



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division

AUG 07 2017

**THIRD DIVISION**

**PO1 CELSO TABOBO III y  
 EBID,**

**G.R. No. 220977**

Petitioner,

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,\*  
 BERSAMIN,  
 REYES, and  
 TIJAM, JJ.

- versus -

**PEOPLE OF THE PHILIPPINES,**  
 Respondent.

Promulgated:

**June 19, 2017**

*Mislos-Loja*

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**RESOLUTION**

**REYES, J.:**

This is a petition for review<sup>1</sup> under Rule 45 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Decision<sup>2</sup> dated January 23, 2015 and the Resolution<sup>3</sup> dated October 12, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35948, affirming the Decision<sup>4</sup> dated May 15, 2013 of the Regional Trial Court (RTC) of Manila, Branch 41, convicting Police Officer 1 Celso Tabobo III y Ebid (petitioner) of the crime of Homicide in Criminal Case No. 06-248576.

\* Additional Member per Raffle dated April 26, 2017 *vice* Associate Justice Francis H. Jardeleza.

<sup>1</sup> *Rollo*, pp. 8-25.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Florito S. Macalino and Pedro B. Corales concurring; *id.* at 49-66.

<sup>3</sup> *Id.* at 80-82.

<sup>4</sup> Rendered by Presiding Judge Rosalyn D. Mislos-Loja; *id.* at 28-47.

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### Facts

On January 19, 2005, at around 7:00 a.m., Manuel Zachary Escudero y Araneta (Escudero) was walking along P. Ocampo Street, Manila when two men riding on a motorcycle in tandem suddenly approached him and grabbed his cellphone. The back rider then fired a shot at Escudero, resulting to his death. The incident was reported to Police Station 9 (PS-9) of the Manila Police District. Station Commander Police Superintendent Marcelino DL Pedrozo, Jr. (P/Supt. Pedrozo) dispatched a team of police officers to the crime scene. After conducting a manhunt operation, the team arrested two suspects who fit the description given by witnesses, namely, Victor Ramon Martin y Ong (Martin) and Leopoldo Villanueva. They were directly brought to PS-9 for investigation and both were detained at the detention cell of the PS-9 located at the rooftop.<sup>5</sup>

On January 20, 2005, at around 4:00 a.m., Police Officer 2 Jesus De Leon (PO2 De Leon) was interviewing Martin at the second floor of PS-9 when the latter requested to remove his handcuffs to answer the call of nature. When PO2 De Leon removed the handcuffs, Martin suddenly grabbed his service firearm. A scuffle ensued and the gun went off. The petitioner, who was then at the ground floor, heard the gunshot and proceeded to the second floor. After seeing PO2 De Leon almost subdued by Martin, the petitioner fired his gun twice and hit Martin on the chest. Martin was rushed to the Ospital ng Maynila but he was declared dead upon arrival.<sup>6</sup>

Consequently, the petitioner was charged with the crime of Homicide for Martin's death before the RTC of Manila.<sup>7</sup>

The prosecution presented Dr. Ravell Ronald R. Baluyot (Dr. Baluyot), the physician who conducted the autopsy on Martin's body.<sup>8</sup> He testified that Martin bore two gunshot wounds on the chest.<sup>9</sup> Considering that the exit wounds were higher than the entrance wounds, it was possible that Martin was shot by someone who was positioned lower than him.<sup>10</sup> Dr. Baluyot also testified that Martin had various injuries that could have been caused by forceful contact with hard, blunt objects.<sup>11</sup>

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<sup>5</sup> Id. at 31-32.

<sup>6</sup> Id. at 32.

<sup>7</sup> Id. at 28.

<sup>8</sup> Id. at 32-33.

<sup>9</sup> Id. at 34.

<sup>10</sup> Id. at 35.

<sup>11</sup> Id. at 34.

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On the other hand, the defense presented P/Supt. Pedrozo who testified that when he was informed of a robbery incident, he dispatched a team of police officers to investigate. On the same day, he learned that the suspects were arrested. However, he had no personal knowledge of the incident surrounding Martin's death.<sup>12</sup>

PO2 De Leon initially took the witness stand for his direct examination. However, he was not able to complete his testimony prompting the RTC to order his direct testimony to be stricken off the records. Accordingly, the case was considered submitted for decision.<sup>13</sup>

### **Ruling of the RTC**

On May 15, 2013, the RTC rendered a Decision<sup>14</sup> convicting the petitioner of the crime charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the [petitioner] guilty beyond reasonable doubt for the crime of Homicide and sentencing him to suffer the penalty of reclusion temporal, imposed in its medium period.

However, for lack of basis, no civil liability is adjudged.

x x x x

SO ORDERED.<sup>15</sup>

In so ruling, the RTC held that the petitioner failed to prove that all the elements of justifying circumstance of defense of a stranger are present in this case.<sup>16</sup>

On July 1, 2013, the petitioner filed a Very Urgent Motion to allow accused to avail of the remedy of appeal by accepting his justification and further allow him temporary liberty under his original bond. He later filed an Extremely Urgent Motion for Reconsideration and New Trial. The petitioner alleged that his counsel's gross mistake and negligence deprived him of his right to due process.<sup>17</sup>

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<sup>12</sup> Id. at 38-41.

<sup>13</sup> Id. at 31.

<sup>14</sup> Id. at 28-47.

<sup>15</sup> Id. at 46.

<sup>16</sup> Id. at 42-43.

<sup>17</sup> Id. at 56-57.

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The RTC issued an Order allowing the petitioner to post cash bail in the amount of ₱150,000.00. However, the RTC deferred the resolution of the motion for new trial and informed the petitioner that should he choose to avail of the remedy of appeal, the entire records would be forwarded to the CA. Hence, the petitioner appealed to the CA.<sup>18</sup>

### **Ruling of the CA**

The CA in its Decision<sup>19</sup> dated January 23, 2015, affirmed the decision of the RTC, to wit:

**WHEREFORE**, in view of the foregoing, the Decision dated May 15, 2013 rendered by the RTC of Manila, Branch 41, in Criminal Case No. 06-248576, is **AFFIRMED**, with the **MODIFICATION** that the [petitioner] is sentenced to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and to pay the heirs of the victim, [Martin], Fifty Thousand Pesos (₱50,000.00) as civil indemnity.

**SO ORDERED.**<sup>20</sup> (Citation omitted)

The CA reasoned that the prosecution need not prove the elements of homicide considering that the burden of proof in this case has shifted to the petitioner for interposing the justifying circumstance of defense of a stranger.<sup>21</sup> However, it concurred with the findings of the RTC that the defense failed to prove the existence of all the elements of defense of a stranger.<sup>22</sup>

The petitioner moved for reconsideration<sup>23</sup> of the CA decision, but the motion was denied in a Resolution<sup>24</sup> dated October 12, 2015. Hence, the present petition.

The petitioner argues that he was denied due process in court due to the gross negligence and incompetence of his counsel before the trial court. Moreover, he asserts that the CA should have considered the stipulations made by the parties respecting the Crime Report that Senior Police Officer 2 Edmundo C. Cabal (SPO2 Cabal) executed to the effect that the petitioner acted in defense of PO2 De Leon when he shot the victim, which

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<sup>18</sup> Id. at 57.  
<sup>19</sup> Id. at 49-66.  
<sup>20</sup> Id. at 65-66.  
<sup>21</sup> Id. at 59-60.  
<sup>22</sup> Id. at 60-61.  
<sup>23</sup> Id. at 67-70.  
<sup>24</sup> Id. at 80-82.

consequently relieves him of his duty to prove the elements of the justifying circumstance of defense of a stranger.<sup>25</sup>

### Issue

Whether or not the CA erred in affirming the petitioner's conviction for the crime of homicide.

### Ruling of the Court

The petition is partly meritorious.

“Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.”<sup>26</sup> This rule is strictly observed, particularly where the liberty of the accused is at stake, as in the extant case. Thus, while the Court generally firmly adheres to the principle that factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record,<sup>27</sup> the same is not ironclad and applicable at all times.

In convicting the petitioner, the RTC and the CA primarily relied on the testimony of the prosecution witness, SPO2 Cabal's Crime Report, and the petitioner's declarations in his Sworn Statement, Counter-Affidavit, and Joint Rejoinder. The CA held that the petitioner admitted shooting Martin as stated in his Sworn Statement dated January 26, 2006, Counter-Affidavit dated March 21, 2006 and Joint Rejoinder dated April 25, 2006. It further noted that in his Appellant's Brief, the petitioner relied on the “defense of a stranger” as justification for his act. Thus, the CA concluded that the petitioner admitted that he killed the victim.<sup>28</sup>

However, the fact that the petitioner may have admitted shooting Martin in the said documents does not necessarily establish his guilt for the crime charged. An admission of fact is starkly different from, and is not tantamount to, a confession of guilt. In *People of the Philippines v. Buntag*,<sup>29</sup> the Court elucidated that:

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<sup>25</sup> Id. at 16-17.

<sup>26</sup> *People of the Philippines v. Dahil, et al.*, 750 Phil. 212, 225 (2015).

<sup>27</sup> *Guevarra, et al. v. People*, 726 Phil. 183, 193 (2014).

<sup>28</sup> *Rollo*, pp. 57-59.

<sup>29</sup> 471 Phil. 82 (2004).

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In criminal cases, an admission is something less than a confession. It is but a statement of facts by the accused, direct or implied, which do not directly involve an acknowledgment of his guilt or of his criminal intent to commit the offense with which he is bound, against his interests, of the evidence or truths charged. It is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt. A confession, on the other hand, is an acknowledgment, in express terms, of his guilt of the crime charged.<sup>30</sup> (Citations omitted)

In this case, the Court notes that while the Sworn Statement, Counter-Affidavit, and Joint Rejoinder may be considered as the petitioner's admission as to the fact of the killing, the same were never identified by the petitioner in court since he never took the witness stand, and is thus, hearsay as regards to him. As elucidated in *Republic of the Philippines v. Marcos-Manotoc, et al.*,<sup>31</sup> affidavits are considered as hearsay evidence unless the affiants themselves testify thereon:

Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.<sup>32</sup> (Citation omitted)

The RTC, therefore, should not have readily relied on the said documents to establish the petitioner's admission of the killing, more so when the admission was not corroborated by evidence, except for the Crime Report.

The Court observes that the petitioner pleaded not guilty to the killing during arraignment and invoked the justifying circumstance of defense of a stranger under Article 11 of the Revised Penal Code. One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. He must show by clear and convincing evidence that he indeed acted in self-defense, or in defense of a relative or a stranger. With clear and convincing evidence, all the following elements of self-defense must be established: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel

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<sup>30</sup> Id. at 95.

<sup>31</sup> 681 Phil. 380 (2012).

<sup>32</sup> Id. at 404-405.

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it; and (3) lack of sufficient provocation on the part of the person claiming self-defense.<sup>33</sup>

In *People v. Patrolman Belbes*,<sup>34</sup> the Court ruled:

It is well settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, "for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing."<sup>35</sup> (Citations omitted)

Thus, the petitioner must establish with clear and convincing evidence that the killing was justified, and that he incurred no criminal liability therefor. However, the petitioner was deprived of such opportunity to effectively present his evidence and to defend himself due to the gross and palpable negligence and incompetence of his counsel. Such deprivation amounts to a denial of the petitioner's due process, vitiating the integrity of the proceedings before the trial court.

Evidently, the trial was marked by gross negligence and incompetence of the petitioner's counsel due to numerous delays and postponements. The Court notes that the petitioner's counsel failed to attend the hearings set on September 21, 2011, October 17, 2011, November 16, 2011, November 5, 2012, November 26, 2012, and March 18, 2013 despite notice, all of which were crucial for the defense. As a result, the RTC ordered the initial testimony of PO2 De Leon, the sole witness to the shooting, to be stricken off the records and to consider the presentation of the defense's evidence waived.<sup>36</sup>

Moreover, the petitioner's counsel failed to ask for reconsideration of the RTC order, knowing fully well that PO2 De Leon's testimony of what transpired in the police station is crucial to the petitioner's defense. Likewise, no formal offer of exhibit was filed for the defense. Thus, the petitioner's counsel can hardly be considered to have defended the petitioner at all.

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<sup>33</sup> *People v. SPO2 Magnabe, Jr.*, 435 Phil. 374, 390 (2002); *People v. Asuela*, 426 Phil. 428, 443 (2002); *Salcedo v. People*, 400 Phil. 1302, 1311 (2000).

<sup>34</sup> 389 Phil. 500 (2000).

<sup>35</sup> *Id.* at 507.

<sup>36</sup> *Rollo*, pp. 62-63.

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It is, however, an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.<sup>37</sup> The only exception would be where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law.<sup>38</sup> The Court finds that the exception applies in this case.

The petitioner is, without doubt, entitled to competent legal representation from his counsel. In *Sanico v. People*,<sup>39</sup> the Court held that:

If the incompetence of counsel was so great and the error committed as a result was so serious that the client was prejudiced by a denial of his day in court, the litigation ought to be reopened to give to the client another chance to present his case. The legitimate interests of the petitioner, particularly the right to have his conviction reviewed by the RTC as the superior tribunal, should not be sacrificed in the altar of technicalities.<sup>40</sup>

Furthermore, in *Reyes v. CA*,<sup>41</sup> the Court held that in cases where the counsel is grossly negligent as to deprive the accused of his constitutional right to be heard, the conviction should not be based solely on the evidence of the prosecution, thus:

It was Atty. Tenorio's absences, then, rather than petitioner's, which appear to be the cause for the defense's failure to present its evidence. Atty. Tenorio's negligence did not consist in error of procedure or even a lapse in strategy but something as basic as failing to appear in court despite clear warning that such failure would amount to waiver of her client's right to present evidence in her defense.

Keeping in mind that this case involves personal liberty, the negligence of counsel was certainly so gross that it should not be allowed to prejudice petitioner's constitutional right to be heard. The judicial conscience certainly cannot rest easy on a conviction based solely on the evidence of the prosecution just because the presentation of the defense evidence had been barred by technicality. Rigid application of rules must yield to the duty of courts to render justice where justice is due – to secure to every individual all possible legal means to prove his innocence of a crime with which he or she might be charged.<sup>42</sup> (Citation omitted)

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<sup>37</sup> *Lagua v. CA, et al.*, 689 Phil. 452, 458 (2012); *Panay Railways, Inc. v. Heva Management and Development Corporation, et al.*, 680 Phil. 1, 9 (2012).

<sup>38</sup> *Pasiona, Jr. v. CA, et al.*, 581 Phil. 124, 134 (2008).

<sup>39</sup> G.R. No. 198753, March 25, 2015, 754 SCRA 416.

<sup>40</sup> Id. at 427-428.

<sup>41</sup> 335 Phil. 206 (1997).

<sup>42</sup> Id. at 215.


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In the *Reyes* case, the Court resolved to remand the case to the RTC for further reception of the accused's evidence. Hence, in accordance with the Court's pronouncement in *Reyes*, and in view of the irregularities prejudicial to the rights of the petitioner that attended the trial, the case calls for a new trial pursuant to Section 2<sup>43</sup> of Rule 121 of the Rules of Court. The case should be remanded to the trial court to enable the petitioner to effectively defend himself and present evidence.

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Decision dated January 23, 2015 and Resolution dated October 12, 2015 of the Court of Appeals in CA-G.R. CR No. 35948 and the Decision dated May 15, 2013 of the Regional Trial Court of Manila, Branch 41 in Criminal Case No. 06-248576 are hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Manila for a new trial for the purpose of allowing Police Officer 1 Celso Tabobo III y Ebid to present evidence in his defense with directive to the court thereafter to decide the case with all deliberate speed.

**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**


  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson


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<sup>43</sup> Sec. 2. *Grounds for a new trial.* – The court shall grant a new trial on any of the following grounds:

(a) The errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) The new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.


  
**DIOSDADO M. PERALTA**  
 Associate Justice

  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**NOEL GIMENEZ TIJAM**  
 Associate Justice


**ATTESTATION**

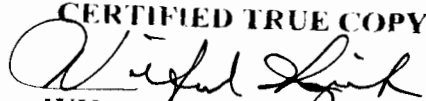
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

AUG 07 2017

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