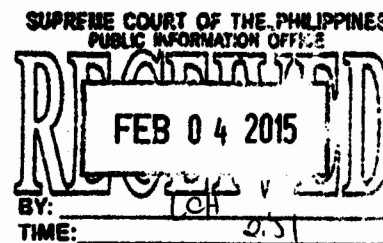




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated December 3, 2014 which reads as follows:*

**“G.R. 159672 - FLORENCIO ALFORTE, Petitioner v. PEOPLE OF THE PHILIPPINES, Respondent.**

The accused, a police officer, seeks the review on *certiorari* of the affirmance of his conviction for homicide under the decision of the Court of Appeals (CA) promulgated on February 24, 2003,<sup>1</sup> pleading that:

IF THERE WAS NO ERROR IN THE FINDING OF GUILT, THERE WAS, IN THE IMPOSITION OF THE PENALTY, FOR LACK OF PROPER APPRECIATION OF CERTAIN CIRCUMSTANCES, AS BLEEDING, DAZED, HUMILIATED PETITIONER ARGUABLY ACTED UNDER AN HONEST MISTAKE OF FACT IN THAT HE WAS BEING ATTACKED OR RIDICULED IN HIS WOUNDED CONDITION BY SOMEONE, SOMEWHERE, LEADING TO OR CAUSING PASSION OR OBFUSCATION, WHICH DID NOT NECESSARILY HAVE TO HAVE BEEN PROVOKED BY THE VICTIM, OR HE WAS IN SUCH A STATE OF “PAGDIDILIM NG ISIP O PAGKAWALA SA HWISYO O SARILI” AMOUNTING TO “TEMPORARY INSANITY” OR DIMINISHED RESPONSIBILITY, ENTITLING HIM AS WELL TO A RECOMMENDATION FOR COMPASSION AS THE PENALTY MUST FIT THE OFFENSE.

- over – eleven (11) pages .....

<sup>1</sup> *Rollo*, pp. 44-55; penned by Associate Justice Salvador J. Valdez, Jr. (retired/deceased), and concurred in by Associate Justice Edgardo P. Cruz (retired) and Associate Justice Mario L. Guariña III (retired).

IT WAS ALSO ERROR FOR THE COURT OF APPEALS TO RULE THAT THE SOURCE OF PROVOCATION IN CASES OF PASSION OR OBFUSCATION MUST BE THE VICTIM, CITING ONE AUTHORITY BUT PETITIONER CITED A CONTRARY AUTHORITY, CALLING FOR THE NEED TO RECONCILE THESE CONTRASTING VIEWS, IN FAVOR OF AN ACCUSED IN A CRIMINAL CASE.<sup>2</sup>

Petitioner SPO1 Florencio Alforte pleaded *not guilty* to the charge of murder brought by the Provincial Prosecutor of Masbate in the Regional Trial Court in Masbate (RTC) under the following information, viz:

That on or about 8:55 o'clock in the morning of May 20, 1993 at Pier Site, Masbate, Masbate and within the jurisdiction of this Honorable Court, the above named accused, armed with .45 Caliber Pistol, with intent to kill and treachery, did, then and there wilfully, unlawfully and feloniously shot one Jay Verano thereby inflicting mortal wound causing the latter's death, to the damage and prejudice of the heirs of said Jay Verano in the amount that may be proven in Court.

Contrary to law.<sup>3</sup>

The evidence of the State, as summed up by the RTC, showed that:

x x x the accused Florencio Alforte on May 20, 1993 at around 8:55 o'clock in the morning at the wharf in Brgy. Bapor Masbate, Masbate boarded the motorboat, M/B Christian bound for Lagundi, Batuan, Masbate. While on his way to the said motorboat, the said Florencio Alforte slid on the stairway and fell down. When he stood up his head was bleeding and blood oozed down to his face, and the people around were then laughing. At that juncture there were some teenagers running on the nearby motorboats. The accused grabbed his gun which was tucked in his waist, cocked it and squeezed the trigger pointing at one of the teenagers, Efren Salvacion Jr. But there was no explosion. The said accused squeezed again the trigger of his gun for the 2<sup>nd</sup> and 3<sup>rd</sup> time but it did not explode. The three teenagers were just standing in front of him and did not move. When the accused changed the magazine of his 45 cal. Pistol, that was the time the three teenagers, Efren Salvacion Jr., Arnel Garganta and Jay Verano started to run. Then there was a gun explosion. It so happened that the rope had tangled the foot of Jay Verano while in the process of running away. Unfortunately the head of Jay Verano was hit when the accused cocked his gun and squeezed the trigger after having changed the magazine. Jay Verano was able to rise and walked limping

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<sup>2</sup> Id. at 18.

<sup>3</sup> Records, p. 1.

and he fell down later. Then accused Florencio Alforte asked SPO4 Jerry Dezalzo who was also on board the M/B Christian to help him in going to the hospital. Both disembarked the motorboat and proceeded to the Masbate Provincial Hospital for treatment of his injuries. The victim Jay Verano was likewise brought to the Masbate Provincial Hospital for treatment but said victim expired few hours after in said hospital.<sup>4</sup>

On his part, Alforte gave a different version of the event, to wit:

x x x on May 20, 1993 he received a message from the PNP Headquarters that he has to report sent by one Major Vicido. That he received the message on May 19, and due to non-availability of transportation he was able to come to Masbate on May 20, 1993. When he appeared in the PNP Headquarters he was asked by Major Vecido of the outcome of the fiesta of Batuan. The said conference started at 8:00 A.M. and ended at about 8:30 A.M. Thereafter he proceeded to the Masbate pier in order to go home to Batuan. Upon reaching the pier he boarded the pumpboat, M/B Christian. When he reached the rear portion, he found out that SPO4 Gerry Descalzo was there. There were also many passengers but he does not know their names. When the M/B Christian was about to leave for Batuan and the engine had started, while it moved backward he heard a gun explosion and he was hit on his right forehead. Then he shouted and asked for help and called the attention of SPO4 Gerry Descalzo. At that juncture, SPO4 Gerry Descalzo told him to make a warning shot because they might still be attacked. SPO4 Gerry Descalzo further told him that his gun was kept inside his bag while the gun of Florencio Alforte was tucked in his waist. When he fired his alarm shot the direction was upward. At that time his face including his eyes was filled with blood. He felt severe headache so that he was assisted by SPO4 Gerry Descalzo. He was brought by SPO4 Descalzo to the Masbate Provincial Hospital for treatment of his injury. He was able to disembark M/B Christian by passing through the motorboats Sabrina and Junjun. Then they looked for a tricycle, and on their way to the tricycle somebody who happened to be one Jong Salvacion told SPO4 Gerry Descalzo that the one who hit him was his cousin. Then they proceeded to the Masbate Provincial Hospital with SPO4 Gerry Descalzo and Jong-jong Salvacion. Then he was treated at the Masbate Provincial Hospital. While being treated he saw Patrolman Ollos to whom he turned over his gun so that it would not be lost, including the magazine. From the Masbate Provincial Hospital he was transferred by his two elder brothers to the St. Anthony Hospital at noontime of the same day. Then he was treated by Dr. Antonio Chang and he was confined in the said hospital for 3 days. After that he was detailed by Provincial Director Olario at the Headquarters of Masbate PNP Provincial Command, at Camp Bonny Serrano, Masbate, Masbate. Then he was detained in the Provincial Headquarters for 3 days. Then he was arrested by the policemen of Masbate Police Station by virtue of a

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<sup>4</sup> Id. at 495-496.

warrant of arrest. But before the arrest he underwent an investigation in the Masbate Provincial Headquarters by SPO2 Elner Antang. When he reached the Masbate Police Station he found out that he was charged of murder for the death of Jay Verano whom he even does not know. Florencio Alforte denied the allegations of Lorie Rose Cortes that he fell down when he alighted the pumpboat, M/B Christian. He likewise denied that he was drunk because he drank in the pier before he alighted the pumpboat. When cross examined he claimed that he heard somebody told Gerry Descalzo that he knows the person who shot him but no case was filed against any other person involving the said incident. Neither he knows of any motive of the prosecution witnesses to testify falsely against him in this case.<sup>5</sup>

On December 4, 2000, the RTC rendered its decision,<sup>6</sup> convicting Alforte of homicide, but appreciated the mitigating circumstance of passion and obfuscation in his favor. In its analysis of the physical evidence, the RTC observed that Alforte had not been shot by a gun, considering that two physicians (namely: Dr. Antonio Chang and Dr. Jason Dimen) had testified that the injury of Alforte had been the result of a fall on a hard object or a blow with a blunt object. It ruled out the defense of Alforte that he did not fire at the victim Jay Verano but had instead fired only a warning shot upwards, for if that were true he could not have hit the victim who was standing on the same level as he was about three meters away. It rejected the attendance of treachery, however, observing that Alforte “did not think of the mode of attack,” and had been unaware that “such untoward incident [could] happen” because he had realized that he had been injured only when he had stood up and seen himself bleeding in the forehead, causing him to feel embarrassed due to some of the people then laughing and making fun of his falling from the gangplank; and that he had been then prompted to grab his gun from his waist, cocking it and squeezing the trigger three times.

Even so, the RTC declared that: “Due to his [appellant] fall on the pump-boat in which his forehead was injured and he was laughed at by the people around, the mitigating circumstance of passion and obfuscation is appreciated in his favor.” It disposed thusly:

WHEREFORE, with the attendant (sic) of one mitigating circumstance and none of the aggravating circumstances appreciated against him, accused Florencio Alforte is hereby sentenced to suffer an indeterminate penalty of six (6) YEARS and ONE (1) DAY OF PRISION

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<sup>5</sup> Id. at 495-507.

<sup>6</sup> CA rollo, pp. 52-64; Records, pp. 495-507.

MAYOR as MINIMUM to FOURTEEN (14) YEARS EIGHT (8) MONTHS OF RECLUSION TEMPORAL as MAXIMUM; to indemnify the heirs of Jay Verano the sum of Fifty Thousand Pesos (₱50,000.00); to pay the heirs of Jay Verano the sum of ₱20,500.00 for the burial expenses; and to pay the cost.<sup>7</sup>

On appeal, the CA affirmed the conviction, but reversed the appreciation of the mitigating circumstance of passion and obfuscation,<sup>8</sup> viz:

But the trial court correctly ruled out the attendance of the qualifying circumstance of treachery so that the resulting crime that the appellant committed was merely homicide. As it aptly said:

“x x x Alforte did not think of the mode of attack. He was not even aware that such untoward incident may happen. According to Lorie Rose Cortes in her testimony on April 13, 1994 the accused when he stood up with his forehead bleeding might have been ashamed because the people there including herself were then laughing which prompted the accused to grab his gun from the waist and cocked the same then squeezed the trigger three times. When he changed the magazine then there was explosion which hit the victim whose foot was tangled by the rope while running.”

However, it committed a reversible error in appreciating the mitigating circumstance of passion and obfuscation in his favor. For this circumstance to be present, the cause producing the passion or obfuscation must come from the offended party, which was not so in the instant case. For the evidence does not show that the victim and his companions were among those who laughed at the appellant. On the contrary, they just met the already bleeding appellant when they were running on their way to take a dip into the sea.

Consequently, the penalty prescribed for homicide, which is *reclusion temporal*, should be imposed on the appellant in its medium period, there being neither aggravating nor mitigating circumstances.

WHEREFORE, the decision appealed from is hereby MODIFIED in that the accused-appellant FLORENCIO ALFORTE Y ARGOTE should be, as he is hereby, sentenced to suffer an indeterminate penalty of 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. In all respects, the same decision stands.

SO ORDERED.<sup>9</sup>

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<sup>7</sup> Records, pp. 506-507.

<sup>8</sup> Supra note 1.

<sup>9</sup> CA *rollo*, pp. 116-127.

Alforte sought a reconsideration,<sup>10</sup> but the CA denied his motion for the purpose, holding:

Furthermore, as aptly pointed out by the People, temporary insanity as claimed by appellant in his motion for reconsideration, is not recognized defense to a criminal prosecution in this jurisdiction and that mere abnormality of the mental faculties will not exclude imputability. In any case, appellant had the burden of proving his alleged “temporary insanity,” as it is a basic principle in our rules on evidence that he who alleges a fact must prove the truth thereof. However, he did not do so. Nor did he raise this argument during the trial, and it is only now that he belatedly raised it.

It must be stressed that to consider passion and obfuscation as mitigating circumstance, it must be shown that (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused's mind; and (3) the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.

The alleged mistake of fact claimed by appellant causing him to mistakenly fire at the victim will not exempt him from criminal liability since the doctrine of *ignorantia facti excusat* is never applied when negligence, if not blatant lie, can be imputed to the accused. As a police officer who is supposed to have been trained to confront any emergency situation with equanimity, or more precisely, presence of mind, he ought to have adhered to the truth that he sustained the injury when he accidentally slipped as he was passing on the wooden gangplank of the boat he was to ride on and bumped his head against the ladder, instead of making up the fantastic story that as the boat was about to move, he heard a gun explosion and his head was hit so that with blood flowing from his head down to his eyes, he got the gun tucked in his waist and fired a warning shot upwards to deter any further attack. Unfortunately, his shot found its mark on the head of the victim, who was nowhere up in heaven yet but here on earth about to take a dip into the sea for a morning bath but was no longer able to do so as he succumbed to the gunshot wound he sustained from the appellant.<sup>11</sup>

In his present appeal, Alforte argues that he was in a dazed mental state at the time of the incident due to his bleeding, physically and psychically; that he should not then be judged by a standard exacted on a normal person in the calm of a peaceful meeting, because his discernment was then clouded by the sound of laughter from people who appeared to be

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<sup>10</sup> Id. at 128-151.

<sup>11</sup> Id. at 174-175.

mocking him; that if he then thought mistakenly that the victim was among those mocking him most cruelly and insensitively, then he should be held to have acted under some mistake of fact; that it was difficult for him to identify and single out the person or persons mocking him in his bleeding and dazed state, partly because of his vision being then obscured by blood; and that if he could not be absolved entirely, he should at least be favored with two mitigating circumstances and one alternative circumstance without any aggravating circumstance, naming the two mitigating circumstances as that of having acted upon an impulse so powerful as naturally to have produced passion and obfuscation under Article 13(6), Revised Penal Code, and that of having such illness as would diminish his exercise of will-power without however depriving him of consciousness of his acts under Article 13(9), Revised Penal Code; and the circumstance of temporary insanity as an analogous circumstance under Article 13(10), Revised Penal Code; and that he should further benefit from an alternative circumstance under Article 15 of the Revised Penal Code, because his situation was akin to that of one whose judgment was impaired by intoxication, and whose responsibility was thereby diminished.

On its part, the State assails the remedy of appeal on certiorari, by which Alforte was raising questions of fact instead of confining himself to issues of law; that he could not have the Court review and re-examine the facts without his clear showing that the CA's factual findings were not supported by the evidence on record, or that such findings were based on misapprehension of facts; that the CA's findings were thus final and conclusive upon the Court; that the victim did not commit an unlawful act sufficient to produce passion and obfuscation in Alforte; that to laugh because Alforte had fallen from the wooden gangplank of the boat was not an unlawful act; that, at any rate, Alforte did not even know who had actually laughed at his situation; that even if the victim had laughed at him, shooting him was uncalled for; that the victim was only 16 years old and unarmed; and that shooting another in retaliation for derision was not proportionate.

The State sought an additional ₱50,000.00 be awarded to the heirs of the victim as moral damages.

### **Ruling**

We affirm the ruling of the CA.

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Alforte's pleas of having acted upon an impulse so powerful as naturally to have produced passion and obfuscation; of such illness as would diminish his exercise of will-power; of the alternative circumstance similar to intoxication; and of temporary insanity cannot be appreciated singly or together in his favor. He did not sufficiently show the factual bases for the supposed mitigation of his penalty.

For passion and obfuscation to be appreciated, the accused must establish that: (1) he acted upon an impulse, and (2) the impulse must be so powerful that it naturally produced passion and obfuscation. The requisites of the circumstance are, namely: (1) there is an act, both unlawful and sufficient to produce such condition of the mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time during which the perpetrator might have recovered his normal equanimity.<sup>12</sup> Moreover, the passion and obfuscation could reduce the penalty only where the provocation causing the heated passion came from the injured party.<sup>13</sup>

The criminal liability of Alforte was not to be mitigated. The victim and his two companions were not doing anything unlawful, unjust, or improper that would have engendered passion or obfuscation in Alforte. They did not laugh or mock Alforte, nor did they cause his fall from the gangplank. He had fallen due to his lack of care in traversing the gangplank. Indeed, the passion and obfuscation, to be mitigating, must originate from lawful feelings, not from vicious, unworthy, and immoral passions.<sup>14</sup> The turmoil and unreason that result from a wounded ego<sup>15</sup> were not enough to obfuscate one's sanity and self control. Nor would a risen temper, or anger mitigate.

Alforte contends that he lost his sense of discernment upon finding himself being laughed at, that he then thought that he was being mocked; and that in his dazed condition he should be deemed to have acted upon a mistake of fact. This contention was inappropriate, however, because his misapprehension was not committed without fault or carelessness on his part.<sup>16</sup> He did not show: (a) that the mistake was honest and reasonable; (b) that it was upon a matter of fact; and (c) that it negated the culpability required to commit the crime or the existence of the mental state that the

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<sup>12</sup> *People v. Alanguilang*, 52 Phil. 663, 665 (1929).

<sup>13</sup> *United States v. Esmedia*, 17 Phil. 260, 265 (1910).

<sup>14</sup> *United States v. De la Cruz*, 22 Phil. 429, 431-432 (1912).

<sup>15</sup> *People v. Rabanillo*, G.R. No. 130010, May 26, 1999, 307 SCRA 613, 624.

<sup>16</sup> *People v. Oanis*, 74 Phil. 257 (1943).



statute prescribed with respect to an element of the offense. On the contrary, he admitted that he had pulled the trigger of his gun not once but thrice, but the gun did not fire; and that he then reloaded his gun with another magazine, then pointed and fired it. Such acts of his evinced the intent to kill or to maim whomsoever he thought had laughed at him. He should really be criminally liable for all the results of his voluntary acts.

Alforte would have us consider his situation as similar to one of a person who was intoxicated in the nature of an alternative circumstance under Article 15 of the Revised Penal Code. But we cannot accede because he was a police officer who should have had full control of his emotions and temper. Nor can we consider his situation as an analogous circumstance.

The State has called attention to the omission of moral damages of ₱50,000.00 for the heirs of the victim. The omission was a patent legal error to be corrected. Moral damages are mandatory in murder and homicide, without need of any allegation or proof other than the death of the victim. In short, moral damages are awarded despite the absence of proof of mental and emotional sufferings of the victim's heirs because, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.<sup>17</sup> As the Court has aptly observed in one case,<sup>18</sup> "a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them." But the amount should not be limited to ₱50,000.00 but should be pegged at ₱75,000.00. The similar amount of ₱75,000.00 as civil indemnity to compensate for the death of the victim is also fixed. These upward adjustments conform to prevailing jurisprudence.<sup>19</sup>

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<sup>17</sup> *Villamor v. People*, G.R. No. 182156, November 25, 2009, 605 SCRA 616, 627; *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69; *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009, 582 SCRA 547.

<sup>18</sup> *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

<sup>19</sup> *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255; *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769.

The CA affirmed the grant of only ₱20,500.00 for burial expenses because that was the total amount proved. In our view, however, temperate damages of at least ₱25,000.00 should instead be allowed to the heirs of the victim. Limiting the amount to what the heirs of the victim actually established through receipts would be unfair to them if in other cases the Court has allowed temperate damages of at least ₱25,000.00 in lieu of allowing actual damages to the heirs of the victim who were unable to establish burial expenses of at least that amount. Although Article 2224 of the *Civil Code* provides that temperate damages may be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty, it would really be anomalous and unfair that the heirs of the victim who tried and succeeded in proving actual damages of less than ₱25,000.00 only would be put in a worse situation than others who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages.<sup>20</sup>

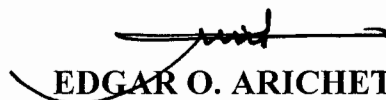
Furthermore, interest of 6% *per annum* is imposed on the damages to be reckoned from the finality of this decision.<sup>21</sup>

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on February 24, 2003 in every respect subject to the **MODIFICATIONS** that the petitioner shall pay to the heirs of the late Jay Verano: (a) the amount of ₱75,000.00 as moral damages in addition to the civil indemnity of ₱75,000.00; (b) ₱ 25,000.00 as temperate damages in lieu of actual damages; (c) interest of 6% *per annum* from the finality of this decision until full payment on each item of civil liability.

The petitioner shall further pay the costs of suit.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court  
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Court of Appeals (x)  
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(CA-G.R. CR No. 25402)

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<sup>20</sup> Id.

<sup>21</sup> *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

The Solicitor General (x)  
Makati City

The Hon. Presiding Judge  
Regional Trial Court, Br. 48  
Masbate City 5400  
(Crim. Case No. 7093)

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