

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO BRIONES Y MOLINA, ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated June 18, 2013[1] in Criminal Case No. Q-08-152400 of Branch 83, Regional Trial Court (RTC), Quezon City finding accused-appellant Juanito Briones y Molina guilty beyond reasonable doubt of the crime of frustrated murder.

THE ANTECEDENTS

Around 11:30 in the evening of September 17, 2007, while private complainant Renato Pia was walking home from work along Freedom Park 5, Batasan Hills, Quezon City, accused-appellant suddenly appeared, held him by the shoulders and uttered, "You are not from this place". Thereupon, accused-appellant stabbed private complainant with a bladed weapon. Private complainant was hit on the upper abdomen and tried to run away. However, accused-appellant, who was with a certain alias "Duling", [2] caught up with him and stabbed him in the arm. [3] Despite his wounds, private complainant was able to get away from accused-appellant until he reached home. [4] His family then brought him to the East Avenue Medical Hospital where he was treated and confined from September 17-21, 2007. [5]

However, accused-appellant denied having anything to do with the crime as he claimed that he was at home on Badon Street, Freedom Park, Quezon City at the time of the incident. [6] Allegedly, it was a case of mistaken identity since most of the residents in their area had similar faces. [7]

On June 4, 2008, an information [8] was filed with the trial court against accused-appellant charging him with frustrated murder committed as follows:

"That on or about the 17[th] day of September, 2007 in Quezon City, Philippines, the above-named accuse, conspiring together, confederating with another persons whose true name identity and whereabouts had not as yet been ascertained with intent to kill, with the qualifying aggravating circumstances of evident premeditation, treachery and abuse of superior strength did, then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of RENATO PIA y UBATAY, by then and there held him by the shoulder and stabbing him on the chest, thereby inflicting upon him serious and mortal stab wounds, thus performing all the acts of execution which would have produced the crime of Murder, as a consequence, but nevertheless did not produce it by reason or causes independent of the will of the perpetrator, that is the timely and able medical assistance rendered to said RENATO PIA y UBATAY to his damage and prejudice.

Accused persistently planned commission of the crime prior to its execution, consciously adopting the means and methods of execution, done suddenly and unexpectedly and taking advantage of superior strength and numbers to ensure commission of the crime without risk to the accused.

CONTRARY TO LAW."

Accused-appellant pleaded "not guilty" to the charge. During the pre-trial conference,[9] he admitted the following:

- "1. That the Court has jurisdiction over the case;
2. That the real name of the Accused is JUANITO BRIONES;
- 3.

That whenever the name FIDEL EXPECTACION y BINAOBRA is mentioned in the subsequent hearings of this case, said name will refer to the same JUANITO BRIONES, who is the accused in this case."

Trial on the merits ensued. The prosecution presented as its witness private complainant Renato Pia. On the other hand, accused-appellant and Marta A. Almogeurra (a boarder of accused-appellant's father) took the witness stand for the defense.

On June 18, 2013, the trial court rendered a Decision convicting accused-appellant of frustrated murder. The decretal portion of the Decision reads:

"WHEREFORE, the prosecution having established the guilt of accused JUANITO BRIONES of the offense of FRUSTRATED MURDER beyond reasonable doubt, this Court finds him GUILTY thereof and hereby sentences him to undergo imprisonment of 12 years and 1 day to 14 years and 8 months as minimum to 20 years as maximum.

Accused Juanito Briones, is hereby ordered to reimburse to complainant Renato Pua the medical expenses incurred by the latter in his hospitalization and treatment of his injuries in the amount of Fifty Eight Thousand Pesos (P58,000.00) and loss of income for three months in the total amount of Fifty Thousand Pesos (P50,000.00).

Costs against the accused.

SO ORDERED."

Hence, accused-appellant filed the present appeal ascribing the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

II

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS LIABLE, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF FRUSTRATED MURDER INSTEAD OF FRUSTRATED HOMICIDE.[10]

THE ISSUE

Whether the trial court erred in convicting accused-appellant of the crime of frustrated murder.

THE COURT'S RULING

In holding accused-appellant guilty of frustrated murder, the trial court gave weight and credence to the positive testimony of private complainant and did not dignify accused-appellant's defense of alibi. Said the trial court:

"Scrutinizing the respective versions of the prosecution and the defense, there is more reason to believe the version of the prosecution that accused Juanito Briones was the one [who] inflicted the stab wound upon the complainant. The testimony of the private complainant has all the earmarks of credibility, he is straightforward, consistent in giving a clear picture of the whole stabbing incident that transpired on September 17, 2007.

On the other hand, Juanito Briones set up the defenses of alibi and denial. His evidence is to the effect that on June (sic) 17, 2007 at around 11:30 o'clock in the evening when the stabbing incident occurred he was inside the "Carinderia" together with his daughter they were eating porridge. After eating, they went home at around 11:35 o'clock in the evening.

x x x x x x x

Further, the positive identification made by private complainant, the conclusion is inescapable that accused Briones was the one to be responsible for the stabbing incident for the stabbing incident on September 17, 2007 and therefore, a judgment of conviction is in order."

Accused-appellant, however, asseverates that although the defense of alibi is weak, he should be acquitted because the evidence of the prosecution is also weak. Allegedly, it was unlikely for private complainant to have positively and clearly identified him if the former immediately ran away after the attack.

The asseveration is unfounded.

Basic are the elements of murder, to wit: (i) a person was killed; (ii) the accused killed him or her; (iii) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and, (iv) the killing is not parricide or infanticide.[11]

In his direct testimony, private complainant positively identified accused-appellant as his assailant and candidly narrated the material events showing how the crime was perpetrated with treachery. Thus:

"Hon. Eduardo Leagspi (Public Prosecutor):

Mr. Witness, on September 17, 2007, at about 11:30 in the evening, do you know where you were?

Renato Pia y Ubatay (Private Complainant):

I was on my way home. I was along Briones St., Sir.

x x x x x x x x

Q: While walking thereat at that time, was there any unusual incident that happened?

A:

While I was walking thereat, suddenly Juanito Briones appeared and put his arms over my shoulder and told me that "YOU ARE NOT FROM THIS PLACE", and simultaneously stabbed me, Sir.

Q: After you were stabbed by the accused, what did you do?

A:

I tried to escape and ran away, but again he went after me and stabbed me at my right upper arm, Sir.

X X X X X X X X

Q: After that, what transpired after that?

A:

Again, I tried (sic) myself from him and ran way, then I reached home and my family brought me to the East Avenue Medical Center, Sir.

Q: By the way, this Juanito Briones, who stabbed you, is he inside the courtroom?

A: Yes, Sir.

Court Interpreter:

WITNESS IS POINTING TO A MAN WEARING A YELLOW T-SHIRT, AND WHEN ASKED ABOUT HIS NAME, ANSWERED THAT HE IS JUANITO BRIONES, ACCUSED IN THIS CASE.

Atty. Alexis Bartolome (Counsel for the Accused):

Why are you sure, Mr. Witness, that the accused was the one who stabbed you, when in fact there was no occasion in the past that you talk to him?

X X X X X X X X

Renato Pia y Ubatay (Private Complainant):

Because when he put his arms around me, I saw his face, Sir.

Atty. Alexis Bartolome (Counsel for the Accused):

Is that the place where you stabbed, Mr. Witness, and the place was not well lighted?

Renato Pia y Ubatay (Private Complainant):

We were face to face when he put his arms around me. So, I really saw his face, Sir."[12]

Private complainant also testified on the favorable condition of visibility at the time of the incident. Thus:

"Court:

The defense counsel asked you about the lighting condition, and you said: "Yes". That it was dark. Then you were stabbed. Are you repeating the same answer?

Renato Pia y Ubatay (Private Complainant):

Yes, Your Honor.

Court:

From the place where accused put his arms on your shoulders, how far was the nearest light?

Renato Pia y Ubatay (Private Complainant):

Up to that cabinet, Your Honor.

Hon. Eduardo Legaspi (Public Prosecutor):

About 5 meters.

x x x x x x x x

Court:

According to you that when accused stabbed you, you looked at him?

Renato Pia y Ubatay (Private Complainant):

Yes, Your Honor.

Court:

And you saw the face of the accused?

Renato Pia y Ubatay (Private Complainant):

Yes, Your Honor."^[13]

Accused-appellant posits that the qualifying circumstances of evident premeditation, treachery and abuse of superior strength did not attend the commission of the crime.

To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and, (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.^[14] The prosecution failed to prove that accused-appellant planned the crime before committing it. Therefore, evident premeditation cannot be appreciated against accused-appellant.

The prosecution likewise failed to prove the requirements of the qualifying circumstance of abuse of superior strength. To appreciate abuse of superior strength -

[T]here must be shown a deliberate intent on the part of the malefactors to take advantage of their greater number. They must have notoriously selected and made use of superior strength in the commission of the crime. To take advantage of superior strength is to use excessive force that is out of proportion to the means for self-defense available to the person attacked; thus, the prosecution must clearly show the offenders' deliberate intent to do so. Where armed assailants seize upon their greater number and superior power to overwhelm an unarmed victim, the aggression must be considered.^[15]

Although it was alleged by private complainant that a certain alias "Duling" was with accused-appellant when the crime was committed, private complainant himself testified that the former did nothing to harm him;^[16] hence, alias "Duling" was not included in the charge. The trial court also observed that private complainant was taller and bigger than accused-appellant.^[17]

However, there is positive evidence showing that the commission of the crime was treacherous. The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victims, depriving the latter of any real chance to defend himself/herself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.^[18]

Private complainant, unarmed, was peacefully walking along the street, without any inkling of the impending attack. Without any provocation from private complainant, accused-appellant suddenly grabbed him by the shoulder and stabbed him on the upper abdomen with a bladed weapon. The swiftness and suddenness of the attack gave no opportunity to private complainant to defend himself. As held in *People v. Antipolo*^[19]:

"Treachery or alevosia exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

In the case at bar, the attack against the victim was treacherous not only due to the suddenness of its execution, but also due to the deliberateness of the mode chosen. The records show that the victim had no inkling of the impending attack. He was just walking along the road leading downhill when the accused-appellant shot him. The victim had no opportunity to anticipate the imminence of his attack, nor was he in a position to defend himself or repel the aggression because he was unarmed. Moreover, he was shot on the chest, at close range, as evidenced by the powder burns found around the victim's gunshot wounds. To ensure the success of his criminal design, the accused-appellant fired at the victim twice although the latter was already wounded and was helplessly sprawled on the ground. Undoubtedly, the accused-appellant deliberately and consciously adopted the means to ensure his criminal purpose without any risk to himself. The suddenness of the attack without the slightest provocation from the victim who was unarmed and had nary any opportunity to repel the aggression qualifies the crime with alevosia."

Notably, the only defense interposed by accused-appellant is alibi. It is settled that alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate.[20] Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[21]

For the defense of alibi to prosper, the accused must prove the following: (i) that he was present at another place at the time of the perpetration of the crime; and (ii) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed[22].

Here, accused-appellant utterly failed to prove the essential requisites of alibi. From accused-appellant's very own testimony,[23] his house was just nearby the place of the crime. As such, it was not physically impossible for him to be present at the scene of the crime. Moreover, accused-appellant's alibi is not only weak, but it is also tainted with glaring inconsistencies. As found by the trial court:

"Defense witness Marta A. Almoguerra corroborated the testimony of the accused, she testified that she saw Juanito Briones together with his daughter inside the canteen. She further testified that she was there around 11:00 to 12:30 P.M. inside the canteen.

With the foregoing statements made by the accused and his witness, both testimonies are not consistent with each other. Apparently, accused admitted that he left the canteen around 11:35 P.M. The time when the stabbing incident happened. This is contrary to the testimony of the witness that she saw the accused inside the canteen from 11:00 to 12:30 P.M. The witness centered her testimony on the whereabouts and personal activity of the accused at the time of the stabbing incident, rather than testifying the physical impossibility of the accused to be the scene of the crime or to commit the crime."

Verily, jurisprudence teaches that when the issues revolve on matters of credibility of witnesses, findings of facts of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[24]

The Court, however, holds accused-appellant guilty only of attempted, not frustrated, murder. It is well settled that where the wounds inflicted on the victim are not sufficient to cause his death, the crime is only attempted murder, as the accused had not performed all the acts of execution that would have brought about the victim's death[25]. As held in *People v. Labiaga*[26]:

In frustrated murder, there must be evidence showing that the wound would have been fatal were it not for

timely medical intervention. If the evidence fails to convince the court that the wound sustained would have caused the victim's death without timely medical attention, the accused should be convicted of attempted murder and not frustrated murder." (Underlining supplied)

Significantly, in *Epifanio v. People*[27], proof of the gravity of the wound sustained by the victim was held indispensable in the conviction of frustrated murder.

"Moreover, the prosecution failed to present testimonial evidence on the nature of the wounds sustained by Crisaldo. The Court has discussed the importance of ascertaining the degree of injury sustained by a victim in *People v. Matyaong*, thus:

In considering the extent of injury done, account must be taken of the injury to the function of the various organs, and also the danger to life. A division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity to the simplest cases, and, on the other hand, the favorable termination of some injuries apparently the most dangerous, render any such classification impracticable. The general classification into slight, severe, dangerous, and mortal wounds may be used, but the possibility of the slight wound terminating with the loss of the person's life, and the apparently mortal ending with only a slight impairment of some function, must always be kept in mind. x x x

The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment. x x x

No evidence in this case was introduced to prove that Crisaldo would have died from his wound without timely medical attendance. It is well-settled that where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder." (Underlining supplied)

In this case, no convincing proof was offered to show that the wound inflicted on private complainant was fatal and would have caused his death had medical help not been provided. Except for the allegation of private complainant in his "Sinumpaang Salaysay ng Pagrereklamo" dated September 30, 2007[28] that he sustained a stab wound on the upper part of his abdomen, no evidence was adduced to prove the gravity of the wound; hence, the Court cannot consider the stab wound as sufficient to cause death. The "Sinumpaang Salaysay ng Pagrereklamo" merely stated:

"NA, noong September 17, 2007 bandang alas 11:30 ng gabi habang ako ay naglalakad sa kahabaang ng Briones St., Freedom Park 5, Brgy. Batasan Hills, Quezon City at pauwi sa aming bahay ay bigla na lamang akong nilapitan ng suspek na si JUANITO BRIONES na anak ni BARANGAY KAGAWAD GONZALO BRIONES ng Batasan Hills, at agad akong inakbayan nito at sinabing "Hindi ka taga-rito a!" Sabay saksak nito ng patalim sa aking dibdib at ako ay tinamaan sa gawing itaas ng aking sikmura at ang kasama naman niyang si "DULING" ay nasa likuran ko at dahil doon ay nagpumiglas ako at nagtatakbo pero hinabol din nila ako at nang maabutan nila ako ay sinaksak uli ako ni JUANITO BRIONES at ako ay tinamaan sa aking kanang Braso ng tagusan at sinabing "Papatayin ko na ito para hindi na makapagsalita!"

Moreover, private complainant's attending physician did not testify on the gravity of the wound inflicted on him. In fact, said doctor was not presented at all during trial. Neither the Medical Certification[29] issued by the East Avenue Medical Center,[30] where private complainant was confined and treated from September 17-21, 2007 contained any indication if the wound sustained was fatal. Thus:

"T/T HEPATIC INJURY, SEG II, 2° to SW

EPIGASTRIC AREA

S/P EEL, EVAC of HPT, HEPATORRAPHY

9/17/2007

NOTHING FOLLOWS"

As there is dearth of evidence to show the nature of the wound inflicted on complainant, this must necessarily be appreciated in favor of accused-appellant. Accordingly, accused-appellant must be convicted of attempted murder only.

The imposable penalty for the crime of attempted murder, following Article 51[31] of the Revised Penal Code, is prision mayor. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be within the range of prision correccional, and the maximum should be within the range of prision mayor in its medium period, since no generic aggravating or mitigating circumstance attended the commission of the crime. Accused-appellant is hereby sentenced to suffer two (2) years, four (4) months and one (1) day of prision correccional medium, as the minimum period, to eight (8) years and one (1) day of prision mayor medium, as the maximum period.

There is no reason for the Court to disturb the trial court's award of P58,000.00 as hospital and medical expenses and P50,000.00 as loss of income for three (3) months. Notably, the parties stipulated during trial that private complainant incurred actual expenses in the total amount of P108,000.00 as medical and hospital expenses and loss of income.[32] Thus, no further proof is necessary. As held:

"A stipulation of facts in criminal cases is sanctioned by law. It is done in further pursuit of the objective of expediting trial by dispensing with the presentation of evidence on matters that the accused is willing to admit. Further, stipulations are recognized as declarations constituting judicial admissions; hence, binding upon the parties. By virtue of such stipulation of facts, the prosecution dispensed with the introduction of additional evidence, and the defense waived the right to contest or dispute the veracity of the statements contained in the exhibits"[33]

Moreover, the award of moral damages is justified under the present circumstances. Article 2219 of the Civil Code expressly provides that the victim of a criminal offense resulting in physical injuries is entitled to recover moral damages. The amount of moral damages is fixed at P50,000.00 for murder. For attempted murder, moral damages of P25,000.00 shall be sufficient.[34]

WHEREFORE, the appealed Decision dated June 18, 2013 is MODIFIED to the effect that accused-appellant is found GUILTY of ATTEMPTED MURDER and is hereby sentenced to suffer imprisonment of (2) years, four (4) months and one (1) day of prision correccional medium, as the minimum period, to eight (8) years and one (1) day of prision mayor medium, as the maximum period. In addition, accused-appellant is ordered to pay private complainant the sum of P25,000.00 as moral damages. The Decision is affirmed in all other respects.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] pp. 20-26, Rollo.

[2] p. 23, TSN, March 3, 2009.

- [3] pp. 3-4, Id.
- [4] p. 5, Id.
- [5] pp. 7-9, Id.
- [6] p. 5, TSN, November 17, 2009.
- [7] p. 12, Id.
- [8] pp. 1-2, Original Records.
- [9] p. 34, Id.
- [10] p. 9, Rollo.
- [11] People vs. Lagman, G.R. No. 197807, April 16, 2012.
- [12] p. 6-26, TSN, March 3, 2009.
- [13] pp. 29-30, TSN, March 3, 3009.
- [14] People vs. Sabangan, G.R. No. 191722, December 11, 2013.
- [15] People vs. Beruega, G.R. No. 142931, April 11, 2002, 380 SCRA 674-688.
- [16] pp. 33-34, TSN, March 3, 2009.
- [17] pp. 32-33, Id.
- [18] People vs. Sabangan, Supra.
- [19] G.R. No. 141135, July 4, 2002, 384 SCRA 77-86.
- [20] Sumbillo vs. People, G.R. No. 167464, January 21, 2010, 610 SCRA 477-486.
- [21] People vs. Piosang, G.R. No. 2000329, June 5, 2013, 697 SCRA 587-600.
- [22] People vs. Jastiva, G.R. No. 199268, February 12, 2014.
- [23] pp. 10-11, TSN, November 17, 2009.
- [24] People vs. Nelmidia, G.R. No. 184500, September 11, 2012, 680 SCRA 386-440.
- [25] People vs. Gutierrez, G.R. No. 188602, February 4, 2010, 611 SCRA 633-648.
- [26] G.R. No. 202867, July 15, 2013.
- [27] G.R. No. 157057, June 26, 2007, 525 SCRA 552-565.
- [28] p. 10, Original Records.
- [29] p. 11, Id.
- [30] pp. 7-8, TSN, March 3, 2009.
- [31] Article 51. Penalty to be imposed upon principals of attempted crimes. - A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

[32] pp. 11-14, TSN, March 3, 2009.

[33] People vs. Razul, G.R. No. 146470, November 22, 2002, 392 SCRA 553-579.

[34] People vs. Darilay, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45-64.

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