

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN GUACENA, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is an appeal on the Decision[1] dated September 18, 2012 (“assailed Decision”) of the Regional Trial Court, Branch 24 of Iloilo City, convicting herein accused-appellant Allan Guacena of frustrated murder; sentencing him to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, and ordering him to pay private complainant Julius Ronald Pacificador the amount of Php1.5 Million pesos as actual damages.

In an Information[2] docketed as Criminal Case No. 03-58028, accused-appellant was charged with the felony of frustrated murder committed as follows:

“That on or about the 13[th] day of September 2002, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a gun, with deliberate intent and without any justifiable motive, by means, or with the qualifying circumstance of treachery, and with a decided purpose to kill, did then and there willfully, unlawfully and criminally shoot, hit and wound Julius Ronald L. Pacificador with the said gun with which the said accused was provided at the time, thereby causing upon said Julius Ronald L. Pacificador injuries on various parts of his body, thus, the accused has performed all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the accused, that is, by the immediate and timely intervention of a third person and medical attendance accorded to the said offended party.

CONTRARY TO LAW.”

When arraigned, accused-appellant, assisted by counsel entered a plea of not guilty.

The pieces of evidence[3] for the prosecution tend to show the following version of facts:

Sometime in September 2001, Julius Ronald Pacificador came to know Allan Guacena through one Eddie Balgoa, when Julius was accompanied by Eddie to the house of Allan at Bakhaw, Madurriao, Iloilo City to buy shabu. At that time, Allan did not sell them shabu as he intended to clear the names of Julius and Eddie with his boss. Allan instructed the two to return the following week. Thus, a week later, Allan sold shabu to Julius and Eddie after their names were cleared.

The dealings with Allan continued on many occasions and this made Julius become acquainted with Allan. Through these dealings, Julius came to know that Allan, though a drug dealer, was untouchable because he was being protected by the NARCOM, and this Allan always bragged.

In June 2002, Julius received a call from Allan, informing the former that he and Eddie were in the watchlist of NARCOM. From that call, Allan informed Julius that the latter has to pay an amount of P3000.00 per week in

order for him not to be arrested. Allan told Julius that his (Allan) friend Pol. Inspector Alexis Relado would arrest Julius if he would not pay. Julius protested. Julius reasoned that he is merely a user not a drug pusher, so he cannot afford to give the amount being demanded. Allan, however, insisted with his threat and warned Julius that he has to fend for himself.

Later on, in August 2002, Julius learned that Eddie's house was raided by the police and cases of illegal possession of illegal drugs and illegal possession of firearm were filed against Eddie.

Two days after Eddie's arrest, Allan called up Julius, threatening that if the latter would not pay the amount of P3,000.00 every week, the latter would be next to be apprehended by the police through Pol. Inspector Alexis Relado. Julius tried to convince Allan that he could not put up the amount being demanded, but Allan retorted, "You are the son of the mayor of Hamtic and you do not have money to pay?"

A month later, in the evening of September 13, 2002, Julius received another call from Allan. This time, Allan offered Julius if the latter wanted to buy shabu. Julius acceded. However, before Julius went out of his house, he saw his wife and daughter, and suddenly realized that he needed to stop using shabu. He then decided to tell Allan that he would already stop buying shabu from him.

Julius drove his way to a mall where he and Allan would meet up. Upon arrival at the mall, Julius saw Allan with a certain Pabong waiting beneath the mall's overpass. He stopped his car where the Allan and Pabong were waiting. When Julius opened the window at the passenger side of his car, he saw Allan laughing. Allan, upon seeing the opened window of the car, suddenly fired his gun at Julius. Allan hit Julius in his right arm, right chest, right side of his abdomen, and between his left index and middle fingers. Desiring to save himself, Julius stepped on the accelerator to escape, but he lost control and rammed on another vehicle and a lamp post.

Julius was brought to the hospital by an ambulance. He underwent three operations in two different hospitals. The operations and the medicines he took cost him to pay an aggregate amount of Php436,641.46.

Julius suffered two fatal gunshot wounds – one on his right chest and one on the right lower abdomen that injured his small and large intestines. These two injuries would cause Julius' death if it were not for the timely medical intervention given to him.

On the other end, the defense centered on alibi and denial. The testimony of Allan,[4] corroborated by the testimony of his wife Jannette Guacena,[5] mainly narrated that he was an electronic technician, that he did not engage in drug pushing, and that he knew of Eddie Balgoa as a drug pusher but denied transacting with him except accepting a T.V. repair from Eddie. He said that he knew Julius but only because the latter accompanied Eddie the time Eddie availed Allan's repair services. Eddie introduced Julius to Allan as a son of a mayor.

Allan claimed that in the evening of September 13, 2002, he was at his house sleeping. At that time, he was with his wife, his children, and his old mother. He said that he heard about the incident involving Julius only through a radio broadcast. He also narrated that the his house is about a kilometer away from the mall where Julius was shot.

With these versions of facts, the RTC ruled against herein accused-appellant Allan Guacena. In its assailed Decision,[6] the trial court gave more credence on Julius' testimony positively identifying that his assailant was accused-appellant. It ratiocinated that this positive identification of the accused destroyed accused-appellant's defense of alibi.

The assailed Decision's decretal portion finding the guilt of the accused-appellant reads this wise:

"Wherefore, the court finds the accused Allan Guacena guilty beyond reasonable doubt of the felony charged

in the Information and is hereby sentenced to suffer the penalty of imprisonment, applying the indeterminate sentence law, from 8 years and 1 day as minimum of prison mayor to 14 years, 8 months and 1 day of reclusion temporal as maximum and to pay the private complainant Julius Ronald Pacificador the sum of Php1.5 Million as actual damages.

SO ORDERED.”[7]

Consequently, accused-appellant raised this appeal, assigning to the trial the following errors:

“I

It has been held that “habitual users of narcotics become notorious liars and their testimony is likely to be affected thereby” (Vide *People vs. Lewis*, 25 Ill. 396 185 NE 2d 168 Supreme Court of Illinois, cited by Justice Conchita Carpio-Morales in *Antonio Lejano vs. People of the Philippines*, G.R. No. 176389, December 14, 2010 and *People of the Philippines vs. Webb et al.*, G.R. No. 176864, December 14, 2010). Pacificador in this case, the only eyewitness, is a self-confessed “shabu” buyer. The trial court erred in giving full-faith credence to his testimony especially in the identification of Guacena as his assailant.

II

While denial and alibi are inherently weak “not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent he can have no other defense but denial and alibi” (Justice Roberto Abad, *Antonio Lejano vs. People of the Philippines*, G.R. No. 176389, December 14, 2010 and *People of the Philippines vs. Webb et al.*, G.R. No. 176864, December 14, 2010). The trial court erred in its hasty conclusion that Pacificador's positive identification of Guacena as his shooter automatically destroys the defence of Alibi.

III

Aggravating Circumstance alleged in the Information must be proven in the same manner as the elements of the offense charged. Treachery as aggravating circumstance must be proven beyond reasonable doubt. The state in this case failed to prove the qualifying circumstance of treachery.”[8]

With the foregoing assignment of errors, the instant appeal presents the following issues: (a) Whether or not the trial court correctly found the accused-appellant's guilt beyond reasonable doubt (b) whether or not the trial court correctly gave credence and weight to Julius' testimony on accused-appellant's identification as the assailant; (b) whether or not the defense of alibi and denial posed by accused-appellant is more credible than the testimony of the prosecution's witness; and, (c) whether or not the prosecution has proven beyond reasonable doubt the qualifying circumstance of treachery.

The issues shall be discussed jointly as they are interrelated. Accused-appellant avers that his guilt was not proven beyond reasonable doubt as his identification as the assailant is marred with doubts, considering that Julius himself admitted that he is a shabu buyer and user. Accused-appellant insinuates that Julius, being a drug-user as he admitted in his testimony, cannot be a credible witness because his drug use would render questionable his recollection of the incident. Citing the cases of *Lejano v. People of the Philippines*[9] and *People of the Philippines v. Webb, et al.*[10] as bases, accused-appellant argues that, Julius, a drug addict, has a penchant for crafting lies. For accused-appellant, the trial court committed a fallacy when it immediately concluded that his alibi and denial to be inherently weak and cannot stand against positive identification of Julius despite the unreliability of Julius' testimony.

In addition, accused-appellant contends that the trial court erred in convicting him of frustrated murder considering that the prosecution failed to prove beyond reasonable doubt the qualifying circumstance of treachery. He points out that Julius was able to fire his own gun at his assailant as revealed by a police report stating that

empty shells of .9mm and .38 caliber and an empty cartridge of .38 caliber were found inside Julius' car. The fact that Julius fired back belies treachery.

The contentions of accused-appellant are bereft of merit.

Article 248 of the Revised Penal Code defines and punishes the crime of Murder, viz:

Article 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity[.]

To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[11]

In this case, the Information alleges that the crime was attended with treachery. Treachery is defined as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[12]

Meanwhile, the crime of murder is categorized as frustrated when the accused performed all the acts of execution which would kill the victim, but which, nevertheless, did not produce it by reason of causes independent of the offender's will.[13]

We find that the prosecution has established the elements of frustrated murder.

The testimony of Julius clearly recounted how accused-appellant shot him while inside his car, to wit:

Atty. Alcantara:

Q: At about past 10:00 in the evening of Sept. 13, 2002, was there an unusual incident that happened that you cannot forget?

A: Yes, sir.

Q: At about this time of the evening, can you recall where were you?

A: I was going towards S.M. City to meet Allan Guacena.

Q: When you say you are going to S.M. City to meet Allan Guacena, are you referring to the same Allan

Guacena the accused in this case?

A: Yes, sir.

Q: Why are you going to meet the accused Allan Guacena that evening?

A: Because he was offering me shabu and wanted to tell him that I don't shabu anymore because I already have a family.

XXXX

XXXX

Q: In the late evening of Sept. 13, 2002 when you went to S.M. City to meet Allan Guacena, were you alone or with somebody else?

A: I was alone that time.

Q: On your way to S.M. City, what happened if any?

A: I saw Allan Guacena and his friend Pabong waiting beneath the overpass.

Q: When you say waiting beneath the overpass, you are referring to the overpass of S.M. City?

A: Yes, sir.

Q: After seeing the accused and his friend Pabong what did you do?

A: I opened the window at the passenger side and stopped my vehicle in front of them.

Q: What happened immediately after that?

A: Allan Guacena fired shots at me?

Q: Were you hit?

A: Yes, sir.

Q: Where?

A: I was hit at my right arm, right chest, right side of my abdomen and also between my left index finger and middle finger.

XXXX

Q: Did you ever suspect that the accused Allan Guacena will shot (sic) you at that particular moment?

A: No, sir, because when I rolled down the window of my car, he was still laughing.

XXXX

XXXX.”[14]

Julius' testimony clearly identified accused-appellant as the assailant. This positive identification is strengthened by the fact that Julius is acquainted with accused-appellant through their drug dealings. Julius testified that after his dealings with Allan, the latter informed him that he was in the watchlist of NARCOM and started to ask for protection money from Julius under the threat of arrest if Julius would not give the amount demanded.[15] Thus, Julius is not only familiar but also knows accused-appellant. Julius mistaking Allan for somebody else is clearly out of the question.

We, therefore, cannot subscribe to accused-appellant's argument that Julius could not positively identify him (Allan) as his assailant on the theory that Julius, being a drug addict, could not be a credible witness – Julius has a penchant of crafting lies.

A careful scrutiny of the records reveals no evidence that would discredit Julius' testimony. At the time Julius was presented, the defense did not object on his qualification to testify on the ground that his perception would be doubtful on account of his drug use. Not even a piece of evidence was presented to prove that Julius, being a drug user, is incapable to perceive and can make known to others his perception. The defense failed even to impeach Julius' character as a witness.

Clearly, the trial court did not err in giving full-faith to Julius' testimony as regards the identification of his assailant. “The age-old rule is that the task of assigning values to the testimonies of witnesses on the witness stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is, thus, no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.”[16]

We also do not find the cases of Lejano and Webb applicable in the circumstances of this case. We emphasize that the cited cases already raised the issue on the credibility of Jessica Alfaro as a witness during the trial stage. The defense therein presented witnesses that would not only discredit the reliability of Alfaro's testimony but also prove that Alfaro's drug use and her bad reputation for truth and honesty render her testimony not credible.

In the instant case, the defense raised the issue of credibility and character of Julius for the first time on appeal. As discussed, the defense did not object at the time the testimony of Julius was offered and neither did it present contrary evidence to prove that Julius' testimony is unreliable. "Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal." [17] The rule in this jurisdiction is that "issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process." [18]

Verily, the trial court did not err in giving more credence to Julius' positive testimony than accused-appellant's defense of alibi and denial. We bear to emphasize that positive identification, where categorical and consistent, and not attended by any showing of ill motive on the part of the eyewitnesses on the matter, prevails over alibi and denial. [19] Settled is the rule that bare denial is a weak defense, which becomes even weaker in the face of positive identification by the prosecution witnesses. Denials, if unsubstantiated by clear and convincing evidence, are negative, self-serving and merit no weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters. [20]

Anent the contention that the prosecution failed to prove treachery as a qualifying circumstance, We rule that the trial court correctly appreciated the qualifying circumstance of treachery that attended the frustrated killing of Julius.

The circumstances surrounding the attack on Julius clearly showed treachery. To recall, Julius testified that he went to meet accused-appellant for the purpose of talking to him about his intent to stop buying shabu from him. As his vehicle approached their meeting place, Julius saw Allan standing with a companion. When Julius opened the car window in the passenger seat, he still saw Allan laughing who without any word suddenly fired gun shots at Julius. This fact that Allan shot Julius as soon as the latter opened his car's window clearly presented treachery. At the time of the attack, Julius was not in a position to defend himself. He did not suspect that Allan would fire shots at him because he still saw the latter laughing when he opened the car window. Allan, in taking the timing to shoot Julius as soon as the latter opened the car window, consciously and deliberately adopted such means in order to insure the execution of his attack without risk to him arising from any defense which Julius might make.

The presence of the empty shells of firearms allegedly found in Julius car is of no moment. For one, it was never proven that these empty shells were fired at the time the shooting of Julius happened. Second, the police report cited as basis for the presence of the empty shells was not identified during trial by the person who executed the same.

The frustrated stage of the crime, meanwhile, was proven through the testimony of Dr. Maximo Nadala, the surgeon who operated on Julius' injuries. His testimony [21] reveals that Julius' gunshot wound on Julius' right chest was serious as it would render Julius unable to breathe if the blood clot on the same was not timely removed through medical intervention. He described the injury of Julius on his right abdomen as penetrating and injuring Julius' small and large intestines which could also cause Julius' death if it was not timely attended to by

medical intervention.

In sum, the prosecution was able to establish accused-appellant's guilt beyond reasonable doubt for the crime of frustrated murder. We affirm the trial court sentencing accused-appellant with the indeterminate penalty of imprisonment from eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, considering that the crime of murder, with a penalty of reclusion perpetua to death, was in the frustrated stage; thus, the penalty next lower in degree is reclusion temporal.

We modify, however, the award of Php1.5 Million pesos as actual damages granted by the trial court. Records reveal that victim Julius was able to substantiate through official receipts[22] only the aggregate amount of Php436,641.46. Hence, Julius is only entitled to the amount of Php436,641.46 as actual damages. Moreover, based on prevailing jurisprudence,[23] Julius is entitled to moral damages in the amount of Php40,000.00 and to exemplary damages in the amount of Php20,000.00, in view of the presence of treachery as above discussed. The total amount of these monetary awards shall earn interest at the rate of six percent (6%) per annum from the date this judgment shall become final until the same is fully satisfied.[24]

WHEREFORE, the instant appeal is DENIED. The Decision dated September 18, 2012 of the Regional Trial Court, Branch 24 of Iloilo City, convicting herein accused-appellant Allan Guacena of frustrated murder in Criminal Case No. 03-58028, is AFFIRMED with MODIFICATIONS on the amounts of damages as follows:

- 1) The amount of actual damages is decreased to Php436,641.46;
- 2) Moral damages is awarded to the victim in the amount of P40,000.00;
- 3) Exemplary damages is awarded to the victim in the amount of Php20,000.00; and,
- 4) Legal interest at the rate of six percent (6%) per annum is imposed on the total amount of the monetary awards from the date of finality of this judgment until fully paid.

SO ORDERED.

Delos Santos, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] Records, pp. 503-508.

[2] Records, p. 1.

[3] Testimony of Julius Ronald Pacificador, TSNs dated October 27, 2004, March 17, 2005, September 8, 2005, February 21, 2007, and August 14, 2007; and testimony of Dr. Maximo Nadala, TSN dated May 16, 2005.

[4] TSN dated September 10, 2009.

[5] TSN dated June 23, 2010.

[6] Supra, note 1.

[7] Records, p. 508.

[8] Rollo, pp. 25-26.

[9] G.R. No. 176389, December 14, 2010.

[10] G.R. No. 176864, December 14, 2010.

- [11] People v. Las Piñas, et al., G.R. No. 191723, July 23, 2014.
- [12] Ibid.
- [13] Id.
- [14] TSN dated March 17, 2005, pp. 4-7.
- [15] TSN dated October 27, 2004, pp. 9-13.
- [16] People v. Las Piñas, et al., G.R. No. 191723, July 23, 2014.
- [17] People v. Sta. Maria, G.R. No. 171019, February 23, 2007.
- [18] See Madrid v. Mapoy, G.R. No. 150887, August 14, 2009.
- [19] People of the Philippines v. Garchitorena, et al., G.R. No. 175605, August 28, 2009.
- [20] People of the Philippines v. Lindo, G.R. No. 134506, December 27, 2002.
- [21] TSN dated May 16, 2005, pp. 7-8.
- [22] Exhibits “A” to “G” of the prosecution.
- [23] People v. Baldomar, G.R. No. 197043, February 29, 2012.
- [24] Nacar v. Gallery Frames, G.R. No. 189871, August 13, 2013.

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