

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR V. RAGUINDIN, ACCUSED-APPELLANT.

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GONZALES-SISON, M., J.:[*]

This is an appeal[1] from the decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 21 dated 17 May 2013 in Criminal Case No. L-7611 which found herein accused-appellant Melchor Raguindin guilty beyond reasonable doubt of frustrated homicide for the wounding of Archimedes Pacariem.

Briefly, the facts of the case, are as follows:

In an Information dated 10 April 2005, the Office of the Provincial Prosecutor of Pangasinan charged accused-appellant Melchor Raguindin (appellant Melchor) with the felony of frustrated homicide, the accusatory portion of which reads:

“That on or about May 23, 2005 in the evening in Andangin, Mangatarem, Pangasinan of this Honorable Court, the above-named accused with intent to kill, did, then, and there, willfully, unlawfully, and feloniously shoot with a firearm ARCHIMEDES R. PACARIEM, offended party, that caused such offended party to suffer:

“GUNSHOT wound, POE – 1 cm
2[nd] ICSML; POX – 1.5 cm
Posterior Axillary Fold (L);
Thru and thru perforation
of left upper Lobe Lung”

thus, the said accused performed all the acts of execution which would produce HOMICIDE as a consequence but which, nevertheless, do not produce it by reason of causes independent of his will specifically due to the immediate and competent medical attendance rendered that prevented the death of the said offended party, to the damage and prejudice of the said offended party.”

Contrary to Article 249 in relation to Articles 250 and 6, 2[nd] par. 2[nd] phrase all of the Revised Penal Code.”[2]

When arraigned, the appellant assisted by counsel pleaded not guilty to the charge.[3]

Thereafter, trial on the merits ensued, which revealed the following:

It is undisputed that in the evening of 23 May 2005 in Barangay Andangin, Mangatarem, Pangasinan, Joey Ayenza (Joey), Archimedes Pacariem (Archimedes) and Ceferino Pacariem (Ceferino) were having a drinking bout in the latter's house located within the Pacariem Compound. A few meters away, in an establishment identified as Bebing's Store, appellant Melchor, then the Barangay Captain of Barangay Andangin was also having a drinking session with his Kagawads – Elpidio Bautista, Ernesto Arellano and Lito Lucero.

What transpired next is contested upon by the prosecution and the defense.

On the part of the prosecution, Archimedes claimed that suddenly, appellant Melchor entered the Pacariem Compound by kicking the gate of the yard which is made of bamboo. Appellant Melchor then pointed a gun at Joey then at Ceferino and finally at Archimedes while uttering in their vernacular, “who are you toughest here, who are you bragging here and vulva of your mother, I will kill you.”

Archimedes then stood a little bit and raised his right palm and told appellant Melchor that no one is tough here. Archimedes' explanation, however, was met with a gunfire from appellant Melchor, hitting Archimedes' chest. After placing his hand on his chest and feeling something warm, Archimedes lost consciousness.[4]

Subsequently, appellant Melchor aimed his gun at Joey and Ceferino who were able to evade the gunfires by hiding behind a mango tree and a coconut tree respectively.[5] Ceferino then jumped towards appellant Melchor to try to wrest the gun from the latter. After succeeding in seizing the gun, Ceferino used its butt to strike appellant Melchor several times. Appellant Melchor then ran away in retreat while Ceferino held on the gun and kept it in the house of his father before turning it over to the National Bureau of Investigation.[6]

Meanwhile, Archimedes was brought to the Villaflor Hospital where he was operated on and attended to by Dr. Alexander Salceda Quilaton (Dr. Quilaton). Dr. Quilaton identified the medical certificate he issued[7] and testified that a single bullet penetrated the lung of Archimedes and that he could have died if not promptly attended to.[8]

The defense, however, gave a different account of the events.

According to appellant Melchor while he and his Kagawads were drinking beer at Bebing's Store, Ceferino arrived and bought cigarettes. Kagawad Elpidio Bautista then greeted Ceferino who, however, snubbed the former and immediately left. A few moments later, a bottle was hurled towards the party of appellant Melchor. Appellant Melchor then tried to investigate where the bottle came from and went towards the Pacariem Compound.

Outside the gate of the Pacariem Compound, appellant Melchor was met by Ceferino who appeared to be holding a piece of wood while behind the latter was Archimedes also holding a piece of wood. Appellant Melchor then asked Ceferino if he was the one who threw the bottle, but the latter denied doing it. Ceferino then became infuriated and started shouting at appellant Melchor who was insisting that the bottle came from the Pacariem Compound. Without warning, Ceferino kicked appellant Melchor in his abdomen which caused the latter to fall down on the road.

Seeing that Ceferino was rushing towards him, appellant Melchor fired a warning shot upwards using his service pistol. Nonetheless, Ceferino still went after appellant Melchor and tried to grab the pistol from his hands. Both of them then fell down while grappling for the gun, Ceferino on top of appellant Melchor. While Ceferino and appellant Melchor were fighting for the possession of the gun, Archimedes was busy striking appellant Melchor with a wooden club. All of sudden, the gun went off two (2) times right before appellant Melchor lost consciousness after getting weak from the clubbing he sustained. He later regained his consciousness in the hospital.[9]

After the parties submitted their respective memorandum, the case was deemed submitted for resolution.[10]

Finding then the pieces of evidence of the prosecution worthy of credence and weight as against those offered by the defense, the Regional Trial Court of Lingayen, Pangasinan, Branch 21 (trial court) convicted appellant Melchor for the felony charged. The fallo of the trial court's decision reads:

“Wherefore, premises considered, accused MELCHOR V. RAGUINDIN is found GUILTY of frustrated homicide, and hereby sentenced to the indeterminate imprisonment of 4 years and 2 months of prision correccional as minimum to 8 years, 8 months and 1 day of prision mayor as maximum.

He is ordered to pay the complaining witness, Archimedes Pacariem, the sum of P209,022.16 as compensatory damages for the(sic) his injuries, moral damages of P50,000.00 and attorney's fees of P30,000.00. No pronouncement as to costs.

SO ORDERED.”[11]

Dissatisfied with the said decision, appellant Melchor now comes to this Court via this instant appeal and in support thereof assigns the following errors on the part of the trial court:

I.

THE COURT A QUO COMMITTED GRAVE AND SERIOUS REVERSIBLE ERROR IN NOT CONSIDERING THAT THE EVIDENCE ADDUCED BY THE PROSECUTION DOES NOT PROVE BEYOND REASONABLE DOUBT APPELLANT'S CRIMINAL LIABILITY FOR THE CRIME CHARGED

II.

THE COURT A QUO COMMITTED REVERSIBLE ERROR IN GIVING CREDENCE TO THE TESTIMONY OF THE POLICE CHIEF INSPECTOR DAVID DULNUAN THAT HE WAS ABLE TO RECOVER INSIDE THE PACARIEM COMPOUND AN EMPTY SHELL NEAR THE TABLE (AND ALSO NOTICE BLOOD STAINS UNDER THE TABLE) AND ANOTHER EMPTY SHELL MARKED AS “EP” AND “DD”, RESPECTIVELY IMMEDIATELY AFTER THEY RECEIVED A REPORT

III.

THE COURT A QUO ALSO GRAVELY ERRED IN CONCLUDING THAT APPELLANT WAS MOTIVATED BY ANGER WHEN THE PRIVATE COMPLAINANT AND HIS COMPANIONS THREW A BOTTLE OF BEER AT THE PLACE WHERE HE AND HIS KAGAWADS WERE DRINKING

IV.

THE COURT A QUO COMMITTED GRAVE REVERSIBLE ERROR IN FINDING THE APPELLANT CIVILLY LIABLE FOR THE INJURIES SUSTAINED BY THE PRIVATE COMPLAINANT

V.

THE COURT A QUO COMMITTED SERIOUS REVERSIBLE ERROR IN RELYING ON THE WEAKNESS OF THE DEFENSE AND NOT ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE.

VI.

THE COURT A QUO ALSO GRAVELY AND SERIOUSLY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT AT LEAST ON REASONABLE DOUBT.

In essence, appellant Melchor argues that the trial court seriously erred when it convicted him based on the discrepant testimonies of the defense in violation of the principle that the accused must be presumed innocent until the contrary is proved. Appellant Melchor then stressed that the trial court should have instead scrutinized the inconsistent, unreliable and fabricated evidence of the prosecution which would result in his exoneration. More specifically, appellant Melchor argues the following:

First, it is illogical that Archimedes would be shot on the chest considering that according to the prosecution when appellant Melchor aimed his gun at Archimedes who was then sitting in a swing appellant Melchor did it with an extended arm. It is more logical, according to appellant Melchor that Archimedes would be shot on the head which is in the same level as the tip of the gun.

Second, appellant Melchor asserts that even if he aimed at the body of Archimedes, the trajectory of the bullet must have been the middle of the chest downward his back, and not upward and sideways to his left armpit.

Third, appellant Melchor underscored the inconsistent statements of Joey and Ceferino as to the sequence of the alleged pointing of the gun, the position of Archimedes when he was shot and whether Joey was indeed shot.

Fourth, appellant Melchor claims that it is improbable that Ceferino waited to be shot at before jumping at appellant Melchor and that the latter waited for Ceferino to pass him by and hide behind a coconut tree before firing at him. Also, appellant Melchor asserts that the testimony of Ceferino that he hit the former on his head with a butt of the gun is highly unlikely considering that appellant Melchor only suffered hematoma confluent bicep or “gasgas” on his head.

Fifth, appellant Melchor highlighted the testimony of SPO1 Ernesto Pagdilao, Jr. (Jr.) stating that the police team did not find any spent shells or blood stains at the scene of the incident during their first investigation on 23 May 2005. The policemen allegedly came up with the spent shells only in the following morning after the incident. Also, appellant Melchor pointed to the absence of drips of blood from the Pacariem Compound towards the cemented road as proof that the incident did not happen inside the compound. On the other hand, appellant Melchor claimed that his shirt at the time of the incident was smudged with Archimedes' blood proving that the latter was shot during the scuffle with Ceferino. As to the spent shells that were later found inside the compound, appellant Melchor insinuated that the same were fired from the same gun only after the incident in order pin him down for the felony charged. It is also impossible that he scampered away as testified to by Ceferino because Dr. Garcia, the one who attended to appellant Melchor, testified that based on the medico-legal report, appellant Melchor probably could not run.

After sifting through the facts of case, as guided by the applicable laws and jurisprudence, this Court finds the instant appeal bereft of merit.

At the outset, it bears pointing out that the elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[12]

The first element was proven by Archimedes, Joey and Ceferino who were consistent, cohesive and certain in identifying appellant Melchor as the culprit in the shooting of Archimedes.

The relevant testimony of Archimedes reads:

ATTY. TOLETE

Q

While you were drinking inside the compound of your brother Ceferino Pacariem and Barangay Captain were also having a drinking spree at Bebing's Store, do you know what happened?

A

Yes sir.

Q

Will you please inform the Honorable Court?

A

Melchor Raguidin enter the yard of Ceferino Pacariem where we were with his companions.

Q

Do you know how he entered the compound of your brother?

A

He kicked the gate of yard which is made of bamboo sir.

Q

You said that accused Melchor Raguindin entered the compound, what else did he do?

A

He was holding a gun sir.

Q

What else aside from holding a gun?

A

He poked the gun against us.

Q

Aside from poking the gun to you, what else did he do?

A

Aside from poking the gun at us, he also uttered the words, “who are you toughest here, who are you bragging here and vulva of your mother, I will kill you”

Q

When you said, he pointed the gun to you, will you please demonstrate how he pointed the gun to you?

A

He first pointed his gun to Joey Ayenza and then by sending his right hand to Joey Ayenza and then pointed next to Ceferino and to me, sir.

Q

What was Joey Ayenza doing at that time when accused Raguindin pointed a gun to him?

A

Joey Ayenza was still sitting.

Q

How about Ceferino Pacariem, what was he doing at that time?

A

He was also sitting sir.

Q

After pointing the gun to Ceferino, what else did the accused do?

A

After uttering the words, “who are you toughest here, who are you bragging here and vulva of your mother, I will kill you” I stood a little bit and raised my right palm and I told him nobody was toughed there and he said, “you were the one toughest here”.

Q

After saying, you are the one, what else did you do?

A

Then he fired his gun at me.

Q

What was your position when he fired his gun at you?

A

I was able to hit(sic) at that time from the tree and while sending my right palm towards him, he fired at me, so I was not able to stand completely when he fired his gun at me.

Q

How far was he from you when he pointed the gun and fired?

A

He was around 2 meters away, sir.

Q

When he fired the gun were you hit?

A

Yes, sir.

Q

What part of your body was hit?

A

I was hit on my chest.”[13]

Meanwhile, Ceferino corroborated said testimony with thus:

“ATTY. TOLETE

Q

You said that accused, Melchor Raguindin, pointed his gun to you?

xxx.

WITNESS

A

When he pointed the gun, he uttered the words, “who are you toughies here, whom are you bragging or boasting, vulva of your mother, I will kill you all right now.” He also pointed first the gun to Joey Ayenza and

then pointed it to me and also to Archimedes Pacariem, sir. And when he pointed the gun to Archimedes Pacariem, the gun went off sir.

xxx.

ATTY. TOLETE

Q

What do you mean by the gun went off?

WITNESS

A

He shot my brother Archimedes Pacariem, sir.”[14]

Finally, Joey recounted the events in this manner:

“ATTY. TOLETE

Q

While the accused pointed his gun to each one of you what else did he do?

A

Then he pulled the trigger to Archimedes, sir.

Q

Before pulling the trigger and shooting Archimedes, what else did he do?

A

He said, “Who are you toughest here? Whom are you bragging about? Vulva of your mother, I will kill you all?”[15]

Indeed, the nature of the weapon used for the attack, the direction at which it was aimed, the prior cursing and threat unmistakably showed appellant Melchor's intent to kill Archimedes on the time of incident.

The second element is likewise present when Dr. Quilaton testified that a single bullet penetrated the lung of Archimedes and that the latter could have died if not promptly attended to.[16]

Finally, none of the qualifying circumstances for murder are present, making this a case for frustrated homicide.

As to the inconsistencies in the sequence of the pointing of the gun and the firing of it in the testimonies of the prosecution witnesses, the same are trivial in light of their positive identification that appellant Melchor shot Archimedes from a distance. It has been held that a witness testifying about the same nerve-racking event can hardly be expected to be correct in every detail and consistent with other witnesses in every respect, considering the inevitability of differences in perception, recollection, viewpoint or impressions, as well as in their physical, mental, emotional and psychological states at the time of the reception and recall of such impressions. After all, no two persons are alike in powers of observation and recall. Total recall or perfect symmetry is not required as long as witnesses concur on material points.[17]

As to the improbability of the pieces of physical evidence, it is well to remember that appellant Melchor readily admitted that he was holding the gun and that one (1) of his fingers was on the trigger right before the two (2)

gunshots were fired.[18]

Undeniably, appellant Melchor's defense is built on the postulation that the gun bursts, one (1) of which struck Archimedes was accidental as Ceferino was allegedly grappling with him in control of the gun.[19] In that situation, however, appellant Melchor now has the inescapable burden of proving the elements of the exempting circumstance of accident.[20] Appellant Melchor however miserably failed in this regard.

To prove that the trajectory of bullet as presented by the prosecution is impossible, it is incumbent upon appellant Melchor to present an expert witness to prove such theory. However, appellant Melchor did not present any such expert witness nor did his counsel ask Dr. Quilaton on this hypothesis. Likewise, no evidence was adduced by appellant Melchor that the blood which stained his shirt was that of Archimedes.

It is also probable that appellant Melchor hit Archimedes on the chest rather than the head because appellant Melchor is a not a straight shooter compounded by the way he held the gun with only one (1) hand and his inebriation at that time.

In the same vein that since all the parties concerned were drinking alcohol, appellant Melchor missed shooting Ceferino despite an early and clear opportunity and Ceferino, in turn, acted late in trying to wrest the gun from appellant Melchor.

As to the testimony of SPO1 Ernesto Pagdilao, it should be emphasized that he pointed to Police Chief Inspector David Dulnuan (PCI Dulnuan) as the one who found the empty shells.[21] PCI Dulnuan, meantime testified that on the night of the incident he found at least one (1) of the empty shells upon entering the Pacariem Compound.[22] This then indicates that the incident happened inside the compound and not outside as espoused by appellant Melchor. Further, this proves that the police investigated the scene of the incident on the night of the incident itself and not after. The presumption that official duty has been regularly performed[23] was not successfully refuted by appellant Melchor.

Anent the lack of wounds on appellant Melchor's head, Dr. Garcia admitted that if the force of the blow using a 9mm pistol is not so hard then it may not cause any injury. As to whether appellant Melchor could have run, it is worthy to note that Dr. Garcia in the same testimony stated that appellant Melchor did not suffer any life threatening injuries nor was he injured in his legs. [24] Hence, there is a ring of truth in the prosecution's averment that appellant Melchor scurried away after being having taken a beating from Ceferino.

The case for appellant Melchor was also not helped by the contradicting testimonies given by the witnesses for the defense which were keenly pointed out by the trial court. More specifically, appellant Melchor claimed that when he was confronted by Ceferino, the latter and Archimedes were both holding a wooden club.[25] Defense witness Edelito Lucero, on the other hand was adamant in stating that only Archimedes Lucero was holding a wooden club.[26] It also does not make sense for Ceferino to be holding an object when his motivation was to grab the gun away from appellant Melchor.

All in all, we rely on the well-entrenched doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh the testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood.[27] The findings of the trial court on such matters then are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, which are not true in the present case.[28]

Turning to the proper penalty, under Article 249 of the Revised Penal Code, the impossible penalty for homicide is reclusion temporal in its full range. Since the petitioner is guilty of frustrated homicide, the penalty must be reduced by one degree, namely, to prision mayor with a range of six (6) years and one (1) day to twelve (12) years. The maximum of the indeterminate penalty should be taken from the medium period of prision mayor absent any modifying circumstance. To determine the minimum of the indeterminate penalty, prision mayor should be reduced by one degree, which is prision correccional, with a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate penalty may be taken from the full range of prision correccional. Accordingly, the trial court was correct in imposing the indeterminate penalty of four (4) years and two (2) months of prision correccional as minimum to eight (8) years, eight (8) months and one (1) day of prision mayor as maximum.

Anent the civil liabilities, the actual medical expenses of P209,022.16 awarded was aptly proven by Archimedes[29] and unassailed by appellant Melchor before this Court, hence must be maintained. Also, we find the award of P50,000 as moral damages is in order. There is sufficient basis to award such amount as ordinary human experience and common sense dictate that the wound inflicted on Archimedes would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[30] Likewise, the award of P30,000.00 as attorney's fees is reasonable considering that Archimedes hired a private prosecutor before the trial court. Under Article 2208(11) of the Civil Code, attorney's fees can be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[31]

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit and the assailed decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 21 dated 17 May 2013 is hereby AFFIRMED.

SO ORDERED.

Ybañez, E.A.,[**] and Sorongon, E.D. JJ., concur.

[*] Vice J. Carandang per Office Order No. 485-14-RSF dated 24 November 2014.

[**] Vice J. Gonzales-Sison per Office Order No. 485-14-RSF dated 24 November 2014.

[1] Notice of Appeal, Records, p. 525.

[2] Records, pp. 3-4.

[3] Certificate of Arraignment, p. 125.

[4] TSN, 17 March 2009, pp. 7-11.

[5] TSN, 5 June 2006, pp. 15-16.

[6] TSN, 21 January 2008, pp. 3-5.

[7] Exhibit "I".

[8] TSN, 19 April 2010, pp. 4-5.

[9] TSN, 9 May 2012, pp. 9-17.

[10] Order dated 18 February 2013, Records, p. 509.

[11] Records, p. 524.

- [12] Cervantes v. People, G.R. No. 165023, 5 July 2010.
- [13] TSN, 17 March 2009, pp. 10-11.
- [14] TSN, 7 November 2007, pp. 3-4.
- [15] TSN, 5 June 2006, p. 13.
- [16] TSN, 19 April 2010, pp. 4-5.
- [17] People v. Pateo, G.R. No. 156786, 3 June 2004.
- [18] TSN, 13 August 2012, p. 16.
- [19] Appellant's Brief, p. 21, Rollo, p. 46.
- [20] People v. Suelto, G.R. No. 103515, 7 October 1999.
- [21] TSN, 9 September 2010, pp. 13-14.
- [22] TSN, 7 October 2010, pp.4-5.
- [23] Section 3 (m), Rule 131 of the Rules on Evidence.
- [24] TSN, 15 February 2012, pp. 7 and 10.
- [25] TSN, 9 May 2012, pp. 12-13.
- [26] TSN, 3 February 2011, p. 11.
- [27] People v. Soriano, G.R. No. 171085, 17 March 2009.
- [28] Sumbillo v. People of the Philippines, G.R. No. 167464, 21 January 2010.
- [29] Exhibits "R" and series.
- [30] See Perpetua v. People, G.R. No. 198400, 7 October 2013.
- [31] See Esqueda v. People, G.R. No. 170222, 18 June 2009.

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