

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE MAHINAY, ACCUSED-APPELLANT.

Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

Brought before this Court is an appeal[1] from the Joint Decision[2] dated December 3, 2013 rendered by the Regional Trial Court of Taguig City, Branch 153 finding accused-appellant guilty as charged in Criminal Case No. 133671-H for Murder and guilty for Attempted Murder in Criminal Case No. 133672 where he was charged with Frustrated Murder.

The Informations[3] filed against accused-appellant read:

CRIMINAL CASE NO. 133671-H

“That on or about the 3[rd] day of March, 2004, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, with the use of a firearm – a deadly weapon, did, then and there willfully, unlawfully and feloniously attacked, assault and shot with the said firearm, one Albert Villanueva y Parungao, which directly cause the latter's death.

CONTRARY TO LAW.”

CRIMINAL CASE NO. 133672

“That on or about the 3[rd] day of March, 2004, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, with the use of a firearm, a deadly weapon, did, then and there willfully, unlawfully and feloniously attack, assault and shot with the said firearm, one Eric Labao on his body, thus performing all the acts of execution which would have produce the crime of murder as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is due to the timely and able medical assistance rendered to said Eric Labao, which prevented his death.

CONTRARY TO LAW.”

These two cases were tried jointly.

Upon arraignment, accused-appellant pleaded “not guilty” to the crimes imputed to him.[4]

To establish the guilt of accused-appellant, the prosecution presented Eric Labao, Marie Joy Villanueva and Domingo Dionisio. Their testimonies established the following facts:

Accused-appellant Jessie Mahinay was an employee in a fishpond at Talisay, Taguig City. Albert Villanueva alias “Abak” (victim in the murder case) and Eric Labao (victim in the frustrated murder case) were his co-employees.

At around 12:00 noon on March 3, 2004, Eric Labao was cooking lunch inside a nipa hut in a fish pen in Laguna Lake located at Barangay Wawa, Taguig City. Labao was with “Jun”, “Alfie”, “Tata” and “Kuya Abak” or

victim Albert Villanueva. He was about two arms away from accused-appellant.

While he was cooking, Labao heard a gunshot. When he looked around, he saw Albert Villanueva clutching the gunshot wound on his chest. He then saw accused-appellant going back and forth in the nipa hut holding a .38 caliber gun. After Villanueva fell down, accused-appellant turned to Labao and shot him at the back before he could escape. Their other companions managed to escape by jumping into the water while Labao was only able to hit the water after he was already shot by accused-appellant. He was rushed to the hospital for treatment by Domingo Dionisio, Albert Villanueva's uncle. He survived but Villanueva died.

According to Labao, the shooting was sudden and without any warning. It was not even preceded by any conversation or argument between accused-appellant and the deceased Villanueva. There was also no disagreement between him and accused-appellant.

By reason of Villanueva's death, his family and heirs suffered great loss and damage which could not be compensated with money. They spent around P54,000.00 for his funeral. As for Labao, his treatment lasted for five (5) days and he is claiming P100,000.00 for the damages he sustained.

After the prosecution and defense agreed on the genuineness and due execution of the Medico-Legal Report and the Anatomical Sketch of the late Albert Villanueva which was prepared by Dr. Voltaire Nulud, Medico-Legal Officer, his testimony was dispensed with.

For its part, the defense initially presented accused-appellant to testify. However, on October 1, 2013, the defense made a manifestation that it was waiving the presentation of evidence in its favor. Accused-appellant moved to strike off from the record his initial testimony and that in lieu thereof, a memorandum in support of his defense will be filed. The said motion was granted by the trial court.[5]

In the Memorandum[6] submitted by the defense, it was asserted that the prosecution failed to establish the elements of treachery and evident premeditation that would qualify the crime to murder, thereby, creating a reasonable doubt as to the guilt of accused-appellant that warrants his acquittal.

Not finding credence on accused-appellant's defense, the trial court convicted him of murder and attempted murder in its assailed Joint Decision, viz –

“WHEREFORE, foregoing considered, this court hereby finds accused Jessie Mahinay GUILTY beyond reasonable doubt for the crimes of Murder and the lesser offense of Attempted Murder. Accordingly, he is hereby sentenced as follows:

1) For the murder of Albert Villanueva in Criminal Case No. 133671-H, accused Jessie Mahinay is SENTENCED to suffer the penalty of reclusion perpetua and ORDERED to pay the heirs of Albert Villanueva the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages and P25,000.00 as temperate damages; and

2) For the attempted murder of Eric Labao in Criminal Case No. 133672, accused Jessie Mahinay is SENTENCED to suffer imprisonment from six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum, and ORDERED to pay Eric Labao the amounts of Php25,000.00 as civil indemnity, Php30,000.00 as moral damages, Php25,000.00 as temperate damages and Php20,000.00 as exemplary damages.

SO ORDERED.”

Hence, the extant appeal assigning the following errors allegedly committed by the trial court:

“I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.

II

ON THE ASSUMPTION THAT ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR ATTEMPTED MURDER IN THE CASE OF ERIC LABAO INSTEAD OF SLIGHT PHYSICAL INJURY ONLY.

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE SHOOTING OF ALBERT VILLANUEVA AND ERIC LABAO IS QUALIFIED BY TREACHERY.”[7]

In seeking his acquittal, accused-appellant assails the credibility of eyewitness and victim Eric Labao. According to him, Labao's testimony was self-serving and does not sufficiently establish his guilt beyond reasonable doubt. No one corroborated Labao's testimony that he shot him and the late Albert Villanueva although it was alleged that there were other persons who witnessed the shooting incident.

Accused-appellant insists that intent to kill was not proven beyond reasonable doubt. Hence, assuming that he shot Labao, the crime committed was simply physical injury and not attempted murder. The prosecution also failed to establish the qualifying circumstance of treachery that would qualify the crimes charged against him to murder for the death of Villanueva and attempted murder, for the injury sustained by Labao.

On the other hand, plaintiff-appellee maintains that the prosecution was able to prove accused-appellant's guilt beyond reasonable doubt.

After a judicious scrutiny of the facts and the records of the case, WE hold that the trial court did not err in convicting accused-appellant.

In giving full faith and credence to the testimony of Labao, the trial court considered the fact that he was not simply a witness but also a victim in the shooting incident involving accused-appellant. While Labao did not see how accused-appellant actually shot Villanueva, the series of events that took place on the day that Villanueva died and Labao was shot by accused-appellant leads to no other reasonable conclusion that the accused-appellant did not only shoot Labao but also shot Villanueva. The records show that on the day of the shooting incident, Labao was with accused-appellant, the late Villanueva and their co-workers in a nipa hut in a fish pen situated in the middle of Laguna Lake. Labao was only two arms away from accused-appellant when a shot was fired. When Labao looked around, he saw Villanueva clutching his wounded chest after which the latter fell down. He also saw accused-appellant holding a .38 caliber gun while going around the nipa hut with his companions jumping into the water to escape apparently to avoid accused-appellant's further attack. Thereafter, accused-appellant shot Labao hitting him at the back before the latter could manage to jump into the lake.

Through the unwavering, spontaneous, straightforward and categorical testimony of Labao the prosecution was able to prove the identity of accused-appellant as the perpetrator of the crimes. It is established jurisprudence that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.[8] Likewise, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave

their testimonies. The trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.[9]

Furthermore, in his memorandum submitted to the trial court, accused-appellant did not even deny the fact that he shot Villanueva and Labao. He simply disputed the presence of the qualifying circumstances of treachery and evident premeditation to support his plea of acquittal.

In the face of the positive identification made by Labao, the relevant testimonies of the other witnesses and the absence of showing of any ill motive on their part, WE give due weight to the finding of the trial court that it was accused-appellant who shot Villanueva and Labao.

Accused-appellant claims that considering the nature of the injury sustained by Labao, the crime committed was only slight physical injury because intent to kill was not duly proven by the prosecution.

Intent to kill is a state of mind that the courts can discern only through external manifestations, i.e., acts and conduct of the accused at the time of the assault and immediately thereafter.[10] In *Esmeraldo Rivera, et al. vs. People*,[11] the Supreme Court explained that:

“An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by *dolo*.

In *People v. Delim*, the Court declared that evidence to prove intent to kill in crimes against persons may consist, *inter alia*, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.” (Emphasis supplied).

In the extant case, the overt actions of accused-appellant and the totality of the circumstances surrounding the commission of the crimes clearly depict an intention on his part to kill his victims. First off, the weapon used by accused-appellant was a .38 caliber gun which undisputably is a deadly instrument, one that could kill an individual with even only one mortal shot. Then, accused-appellant shot Labao at his upper back body where the bullet could pierce through the victim's vital organs like the heart. Another, the attack made was sudden, swift and unexpected giving Labao no time and chance to defend himself or even to dissuade accused-appellant from pursuing his course of action. Also, the shooting was done in a relatively isolated place as they were in a fish pen in the middle of Laguna Lake, facilitating the commission of the crime.

While ordinarily where the wound was only slight, accused shall be liable only for slight physical injury, however, where the infliction of such injury is with intent to kill, the accused will be liable not merely for slight physical injury but for attempted murder/homicide.[12] The High Court, time and again, held that the use of a gun fired at another certainly leads to no other conclusion than there is intent to kill.[13]

It is also a doctrinal rule laid down by the Supreme Court that where the accused intended to kill his victim but he was not able to perform all the acts of execution necessary to consummate the killing and the wound inflicted were not fatal, the crime is attempted murder/homicide.[14]

In *Rujjeric Z. Palaganas vs People*,[15] a clear cut distinction which separates frustrated murder/homicide from attempted murder/homicide and from physical injuries, was discussed by the Supreme Court in this wise:

“In addition to these distinctions, we have ruled in several cases that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal

wound/s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury.” (Emphasis supplied)

Hence, the fact that no convincing proof was offered by the prosecution to show that the wound inflicted on Labao was fatal and would have caused his death does not at all negate accused-appellant's criminal liability for attempted murder considering that intent to kill was duly established by the prosecution. It should be remembered that in Criminal Case No. 133672, accused-appellant was charged with Frustrated Murder. However, the trial court convicted him only of Attempted Murder for the reason that "xxx while the medical certificate showing the injury or wound sustained by Labao was admitted by the defense, nothing in the evidence shows that the wound would be fatal without medical intervention.... Under this situation, the character of the wound enters the realm of doubt; thus, the doubt created by the lack of evidence should be resolved in favor of the accused. Thus, the crime committed should be attempted, not frustrated, murder.” On this score, WE are in agreement with the trial court's conclusion. For the charge of frustrated murder to flourish, the victim should sustain a fatal wound that could have caused his death were it not for timely medical assistance.[16]

Proof that the wound inflicted on the victim is not mortal is required only where the crime is frustrated murder/homicide.[17]

Finally, as regards the presence of treachery as a qualifying circumstance, the same was properly appreciated by the trial court. The shooting of Villanueva and Labao were both attended with treachery. These were done in a sudden and unexpected manner giving them no chance to defend themselves and retaliate. The means employed by accused-appellant were also designed to ensure the success of his attacks without risk to himself from the defenses that his victims might have offered. It is an oft repeated doctrine that the essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.[18]

With respect to the penalties, the trial court correctly imposed the penalty of reclusion perpetua in Criminal Case No. 133671-H for the murder of Albert Villanueva. Treachery having qualified the killing of Villanueva to Murder, the prescribed penalty against accused-appellant under Article 248 of the Revised Penal Code is reclusion perpetua to death. With the abolition of death penalty, the imposable penalty is reclusion perpetua without, however, eligibility for parole pursuant to Section 3 of Republic Act No. 9346.[19]

The trial court also correctly assessed the penalty imposable upon accused-appellant for attempted murder of Eric Labao in Criminal Case No. 133672. Attempted Murder is punishable with a penalty two degrees lower than that prescribed for the consummated felony under Article 51 of the Revised Penal Code. Accordingly, the imposable penalty is prision mayor. Absent any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be within the range of prision correccional, and the maximum of the penalty to be imposed should be within the range of prision mayor in its medium period.[20]

As to damages, well settled is the rule that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[21]

Being consistent with current jurisprudence, the trial court's award of P75,000.00 as civil indemnity to the heirs of Albert Villanueva without need of allegations and proof other than the death of the victim is found to be in order.[22] WE also affirm the award of moral damages in the amount of P50,000.00 and exemplary damages in the amount of P30,000.00.[23]

The award of temperate damages in the amount of P25,000.00 is also proper although no evidence of burial and funeral expenses was presented for it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[24]

To be in consonance with prevailing jurisprudence, an interest of 6% per annum should also be imposed on the award of civil indemnity and all damages from the finality of the decision until full settlement thereof.[25]

With respect to attempted murder case, moral damages in the amount of P30,000.00 was correctly awarded to Eric Labao. Ordinary human experience and common sense dictate that the wounds inflicted on the surviving victim would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries.[26] The award of P20,000.00 as exemplary damages to Labao was likewise in order considering that the crime was attended by the qualifying circumstance of treachery.[27]

Finally, the award of P25,000.00 as civil indemnity and P25,000.00 temperate damages were also proper in the light of prevailing jurisprudence.[28]

WHEREFORE, in view of all the foregoing, the appealed Joint Decision of the Regional Trial Court, Branch 153, Taguig City is hereby AFFIRMED with MODIFICATIONS in that accused-appellant in Criminal Case No. 133671-H shall not be eligible for parole and that apart from the civil indemnity and damages which the court a quo ordered accused-appellant to pay, he is further ordered to pay an interest thereon at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Barrios, M.M.,[*] and Reyes-Carpio, A., JJ., concur.

[*] Vice J. Noel G. Tijam, who is on leave as per Office Order No. 493-14-RSF, dated November 28, 2014.

[1] Record, p. 154.

[2] Ibid, pp. 141-151.

[3] Ibid, pp. 1 and 18.

[4] Ibid, p. 33.

[5] See Order dated October 1, 2013, Record, p. 134.

[6] Record, pp. 136-140.

[7] Rollo, pp. 36-37.

[8] See *Lenido Lumanog and Augusto Santos vs. People*, G.R. No. 182555, September 07, 2010.

[9] Ibid.

[10] See *Giovani Serrano vs. People*, G.R. No. 175023, July 05, 2010 citing *Rivera vs. People*, G.R. NO. 166326, January 25, 2006.

[11] G.R. NO. 166326, January 25, 2006.

[12] Supra. See note 10.

[13] See People vs. Tiboy Albacin, G.R. No. 133918, September 13, 2000 citing Araneta, Jr. vs. CA, G.R. No. 43527, July 3, 1990.

[14] See People vs. Ford Gutierrez, G.R. No. 188602, February 04, 2010; People vs. Felix Ventura, G. R. Nos. 148145-46, July 05, 2004; People vs. Conrado M. Glino, G.R. No. 173793, December 4, 2003; People vs. Ruperto Balderas, G.R. No. 106582, July 31, 1997 People vs. Ramolete, No. L-28108, March 27, 1974.

[15] G.R. NO. 165483, September 12, 2006.

[16] See People vs. Henry Almazan, G.R. Nos. 138943-44, September 17, 2001.

[17] See People vs Honorada, 62 Phil. 112; People vs. Mercado, 51 Phil. 99.

[18] See People vs. Judito Molina , G.R. No. 184173, March 13, 2009.

[19] See People vs Hermenegildo Maglente and Rolando Velasquez, G.R. No. 201445, November 27, 2013.

[20] See People vs. Ford Gutierrez, G.R. No. 188602, February 04, 2010.

[21] See People vs. Judito Molina and John Doe, G.R. No. 184173, March 13, 2009.

[22] See People vs. Dante Dulay, G.R. No. 194629, April 21, 2014; People vs. Restituto Carandang, G.R. No. 175926, July 06, 2011; People vs. Mitsuel L. Elarcosa, G.R. No. 186539, June 29, 2010.

[23] See People vs. Agripino Guevarra, G.R. No. 182192, October 29, 2008; People vs. Jose Pepito D. Combate', G.R. No. 189301, December 15, 2010; People vs. Reynaldo Barde, G.R. No. 183094, September 22, 2010.

[24] See People vs. Judito Molina, G.R. No. 184173, March 13, 2009.

[25] See People vs. Jose Pepito D. Combate, G.R. No. 189301, December 15, 2010.

[26] Supra. See note 20.

[27] Ibid.

[28] See People vs. Reggie Bernardo G.R. No. 198789, June 03, 2013 citing People v. Nelmidia, G.R. No. 184500, September 11, 2012 and People v. Punzalan, G.R. No. 199892, December 10, 2012.

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