

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL HABAGAT ALIAS TOTO VALDEVIESO, ACCUSED-APPELLANT; JOSEPH MARIO DEL ROSARIO, ANTHONY ABRINA, ACCUSED.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Appeal from a Decision dated May 25, 2010 rendered by the Regional Trial Court, Branch 8, of Davao City (hereafter, RTC-Branch 8, Davao City), the fallo of which states:

WHEREFORE, accused JOSEPH MARIO DEL ROSARIO and ARIEL HABAGAT are hereby found GUILTY beyond reasonable doubt of the crime of Frustrated Murder as defined and penalized under Article 248 in relation to Article 6 of the Revised Penal Code.

Accused Joseph Mario del Rosario, considering the privileged mitigating circumstance of minority and applying the Indeterminate Sentence Law, is hereby sentenced to suffer the indeterminate penalty of imprisonment of from SIX (6) YEARS of PRISION CORRECCIONAL as Minimum to EIGHT (8) YEARS of PRISION MAYOR as Maximum. Pursuant to R.A. 9344 or the Juvenile Justice and Welfare Act, his sentence is hereby suspended.

Accused Ariel Habagat applying the Indeterminate Sentence Law, is hereby sentenced to suffer the indeterminate penalty of imprisonment of from TWELVE (12) YEARS of PRISION MAYOR as Minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of RECLUSION TEMPORAL as Maximum.

Both accused are hereby directed to pay jointly and solidarily private complainant the sum of P52,491.35 as actual damages, P50,000.00 as moral damages and P28,000.00 as exemplary damages.

SO ORDERED.[*]

The antecedent facts are as follows:

On February 2, 2001, at around 3:00 o'clock in the afternoon, 16 years old Frederick San Felix, Jr. (victim) and Peter Yusay were at Lucero Store in Juna, Kalamansi St., Davao City. The two were celebrating Yusay's upcoming birthday and were waiting for friends to join them for a drinking session scheduled at 6:00 o'clock.[1] Another friend, Jun-Jun Olgasan, joined the group much later but did not remain as he also had other friends in nearby tables.

At around 7:30 o'clock in the evening, Joseph Mario del Rosario alias Cocoy, a high school classmate of San Felix at Casa Mercado School, passed by with his older brother. Yusay invited them to join and the two signaled that they would come back, and before 9:00 o'clock, del Rosario returned tagging along Ariel Habagat alias Toto and Anthony Brina alias Tonio who were introduced to the group. Another guy named Robert also joined the group but he did not stay long. Except for Robert who was not present in court, all of them were positively identified by San Felix in open court.[2]

While the group drank a concoction called mestiza, a combination of beer, softdrink and rum, Rey Carlo Lucero

arrived. His driver, Jun-Jun Aguimod, also joined them but he did not linger. The group which ended their drinking session at around 10:15 o'clock in the evening.

San Felix went on his way home along Durian Street in McArthur highway with Jun-Jun Olgasan. After a few moments, he noticed that del Rosario, Abrina and Habagat were following them.

Suddenly, del Rosario called out to him and asked him to come nearer.[3] San Felix and Olgasan stopped but del Rosario asked Olgasan to leave stating that he was not part of their discussion. Olgasan left.

Abrina then confronted San Felix about an incident in December 8, 2000 where San Felix allegedly punched del Rosario. San Felix recounted to the court that he had attacked del Rosario on that day because his (San Felix) sister confided to him that the former had gone into her room and kissed her during a party at the San Felix residence.

Before San Felix could answer, del Rosario moved behind him and struck him hard behind his left ear causing him to lose his balance. San Felix was able to break his fall with his elbow but when he looked up, the three were already approaching him. They then proceeded to kick and punch him until he lost consciousness.[4]

When San Felix regained consciousness the next day, he was already at the hospital with his parents and friends. Aguimod, Lucero's driver, had seen the assault and chased away the three before rushing San Felix to the Davao Doctor's Hospital.

When Aguimod took the witness stand, he narrated that on the night in question, he was with Lucero's group for some drinks but he had gone home early. While there, he was introduced to one who said his name was Toto Valdevieso.

Later that night, he was buying mosquito repellant from another store about 50 meters away from the Lucero Store when he chanced upon the group of del Rosario, San Felix, Toto Valdevieso, Anthony Abrina. As the area was lighted by a light post, he saw del Rosario wrap a stone in a big white handkerchief[5] and hit del Rosario on the head with it. Valdevieso then started boxing and kicking San Felix. Abrina also threw in some punches and kicks at San Felix.[6] The three did not stop even after San Felix had stopped moving. At this point, Aguimod was already running towards them, shouting "Tama na, ayaw ninyong tabangi!" The three scampered away[7] and Aguimod brought the unconscious San Felix to the Davao Doctor's Hospital.[8] He then reported the incident to his employer, Lucero.

Aguimod identified San Felix, del Rosario and Abrina in open court. He also pointed to Habagat but identified him by another name, Toto Valdevieso.

At the hospital, a photographer took pictures of the injured San Felix. He was confined for 17 days for the injuries and his Affidavit-Complaint was taken while he was lying on the hospital bed.[9]

San Felix was given immediate medical attention at the Davao Doctors' Hospital in Davao City.[10] Initial diagnosis was made in the emergency room by Resident-in-Charge Dr. Yara. The Patient Data Sheet indicated that San Felix sustained the following injuries:[11]

DEPRESSED COMMINUTED FRACTURE (R) [TEMPORAL] AREA WITH PNEUMOCEPHALUS AND SUBARACHNOID BLEED HEMORRHAGE. MULTIPLE OF TISSUE CONTUSION AND TRAUMATIC: (R) TEMPORAL SCALP, (R) PERIORBITAL AREA; MULTIPLE ABRASION SECONDARY TO MAULING.

The findings from the initial examination were thereafter confirmed by Dr. James A. Soriano, the Attending Physician, who added "multiple contusion in the right periorbital area." [12] He explained that the prognosis

meant that “a certain portion of the skull [was] fractured and this was driven inside towards the brain.”[13] This caused a contusion on the affected part of the brain, or a cerebral contusion.[14] Out of the six brain injuries sustained, Dr. Soriano revealed that the most serious one, the subarachnoid bleed hemorrhage, could have led to San Felix’s death if not for timely medical attention.[15] Dr. Soriano explained that it will take about one year and a half for this injury to fully heal although the probability of the patient’s survival from subarachnoid hemorrhage would be determined about after a month.[16] They could not have operated on the injury since it was not remediable by surgery.[17]

Dr. Soriano testified that he allowed San Felix to be discharged 17 days from the date of his confinement since he was out of immediate danger. He clarified that the discharge was not because San Felix was completely out of danger but because the move would encourage faster recovery and eliminate the possibility of San Felix acquiring hospital infections. It would also spare his family from the rising cost of expenses. The doctor was also confident that the close supervision his patient needed could be provided by his parents, one of whom was a physician, who can bring him to the hospital at the slightest sign of complication from any of his head injuries. Upon further questioning, Dr. Soriano explained that he was concerned of the occurrence of hydrocephalos which may develop within a year from the date of injury.[18]

On the strength of a Resolution finding probable cause against del Rosario, Habagat and Abrina,[19] an Information was filed, to wit:

The undersigned accuses the above-named accused of the crime of Frustrated Murder, under Art. 248 in relation to Art. 6 of the Revised Penal Code, committed as follows:

That on or about February 1, 2001, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Mario del Rosario armed with a stone wrapped with a handkerchief conspiring, confederating and helping one another with his co-accused, minors, with treachery and evident premeditation and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted, boxed, kicked and struck with a stone one Frederick San Felix, Jr., thereby inflicting upon the latter the following injuries, to wit:

“DEPRESSED COMMINUTED FRACTURE (R) TEMPORAL AREA WITH PNEUMOCEPHALUS & SUBARACHNOID BLEED HEMORRAHAGE. MULTIPLE OF TISSUE CONTUSION & TRAUMATIC: (R) TEMPORAL SCALP, (R) PERIORBITAL AREA; MULTIPLE ABRASION SECONDARY TO MAULING”

thus performing all the acts of execution which would have produced the felony of murder as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his will, that is, by the timely intervention of other [persons] and the able medical assistance rendered to the said Frederick San Felix, Jr., which prevented his death.

Contrary to law.[20]

An Order[21] was thereafter issued by the RTC-Branch 8, Davao City for the issuance of a Warrant of Arrest which was promptly issued, setting the bail at P200,000.00.[22] A Motion to Reduce Bail Bond[23] lowered the bond to only P100,000.00.[24] Abrina and Habagat subsequently posted bond for their provisional liberty.[25]

On June 29, 2001, del Rosario appeared before the RTC-Branch 8, Davao City to post the bond for his provisional liberty.[26] Upon arraignment, del Rosario, Abrina and Habagat pleaded not guilty to the charge.[27]

Abrina, then only 17 years old,[28] later on withdrew his plea of Not Guilty and entered the plea of Guilty to the offense of Frustrated Murder.[29] Judgment of conviction was declared suspended and he was thereafter

committed to the custody and care of the Department of Social Welfare and Development Regional Rehabilitation Center for Youth (DSWD-RRCY) in Bago Oshiro, Davao City[30] pursuant to the Child and Youth Welfare Code.[31] The DSWD-RRCY filed its Manifestation dated November 15, 2001 recommending that Abrina be placed in the custody of his father so he could continue with his studies.[32] An Affidavit of Undertaking was executed by his father, Basiliso C. Abrino, Jr., and Abrina was entrusted to his father's custody.[33]

Meanwhile, trial commenced for the two other accused.

Accused-Appellant Habagat defended himself by declaring that he had no part in the incident and that, in fact, he and Abrina tried to stop del Rosario from mauling San Felix.

Habagat narrated that on that fateful night, he and Abrina, a neighbor at Ecoland, Phase 2, Davao City, were accompanying del Rosario. They were brought by del Rosario to a store at Calamansi St., Juna Subdivision, Davao City where del Rosario was having an advanced birthday celebration. San Felix, Olgasan, Yusay were already way into the drinking session when they arrived. Lucero arrived shortly thereafter. Habagat and Abrina were introduced to all of them.

While they were drinking, he noticed that San Felix and Abrina were exchanging unpleasant looks, but neither of them said anything.[34] At around 10:30 o'clock, he, along with Abrina and del Rosario, left for home and headed for Ecoland. Suddenly, Abrina stopped and called out to San Felix. Noticing that Abrina had gotten a stone and had already wrapped a handkerchief around it, he advised Abrina to stop and that they should just go home.[35] Instead, Abrina ran towards San Felix and hit the latter twice on the head with his improvised weapon. Habagat and del Rosario tried to stop him but Abrina fled in the direction to Ecoland after the attack. San Felix had fallen to the ground so he and del Rosario started to help him up, but then someone called their attention. They panicked and they both ran towards Ecoland where they also found Abrina.[36]

Habagat denied that the three of them had any prior agreement or "pareglahan" when they went to the store. He also explained that although he had just met the others, including San Felix, he joined them in their drinking because they were invited by del Rosario who was a friend of the birthday celebrator. Telling the court that it was Abrina's own decision to admit culpability because he was really at fault, he belied any participation in the mauling incident.

After the trial spanning nine years, the RTC-Branch 8, Davao City rendered the assailed Decision finding Habagat and Abrina guilty of the crime of frustrated murder.[37] Habagat was ordered committed to the Davao City Jail.[38]

On July 1, 2010, an Urgent Motion was filed asking that Habagat be instead be released on recognizance or be allowed bail pending appeal.[39] A Notice of Appeal was subsequently filed.[40] Meanwhile, Habagat obtained the services of a new counsel.[41] He was also ordered transferred to the Davao Prison and Penal Farm, Barulio Dujali, Davao del Norte.[42]

On June 21, 2011, the motion asking for Habagat's release on recognizance or for him to be released on bail pending appeal was denied on the ground that the sentence imposed on him exceeded six years.[43]

Del Rosario, on the other hand, who was subjected to Court Disposition Measure,[44] completed six months of community service and was thereafter recommended for social intervention.[45]

On November 11, 2011, a Motion to Admit Late Memorandum[46] and a Memorandum Brief[47] were filed by accused-appellant Habagat. The Appellee's Brief[48] was then filed on March 19, 2012, and the instant appeal was deemed submitted for decision on July 2, 2012.[49]

ISSUE:

THE HONORABLE REGIONAL TRIAL COURT ERRED WHEN IT FOUND THE ACCUSED-APPELLANT GUILTY OF CONSPIRING WITH HIS CO-ACCUSED ANTHONY ABRINA WHO PLEADED GUILTY FOR COMMITTING FRUSTRATED MURDER.

RULING:

We uphold the conviction, but find the accused-appellant guilty only of frustrated homicide, not frustrated murder.

The three accused acted in conspiracy.

Intent to kill was evident.

Accused-Appellant challenged the findings of the court a quo that he, del Rosario and Abrina conspired against San Felix, and pointed out that his participation, if the victim is to be believed, was even only limited to boxing and kicking him. It was a blanket accusation as no specific body part was even mentioned. He was not even the one who hit San Felix on the head. Accused-Appellant also doubted the credibility of the victim's testimony because he allegedly lost consciousness after falling on the ground.

Be that as it may, the victim's positive testimony pointing to accused-appellant as one of those who landed blows on his body after he fell to the ground is crystal clear.[50] Under oath, he narrated that accused-appellant, Abrina and del Rosario were together and had acted in concert from the time del Rosario struck him on the head until when he lost consciousness.[51] The victim's recollection of that night's incident was consistent in all material points,[52] and he did not waver even under rigorous questioning by the defense counsel.[53] His collapse did not preclude him from seeing his assailants because the attack had already commenced when he fainted.

In *People vs. Inguito*,[54] the Supreme Court had this to say when the defense also questioned the identification made by the private complainant, to wit:

It is however equally true that before his sense faded out he saw herein appellants perform their atrocities on himself as well as on Federico Cañalete. It cannot therefore be doubted that he made no mistake in pointing out to herein appellants as definitely among their assailants. This he did, not only at the police station but also in open court during the trial. It is furthermore not disputed by defendants-appellants that Antonio Maravilla has no reason or motive to falsely accuse them of murder and attempted murder. The positive identification he made must therefore be given credence.

Aguimod's resounding testimony should also be given credit in appreciating that the three acted with a common purpose and design. His testimony reads:

Q:

Alright, and you mentioned also this Anthony Abrina, am I correct?

A:

Yes.

Q:

What did he also do at that time when the victim was being hit with a stone by Mr. Joseph Mario del Rosario?

A:

He also joined Toto Valdevieso[*] when San Felix was hit.

xxx

Q:

Alright, after Joseph del Rosario hit Frederick San Felix with a stone wrapped with a handkerchief, what else did Joseph Mario del Rosario do?

A:

After Joseph Mario del Rosario hit Frederick San Felix with a stone wrapped with a handkerchief, he boxed Frederick San Felix, kicked him and mauled him.

Q:

What about this Toto Valdevieso who identified himself as Ariel Habagat, you said he also participated in hitting Frederick San Felix. Now my question is how did he participate in hitting San Felix?

A:

He also participated in mauling San Felix.

Q:

Could you please clarify by you said mauled, how did he carry out the mauling?

A:

He boxed Frederick, kicked him.

Q: And what about this Anthony Abrina, you said he also joined in the mauling, how did he execute his participation in the mauling?

A: He did not maul. He pummeled.[55]

From this recital, it can be readily inferred that there existed conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[56] It can be deduced from the acts of the assailant prior, during and after the attack. For conspiracy to be established, it is not essential that there be previous agreement to commit the crime. It does not even need to be proven by direct evidence. It is only requires that it be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of the common unlawful purpose.[57] It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.[58]

Aguimod was practically a stranger to all of the three accused having only met them. He did not have any reason to falsely testify and identify accused-appellant, del Rosario and Brina as the three persons who mauled the victim until he was able to intervene and chased them away. Even the confusion as to the real name of accused-appellant was not enough to produce loopholes in his testimony.[59] The area where the attack occurred was near the highway and was well-lit. It would not have been difficult for both the victim and Aguimod to see their faces and

identify them, especially San Felix the victim who had just spent some time drinking with them. No iota of evidence was also presented to show that he had any motive to falsely testify against the three accused.

From the testimony of witness Aguimod and of the victim himself, it is evident that the three shared a common design when they attacked San Felix. It was the three of them who followed the victim on his way home, who started to confront him, and helped each other rain blows on the defenseless victim and did not stop even after he was already unconscious on the ground. The participation of each of them was direct hence the liability should be shared by all three of them.

Accused-Appellant tried to persuade the court a quo that he asked Abrina to stop when he noticed what accused-appellant was going to do. He also insists that he and del Rosario did not lay a single hand on the victim and explains their flight as caused by panic because someone had called their attention.

Unfortunately, his testimony is inconsistent in one important point. The victim's conflict was with accused del Rosario, but they are now attributing the crime to Abrina alone. The court a quo's pronouncement is worth noting, to wit:

After study, this Court finds that the prosecution has overcome the burden of proving the guilt of the accused beyond reasonable doubt. This court [sees] no reason to disbelieve the account of the mauling incident as narrated by the prosecution through its principal witness, private complainant San Felix. No ill-motive was shown on the part of San Felix to charge the three (3) accused. Consequently, his testimony has the ring of truth in it. What is more, it is corroborated by the testimony of a disinterested witness in the person of Maximo Aguimod who testified that he saw the three (3) accused taking turn in boxing and kicking San Felix xxx

xxx This Court cannot see its way clear through the defense version of the incident that del Rosario and Habagat did not participate in the mauling and even tried to stop it. This Court wonders, and not without reason, why the two accused were not able to subdue Abrina. Abrina alone, who was smaller than San Felix, could not have effected the numerous blows and the extent of the injuries sustained by the latter. Suffice it to state that San Felix could have fended some of the blows he received if Abrina was alone in inflicting them with the two other accused getting in the way, so to speak. Curiously, Abrina had, as earlier stated, already pleaded guilty to the charge whose sentence was suspended as he was at the time of the incident a minor. This suggests that Abrina's guilty plea was taken advantage of by del Rosario and Habagat and utilized as a convenient excuse to point to him as the only perpetrator.[60]

The court a quo's observations are well-taken because of its superior position in examining real evidence, as well as in observing the demeanor of the witnesses while testifying on the stand.[61] In short, it is in a better position to determine the issue of credibility of the witnesses presented before it.[62] Its findings should not be disturbed on appeal unless certain facts of substance and value were overlooked which, if considered, may affect the outcome of the case.[63] None are present here.

Moreover, the rift was between del Rosario and San Felix, and the latter did not have any reason to pin herein accused-appellant for the injuries sustained by him. The defense did not even present any evidence of false or evil motive on the part of San Felix that would move him to blame Habagat for his injuries. Human experience tells us that it is unnatural for a victim to accuse someone other than his actual attacker; in the normal course of things, the victim would have the earnest desire to bring the guilty person to justice, and no other.[64] In fact, the victim's direct and positive identification of his assailants is almost always regarded with indubitable credibility because of the natural tendency of victims to seek justice, and thus strive to remember the faces of their malefactors and the manner in which they committed the crime.[65]

In addition, it is immaterial that Habagat and Abrina did not have any reason to hurt San Felix. Proof of motive is unnecessary where there is a positive identification of the accused.[66] When the prosecution witnesses had

already positively identified the perpetrators, proof of motive merely strengthens the case against them.[67]

In the crimes of homicide or murder, the principal element is the accused's intent to take his victim's life which must be established clearly and convincingly so as to exclude every possible doubt regarding homicidal intent of the aggressor.[68] It is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.[69] From the evidence presented to the trial court, it is apparent that the trio was able to perform all acts necessary to produce death as a consequence. The intent to kill in this case is inferred from the manner of attack and the lopsided number of the assailants versus the lone victim. As aptly summarized by the prosecution based on the sworn testimony of the attending physician:

The injury inflicted was sufficient to cause the victim's death without timely medical intervention, as supported by the medical findings on the degree of injury. In the provisional diagnosis, the findings were: Provisional Diagnosis: Depressed Comminuted Fracture (R) Temporal Area with Pneumocephalus and Subarachnoid Bleed Hemorrhage. Multiple of Tissue Contusion and Traumatic (R) Temporal Scalp, (R) Periorbital Area; Multiple Abrasion Secondary to Mauling. In the final Diagnosis, the findings were: Depressed Comminuted Fracture (R) Temporo-Parietal Area with Cerebral Contusion, Pneumocephalus and Subarachnoid Bleed Hemorrhage with Inter Vena Extension. Multiple Contusion (R) Temporal Area with Abrasion Secondary to Mauling.

According to Dr. James Soriano, the attending physician from the Davao Doctor's Hospital, the victim suffered four (4) injuries on the skull and one (1) on the scalp. A certain portion of the skull was fractured and it was driven inside towards the brain. Dr. Soriano opined that one injury sustained by the victim, subarachnoid bleed hemorrhage, could have caused his death.[70]

Upon further questioning, Dr. Soriano categorically declared that there was a 39% mortality rate[71] on the kind of injury sustained by the victim even if treated.[72] In fact, his survival could not be ascertained until after a year from the incident as he was still in danger of developing hydrocephalus as a complication from his fractured skull.[73]

These findings lead to the conclusion that a frustrated felony had been committed. Its essential elements are: (1) The offender performs all the acts of execution; (2) all the acts performed would produce the felony as a consequence; (3) but the felony is not produced; and (4) by reason of causes independent of the will of the perpetrator.[74] The offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[75]

Categorically, the victim San Felix could have expired, but did not because of the timely medical attention given. Had he succumbed to his wounds, the crime would be frustrated homicide.[76] With four head injuries sustained, one of these life-threatening, their victim could have expired if he was not brought immediately to the hospital emergency room by Aguimod.

The felony committed was
Frustrated Homicide, not Frustrated Murder.

That a frustrated felony was committed has been established beyond doubt by the prosecution. What merits Our attention is that accused-appellant, del Rosario and Abrina should have been convicted of the lesser offense of frustrated homicide.

In downgrading the crime to frustrated homicide, We take a look at its elements, to wit:

- 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[77] of the Revised Penal Code, as amended, is present.

A careful scrutiny of the Information reveals that accused-appellant was charged with murder because the act complained of was qualified by evident premeditation and treachery.

With regard to the allegation of evident premeditation, We agree with the court a quo when it pronounced that this did not attend the case at bench. The prosecution witness, Ernie Palanca, testified that del Rosario held a grudge against San Felix because the latter punched him after he (del Rosario) tried to kiss San Felix's sister in her room. The prosecution tried to impress before the court that del Rosario and the other two planned the whole incident because he wanted revenge. For this circumstance to be appreciated, the following must be proven beyond reasonable doubt that:

- 1) the time when the accused determined to commit the crime;
- 2) an act manifestly indicating that the accused clung to his determination; and,
- 3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.

Based on the witnesses' recount, there was no proof that the three had a prior agreement to maul San Felix and had purposely sought to execute the plan after the drinking session. In *People vs. Herbias*, [78] the Supreme Court pronounced that even if conspiracy attended the commission of a crime, it does not serve to prove that there was evident premeditation on the part of the culprits, thus:

The evidence on the existence of evident premeditation does not appear conclusive as it can only be presumed where conspiracy is directly established. But when conspiracy is only implied, as in this case, evident premeditation may not be appreciated if there is no showing as to when the plan to kill the victim was hatched or how much time elapsed before it was carried out.

Here, other than Palanca's testimony, no other evidence to support evident premeditation was presented by the prosecution, and none can be found.

In the instant case, treachery [79] cannot be appreciated because there was no evidence that accused-appellant deliberately adopted or employed means to ensure execution without affording opportunity to the victim to defend himself. In fact, there was an existing conflict between the victim and the accused del Rosario before the actual mauling. These incidents serve as a warning to both of them that the antagonistic feelings borne from the previous months' punching episode had not yet subsided:

- While at the store drinking alcohol with their friends, the victim and del Rosario were already exchanging hostile glances;

- On the way home with Olgasan, the victim noticed that del Rosario, who he previously punched for harassing his sister, was following him accompanied by Habagat and Abrina;

- When the victim and Olgasan were approaching the three after being summoned, del Rosario asked Olgasan to leave because the business they wanted to settle was supposedly only with the victim.

Taken with their violent encounter months before, the afore-mentioned incidents should have already alerted and did alert the victim of the impending danger on his person. Considering the pre-existing animosity between them,

it is unnatural for the victim not to expect any form of aggression especially from del Rosario. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself.[80] Even if the punching incident had transpired weeks before, the unpleasant exchange of looks earlier in the evening serves as sufficient warning to the victim that del Rosario still wanted to settle the score between them, thus, putting him on guard.

The Information failed to support the allegation of Frustrated Murder.

Assuming *arguendo* that treachery did attend the commission of the crime by virtue of the suddenness of the attack and the means of execution, We are still barred from recognizing it in this particular case because of insufficiency of the Information.

The averments contained in an Information serve as an accused's notice on the charges against him. This means that qualifying circumstances are strictly to be alleged with particularity in the Information in order to comply with the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him.[81] In fact, it is specifically required that the acts or omissions complained of as constituting the offense, including the qualifying and aggravating circumstances, must be stated in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged and the attendant qualifying and aggravating circumstances present, so that the accused can properly defend himself and the court can pronounce judgment.[82] The purpose is to allow the accused to prepare fully for his defense to prevent surprises during the trial.*arguendo*[83]

The Information herein involved merely states that "with treachery and evident premeditation and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted, boxed, kicked and struck with a stone one Frederick San Felix, Jr." Thus, it failed to enumerate each act and circumstance constituting the alleged treachery such that the accused-appellant, in formulating his defense, would be able to adequately dispute. Time and again, it has been held that it is the allegations in the Information that govern the nature of the offense, not the technical name as stated in the Information.[84] The technical designation of "treachery" will not aid accused-appellant in a contest on the merits. Every element must be alleged with particularity, and not in a sweeping manner under one technical and specific name.[85]

In *People vs. Velez*,[86] the Supreme Court reiterated the sacred rule on sufficiency of the allegations embodied in an Information before a person may be convicted of a crime, to wit:

xxx And, fourthly, it is unavoidable for the Court to pronounce PO2 Valdez guilty of three homicides, instead of three murders, on account of the informations not sufficiently alleging the attendance of treachery.

Treachery is the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the State to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated,

which are mere conclusions of law, but by the actual recital of the facts in the complaint or information. In *People vs. Dimaano*, the Court elaborated:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.

The averments of the informations to the effect that the two accused “with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did xxx assault, attack and employ personal violence upon” the victims “by then and there shooting [them] with a gun, hitting [them]” on various parts of their bodies “which [were] the direct and immediate cause of [their] death[s]” did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the Informations.

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of

his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. xxx.

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

This pronouncement is in consonance with the Rule[87] that requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. With the mere protestation that the three accused "with treachery and evident premeditation and with intent to kill," the information was defective. It failed to allege every single fact necessary to constitute all the elements of the offense charged.

Imposable Penalty

Under Article 249 of the Revised Penal Code, the crime of homicide is punishable by reclusion temporal. Article 50 of the Code states that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony like in this case. The penalty next lower in degree to reclusion temporal is prision mayor.[88] Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Absent any mitigating or aggravating circumstances, the proper imposable penalty on accused-appellant is six (6) months and one (1) day to six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day to ten (10) years of prision mayor in its medium period, as maximum. 89 Thus, accused-appellant is sentenced to the indeterminate sentence of imprisonment ranging from six (6) years of prision correccional as minimum to ten (10) years of prision mayor medium as maximum.

Damages

After having presented receipts and other documents[90] sufficiently proving their expenses for hospitalization, medication and other charges related to the victim's recovery, the award of P52, 491.53 in actual damages[91] is sustained.

Moral damages[1] which does not need to be proven given the fact that crime has been committed, of P50,000.00 is also awarded.[93] The exemplary damages[94] awarded is lowered to P25,000.00 in keeping with recent jurisprudence.[95]

It is a settled rule that once conspiracy is established, the act of one is the act of all,[96] thus, all the conspirators are answerable as co-principals. There was unity in design and purpose in the mauling of San Felix by del Rosario, Abrina and Habagat such that each one was a direct participant in the attack. Accused-Appellant should not be absolved based on his feeble defense especially when he has been clearly pinpointed as one of the

assailants.

In closing, treachery is an element of the crime of murder, and the Constitution requires that the accused must be informed of the "nature and cause of the accusation against him." Obviously, this failure to allege treachery with particularity in the Information is a major lapse of the prosecution. Since every doubt must be resolved in favor of the accused, We cannot convict him of frustrated murder but only of the lesser crime of frustrated homicide.

The downgrading of the criminal offense from frustrated murder to frustrated homicide should likewise benefit the two minors who did not appeal from their suspended sentence pursuant to Presidential Decree No. 603, as amended, in any manner they may be benefitted by this ruling.[97]

WHEREFORE, the Decision dated May 25, 2010 of the Regional Trial Court, Branch 8, of Davao City in Criminal Case No. 47,616-2001 is MODIFIED. Accused-Appellant ARIEL HABAGAT alias Toto Valdevieso is hereby found GUILTY beyond reasonable doubt of Frustrated Homicide as defined and penalized by Article 269 in relation to Article 6 of the Revised Penal Code, and is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of prision correccional as minimum to ten (10) years of prision mayor medium as maximum.

The award of exemplary damages to private complainant is adjusted to P25,000.00

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[*] Accused Abrina withdrew his plea of guilty and entered a plea of guilty, see Pieza 1, pp. 61-62.

[1] TSN dated November 15, 2011, p. 30.

[2] TSN dated November 12, 2001, pp. 8-11.

[3] TSN dated November 15, 2001, pp. 25-27.

[4] TSN dated November 15, 2001, p. 4.

[5] TSN dated April 16, 2002, pp. 35-40.

[6] TSN dated April 16, 2002, pp. 6-7 and 20-23.

[7] TSN dated April 16, 2002, pp. 20-23.

[8] TSN dated April 2, 2002, p. 33.

[9] Pieza 1, pp. 4-6.

[10] Pieza 2, p. 345.

[11] Pieza 2, p. 345; Certificate of Confinement, Pieza 1, p. 7.

[12] TSN dated November 28, 2001, p. 16.

- [13] TSN dated November 28, 2001, p. 19.
- [14] TSN dated November 28, 2001, p. 20-21.
- [15] TSN dated February 5, 2002, pp. 25-27.
- [16] TSN dated February 5, 2002, p. 41.
- [17] TSN dated February 5, 2002, p. 43.
- [18] TSN dated February 5, 2002, p. 52.
- [19] Pieza 1, p. 3.
- [20] Pieza 1, pp. 1-2.
- [21] Pieza 1, p. 11.
- [22] Pieza 1, p. 12.
- [23] Pieza1, pp. 13-14 for accused Abrina; pp. 41-43 for accused-appellant Habagat.
- [24] Pieza 1, p. 15.
- [25] Pieza 1, pp. 17-29 for accused Abrina; pp. 44-51 for accused-appellant Habagat.
- [26] Pieza 1, pp. 16-27.
- [27] Pieza 1, pp. 54-57.
- [28] Pieza 1, p. 69.
- [29] Pieza 1, p. 61-62.
- [30] Pieza 1, p. 89.
- [31] Presidential Decree No. 603.
- [32] Pieza 1, pp. 100-107.
- [33] Pieza 1, p. 108.
- [34] TSN dated December 5, 2005, pp. 14-20.
- [35] TSN dated December 5, 2005, p. 23.
- [36] TSN dated December 5, 2005, p. 33.
- [37] Supra. at note 1.
- [38] Pieza 2, p. 498.
- [39] Pieza 2, pp. 501-502.
- [40] Pieza 2, pp. 503-504.
- [41] Pieza 2, pp. 509-513.
- [42] Pieza 2, p. 521.
- [43] Pieza 2, pp. 540-541.

- [44] Pieza 2, p. 507.
- [45] Pieza 2, pp. 535-539.
- [46] Rollo, pp. 25-29.
- [47] Rollo, pp. 30-36.
- [48] Rollo, pp. 47-71.
- [49] Rollo, p. 78.
- [50] TSN dated November 15, 2001, pp. 20-21.
- [51] TSN dated November 15, 2001, pp. 25-33.
- [52] TSN dated November 12, 2001.
- [53] TSN dated November 15, 2001.
- [54] L-20183, June 30, 1966.
- [*] The name accused-appellant gave Aguimod when they were introduced.
- [55] TSN dated April 16, 2002, pp. 16-21.
- [56] People vs. Peralta, G.R. No. L-19069, October 29, 1968.
- [57] People vs. Mapalo, G.R. No. 172608, February 6, 2007.
- [58] Yapyuco vs. Sandiganbayan, G.R. Nos. 120744-46, June 25, 2012.
- [59] TSN dated April 16, 2002, pp. 11-15.
- [60] Pieza 2, pp. 480-481.
- [61] People vs. Domingo, G.R. No. 184343, March 2, 2009.
- [62] People v. Juan, 379 Phil. 645, 666 (2000)
- [63] People vs. Villanueva, G.R. No. 172697, September 25, 2007.
- [64] Serrano vs. People, G.R. No. 175023, July 5, 2010.
- [65] People vs. Cabildo, G.R. No. 189971, August 23, 2010.
- [66] People vs. Guillermo, G.R. No. 113787, January 28, 1999; People v. Madali, 188 SCRA 69 (1990).
- [67] People vs. Guillermo, G.R. No. 113787, January 28, 1999.
- [68] Pentecostes, Jr. vs. People, G.R. No. 167766, April 7, 2010; v. Pagador, 409 Phil. 338, 351 (2001).
- [69] Rivera v. People, G.R. No. 166326, January 25, 2006.
- [70] Rollo, p. 58-59; TSN dated November 28, 2001 and February 5, 2002.
- [71] Based on United States figures; TSN dated February 5, 2002, p. 27.
- [72] TSN dated February 5, 2002, pp. 25-27.
- [73] TSN dated February 5, 2002, p. 52.

[74] Nerpio vs. People, G.R. No. 155153, July 24, 2007.

[75] People vs. Tolentino, G.R. No. 176385, February 26, 2008.

[76] Colinares vs. People, G.R. No. 182748, December 13, 2011.

[77] Revised Penal Code. Art. 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 temporal in its maximum period to death, if committed with any of the following attendant circumstances:

- 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.

- In consideration of a price, reward, or promise.

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

- With evident premeditation.

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[78] G.R. Nos. 112716-17, December 16, 1996.

[79] Article 14 (16) of the Revised Penal Code defines treachery as “the employment of means, methods, or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make.”

[80] People vs. Reyes, G.R. No. 118649; March 9, 1998; People vs. Tampon, G.R. No. 105583, July 5, 1996.

[81] Go vs. BSP, G.R. No. 178429, October 23, 2009; Article III, par. 14(1), 1987 Philippine Constitutional.

[82] Ibid.; Rule 110, Section 9, Revised Rules of Court.

[83] People vs. Lab-eo, G.R. No. 133438, January 16, 2002.

[84] Matrido vs. People, July 13, 2009.

[85] Ibid.

[86] G.R. No. 175602, January 18, 2012.

[87] Section 8 of Rule 110 of the Revised Rules on Criminal Procedure.

[88] Zarate vs. RTC, Branch 30, of Gingoog City, G.R. No. 152263, July 3, 2009.

[89] Art. 64. Rules for the application of penalties which contain three periods.— x x x

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. xxxx

[90] Pieza 1, pp. 71-84.

[91] Article 2202, Civil Code of the Philippines.

[92] Article 2219, Civil Code of the Philippines.

[93] People vs. Camat, G.R. No. 188612, July 30, 2012.

[94] Article 2229-2230, Civil Code of the Philippines.

[95] People vs. Baldomar, February 29, 2012; People vs. Domingo, G.R. No. 184343, March 2, 2009.

[96] People vs. Caarandang, G.R. No. 175926, July 6, 2011; People vs. Abendan, G.R. No. 132026-27, June 28, 2001; U.S. vs. Ramos, 2 Phil. 434.

[97] SC Resolution dated February 13, 2013, People vs. Valdez, G.R. No. 175602, February 13, 2013; People vs. Baltar, G.R. No. 125306, December 11, 2000, citing Rule 122 of the Revised Penal Code.

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