

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERDINAND CADANGAN Y OANDASAN ACCUSED-APPELLANT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Brought before Us for review is the Decision[1] dated 29 September 2000 of the Regional Trial Court (RTC), Second Judicial Region, Luna, Apayao, Branch 26, finding accused-appellant Ferdinand Cadangan y Oandasan (“FERDINAND”) guilty beyond reasonable doubt of the crime of frustrated murder and ordering him to pay civil indemnity.

FERDINAND was charged with frustrated murder in an Information[2] dated 13 March 1998, the accusatory portion of which reads as follows:

“That on or about the evening of January 11, 1998 at Sipa, Sta. Marcela, Apayao within the jurisdiction of this Honorable Court, the above-named accused armed with a short firearm (unrecovered) with intent to kill and with the attendance of treachery, did then and there willfully, unlawfully and feloniously assault, attack and shot one GABRIEL SADAKEN y PADILLA inflicting upon the latter multiple gun shot injuries thus performing all the acts of execution which would have produced the crime of Murder but which did not, by reason of causes independent of the will of the perpetrator, that is the timely medical attendance given the victim.

Contrary to Law.”

On 13 April 1998,[3] FERDINAND, assisted by counsel de parte, was arraigned and entered a plea of not guilty. At the pre-trial, the prosecution and defense entered into a stipulation on (1) the identity of FERDINAND as the one charged (and therefore, the accused) in the Information but not as the assailant; and (2) the existence of a medical certificate issued by Dr. Emily Estaris of the Baguio General Hospital. Trial on the merits forthwith ensued.[4]

The prosecution presented seven (7) witnesses, namely, Gabriel Sadaken, SPO1 Felizardo Castillo, Records Officer Erlinda Danao, Jessie Pinera, Dr. Emily Estaris, Dr. Roderick Ramirez and rebuttal witness Cresencio Padilla.

The version of the prosecution is as follows:

FERDINAND and the victim, GABRIEL SADAKEN (“GABRIEL”) have known each other since childhood. On 11 January 1998 at about 5:00 o’clock in the afternoon, after a day’s work of planting rice on the farm owned by Allan Castillo in Imelda, Sta. Marcela, Apayao, GABRIEL, together with his fellow farmers, William Lozano, Rico dela Cruz, Jessie Pinera, Reynaldo Guillermo, Carter Zuniga and Rogelio Sadaken, decided to go to the house of Mars Zuniga. At the open porch of the said house, they drank gin, divided their earnings from planting palay, sang and joked with each other until 8:00 o’clock in the evening. At about 9:00 o’clock in the evening, FERDINAND and his wife, Gloria went in front of Mars Zuniga’s porch where GABRIEL’s group was drinking and asked them to stop drinking because they were noisy and she could not sleep. GABRIEL told her “Excuse us

Manang because we are noisy.” Suddenly, someone from the southwest threw a stone at them. The stone hit the side of the house of Mars Zuniga. FERDINAND, who was all the time sitting under a mango tree about 2 meters away from where the group was drinking, ran towards his house which was just across the house of Mars Zuniga. Some of GABRIEL’s companions went inside the house of Mars Zuniga while GABRIEL, Jessie Pinera, Rogelio Zuniga and Reynaldo Guillermo were left in the porch. FERDINAND came back and pointed a short firearm at them. GABRIEL tried to run but he was hit on his left shoulder. FERDINAND fired two successive shots, the second of which hit GABRIEL on his jaw. His left jaw and right gums were broken and injured, respectively. Feeling weak, GABRIEL fell on his side. The incident caused shock among the other members of GABRIEL’s group. FERDINAND ran away while Rogelio, GABRIEL’s brother, brought him to the Medicare Hospital in Sta. Marcela, Apayao on board a tricycle. GABRIEL was eventually brought to the Cagayan Valley Regional Hospital (CVRH) in Tuguegarao, Cagayan where he was confined for 18 days. He was told that his broken teeth and lower jaw could no longer be treated. He was later transferred to the Baguio General Hospital where his confinement took two (2) months and for which he spent about Thirty Thousand Pesos (P30,000.00) for medicines and Nine Thousand Pesos (P9,000.00) for other expenses. GABRIEL’s brothers, Bonifacio and Rogelio Sadaken, paid for his medical expenses.[5]

The barangay officials of Imelda, Sta. Marcela, Apayao informed the police station about the incident. SPO1 Felizardo Castillo investigated the incident by inviting to the police station witnesses, namely: Reynaldo Guillermo, Jessie Pinera and Rico dela Cruz. Two days after the incident, SPO1 Castillo went to CVRH to take down the dying declaration of GABRIEL written by himself. SPO1 Castillo saw the injury sustained by GABRIEL on his shoulder.[6]

DR. RODERICK RAMIREZ, a surgeon connected with the CVRH, testified that he treated GABRIEL for “fracture type 3 over the left mandible and gunshot wound over the left shoulder.” At the time GABRIEL was brought to the hospital, his blood pressure was going down below normal, he was hypodermic and bleeding resulting from the gunshot wound he sustained and he suffered considerable loss of bone tissues. According to Dr. Ramirez, had GABRIEL not been brought to the hospital, he could have died. A medical description of the injuries sustained by GABRIEL was issued by the junior resident physician of Dr. Ramirez stating the diagnosis[7] of “Open Fracture type III, mandible, left with bone loss 2 “ to GSW GSW L shoulder.”[8]

DR. EMILY ESTARIS, the attending physician of GABRIEL at the Baguio General Hospital, testified that she treated the latter seventeen days after admission at the CVRH for a “comminuted fracture” of the left mandible which meant that GABRIEL sustained “multiple different fragments with complete separation”. She related that the fracture was allegedly caused by the entry of a bullet from the left angle of the left body to the right mandible. A reinforcement metal plate was attached to treat GABRIEL’s mandible which costed around Twenty Thousand Pesos (P20,000.00)[9]. Dr. Estaris, thereafter, issued a medical certificate[10] stating that GABRIEL was confined at the Baguio General Hospital for “Gunshot wound, POEnt-left mandible, POExit-none w/ fracture, mandible, angle, open left, body right comminuted.”

On the other hand, the defense presented a different version. Through the testimonies of witnesses Silvestre Bello, Florante Bello, Gloria Cadangan and FERDINAND Cadangan, the defense countered the prosecution theory, as follows:

In the morning of 11 January 1998, Silvestre Bello was with Armando Cadangan and Florante Bello in Barangay Bayog, Sta. Marcela, Apayao to repair old shoes and broken umbrellas. At about 5:30 or 6:00 o’clock in the evening, they left Barangay Bayog using a different route because it was nearer to an exit road which would lead them to the place where they could wait for their ride back to Flora, Apayao. While waiting for their ride, they ate supper at FERDINAND’s home after which they stayed near the gate of the latter’s house. FERDINAND and his

wife Gloria were also with the three men outside the gate waiting when they saw a light emanating from the north. Thinking it was the ride going back to Flora, Apayao, Gloria volunteered to flag down the vehicle but as she went near the edge of the road, GABRIEL and Reynaldo Guillermo passed by, with the latter holding two (2) bottles of Ginebra San Miguel bought from a store about 90 meters south from Mars Zuniga's house. Gloria advised the two men to stop drinking as they were already drunk and noisy; however, GABRIEL answered her, "I know you are gathering something to report to the Barangay Captain, we are not afraid; even now we will talk over the matter in front of the Barangay Captain." Gloria retorted, "Awan Kaniak daya ading." Then Bonifacio Sadaken came and told Gloria, "Your husband is only making something wherein he is afraid of (sic)", and picked up a 3-inch stone throwing it towards Gloria. The stone did not hit Gloria but landed beside her foot. When Gloria told Bonifacio, "You are intoxicated", the latter immediately rushed towards her and pulled her hair with his left hand. FERDINAND, who, like his brother Armando and the group were waiting for the ride, merely watched everything that had transpired. Eventually, FERDINAND ran towards Gloria and Bonifacio saying, "Pagbabartekamyon met dataon." (You are making a fool out of her because you are already drunk). While holding Gloria's hair with his left hand, Bonifacio then drew a gun from his right hand but FERDINAND immediately took hold of said hand and pushed it forward. Thereafter, the gun pulled off. Gloria ran as Bonifacio's grip on Gloria's hair loosened. GABRIEL, who was in the act of picking up a stone uttered, "I am hit." FERDINAND, Gloria and their visitors ran inside their house where they stayed the whole night while GABRIEL's group continuously threw stones thereat.[11]

Two (2) days after the incident, GABRIEL's mother went and asked FERDINAND to help defray the expenses incurred by their family for the treatment of GABRIEL.[12]

After trial, the court a quo rendered judgment on 29 September 2000 convicting FERDINAND for the crime of frustrated murder, the dispositive portion of which is quoted as follows:

"WHEREFORE, finding accused FERDINAND CADANGAN y Oandasan guilty beyond reasonable doubt of the crime of Frustrated Murder with the aggravating circumstance of the use of an illegally possessed firearm with no mitigating circumstance and after applying the indeterminate sentence law herein accused is hereby sentenced to suffer the penalty of imprisonment of EIGHT (8) YEARS and TWENTY ONE (21) DAYS as minimum to FOURTEEN (14) YEARS and TEN (10) MONTHS as maximum.

The accused is further ordered to pay the victim, Gabriel Sadaken, the amount of THIRTY NINE THOUSAND PESOS (P39,000.00) as medical expenses plus TWENTY THOUSAND PESOS (P20,000.00) as moral damages and costs of the suit.

Whatever preventive imprisonment the accused have (sic) undergone in this case shall be credited in his favor.

SO ORDERED."[13]

Aggrieved, FERDINAND, now appellant, seasonably inter-posed the instant appeal raising the following errors:

I

THE TRIAL COURT ERRED IN FINDING THAT THE SHOOTING OF THE COMPLAINING WITNESS IS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHER(Y).

II

THE TRIAL COURT ERRED IN APPRECIATING THE USE OF AN ILLEGALLY POSSESSED FIRE-ARM AS AN AGGRAVATING CIRCUMSTANCE.

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE SHOOTING OF THE COMPLAINING WITNESS IS PURELY ACCIDENTAL.

IV

THE TRIAL COURT ERRED IN NOT ACQUITTING THE AP(P)ELLANT.

Appellant contends the fact that his return to the porch where the victim was, and the absence of proof that the victim was taken by surprise of the attack, negate the presence of the aggravating circumstance of treachery.

Appellant asserts that the prosecution failed to proffer evidence that the firearm used in the shooting was an unlicensed firearm or that appellant had no license to possess the same. In the absence of such proof like a certification from the proper government agency, the aggravating circumstance of the “use of an unlicensed firearm” or that appellant had no license to possess the same cannot be appreciated against him.

Appellant maintains that the testimony of the victim as to his position at the time of the attack contradicts the findings of witness Dr. Ramirez regarding the physical evidence and location of the victim’s wounds. Asserting that the shooting was accidental and that it was caused by Bonifacio, the victim’s brother, appellant assails the court a quo’s finding of conviction.

The Appeal lacks merit.

The third and fourth assigned errors having delved on the court a quo’s assessment on the credibility of the witnesses, We shall first discuss the same.

After a judicious evaluation of the two different versions unveiled by the prosecution and defense, We sustain the court a quo’s assessment on the credibility of the witnesses for the prosecution and likewise give them full faith and credence. Settled is the rule that the factual findings of the court a quo, especially on the credibility of witnesses, are accorded great weight and respect and cannot be disturbed on appeal. This is so because the court a quo has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply, of the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[14]

We find the following testimony of GABRIEL to be truthful, sincere and straightforward:

“q When you already arrived with your companions in the house of Mars Zuniga, what happened if any? or what did you do?

a We sent somebody to buy 2 bottles of gin and our purpose was to buy because of our labor, Sir.

q Were you able to secure some drinks?

a Yes, Sir.

q What did you observed (sic) among yourselves while you were drinking liquor?

a We were singing and joking with each other, Sir.

q Up to what time did you enjoy singing and drinking and joking?

a Around 8:00 o’clock in the evening, Sir.

q Were you still drinking up to 9:00 in the evening, do you remember if there was any thing that happened if any?

a There was, Sir.

q What was that incident that happened?

a The wife of Ferdinand Cadangan came over, Sir.

q Where did Mrs. Cadangan go?

a To the place where we were drinking, Sir.

q Where were you drinking then that time?

a Infront (sic) of the house of Mars Zuniga, Sir.

q Who was the companion of Mrs. Cadangan when she went there if she had a companion?

a They were two, Sir, he was with Ferdinand Cadangan.

q Is this Ferdinand Cadangan the same Ferdinand Cadangan the accused in this case?

a Yes, Sir, the same.

q Do you know what Mrs. Cadangan do (sic) when she went?

ATTY. PASCUALLeading, your Honor.

COURT

Reform the question.

ATTY. AQUILIZAN

q What happened when Mrs. Cadangan went to the place where you were drinking?

a She was asking us to stop drinking, Sir.

q Do you know the reason why she asked you to stop drinking?

a I know, Sir.

q What was the reason given by Mrs. Cadangan?

a Because we were noisy, Sir.

q When Mrs. Cadangan asked you (to) stop what did you and your companions do if any?

a We told her that be patient Manang because we were noisy, Sir.

ATTY. PASCUA

This is the interpretation.

a ("")Excuse us Manang because we are noisy.(")

ATTY. AQUILIZAN

q What else happened or who among your group asked to (sic) Mrs. Cadangan?

a I, Sir.

q After you have asked forgiveness what else happened?

a Somebody stoned us, Sir.

q Somebody stoned to (sic) you was there anybody who was hit by the stone that was thrown?

a None, Sir.

q Did (sic) you know where the stone came from?

a I know, Sir.

q Where did the stone came (sic) from?

a It came from the southwest, Sir.

COURT

q Why do you say that your group was stoned?

a The stone hit the house of Mars Zuniga, Sir.

COURT

Continue.

ATTY. AQUILIZAN

q Where is the house of Mr. & Mrs. Ferdinand Cadangan as regards to (sic) the house of Mars Zuniga where you were drinking?

a The house of Ferdinand Cadangan was just op(p)osite the road, Sir.

q How far is the house of Ferdinand Cadangan to the house of Mars Zuniga?

a Maybe 15 to 20 meters, Sir.

q After the stone hit the wall of the house of Mars Zuniga what else happened if any?

ATTY. PASCUA

The witness did not mentioned (sic) the wall, your Honor.

COURT

Reform(.)

ATTY. AQUILIZAN

q What part of the house of Mars Zuniga was hit by the stone?

a Beside the house, Sir.

q After the stone was thrown and hit the side of the house of Mars Zuniga what else happened?

a Ferdinand Cadangan and his wife ran, Sir.

q To what direction did they go?

a They proceeded towards their house, Sir.

q How about you and your companions, what did you do when there was a stone thrown at the side of the house of Mars Zuniga?

a We went inside the house of Mars Zuniga, Sir.

q Who of (sic) your companions who (sic) entered the house of Mars Zuniga?

a The persons whom I mentioned a while ago, Sir.

x x x x x x x x

q After some of your companions went inside the house of Mars Zuniga and Mr. & Mrs. Ferdinand Cadangan also ran towards their house what else happened thereafter?

a Ferdinand Cadangan came back, Sir.

q What did you observed (sic) when Ferdinand Cadangan went back?

ATTY. PASCUA

Objection, your Honor when Ferdinand Cadangan came back he is suggesting something.

ATTY. AQUILIZAN

I will reform, your Honor.

q What happened when the accused Ferdinand Cadangan returned to the place where you were?

a He pointed the gun to us, Sir.

q What kind of gun did Ferdinand Cadangan have?

a A short firearm, Sir.

q When Ferdinand Cadangan pointed the gun at your group what did you do if any?

a I have the intention to ran but (Ferdinand Cadangan) I was hit at my left shoulder(.

INTERPRETER

Witness showing to the Court where he was hit by Ferdinand Cadangan.

ATTY. AQUILIZAN

May we ask that the witness has some scars behind his shoulder and there is exit wound which is bigger to the front.

ATTY. PASCUA

I beg that there is exit wound, your Honor.

ATTY. AQUILIZAN

I beg there is scars, Sir.

q After you said you were hit at the shoulder what happened next if any?

a He again shoot (sic) my jaw.

INTERPRETER

Witness is touching his left jaw.

ATTY. AQUILIZAN

q Who shot you again?

a Ferdinand Cadangan (Witness pointed to the accused)

q What part of your body was injured as a result of the second shot?

a This one, Sir (Witness touching the left lower jaw and scar could be seen).

q Was there any involvement inside your mouth?

a My left jaw was broken and my right gum was injured.

q After you were hit for the second time what happened?

a I became weak, Sir.”[15] (Emphasis supplied)

GABRIEL withstood attempts of the defense to discredit him as he remained consistent and undaunting during his cross-examination, thus:

q- And you said that as you were drinking you were very noisy as you were singing, shouting and laughing

with your companion?

a- Yes sir.

q- And you also stated that the wife of the accused came to your place telling you what?

a- Please be quiet you were disturbing our peace.

q- And where was she when she made that statement?

a- She was behind us sir.

q- Behind you?

a- Behind us sir.

INTERPRETER:

Witness indicating a distance at his right side at about ½ meter away from them.

q- And was the statement of Mrs. Cadangan addressed to anyone?

a- It was directed to all of us sir.

q- So Mrs. Cadangan was at the porch when she made that statement, is that what you mean?

a- She was beside us sir.

q- Yes but she was also in the porch?

ATTY. AQUILIZAN:

Outside the house your honor.

ATTY. PASCUA:

But the witness was at the porch your honor.

COURT:

Continue.

q- And you also stated that the accused was with his wife at that time she came to the porch and made that statement is that correct?

a- Yes sir.

q- And if that so, where exactly was the accused when the wife made the statement “please keep quiet you were disturbing our peace(”).

a- He was waiting near a wood sir.

q- What wood?

a- A mango tree sir.

q- How far was that mango tree to the place you yourself was?

a- Five (5) meters sir.

q- At what moment did you notice the presence of the accused waiting beside or near that mango tree?

a- They came together with his wife sir.

q- So you noticed the wife and the accused as they were approaching the porch?

a- Yes sir.

q- By the way, where was that mango tree beside which the accused was waiting in relation to the porch?

a- South of the porch sir.

q- And what happened if any when Mrs. Cadangan told you to keep quiet because you were disturbing the peace?

a- Somebody stoned the house sir.

q- Where was the accused when somebody threw a stone in the house?

a- He was on the Southern side of the house sir.

q- You mean he was beside the mango tree where he was waiting?

a- Yes sir.

q- You saw him at that moment when someone threw a stone?

a- Yes sir.

q- And he was waiting at that time?

a- He run when somebody stoned.

q- Yes, after the piece of stone threw that was the time when he run?

a- Yes sir.

q- You stated that the piece of stone hit the wall of the house of Mars Zuniga, right?

a- Yes sir.

q- What wall of the house of Marz Zuniga was hit?

a- The Southern wall of the house sir.

x x x x x x x x

q- And what happened when a piece of stone hit the lowest portion of the wall of the house of Mars Zuniga?

a- Ferdinand Cadangan and his wife run sir.

q- What about you yourself?

a- I was sitting at the place where we were drinking sir.

q- You did not move at all when you noticed the wall of the house of Mars Zuniga hit that piece of stone?

a- No sir.

q- You said you were sitting, how were you sitted (sic)?

a- I was sitting on a piece of chair sir.

q- Facing what direction?

a- I was facing North sir.

q- So that yourback (sic) was towards the South?

a- Yes sir.

q- What about your other companions, what if any did they do when they notice (sic) the wall of the house of Mars Zuniga hit?

a- Some of our companions went inside the house sir.

q- Who were those who went inside the house of Mars Zuniga?

a- William Luzano, Eduard (sic) Guillermo, Nelson Luzano, Dominador Guillermo and Carter Zuniga, sir.

q- They were nine (9) of you who were drinking according to you and they were five (5) who went inside the house, who left outside the house?

a- Reynaldo Guillermo, Rico dela Cruz, Jessie Pinera and I sir.

q- So it is clear now that inspite of your five (5) companions having gone inside the house when the piece of stone hit the wall of the house of Mars Zuniga you never move at your place where you were sittid (sic) in the porch together with your companions namely Reynaldo Guillermo, Rico dela Cruz, Jessie Pinera and you?

a- Yes sir.

q- Do you know of any reason why your five (5) companions went inside the house?

ATTY. AQUILIZAN:

Incompetent your honor.

COURT:

Sustain.

q- So I understand then that you and your other companions remain in the porch and you were not alarm (sic) when the South wall of the house of Mars Zuniga hit?

a- Yes sir.

x x x x x x x x

q- You further declare in your direct testimony that when a piece of stone hit the wall of the house of Mars Zuniga the accused run (Sic) together with his wife, right?

a- Yes sir.

q- And did you notice where the two or any one of them went as they run?

a- They proceeded to their house sir.

q- You saw them proceeding to the direction of their house is that what you mean?

a- Yes sir.

q- But you did not actually saw (sic) them reaching their house?

a- I saw them entered (sic) their house because their light was on, sir.

q- So because you saw them actually reach their house I understand that you watch (sic) them towards the direction of their house?

a- I have (sic) glance(d) at them sir.

q- You glance(d) at them when they were at what point?

a- They were inside their yard sir.

q- Yes because beside the yard of the (sic) accused was an electric light hanging (sic) an electing post?

a- Yes a street light sir.

q- So if you happened to see the accused and his wife reaching their house because you glance(d) at them you did never change your post sitting on a chair facing North and your back towards the South?

a- Yes sir.[16]x x x x x x x x

q How (sic) you also stated that you were seating (sic) on a chair facing north at the porch of Mars Zuniga when someone throw (sic) a stone hitting the southern wall of the house of Mars Zuniga and for which reason the accused and his wife according to you ran away, was that still your position when according to you you were shot for the first time?

a Yes, Sir.

q In other words you never change(d) your position from the moment a piece of stone was thrown at the walling (sic) of the house of Mars Zuniga until the time you were also hit or shot for the first time?

a I wanted to ran (sic) at that moment, Sir.

q At what moment you wanted to ran (sic)?

a When Ferdinand Cadangan came back to shot (sic) me, Sir.

q Do we understand that you noticed Ferdinand Cadangan even before he allegedly shot you?

a Yes, Sir.

q Where was he when you first noticed him allegedly shot you?

a He was near us, Sir.

q Yes, I am not the distance but whether (sic) he in relation to the porch?

a He was at the edge of the road, Sir.

x x x x x x x x

q As you have indicated in the sketch you were seated on a chair at the time you saw them at the edge of the porch, is that correct?

a Yes, Sir.

q And was that balcony with a cemented flooring?

a Some part of the flooring was broken but is is (sic) made of cement.

q And the elevation of the flooring of the porch is higher than the porch?

a Yes, Sir.

q About how high is the flooring of the porch to the level of the ground?

a More than 6 inches, Sir.

q And the chair on which you were seated was off (sic) course a single chair, did I get you right?

a Yes, Sir.

q And the feet of that chair were all resting on the flooring of the porch?

a Yes, Sir.

q And that was also the same place where according to you you noticed the accused Ferdinand Cadangan immediately before you were shot, is that right?

a Yes, Sir.

q And were you then seated in the same position that you were facing northward and your back towards the south?

a Yes, Sir.

q And you said that you wanted to ran (sic) when you noticed the accused came (sic) back and was at the edge of the road as you have indicated with an X, my question is what did you do when you wanted to ran (sic) if you did any?

a I was already hit when I wanted to ran (sic), Sir.

q In other words you were not able to stand up nor take a step forward, sideward or or (sic) what not?

ATTY. AQUILIZAN

Already answered, your Honor.

COURT

You are going around and the court observed.

ATTY. PASCUA

q So you were actually sitting on a chair?

a I wanted to ran (sic) but I was already hit, Sir. (A)nd I had already stood up.

q And you have already stood up but you have not taken any step to ran (sic), is that what you mean?

a Not yet, Sir.

x x x x x x x x

q What about when you were allegedly shot for the second time, what was your position, you have also standing? (I)n the very same position when you were hit for the first time?

a Yes, Sir.

x x x x x x x x

q What is the interval if you know between the first and second shot?

a The fire (sic) is a successive manner, Sir.

q So you want us to understand that there was no first and second shot but it was a successive manner?

a It is a simultaneous firing, Sir.

q When you were hit for the second time what did you do?

a I became weak, Sir.

q You became weak and because you became weak what happened next?

a My older brother came and assisted me, Sir.

q What about your other companions if they did any?

a I can not recall any more, Sir, because I was feeling dizzy that time.”[17] (Emphasis supplied)

GABRIEL’s testimony is corroborated by the unbiased testimony of Jessie Pinera, viz:

q Now you had a drinking spree as you said who went to buy drinks?

a Gabriel Sadaken and Reynaldo Guillermo, Sir.

q What was (sic) the drinks that they bought?

a Gin, Sir.

q Until what time of that day did you go on drinking gin?

a Up to 9:00 o’clock or past 9:00 o’clock, Sir.

q Why did you stop drinking up to past 9:00 o’clock?

a Manang Glory and her husband came over telling us that we are noisy.

q Who is this husband of Manang Glory that you mentioned?

a Ferdinand Cadangan, Sir.

q Is this Ferdinand Cadangan the husband of Glory the same accused in this case?

a Yes, Sir.

q Now what did Glory tell you or your group when she said you are noisy? Tell the actual word when she said you are noisy?

a She told us not to be noisy because we can not sleep.

q As (sic) there any particular person to whom Glory directed that statement?

a Gabriel Sadaken, Sir.

q What did Gabriel Sadaken do if any or any of your group said about the statement of Glory in responds (sic) of the statement of Glory?

a Gabriel Sadaken responded, Sir.

q What did Gabriel Sadaken said (sic) in responds (sic) to the statement of Glory?

a He answered, Sir.

q Do you remember if there was anything unusual that happened while Glory and Gabriel Sadaken were talking?

(I withdraw)

q While Glory Cadangan were talking where is (sic) Ferdinand Cadangan that time?

a He was sitting under the mango tree, Sir.

q How far is the mango tree to the place where you were drinking?

a It was beside the place where we were drinking, about 2 meters from the place where we were drinking, Sir.

q During the time that Glory and Gabriel Sadaken were talking you said there was unusual incident that happened, what was that unusual incident?

a Some body throw (sic) stone in the place where we were drinking and the stone hit the walling of the house, Sir.

q After the stone was thrown what happened if any?

a Ferdinand Cadangan and his wife ran, Sir.

q Where did they go?

a They proceeded to their house, Sir.

q What about you and your group, what was your reaction if any?

a Some of us entered the house, Sir.

q Who were those persons who remain outside the house where you were drinking?

a Rogelio Sadaken, Gabriel Sadaken, Reynaldo Guillermo and I, Sir.

q You and your companions left behind, what else happened if any?

a Ferdinand Cadangan came back and fired us particularly Gabriel Sadaken and Ferdinand Cadangan pointed to us the gun.

q What happened after the shot was fired?

a We were still outside but he fired his gun successive, Sir.

q How many shots did the accused fired (sic)?

a Two shots but again pull(ed) the trigger but he did not fire, Sir.

q How many shots did you hear?

a Two shots, Sir.

q After the first shots (sic) what was the reaction of Gabriel Sadaken?

a He stood up, Sir.

q And then what was the position of Gabriel Sadaken at the time the shooting incident (happened)?

a He fell, Sir.

q How did he fall?

a He fell on his side.

q What was the reaction of your other companions after the first two shots?

a We were still there I was shock(ed).

q What about Rogelio Sadaken, what was his reaction?

a He brought him away, Sir.

q Was Rogelio Sadaken able to get near Gabriel Sadaken?

a Yes, sir, he reach(ed) the side of Gabriel Sadaken?

q When he reached the side of Gabriel Sadaken what else happened if any?

a No more, Sir.

q At the time Rogelio Sadaken went to the side of Gabriel Sadaken where was Ferdinand Cadangan then?

a He ran, Sir.”[18] (Emphasis supplied)

Evidently, the location of the wound of GABRIEL reinforces the medical finding that the trajectory of the bullet was at the entry point of the left angle of the left body of the mandible and that GABRIEL was facing sideways when he was shot from the left side. This also bolsters the prosecution's theory that the group was sitting around a table at the porch of Mars Zuniga's house which was an elevated portion in relation to the edge of the street where appellant was standing when he shot GABRIEL.

Contrary to appellant's allegation, GABRIEL's testimony relative to his position before, during and after the shooting jibes with the location and findings of the physician witnesses. Upon this point, claiming that GABRIEL sustained fatal wounds, Dr. Estaris testified:

“q You said that there was a fracture of this area of the mandible, was it a complete fracture.

a Comminuted meaning there are multiple different fragments, sir.

q So, there was no complete separation.

a There was complete separation, sir.

q What other part of the head of your patient Gabriel Sadaken was involved in the treatment.

a There was also another fracture on the right body of the mandible, this is the angle and this is the anterior portion, sir.

x x x x x x x x

q This fracture in the right body of the mandible what caused it.

a It could have been the entry of the bullet going to the right, sir.

q Was there point of exit of the bullet.

a Externally I have not seen, sir.

q Were there other parts of the mandible or part of the head that was involved that you treated in Gabriel Sadaken.

a No more, sir.

q These are only the fractures in the angle as well as in the right body that you treated.

a Yes, sir.

q Right body of the mandible, how long did you treat Gabriel Sadaken in the hospital.

a I have here the chart, the inclusive dates is forty three (43) days, sir.

q Do you know the cost of the hospitalization of Gabriel Sadaken while he was in the BGH.

a He came to me at the emergency at 6:00 a.m. due to history of gunshot wound he had some x-rays photo copy of the CVRH, sir.

q What I mean doctor is do you know the cost or expenses incurred.

a No, the metal plate cost him around twenty thousand pesos (P20,000.00), sir.

q You mean the reinforcement of the mandible.

a Yes, sir.

q In a layman's parlance, what do you mean by that plate.

a Landok, metal, we put here and very expensive, sir.

x x x x x x x x

q Considering that you said that the second part of the mandible that suffered some breaking, comminuted breaking, what made you conclude that the second area, the right body of the mandible could have been the entry of the bullet.

a The wound is smaller and fracture is also less significant than the entire body, sir.

q Do you mean to say then doctor that the entry point of the bullet was from the angle.

a Yes, sir.

x x x x x x x x

q So, definitely doctor, the fracture is at the right angle of the right body of the mandible.

a It is the left angle of the left body, sir.

q And the right body of the mandible was caused by the same bullet.

a Probably, sir.

q And that is because of the trajectory as indicated by the location of the wound or fracture.

a Yes, sir.

q And you did not treat the victim Gabriel Sadaken of any other wound except the fracture at the left angle and right body of the mandible.

a Yes, sir."[19] (Emphasis supplied)

Corroborating Dr. Estaris' testimony, Dr. Ramirez testified that—

a The patient suffered on that fracture type 3 over the left mandible and he also suffered gunshot wound over the left shoulder, sir.

q What was the condition of the patient when he was brought to the hospital when you first saw him.

a Condition of the patient when he was first brought he came with blood pressure of 86 meaning the blood pressure was going down below normal the patient temperature was 36.5 was already hypodermic then was also noted here that the gunshot wound over the left mandible was bleeding that time, sir.

q Had the patient not been brought to the hospital could he have died of the injuries.

a Yes, sir.

q Without medical treatment.

a Yes, sir.

q So, definitely (sic) doctor there were two (2) wounds that you treated of Gabriel Sadaken under your treatment.

a There were two (2) one (1) over the left shoulder and one (1) over the left mandible, sir.

q And this is indicated in the medical diagnosis, doctor.

a Yes, he incurred on that fracture type 3 left mandible and gunshot wound over the left shoulder caused by gunshot, sir.

X X X X X X X X

q But what about the wound at the left mandible.

a Foremost he incurred operation meaning there is considerable lost of bone tissue and even if the patient was discharged without the orthopedic operation done on the patient that wound would be considered not healed, sir.

X X X X X X X X

q Did you ever take note of the trajectory of the bullet wound on the left shoulder.

a We tried to examine the patient inside the operating room as we were doing the treatment of the wound since the point of entry was noted over the left shoulder and over the left mandible, sir.

q To the best of your ability as medico legal officer the bullet that caused the gunshot wound at the left shoulder was the most probable or was probably the same that hit the left mandible.

a There is a big possibility, sir.

X X X X X X X X

q But you said doctor that the bullet that caused the wound in the left shoulder could have caused the wound in the mandible could it not also be possible that there are two (2) independent wound(s) that caused.

a The possibility is only one gunshot wound because of the proximity over the left mandible the patient was facing sideways (sic) when he was shot then also a part over the left mandible, I think the ballisticsian would be the one to provide that sir.

q The exit wound over in the left shoulder where is it located(?)

a I could not remember where it is located, sir.”[20] (Emphasis supplied)

Pertinently, the following relevant testimony of rebuttal witness Cresencio Padilla buttresses the court a quo’s finding of appellant’s criminal liability:

q When the defense witness Silvestre Bello, Mrs. Gloria Cadangan testified that in the evening of January 11, 1998 Gabriel Sadaken, Reynaldo Guillermo were coming from the south holding bottle of gin and they pass by your house, what can you say?

a I do not believe how can they come to the south because our house is nearer for them to buy gin.

q Do you know where Gabriel Sadaken, Reynaldo Guillermo bought some liquor that evening?

a In our store, Sir.

q These Florante Bello and Silvestre Bello claim when they testified in court that they went to buy cigarette in your store that evening of January 11, 1998 but you claim that you do not know these persons were there persons unknown to you who went to buy cigarette that evening?

a None, Sir.

q Defense Witness Silvestre Bello, Florante Bello, Gloria Cadangan and the accused Ferdinand Cadangan claim that Gabriel Sadaken was shot and hit by a gun fired by Bonifacio Sadaken his own brother, what can you say?

a I do not believe because Bonifacio Sadaken was with me in the store and we were together when we heard a gun report, Sir.

q Did you see any firearm in the possession of Bonifacio Sadaken that evening in front (sic) of your store?

a None, Sir.

q After the gun report, do you remember what happened if any?

a Reynaldo Guillermo came and told me that Gabriel Sadaken was shot and I told them that they will get my tricycle and I will be the one to call for the Policeman.

q Did Reynaldo Guillermo tell you where Gabriel Sadaken was shot?

a Yes, Sir.

q Where?

a In front (sic) of the Balcony of the house of Mars Suniga.

q Is that Mars Zuniga is (sic) the same (as) Mars Zuniga you said your neighbor?

a Yes, Sir.

q Did you go to the Police as you instructed Bonifacio Sadaken as you told Bonifacio to go to the Police Station?

a Yes, I told him to go and see his brother and I will go to the Police station, Sir.

q What did the Police do if any?

ATTY. PASCUA

No basis

COURT

Reform

q Were you able to see the Police?

a Yes, Sir.

q Do you know what action did the Policeman take after you reported to them?

a They went to get Ferdinand Cadangan, Sir. (B)ecause I was the one who reported to have shot Gabriel Sadaken.

q Did you go along with the Police when they went to the scene of the incident?

a I was along with them, Sir.

q Did you see if the Policeman take (sic) custody of Ferdinand Cadangan?

a Yes, Sir.

q When you came to know that Gabriel Sadaken was shot in front (sic) of the porch of Mars Zuniga what did you do if any?

a They told me he was shot in the porch of Mars Zuniga, Sir, and I went to the scene of the incident and I saw blood stain inside the porch, Sir.”[21] (Emphasis supplied)

We hold and so rule that the theory of the defense is less plausible when juxtaposed with that of the prosecution. On this score, We concur with the disquisition of the court a quo:

The pivotal issue to synthesize in this case is - “whose story of the incident is credible and convincing, the prosecution or the defense?”

The court tried to believe the version of the defense as true but painstaking consideration of the whole thing only drove (sic) this court to the conclusion that the defense put up by the accused fails to surmount the overwhelming and more solid evidence of the prosecution.

Accused in his direct testimony declared that Gabriel was bending looking at them (Bonifacio and accused) as if picking (sic) a stone when the gun went off and he (accused) heard the words - “I was hit”. (tsn, p-13, Feb. 3, 2000). In his (accused) demonstration, the latter was holding tightly the right hand of Bonifacio and holding the gun with his (accused) two hand (sic) and pushing downward when the gun fired and someone uttered - “I was hit”. It is therefore, unlikely that Gabriel was hit at the back of his shoulder and left jaw in this particular backdrop.

In the testimony of Dr. Frederick Ramirez there is great possibility that the bullet which hit the left shoulder of the victim (Gabriel) was probably the same that hit the left mandible (left jaw) of the victim. The victim with his face side wise.

This testimony of Dr. Ramirez confirms the sketch (Exhibit “3”) drawn by prosecution witnesses (sic) Jessie Pinera. In this sketch, the accused was behind the victim sitting in the porch of Mars Zuniga's house. So, the bullet which hit the left shoulder of Gabriel could possibly (sic) the same bullet which hit the left mandible of the victim.

On Cross-examination of the accused, it now appears that his direct testimony is severely inconsistent with his testimonies on cross-examination. He testified on cross that the incident happened in a moment and his focus of attention was concentrated on the gun in the hand of Bonifacio while they were struggling possession thereof. On direct testimony, however, accused testified that while he and Bonifacio were struggling possession of the gun sometime the face of Gabriel was towards them so he (accused) saw Gabriel bending as if going to pick (sic) a stone.

Likewise, when Gloria and Bonifacio were arguing, and Bonifacio already pulling the hair of Gloria and no one among the accused's visitors including Armando, the brother of accused, came to the succor of Gloria when they were only five (5) to six (6) meters from them and hearing the exchange of words between Gloria and Bonifacio. This, to the mind of the court, is something ridiculous which could not excite belief on the story of the defense as a whole.

Time and again, Jurisprudence tells us that a testimony to be credible must not only come from the mouth of a credible witness but the testimony itself must be credible, reasonable and in accord with human experience.

On the part of the prosecution, everything appears vividly clear that the accused is the perpetrator of the crime. The accused was positively identified in no certain terms as the gunwilder (sic) being familiar and known to the prosecution witnesses.”[22]

Appellant having failed to show that the court a quo misappreciated or overlooked certain facts of substance and significance, We are bound by the factual findings of the court a quo.

Anent appellant's claim of absence of treachery, We find no reversible error in the court a quo's finding that there was treachery when the appellant shot GABRIEL. For treachery to be appreciated, two elements must concur, namely: that such means of execution were employed as to give the person attacked no opportunity to defend himself or retaliate; and that the means of execution were deliberately or consciously employed.[23]

The evidence on record shows that GABRIEL was unarmed when he was shot by appellant. When appellant and his wife reprimanded GABRIEL's group, there was neither a heated argument, verbal or otherwise, nor a fracas

that ensued. Even assuming *arguendo* that there was tension, the same ceased from the time the appellant and his wife left the street and returned to their house. There was a break in the continuity of the heated argument, hence, it could not be said that it was part and parcel of the tension between the two protagonists. The nature of the entrance wounds and the testimonies of eyewitnesses sufficiently established that, first, at the time of attack, the victim was not in a position to defend himself, as he was shot from behind while seated inside the porch; and second, appellant consciously adopted the particular means of attack,[24] that is, he deliberately came without warning and unexpected, affording the hapless, unarmed and unsuspecting GABRIEL no chance to resist or escape. Given these circumstances, We are convinced of the treacherous nature of the assault. The manner appellant executed the attack tends directly and specially to insure its execution without risk to himself against any possible defense that the victim might offer.[25]

The essence of treachery is a swift and unexpected attack on the victim without slightest provocation on the part of the victim. Thus, it is settled that even a frontal attack can be treacherous when it is sudden and the victim is unarmed.[26]

The prosecution clearly established that appellant suddenly ran inside his house after learning that somebody was hit by the gunshot instead of extending aid to the victim.[27] Relevantly, the old adage “wicked flee even when no man pursueth but the righteous are as bold as a lion”[28] finds application in this case.

Although the defense presented several witnesses whose testimonies try to exculpate appellant, it failed to overcome the positive and forthright testimonies of GABRIEL, Jessie Pinera and Cresencio Padilla.

Appellant’s theory that he did not shoot GABRIEL inspires no belief. Denial is an intrinsically weak defense. To be believed, it must be buttressed by strong evidence of non-culpability.[29] As always, denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.[30]

The records are bereft of evidence that GABRIEL was moved by any improper or ill motive to falsely impute the wrongdoing on appellant. On the contrary, having sustained gunshot wounds, he was expected to seek justice. It would be contradictory to human experience if he attributed the authorship of the injuries inflicted upon him to those who did not commit them. It is settled that if the accused had nothing to do with the crime, it would be against the natural order of events to falsely impute charges of wrongdoing upon him.[31]

As regards appellant’s contention that the prosecution failed to prove that he had an unlicensed firearm or possessed no license, suffice it to state the court *quo* did not appreciate it as an aggravating circumstance. Thus, We find no necessity to pass upon such assigned error. In any case, the prosecution was able to convincingly prove that a short firearm was used by appellant in shooting GABRIEL. The Information for frustrated murder merely alleged that the appellant was “armed with a short firearm (unrecovered).” It did not allege that the firearm used was unlicensed. The failure of the prosecution to allege in the Information the aggravating circumstance of use of unlicensed firearm in committing the crime of frustrated murder prevents Us from imposing the penalty in the maximum period on the appellant even if the same was proved at the trial.[32]

The prosecution having satisfactorily established that the gunshot wounds sustained by GABRIEL were so fatal that were it not for timely medical attendance, the same would have produced the death of the victim[33], the court *quo* committed no error in convicting the appellant of the crime of frustrated murder.

The penalty prescribed by the Revised Penal Code for the consummated crime of murder is reclusion perpetua to death. For frustrated murder, Article 50 of the same Code decrees the imposition of the penalty next lower in

degree or reclusion temporal. Absent any aggravating or mitigating circumstance, the imposable penalty should be reclusion temporal in its medium period, the duration of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Under the Indeterminate Sentence Law, the maximum term of the penalty shall be “that which, in view of the attending circumstances, could be properly imposed” under the Revised Penal Code, and the minimum shall be “within the range of the penalty next lower to that prescribed” for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.[34]

Applying the Indeterminate Sentence Law, the minimum penalty shall be within the range of prision mayor, while the maximum term of the sentence shall be within the range of reclusion temporal medium.[35] There being no aggravating circumstance, the penalty must, by mandate of Article 64 of the Revised Penal Code, be imposed in the medium period. Reclusion temporal in its medium period ranges from 14 years, 8 months and 1 day to 17 years and 4 months. In the case at bench, the proper sentence on appellant for frustrated murder, shall be within the range of 8 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum.

As to the damages awarded by the court a quo, We modify. In order that actual damages may be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon the best evidence available of the actual amount thereof.[36] The records show that the claim for actual damages is not supported by receipts and other documents, as required by Article 2199 of the Civil Code. Hence, the court a quo erred in awarding the said amount of P39,000.00 for medical expenses. However, We find that nominal damages in the amount of P25,000.00 may be awarded so that victim GABRIEL’s rights may be recognized or vindicated.[37] Considering that he sustained gunshot wounds, the court a quo correctly awarded[38] moral damages pursuant to Articles 2217 and 2219 of the Civil Code. By way of public example, We deem it proper to award exemplary damages in the amount of P20,000.00.[39]

WHEREFORE, the Decision appealed from is hereby AFFIRMED with MODIFICATIONS. Accused-appellant FERDINAND CADANGAN is convicted of the crime of frustrated murder sans the presence of an aggravating circumstance of the use of an illegally possessed firearm. A fortiori, he is hereby sentenced to suffer an indeterminate penalty of 8 years and 1 day of prision mayor as minimum to 14 years, 8 months and 1 day of reclusion temporal as maximum. The award of P39,000.00 representing medical expenses is DELETED and in lieu thereof, he is hereby ordered to pay victim GABRIEL SADAKEN the sum of P25,000.00 as nominal damages. In addition, he is ordered to pay P20,000.00 as exemplary damages.

SO ORDERED.

Buzon, and Maambong, JJ., concur.

[1] Original Record, pp. 223-234; Rollo, pp. 81-92; Penned by Hon. Quirino M. Andaya, Executive Judge, RTC, Branch 26, Luna, Apayao.

[2] Original Record, p. 34.

[3] Certificate of Arraignment and Order dated 13 April 1998, Original Record, pp. 45-46.

- [4] Id., p. 49-51.
- [5] TSN, 23 June 1998, pp. 4-13; TSN, 21 August 1998, pp. 14-18, 23; TSN, 9 October 1998, p. 13; TSN, 4 November 1999, p. 12.
- [6] TSN, 24 July 1998, p. 17-20.
- [7] TSN, 3 December 1998, pp. 15-18.
- [8] Original Record, p. 88; Exh. "G".
- [9] TSN, 3 December 1998, pp. 5-6.
- [10] Original Record, p. 8; Exh. "B".
- [11] TSN, 21 January 1999, pp. 5-15; TSN, 20 July 1999, pp. 3-8; TSN, 4 November 1999, pp. 3-10; TSN, 19 November 1999, p. 8, 12; TSN, 3 February 2000, pp. 4-14.
- [12] TSN, 10 March 2000, p. 4.
- [13] Original Record, p. 234.
- [14] *People v. Bertulfo*, 381 SCRA 762, 771 (2002).
- [15] TSN, 23 June 1998, pp. 5-11.
- [16] TSN, 17 July 1998, pp. 13-21.
- [17] TSN, 27 July 1998, pp. 2-6, 8.
- [18] TSN, 21 August 1998, pp. 15-18.
- [19] TSN, 3 December 1998, pp. 5-8.
- [20] TSN, 3 December 1998, pp. 15-17, 19-20.
- [21] TSN, 30 May 2000, pp. 3a-4.
- [22] Decision dated 29 September 2000, pp. 9-10; Original Record, pp. 231-232.
- [23] *People v. Quinicho*, 365 SCRA 252, 265 (2001).
- [24] See *People v. Torio*, 404 SCRA 623, 637 (2003).
- [25] See *People v. Baniel, et al.*, 275 SCRA 472, 481 (1997).
- [26] *People v. Quinicho*, 365 SCRA 252, 265 (2001).
- [27] TSN, 21 August 1998, p. 18.
- [28] *People v. Abatayo*, 433 SCRA 562, 580 (2004); Proverbs 28:1.
- [29] *People v. Sevileno*, 425 SCRA 247, 256 (2004).
- [30] *People v. Espinosa*, 432 SCRA 86, 100 (2004).
- [31] See *People v. Aquino*, 329 SCRA 247, 265 (2000).
- [32] See *People v. Ave*, 391 SCRA 225, 248 (2002).

[33] TSN, 3 December 1998, p. 15.

[34] Jose v. People, 436 SCRA 294, 308 (2004); People v. Gabres, 267 SCRA 581, 595-596 (1997).

[35] People v. dela Cruz, 431 SCRA 388, 399 (2004); People v. Rafael, et al., 343 SCRA 97, 112 (2000).

[36] People v. Delmo, 390 SCRA 395, 437 (2002).

[37] People v. Rafael, 382 SCRA 753, 771 (2002).

[38] Article 2217. x x x moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) a criminal offense resulting in physical injuries.

[39] People v. Rafael, 382 SCRA 753, 771 (2002); See also People v. Delmo, et al., 390 SCRA 395, 438 (2000) and People v. Lopez, 312 SCRA 684, 701 (1999).

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