

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADOR LIM AND NELSON DIEGO, ACCUSED,

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HERNANDO, J:

This is an appeal interposed by accused-appellant Amador Lim @ “Baby Lim” from the Decision[1] dated December 29, 2004 of the Regional Trial Court (RTC), Branch 13 of Culasi, Antique in Crim. Case No. C-003 for Double Frustrated Murder.[2]

In a Motion to Dismiss Appeal[3], Nelson O. Diego decided to withdraw his appeal since he wanted to avail of an executive clemency. This Court had noted in its September 8, 2011 Resolution that the subject of said motion pertained to the December 29, 2004 Decision of the Regional Trial Court, Branch 13 of Culasi, Antique in Crim. Case No. C-002 for Murder. The subject of the instant case, Crim. Case No. C-003 for Double Frustrated Murder involves the trial court’s Decision where Nelson Diego was acquitted.

The Antecedents

In an Information dated December 19, 1991, Assistant Provincial Prosecutor Juan C. Misssion, Jr. of the Office of the Assistant Provincial Prosecutor of San Jose, Antique charged accused-appellant Amador Lim alias “Baby Lim” and Nelson Diego y Orcasitas, with Double Frustrated Murder with the Use of Illegally Possessed Firearm, as follows:

That on or about the 23rd day of December, 1990, in the Municipality of Caluya, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with illegally possessed firearms, homemade .38 Caliber Revolvers, conspiring, confederating together and mutually helping each other, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said firearms one Remo Frias, Jr., thereby inflicting upon the latter the following wounds, to wit:

“Dx: Gunshot wound – chest

POE – Mid-axillary line, right 4th intercostals space directed to the left. Slug seen in left chest hemopneumothorax rt.”

and one Macreynold Ginolos with the following wounds, to wit:

“Dx”: Gunshot wound – Abdomen

1. POE – Left rectus between umbilicus and symphysis pubis, directed upward. Slug remove 3 inches above umbilicus non-penetrating.

2. POE – 1 inch below above directed downward exiting on left scrotum, non-penetrating lacerating left testis.”

thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which, nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance rendered to said Remo Frias, Jr. and Macreynold Ginolos which prevented their

death.

With the qualifying circumstances of treachery and evident premeditation.

Contrary to the provisions of Article 248 of the Revised Penal Code in relation to Article 6 of the same code.[4]

At their arraignment on September 18, 1997, Amador Lim @ “Baby Lim” and Nelson O. Diego, assisted by counsel, Atty. Oseo T. Alcobilla, pleaded not guilty to the offense.[5]

Pre-trial conference proceeded and thereafter, the prosecution and the defense presented their respective evidence.

This case was tried jointly with Crim. Case No. C-002 for Murder which also involved both accused. Incidentally, said case was also appealed and had been decided ahead by a different division of this Court.[6]

Evidence for the Prosecution

On December 23, 1990, at about eleven o'clock in the evening, Ronnelo Ginolos, Macreynold Ginolos, Remo Frias and Jonathan Pacenio were having a couple of drinks inside Roadside Canteen at Semirara Island, Caluya, Antique. Accused-appellants Amador Lim and Nelson Diego then arrived.[7]

When Macreynold Ginolos and Remo Frias went out to urinate, accused-appellant Nelson Diego followed them and pointed at them his .38 caliber revolver. The two then went inside and told accused-appellant Amador Lim what his companion Nelson Diego did. Macreynold Ginolos thereafter saw both accused-appellants going out.[8]

After a while, Nelson Diego re-entered Roadside Canteen and told Ronnelo Ginolos that he is wanted by Amador Lim outside. Macreynolds Ginolos however instructed Ronnelo Ginolos not to get out.[9]

Accused-appellants then went inside Roadside Canteen where they then shot Ronnelo Ginolos in the stomach, which caused the latter to stoop at the table. The accused-appellants thereafter dragged Ronnelo Ginolos outside. Remo Frias and Macreynolds Ginolos followed them. When they caught up with the accused-appellants, Macreynolds Ginolos wrestled with the gun with Amador Lim while Remo Frias did the same with Nelson Diego who immediately ran away.[10]

The gun being grappled upon by Macreynolds Ginolos and Amador Lim, on the other hand, fell on the floor. Macreynolds Ginolos, thinking that the gun was lost, turned to his dying brother Ronnelo Ginolos. But before he could reach his brother, Amador Lim shot Remo Frias in the right armpit. When Macreynolds Ginolos again grappled with accused-appellant Amador Lim for the gun, it went off and Macreynolds was hit at his left testicle but he was able to recover the gun. Accused-appellant Lim thereafter ran away. Ronnelo Ginolos was pronounced dead on arrival at the Semirara Coal Corporation Hospital, while Remo Frias and Macreynolds Ginolos survived the incident due to the timely medical attention given them.[11]

Evidence for the Defense

On the other hand, accused-appellant Amador Lim narrated his defense in his own Brief,[12] as follows:

For appellant's part, both accused testified. Both testified that one of the four in the group of Remo Frias had an altercation with Amador Lim and hit him with a bottle of beer and drew a gun. This was grabbed by appellant Nelson Diego for which reason the gun fell and fired hitting Ronnelo Ginolos. According to Nelson Diego he no longer knew what happened after he ran away. While appellant Amador Lim testified that the gun exploded while he was grappling with a gun which caused the injuries to Macreynold Ginolos and Remo Frias.[13]

The Ruling of the RTC

On December 29, 2004, the trial court convicted accused Lim of Double Frustrated Murder for inflicting gunshot wounds on Frias and Macreynolds, aggravated with the qualifying circumstances of treachery and evident premeditation. According to the trial court, accused Lim failed to rebut or contradict the testimonies of the prosecution witnesses that it was Lim who shot and wounded the victims and had it not been for the timely medical assistance rendered to them (victims), they would have died, thus:

xxx xxx

WHEREFORE, premises considered, prosecution having established the guilt of the accused Amador Lim beyond reasonable doubt for the crime charged of Double Frustrated Murder involving: Remo Frias and Macreynold Ginolos, there being no mitigating circumstance, on the contrary, qualifying aggravating circumstances of treachery and evident premeditation being present, the Court pursuant to Article 50 of the Revised Penal Code in relation to Art. 64, par. 3 of the same Revised Penal Code and in relation further to the Indeterminate Sentence Law, the Court hereby sentences the accused Amador Lim to a penalty of imprisonment of:

- a) 14 years, 8 months and one (1) day to 17 years, as minimum, to 17 years and one (1) day to 20 years as maximum for Frustrated Murder involving the victim Remo Frias; and
- b) 14 years, 8 months and one (1) day to 17 years, as minimum, to 17 years and one (1) day to 20 years as maximum for frustrated murder involving victim Macreynold Ginolos;

Pursuant to Article 100 of the Revised Penal Code, Amador Lim is hereby ordered to pay each victim Remo Frias and Macreynolds Ginolos:

- a) the sum of Php50,000.00 for medical expenses;
- b) the sum of Php300,000.00 for moral and exemplary damages;

There being no evidence as to the participation of Nelson Diego on the gun short injuries sustained by Macreynolds Ginolos and Remo Frias, Nelson Diego is hereby ACQUITTED for the crime charged of Double Frustrated Murder in the instant case.

SO ORDERED.[14]

The Assignment of Errors

The judgment convicting accused-appellant Amador Lim of the offense charged constrained him to interpose this appeal on the grounds that the lower court erred in:

- I. Convicting appellant of the crime of double frustrated murder;
- II. Holding that treachery and evident premeditation attended the commission of the offense; and
- III. When it awarded damages to private complainant in the absence of proof.

Appellant insists that he cannot be convicted of the crime in its frustrated stage because the prosecution failed to present a medical doctor or physician to testify and assert that the wounds suffered by the victims were grave which would have caused their death had they not been given immediate medical attention. According also to him, the trial court erred in convicting him of frustrated murder because the witness for the prosecution, Macreynolds, testified that he and Lim grappled for the possession of the gun. In addition, while the trial court appreciated treachery and evident premeditation as qualifying circumstances, as to how these aggravating circumstances were committed were not discussed in the body of the decision. He also faults the court a quo in awarding Php50,000.00 as medical expenses and Php300,000.00 as moral and exemplary damages when the same

are unsupported by any evidence.

On the other hand, the OSG failed to file the Appellee's Brief within the first 90-day period it requested. Its subsequent motions for extension were denied in Our Resolution dated September 8, 2011.[15]

The Ruling of this Court

According to appellant he cannot be convicted with frustrated murder since the trial court failed to state in its judgment the factual basis for its conclusion that he (appellant) is guilty of frustrated murder when no medical expert or doctor was presented to testify that the injuries sustained were grave that would have led to death if no medical attention was extended to the victims. He asserts that the failure of the prosecution to prove the gravity of the injuries will lead to the conclusion that he can only be convicted with the attempted stage of the crime.

We resolve to partly grant the appeal.

An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by *dolo*. [16]

The antecedents which led to the wounding of Remo Frias and Macreynolds Ginolos due to gunshot wounds was brought about by the act of the appellant of firing a gun at Ronnelo Ginolos, which resulted in the latter's death. As previously stated, the crime for murder was docketed under Crim. Case No. 002 and was tried jointly with this criminal case. In said case, appellant was found guilty of the crime of murder.

The intent to kill therefore is present. It is immaterial that the intent to kill was directed against the victim in the other criminal case since one is responsible for the resulting crimes arising from an illegal act regardless of the fact that the victim herein was not the target person or intended victim of the malefactor. Were it not for the appellant's act of being armed with a firearm and firing the gun at Ronnelo Ginolos, the crime against Remo Frias and Macreynolds Ginolos would not have transpired.

The case of *People v. Delim*, [17] elucidates that evidence to prove intent to kill in crimes against persons may consist, *inter alia*, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed. Here, Ronnelo Ginolos' death was caused by gunshot wounds from the gun fired by Amador Lim; the same gun likewise was fired by Amador Lim which wounded the victims in this case.

The aggravating circumstances of evident premeditation and treachery were sufficiently proven by the prosecution. Evidence clearly disclosed that Ronnelo Ginolos had an altercation with Amador Lim prior to the incident regarding the decision anent the entry of KMU in the Semirara Coal Corporation where the latter heads the exiting labor union. During the incident, when Ronnelo Ginolos was called by Amador Lim and Nelson Diego to go out of the canteen, both accused were armed with guns. When Ronnelo Ginolos did not go out because he was forewarned by his brother, Macreynolds Ginolos, and Remo Frias that Amador Lim and Nelson Diego were armed, the latter barged into the canteen and fired at Ronnelo Ginolos and thereafter dragged him out of the canteen. Remo Frias and Macreynolds Ginolos followed in going out and grappled with the possession of the guns – Macreynolds with Amador Lim while Remo Frias with Nelson Diego. At the moment that Remo Frias succeeded in wresting the gun, Nelson Diego ran away. Around that time, the gun being wrestled by Macreynolds Ginolos and Amador Lim fell on the ground. Macreynolds Ginolos then turned towards his brother in an apparent

move to aid his wounded brother. However, Amador Lim got hold again of the gun and shot at Remo Frias, hitting him in the right armpit. Macreynolds Ginolos again grappled for the gun and was hit on his left testicle.

It is then apparently clear that Amador Lim had the intent to kill and employed treachery and evident premeditation in committing the crime. He alone was responsible for the wounding of the victims since Nelson Diego ran away before he could inflict any wounds on the herein victims.

The penalty imposable against appellant

Under Article 61, paragraph 2, of the RPC, the penalty for frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion temporal. Reclusion temporal has a range of twelve (12) years and one (1) day to twenty (20) years. We thus find it proper to modify the penalty to eight (8) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.[18]

On the issue on damages

The third issue raised by the appellant is the award in the amount of damages. According to him, the prosecution failed to prove that the amount of Php50,000 was incurred by the victims as medical expenses. There was also no basis to award Php300,000.00 as moral and exemplary damages.

On the Php50,000.00 award as actual expenses, We resolve to modify the same. In the absence of concrete evidence proving actual expenses, the amount of Php25,000.00 as temperate damages is awarded each victim since it was evident that both incurred medical expenses.

The award of Php300,000.00 as moral and exemplary damages is likewise modified consistent with prevailing jurisprudence.[19] Appellant is directed to pay each victim Php40,000.00 as moral damages and Php20,000.00 as exemplary damages.

Ergo, We find no error in the judgment of the trial court finding appellant Amador Lim @ “Baby” guilty beyond reasonable doubt of the crime of double frustrated murder. The only part in the assailed judgment that needs modification is in the penalty and in the award of damages.

WHEREFORE, this appeal is PARTLY GRANTED. The Decision dated July 31, 2013 of the Regional Trial Court (RTC), Branch 13 of Culasi, Antique in Crim. Case No. C-003 for Double Frustrated Murder is AFFIRMED with MODIFICATION only in the penalty imposed and in the award of damages. Appellant is sentenced to an indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum and for him to pay each victim the amounts of Php40,000.00 as moral damages, Php25,000.00 as temperate damages and Php20,000.00 as exemplary damages.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by RTC Judge Antonio B. Bantolo.

[2] RTC Decision; RTC records, pp. 166-175.

[3] Rollo, pp. 68-70.

[4] RTC Records, pp. 41-42.

[5] Certificate of Arraignment; RTC records, p. 58.

[6] Crim. Case No. C-002 was docketed as CA-GR CR-HC No. 00727 and was decided by the Eighteenth Division on July 30, 2010; Rollo, pp. 75-87.

[7] Version of the Prosecution, Decision in CA-GR CR-HC No. 00727; Rollo, pp. 75-87.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Appellant's Brief; Rollo, pp. 10-33.

[13] Ibid.

[14] RTC Decision; *supra*.

[15] Rollo, pp. 90-92.

[16] *Rivera v. People*, G.R. No. 166326, January 25, 2006.

[17] *People v. Delim*, G.R. No. 142773, January 28, 2003.

[18] *People v. Mokammad*, G.R. No. 180594, August 19, 2009.

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