

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SHERWIN MONTALBAN Y HEDIERA, ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Accused-appellant Sherwin Montalban is charged with two (2) counts of frustrated homicide contained in the following informations:

Criminal Case No. 16051-SP

That on January 7, 2005 at about 11:30 o'clock in the evening at Barangay West Poblacion, Municipality of Rizal, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without any justifiable cause, and while conveniently armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon one ARNULFO LAZARO y CIAR, thereby inflicting upon the latter stab wound on his chest, thus accused has performed all the acts of execution which could have produced the crime of homicide, as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Arnulfo C. Lazaro, which prevented his death, to his damage and prejudice.

CONTRARY TO LAW.[1]

Criminal Case No. 16052-SP

That on January 7, 2005 at about 11:30 o'clock in the evening at Barangay West Poblacion, Municipality of Rizal, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without any justifiable cause, and while conveniently armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon one JONATHAN CIAR BAYOT, thereby inflicting upon the latter hemopneumothorax (L), thus accused has performed all the acts of execution which could have produced the crime of homicide, as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Jonathan C. Bayot, which prevented his death, to his damage and prejudice.

CONTRARY TO LAW.[2]

Montalban was arrested on February 1, 2009.[3] When arraigned,[4] he pleaded “not guilty.” Trial then ensued.

The version of the prosecution as stated by the Solicitor General is as follows:

4. On 7 January 2005 at around 10:30 o'clock in the evening, while private complainants Arnulfo Lazaro [Arnulfo] and Jonathan Bayot [Jonathan] were drinking at a plaza with their friends including Mark Urmenta [Mark], Francis Vista [Francis] and prosecution witness, Cesar Acedera [Cesar] to celebrate town fiesta, appellant Montalban and his friends arrived. Appellant suddenly threw a stone at private complainants' group which missed and hit an iron fence. Afterwards, appellant, who was carrying a knife at that time, said “Anong

gusto ninyo?” and challenged one of the private complainants' friends, Francis, to a fight.

5. Jonathan approached appellant and asked him “Bakit naman nambato ka? Without any provocation, appellant suddenly stabbed Jonathan with a knife several times hitting him at the back and the lower portion of his shoulder.

6. Upon seeing appellant stabbed his cousin Jonathan, Arnulfo, together with Cesar, tried to pacify appellant. He instructed Jonathan to leave and in an attempt from inflicting more harm to his companions, he held appellant's hands and embraced him. Appellant, however, was able to free himself from Arnulfo's grip and embrace. While this was happening, Jonathan and Cesar left Arnulfo.

7. After he freed himself, appellant stabbed Arnulfo with his knife and hit him in the chest and lower left arm. Despite his injuries, Arnulfo ran away from appellant and proceeded to the house of a friend, where Jonathan and the others were waiting.

X X X

Bayot was brought to the hospital. Lazaro,[5] on the other hand, proceeded to the police station to report the incident. Then, he was subsequently brought to the hospital due to his stab wound.[6] Bayot sustained six stab wounds[7] and was confined for 15 days.[8] On the other hand, Lazaro was also confined for 15 days[9] and was under observation for three days due to internal hemorrhage.[10] The prosecution also presented the Medico-Legal Certificate[11] of Lazaro prepared by Dr. Welmino R. Obungen containing the following findings:

= Hemothorax 2° to stab wound, (L) chest.

Operation Done: Thoracostomy tube insertion, (L).

xxx

In the opinion of the undersigned these injuries will incapacitated (sic) or require medical attendance for more than thirty (30) days xxxx if without complications.

Dr. Obungen testified that Lazaro's wounds could have been fatal.[12]

PO2 Encarnacion testified that the military army brought the suspects and victims at the police station after the incident.[13] Bayot did not know the name of their assailant who was wearing a red shirt.[14] But when confronted by Montalban in the police station, Bayot identified Montalban as the one who stabbed him.[15]

For the defense, Montalban denied that he stabbed Lazaro and Bayot. He claimed that he was at the plaza watching a program with friends when suddenly a commotion occurred.[16] Vista, Arcedero, Lazaro and Bayot were shouting and throwing stones in front of them.[17] Vista signalled Montalban to approach him by waving his hand, but Montalban did not pay attention. Then, Vista returned to his friends who were drinking.[18] Later, Vista went back with a bottle hidden behind him and hit Montalban.[19] Montalban ran away, but the police arrested and brought him to the police station.

Nino Dorado testified that he was with Montalban at the plaza when Vista ran amuck at their group.[20] He hit Montalban on his nape with a bottle.[21] Montalban stooped down and was then ganged-up by Vista and his companions, Lazaro and Bayot.[22] Dorado ran and asked for help.[23] When he returned to the scene, Montalban was already being assisted by the police.[24]

The RTC convicted Montalban of two counts of frustrated homicide with the following dispose:[25]

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 16051:

a. FINDING the accused SHERWIN MONTALBAN y HEDIERA guilty beyond reasonable doubt of the crime of Frustrated Homicide, imposing upon him an indeterminate penalty of imprisonment of Six (6) Months and One (1) Day of Prison Correccional to Eight (8) years and One (1) day of Prison Mayor; and

b. DIRECTING the accused to pay the victim, Arnulfo Lazaro y Ciar, the following: the amount of 9,090.05, as actual compensatory damages; P25,000.00, as exemplary damages; P25,000.00, as moral damages, and to pay the costs of litigation.

In Criminal Case No. 16052:

a. FINDING the accused SHERWIN MONTALBAN y HEDIERA guilty beyond reasonable doubt of the crime of Frustrated Homicide, imposing upon him an Indeterminate penalty of imprisonment of Six (6) Months and One (1) Day of Prison Correccional to Eight (8) Years and One (1) Day of Prison Mayor; and

b. DIRECTING the accused to pay Jonathan Bayot y Ciar the following: the amount of P11,090.05, as actual and compensatory damages; P25,000.00, as exemplary damages; P25,000.00, as moral damages; and the costs of the litigation.

SO ORDERED.

Hence, Montalban interposed this appeal[26] assigning the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE.

II.

THE COURT A QUO GRAVELY ERRED IN FAILING TO GIVE CREDENCE TO THE TESTIMONIES OF THE DEFENSE WITNESSES.

III.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ABSENCE OF INTENT TO KILL.[27]

Essentially, Montalban assails the credibility of the witnesses as follows: (1) Bayot testified that he approached Montalban frontally but the stab wounds were located at the back of his left shoulder indicating that Bayot was attacked from behind; (2) the witnesses were intoxicated when the incident happened impairing their vision,[28] and (3) while Montalban was identified as the one who stabbed Bayot and Lazaro, there were other perpetrators involved in the incident.[29] Montalban also asserts that his intent to kill was not proven because he was allegedly provoking Vista and not Lazaro and Bayot. Likewise, the prosecution failed to show the gravity and nature of the wounds.[30]

The appeal lacks merit.

Time and again the Supreme Court has emphasized that in criminal cases, the evaluation of the credibility of the witnesses is left to the sound discretion of the trial court, whose conclusion deserves much weight and respect for the trial judge has direct opportunity to observe the witness' demeanor, conduct, and attitude under examination.[31] As such, the trial court's findings on the credibility of the witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of proof that substantial facts and circumstances were overlooked, misunderstood or misapplied which could have affected the result of the case.[32]

In the present case, We find no reason to disturb the findings of the RTC. The testimonies of all three prosecution witnesses (Lazaro, Bayot and Acedera) interlock in their material points – that (1) when approached, Montalban suddenly stabbed Bayot; (2) Lazaro and Acedera who were near went to Bayot's rescue; (3) Lazaro held Montalban but he managed to get free and stabbed Lazaro in the chest; (4) Acedera was behind Bayot when he was stabbed by Montalban.[33] While minor discrepancies may be found in their testimonies, they do not damage the essential integrity of the evidence in its material whole.[34] Inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.[35]

As to Montalban's defense of denial, the same will not prosper. He was positively identified by Acedero and by the victims, Lazaro and Bayot themselves.[36] The place of incident was well lighted as it happened near an electric post and a fast food chain.[37] Moreover, during the investigation, PO2 Encarnacion confirmed that Bayot identified Montalban at the police station as the one who stabbed him.[38] Thus, the identification of the accused by the witnesses cannot be doubted.

We are not swayed by Montalban's claim that the intent to kill was not sufficiently established. Records show that Montalban was armed with a knife and repeatedly stabbed Bayot behind his left shoulder. While he stopped, when Lazaro embraced him, he struggled to get loose and stabbed Lazaro in the chest. Evidently, the means employed by Montalban and the nature, and location of the wounds sustained by the victims showed his intent to kill them. As held in *Cervantes v. People of the Philippines*:[39]

Intent to kill is a state of mind that the courts can discern only through external manifestations, i.e., acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,[40] We considered the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We also consider motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.

Further, We cannot disregard the circumstance that Montalban fled and remained at large for two years.[41] Montalban's hiding and failure to surrender indicate an implied admission of guilt “for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence.”[42]

Verily, We find that Montalban committed frustrated homicide against Lazaro who sustained a stab wound in the chest. Dr. Obungen testified that the wound penetrated Lazaro's lung cavity and accumulated blood. The wound was fatal and he would have died if not for timely medical intervention.[43]

Against Bayot, however, We find Montalban liable for attempted homicide. Bayot testified that he sustained six stab wounds behind his left shoulder[44] and was hospitalized for 15 days.[45] However, there is dearth of medical evidence to support the prosecution's claim that Bayot would have died without timely medical intervention.[46] Dr. Obungen did not testify as to the nature, extent, depth, and severity of his wounds. Since evidence failed to show that the wound is fatal, the doubt created by the lack of evidence should be resolved in favor of Montalban.[47]

The penalty for homicide is reclusion temporal.[48] Corollarily, Article 51 of the Revised Penal Code, as amended, provides that the imposable penalty for a frustrated and an attempted crime shall be lower by one and two degrees than that prescribed by law for the consummated felony.[49]

In accordance with the Indeterminate Sentence Law, the minimum imposable penalty for frustrated homicide[50] shall be prison correccional in any of its period, which ranges from six months and one day to six years, and the maximum term is prison mayor in its medium period, with the range of eight years and one day to ten years, in

the absence of any modifying circumstance. On the other hand, the imposable indeterminate penalty for attempted homicide[51] is *arresto mayor* in any of its period, which ranges from one month and one day to six months, as minimum term, to *prision correccional* in its medium period ranging from two years, four months and one day to four years and two months, as the maximum term, in the absence of any modifying circumstance. Accordingly, Montalban may be sentenced with an indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, for the crime of frustrated homicide, and an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, for the crime of attempted homicide.

In terms of the civil liability, We award temperate damages in the amount of Php25,000.00, in lieu of the lesser amount Php9,090.05 and Php11,090.05 of actual damages in both Criminal Case No. 16051-SP and Criminal Case No. 16052-SP.[52] The award of temperate damages is proper because the actual damages proven by receipts is less than Php25,000.00.[53] However, We delete the award of exemplary damages due to the absence of aggravating circumstance in accordance with Article 2230 of the Civil Code of the Philippines.[54]

As for moral damages, We sustain the award of Php25,000.00 in favor of Lazaro in Criminal Case No. 16051-SP in accordance with settled jurisprudence.[55] However, finding that Montalban was only liable for attempted homicide in Criminal Case No. 16052-SP, We reduce the award of moral damages in favor of Bayot to Php10,000.00.[56]

FOR THE STATED REASONS, the January 25, 2012 Decision of the Regional Trial Court is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant **SHERWIN MONTALBAN y HEDIERA** is found **GUILTY** of:

- **FRUSTRATED HOMICIDE** in Criminal Case No. 16051-SP and is hereby sentenced to suffer an indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. In addition, accused-appellant is ordered to pay Arnulfo Lazaro y Ciar temperate damages of Php25,000.00[57] and moral damages of Php25,000.00[58] plus legal interest of 6% per annum from finality of this judgment until its satisfaction.[59]

- **ATTEMPTED HOMICIDE** in Criminal Case No. 16052-SP and is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. In addition, accused-appellant is ordered to pay Jonathan Ciar Bayot temperate damages of Php25,000.00[60] and moral damages of Php10,000.00[61] plus legal interest of 6% per annum from finality of this judgment until its satisfaction.[62]

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] Records for Criminal Case No. 16051-SP, p.1.

[2] Records for Criminal Case No. 16052-SP, p. 1.

[3] Records for Criminal Case No. 16051-SP, RTC Decision dated January 25, 2011, p. 94.

[4] Id. Certificate of Arraignment, p. 30.

[5] TSN dated July 30, 2009, p. 6.

[6] Ibid.

[7] TSN dated October 22, 2009, p. 15.

[8] TSN dated September 10, 2009, p. 6.

[9] Medico-Legal Certificate of Arnulfo Lazaro dated January 24, 2005. Exhibit "A", Index of Exhibits, p.1.

Note: In the RTC Decision, Lazaro was confined for a period of 14 days.

[10] TSN dated July 30, 2009, pp. 7-8.

[11] Supra, Note 9.

[12] TSN dated July 22, 2010, pp. 3-6.

The pertinent portion of Dr. Obungen's testimony reads, thus:

Q:

Could you please tell the result of the examination on the wound of the victim?

A:

Upon examination of the 1 to 2 centimeters wound, bleeding wound is possibly penetrating, sir.

Q:

When you said penetrating, what do you mean by that?

A:

Penetrating the lung cavity, sir.

Q:

And this nature of wound, one that is penetrating the lung cavity, would it be sufficient to cause death of the victim?

A:

Possible, sir.

COURT

Q:

When you suspected the 1 to 2 centimeters bleeding stab wound on the left chest of the victim, possibly penetrated the lung cavity, what treatment did you undertake?

A:

I treated the patient, the wound he sustained and admitted for further examination and observation, Your Honor.

Q:

Again, as per your testimony, it penetrated the lung cavity?

A:

At first, we are sure, Your Honor.

Q:

Were you able to confirm that the stab wound indeed penetrated the lung cavity?

A:

For two (2) or three (3) days, there was an accumulation of blood, Your Honor.

Q:

Where?

A:

At the lung cavity, Your Honor.

x x x

PROS. CO

Q:

This accumulation of the blood in the lung cavity, in your opinion, would you say that the necessary consequence is the penetrating wound?

A:

Yes, sir.

Q:

And this accumulation of the blood, would it be sufficient to cause the death of the victim if not attended to?

A:

Yes, sir.

x x x

Q:

Could it surmise Doctor, based on your answer that the direct cause of accumulation of blood is due to stab wound?

A:

Yes, sir.

Q:

And this accumulation of the blood, would it cause the death of the victim if not treated?

A:

Yes, if not treated, sir.

Q:

How did you treat this?

A:

I inserted a toruscomy tube, sir.

Q:

For what purpose is this insertion of toruscomy tube?

A:

To evacuate the accumulation of blood, sir.

[13] TSN dated August 12, 2010, p. 8.

[14] Id., p. 11.

[15] Id., p. 12.

[16] TSN dated March 10, 2011, p. 2.

[17] Ibid.

[18] TSN dated March 10, 2011, p. 3.

[19] Ibid.

[20] TSN dated August 11, 2011, p. 6.

[21] Id., p. 7.

[22] Id., p. 8.

[23] Id., p. 10.

[24] Ibid.

[25] Records in Criminal Case No. 16051-SP, Decision dated January 25, 2012, pp. 110-111.

[26] Rollo, Brief for the Accused-Appellant, pp. 37-56.

[27] Rollo, p. 101.

[28] As testified by PO2 Encarnacion, TSN dated August 12, 2010, p. 11

[29] Ibid. Rollo, Brief for the Accused-Appellant, pp. 47- 49.

[30] Id., pp. 54-55.

[31] See *Bulawan v. People of the Philippines*, G.R. No. 181444, July 17, 2013.

[32] Ibid. citing *People v. Obina*, G.R. No. 186540, April 14, 2010. See also *People v. Pulusan*, 290 SCRA 353 [1998]

[33] Arnulfo Lazaro testified (TSN dated July 30, 2009, p. 5) thus:

Q:

After Jonathan Bayot inquired from him saying why he threw stone, what if anything did Sherwin Montalban do?

A:

Pinagsasasaksak po si Jonathan Bayot.

Q:

How far away from you this Jonathan Bayot?

A:

About seven (7) meters but I can hear the words uttered “bakit ka nambato”?

Q:

What was the lighting condition at that time?

A:

There was light coming from the poste ng meralco and from Big Mac Store.

Q:

More or less how many times did Sherwin Montalban stabb (sic) Jonathan Bayot?

A:

More or less 4-6 times.

Q:

What happened to Jonathan Bayot after he was stabbed by Sherwin Montalban?

A:

I and Cesar approached them to pacify and he said “tumakbo na kayo and then I held the hands of Sherwin Montalban.

Q:

And were you able to pacify Sherwin Montalban?

A:

Yes, sir I held the hands of Sherwin Montalban so that my other companion could run and then I embraced Sherwin pero nakawala siya and then he stabbed me and I was hit on my left underarm and then I run away.

Cesar Acedera testified (TSN dated September 3, 2009, p. 5; pp.11-13) thus:

Q:

PROS. CO: And who was this person who was stabbed by Sherwin Montalban?

A:

Jonathan Bayot and Arnulfo Lazaro, Sir.

Q:

And which one of them was first stabbed by Sherwin Montalban?

A:

Jonathan Bayot, Sir.

Q:

And where were you when this Jonathan Bayot was stabbed by Sherwin Montalban?

A:

I was behind them, Sir.

Q:

Behind Sherwin Montalban and Jonathan Bayot?

A:

I was behind Jonathan Bayot, Sir.

xxx

Q:

Where were you when Sherwin Montalban stabbed Jonathan Bayot?

A:

I followed Jonathan Bayot, Your Honor.

PROS. CO: So you followed Jonathan Bayot. So more or less, how far were you from Jonathan Bayot when he was stabbed by Sherwin Montalban?

A:

About a meter, Sir.

Q:

A meter away from Jonathan Bayot. After he, Jonathan Bayot was stabbed by Sherwin Montalban you mentioned awhile ago that Sherwin Montalban also stabbed Arnulfo Lazaro. Could you please tell us, where did Sherwin Montalban stabbed Arnulfo Lazaro? Saan siya sinaksak, si Arnulfo Lazaro?

COURT: Saan lugar.

A:

Also in front of Big Mak. "Kasi na una akong tumakbo. Sinundan ko po si Jonathan Bayot, dumating po si Arnulfo Lazaro para po awatin din. Sabi po sa amin ni Arnulfo takbo na, tumakbo na po kami.

COURT: "I followed Bayot in front of Big Mak, and then later on Arnulfo arrived pacifying both of them." It was at that time Sherwin stabbed Arnulfo?

A:

Yes, Your Honor.

xxx

PROS. CO: So you were told by Arnulfo to run?

COURT: And that was already after he was hit by Montalban?

A:

Arnulfo Lazaro was holding the hand of Montalban, Your Honor.

PROS. CO: And then, Arnulfo Lazaro told (sic) you to run?

A:

Yes, Sir.

PROS. CO: So you run, together with whom?

A:

Jonathan Bayot, Sir.

PROS. CO: So you and Jonathan Bayot runaway.

COURT: How did you see Montalban stab Arnulfo kung tumakbo ka na?

A:

Arnulfo showed me the wound he sustained, Your Honor.

Q:

So you did not see the actually(sic) stabbing? He just showed you the wound sustained by him?

A:

Yes, Your Honor.

Q:

And Arnulfo told you that Montalban stabbed him also?

A:

Yes, your Honor.

Jonathan Bayot testified (TSN dated September 10, 2009, pp. 2-5) thus:

Q:

Do you recall of any unusual incident while you were there?

A:

I remember that on that day, my friend was being “kinukursunada” of this Sherwin Montalban, Sir.

Q:

And this friend of yours, who is this?

A:

Francis Vista, Sir.

xxx

Q:

What happened next?

A:

Sherwin Montalban suddenly threw a stone, Sir, and I approached him.

Q:

To what direction?

A:

Going to our place, Sir.

Q:

What did anything you do after the stone was thrown?

A:

I approached Sherwin Montalban but he suddenly stabbed me, Sir.

Q:

Were you able to say something to Sherwin Montalban?

A:

I was about to ask him when he stabbed me, Sir.

xxx

Q:

Were you hit?

A:

Yes, Sir.

Q:

On what part of the body?

INTERPRETER Witness pointing to the left back portion of his left shoulder.

xxx

PROS. CO: After you were stabbed several times by the accused what did you do next?

A:

Arnold Lazaro arrived and asked to get away to leave and when I left the place, I met Arnold Lazaro he was also injured.

[34] See *People of the Philippines v. Togahan*, G.R. No. 174064, 8 June 2007.

[35] *Ibid.*

[36] *Supra*, Note 33.

[37] *Supra*, Note 15.

[38] TSN dated August 12, 2010, p. 12.

[39] G.R. No. 175023, July 5, 2010.

[40] G.R. No. 166326, January 25, 2006, 480 SCRA 188, 197, citing *People v. Delim*, 444 Phil. 430, 450 (2003).

[41] Rollo, p. 60.

[42] See *People v. Del Mundo*, October 2, 2001, GR No. 138929.

[43] *Ibid.*

[44] *Supra*, Note 7.

[45] *Supra*, Note 8.

[46] See *Colinares v. People of the Philippines*, G.R. No. 182748, December 13, 2011.

[47] See *Cervantes v. People of the Philippines*, G.R. No. 175023, July 5, 2010.

[48] Revised Penal Code, Article 249.

[49] Revised Penal Code.

[50] On the crime of frustrated homicide, applying Article 61 and Article 71 of the Revised Penal Code, one lower of reclusion temporal is prision mayor which has a duration of six years and one day to 12 years.

Article 61. Rules for graduating penalties. - For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degrees shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner not especially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

Article 71. Graduated scales. - In the case in which the law prescribed a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty. The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

- Death,
- Reclusion perpetua,
- Reclusion temporal,
- Prision mayor,
- Prision correccional,
- Arresto mayor,
- Destierro,
- Arresto menor,
- Public censure,
- Fine.

SCALE NO. 2

- Perpetual absolute disqualification,
- Temporal absolute disqualification
- Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling,
- Public censure,
- Fine.

[51] Ibid.

[52] Records for Criminal Case No. 16051-SP, Pre-Trial Order, p. 84

Exhibits “I”, “I-1” to “I-45” show the receipts of expenses of Arnulfo Lazaro and Jonathan Bayot incurred in connection with medical treatment of their stab wounds. However, We note that some of the receipts did not indicate the name of the victim who incurred the medical expense.

It is settled that the award of temperate damages is proper because the actual damages proven by receipts is less than Php25,000.00 (People v. Del Rosario, G.R. No. 189580, February 9, 2011. citing People v. Lacaden, G.R. No. 187682, November 25, 2009.)

[53] People v. Del Rosario, G.R. No. 189580, February 9, 2011. citing People v. Lacaden, G.R. No. 187682, November 25, 2009.

[54] Civil Code of the Philippines, Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[55] See Abella v. People of the Philippines, G.R. No. 198400, October 7, 2013.

[56] See Serrano v. People of the Philippines, G.R. No. 175023, July 5, 2010.

[57] Supra, Note 55.

[58] Ibid.

[59] See *Nissan Gallery-Ortigas v. Felipe*, G.R. No. 199067, November 11, 2013 citing *Nacar v. Gallery Frames and/or Felipe Barley, Jr.*, G.R. No. 189871, August 13, 2013 citing BSP-MB Circular No. 799 dated May 16, 2013.

[60] Supra, Note 56.

[61] Ibid.

[62] Supra, Note 59.

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