

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALENTINO ESGUERRA, ACCUSED-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

The instant appeal was interposed by the accused Valentino Perez Esguerra to impugn the April 16, 2001 Decision of the Regional Trial Court, Branch 155, of Pasig City in Criminal Case No. 63491, finding said accused guilty beyond a shadow of doubt of the crime of Frustrated Murder in accordance with Articles 248 and 250 of the Revised Penal Code, and consequently sentencing him in this manner:

WHEREFORE, premises considered, the Court finds the accused Valentino Esguerra y Perez GUILTY beyond reasonable doubt as principal of the crime of Frustrated Murder qualified by treachery as defined and penalized under Articles 248 and 250 of the Revised Penal Code, and there being no mitigating or aggravating circumstance and applying the Indeterminate Sentence Law hereby sentences said accused to suffer the Indeterminate penalty of from eight (8) years and twenty one (21) days of prision mayor, as minimum, to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal, as maximum.

Accused is further ordered to indemnify private complainant the amount of TWO MILLION PESOS (PhP2,000,000.00) as actual and compensatory damages, THREE HUNDRED THOUSAND PESOS (PhP300,000.00) as moral damages, FIFTY THOUSAND PESOS (PhP50,000.00) as exemplary damages, and TWO HUNDRED THOUSAND PESOS (PhP200,000.00) for expenses of litigation, inclusive of attorney's fees, all without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED. (Rollo pp. 46-56)

The origin of this appeal traces to the following factual and procedural antecedents:

On July 8, 1985, the Office of the City Prosecutor of Pasig, through 3rd Assistant Fiscal Rolando L. Gonzales, instituted a criminal Information before the RTC of Pasig City charging Valentino Esguerra (along and in conspiracy with Luis Adea, Jr., and Ramoncito Pascual) with the crime of Frustrated Murder, the accusatory portion of which reads as follows:

That on or about the 28th day of March 1985, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding with one another, armed with a .45 cal. Pistol, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully, and feloniously attack, assault and shoot one Gerardo Mendoza y Maniquiz on the vital parts of his body which would ordinarily caused his death, thus performing all the acts of execution which should have produced the crime of murder as a consequence but nevertheless, did not produce it by reason of cause independent of their will, that is, due to the timely able medical attendance rendered to said Gerardo Mendoza y Maniquiz which prevented his death.

CONTRARY TO LAW. (Record p. 3)

Upon arraignment on February 1, 1996, Valentino Esguerra, with the assistance of Atty. Aurora Salva-Bautista,

pleaded not guilty of the crime for which he is being charged (Record p. 184). However, the case with respect to accused Luis Adea, Jr., and Ramoncito Pascual was archived by the trial court, as said accused have remained at large and were successful in eluding apprehension. Consequently, a full-blown trial on the merits forthwith ensued only in so far as Valentino Esguerra is concerned.

Prosecution evidence established the following facts:

Gerardo Mendoza, the victim herein, used to be the manager of an international freight forwarding company. At around 10:00 in the evening of March 28, 1985, Gerardo and his friend Edwin Quejada were playing a friendly game of darts at a place known as Flicker's Den located at Kapitolyo Drive, Barrio Kapitolyo in Pasig City. At the same time, Valentino Esguerra, Luis Adea, Jr., and Ramoncito Pascual were likewise present at the Flicker's Den. Gerardo was already well acquainted with Luis and Ramoncito, since they were once neighbors in the same residential subdivision. However, Gerardo met Valentino only for the first time that evening. Not long thereafter, Valentino, Luis, and Ramoncito, saying that they wanted to imbibe on liquor but were short of cash, requested Gerardo to treat them for a drink. Gerardo acceded to the request, and the group then left the Flicker's Den at about 10:30 and proceeded directly to My Place Pub, a drinking joint located just along Shaw Boulevard. Upon reaching My Place Pub, the group readily positioned themselves near the bar. Gerardo, Edwin, Luis, and Ramoncito immediately requested to be served with beer, whereas Valentino chose to ask for brandy. Noting that the price of brandy was too expensive, someone from the group called the attention of Valentino and requested him just to order beer instead so as to avoid embarrassment with Gerardo who was "footing the bill" of the group. In a fit of anger due to the remark, Valentino loudly uttered "Putang ina ninyo, umaangal pa kayo. Matagal na kayong under surveillance sa amin", and suddenly drew out his gun, a .45 caliber pistol. Ramoncito then ordered "birahin mo na, upakan mo na." As if acting on cue, Valentino fired a shot at Edwin. Having been hit, Edwin fell on the pavement. In just a matter of seconds, Valentino then aimed his firearm at Gerardo, and without saying a word shot the latter from a distance of just about two meters. The bullet found its mark on Gerardo's chin. Gerardo lost his consciousness almost instantaneously, only to regain it when he was already lying at the hospital bed in Medical City Hospital at Mandaluyong. Gerardo was treated at the Intensive Care Unit of the hospital for three weeks. All in all, Gerardo was confined at the Medical City Hospital for a period of one month. After having been discharged, Gerardo still needed to return to the hospital to undergo physical and occupational therapy sessions, as well as regular examination and monitoring. Gerardo likewise underwent two surgical operations to heal and correct the damage caused by the bullet in his neck and cervical spine. Withal, Gerardo also went to the United States to have his condition evaluated by a physician who specializes in the kind of injury that he sustained, for which Gerardo incurred no less than US\$8,000 in medical expenses. At present, half of Gerardo's body is already disabled. (TSN, Gerardo Mendoza, April 18, 1997, pp. 5-24; October 24, 1997, pp. 3-33)

Gerardo's attending physician Dr. Bievenido Aldanese testified that Gerardo sustained a gunshot wound that entered his chin and penetrated through his spinal column and cervical spine. Dr. Aldanese needed to insert a tube into Gerardo's oral pharynx to secure a clear passage for air considering that blood was already getting into Gerardo's pulmonary system, and Gerardo was then beginning to drown in his own blood. The penetrating bullet caused a fracture on Gerardo's cervical spine which necessitated to be stabilized in order to minimize further injury to Gerardo's spinal cord. By way of expert medical opinion, Dr. Aldanese stated that Gerardo sustained a fatal gunshot wound, such that without timely and adequate medical attention, Gerardo would have drowned in his own blood and that his spinal cord would have swollen up, thereby making his death certain by reason of inability to breath freely. Dr. Aldanese likewise declared that by reason of the gunshot wound, Gerardo is now suffering from secondary paralysis, which is virtually permanent in nature. (TSN, Dr. Bievenido Aldanese, November 7, 1997, pp. 6-19).

In an attempt to secure exoneration, Valentino posited the defense of denial, disclaiming having known Gerardo, and all the more shooting the latter in that fateful evening of March 28, 1985. According to Valentino, he is a second hand car salesman by profession, and his usual practice was to transact business deals with prospective clients inside different watering holes. Valentino vividly remembered that he was at My Place Pub at Shaw Boulevard when the shooting incident took place, but denied to being the author of the assault against Gerardo. Valentino declared that he suddenly heard the sound of gunfire during the incident, and he lost no time in leaving the premises of My Place Pub out of panic and fear. (TSN, January 27, 2000, pp. 6-20)

On April 16, 2001, after deliberating upon the evidence adduced by the prosecution and the defense, the trial court rendered the herein assailed Decision convicting Valentino of the crime of Frustrated Murder, and accordingly sentencing him to suffer imprisonment and to pay actual, moral, and exemplary damages, including the expenses of litigation (Rollo pp. 46-56).

Disagreeing with the verdict of conviction, Valentino interposed the present appeal, and for this purpose ascribes to the trial court the following errors:

I.

The court a quo gravely erred in giving weight and credence to the theory of the prosecution and in disregarding that of the defense.

II.

The court a quo gravely erred in convicting accused-appellant of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

III.

The court a quo gravely erred in failing to consider the reluctance of the other victim to pursue the case against accused-appellant despite the fact that he was also fatally injured.

IV.

Assuming arguendo that accused-appellant shot the victim, the court a quo gravely erred in qualifying the shooting as frustrated murder instead of the lesser offense of frustrated homicide. (Rollo p. 35)

The appeal is devoid of merit.

We shall thresh out the foregoing assignment of errors not necessarily in the exact series that the same are presented in the Appellant's Brief.

On the matter the first assigned error, We are in full concurrence with the trial court when it accorded belief upon the manner by which Gerardo has made a firm identification of Valentino as the individual who shot him inside My Place Pub on the evening of March 28, 1985. Time-honored is the doctrine that positive identification of the accused, where categorical and consistent, and when made without any showing of any ill motive on the part of the victim testifying on the matter, should always prevail over the defense of mere denial which, if unsubstantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law (People vs. Dinglasan, 267 SCRA 26). The surrounding facts of the case lead Us to the ineluctable conclusion that Gerardo could not have mistakenly identified Valentino as the same person who seriously assaulted him with the use of a firearm. First, Gerardo came face to face with Valentino even while their respective groups were still at the Flicker's Den at Pasig City, and their acquaintance in said place, albeit brief, became the basis of Gerardo's familiarity and recognition of Valentino's facial features and appearance. And second, Gerardo had the ample opportunity to see Valentino's face a few seconds before the latter shot him on the chin. It is undisputed that My

Place Pub was well lighted at the time when the violent incident took place, and considering that Valentino shot Gerardo in a relatively close distance of around only two meters, Gerardo's identification of his assailant is credible. Moreover, Valentino's defense amounts to a mere flat denial, which, like alibi, is the weakest of all known defenses in the realm of the rules on evidence, and is necessarily demolished by his positive identification of his own victim Gerardo. Too, it must likewise be emphasized that the defense failed to show that Gerardo was harboring ill motive against Valentino that could have effectively impelled him to prevaricate and falsely accuse Valentino of a crime as serious as that of frustrated murder.

On the third assigned error, this Court can not definitively conclude that Edwin's (Gerardo's companion who was likewise shot) hesitance and inaction to initiate a criminal prosecution against Valentino is consistent with the latter's innocence of the crime for which he is being charged by Gerardo. Indeed, We can only venture to speculate and surmise for the reason behind Edwin's omission to pursue a criminal case against Valentino, but even then, such speculation does not carry any legal import or evidentiary value for the purpose of determining Valentino's guilt or innocence of the crime in this action.

Finally, as regards the second and fourth assigned errors which are substantially intertwined, We hold that there is not even a tinge of doubt that Valentino was indeed the person who shot Gerardo on the night in question. Carefully analyzing the factual backdrop of the case, it is clear that Valentino, for shooting Gerardo on the chin - which is a vital and delicate portion of the human body - has passed the subjective phase of the crime, such that Valentino has already performed all the indispensable acts of execution that would have certainly produced the killing of Gerardo as a consequence. First, Valentino assaulted Gerardo with the use of a firearm, a deadly weapon, which in not a few similar cases of bodily assaults, more often than not, has claimed the life of the victims. Furthermore, the shot found its mark and pierced on Gerardo's chin and penetrated into his cervical spine, a vital portion of the latter's anatomy, which according to Gerardo's attending physician Dr. Aldanese, was sufficient to effectively claim Gerardo's life had the latter not been administered with timely and effective medical treatment. In the case of *People vs. Bayod* (351 SCRA 162), the Supreme Court pronounced that intent to kill is safely inferable from the nature of the wound inflicted and the kind of weapon used in the attack. Taking cue from this instructive doctrine, We hold that Valentino's use of a firearm in the commission of the assault, taken in combination with the fact that the gunshot wound inflicted upon Gerardo was basically mortal in character, are concrete indicia that there was indeed intent on the part of Valentino to kill and finish Gerardo off, and not just a mere desire to superficially injure and harm the latter. As regards the nature and seriousness of the injury, Dr. Aldanese opined that the gunshot wound could have certainly caused the death of Gerardo in the absence of timely medical intervention considering that blood was already flowing into Gerardo's pulmonary system, and such serious bodily condition, no doubt, shall resultantly cause Gerardo's death for inability to breath (TSN, Dr. Aldanese, November 7, 1997, pp. 6-19). Under the circumstances, We failed to see any reason to doubt the veracity of the testimony of Dr. Aldanese relative to the mortality of the gunshot wound inflicted by Valentino upon Gerardo. First, Dr. Aldanese is a US-trained Neuro-Surgeon who has had the opportunity to treat the wounds of around a thousand gunshot victims when he was still working for the Philippine Army. This being so, it is safe to assume that he knows whereof he speaks, in that, by virtue of his actual training, actual experience and extensive exposure in the field of medical science, Dr. Aldanese is professionally competent to categorically diagnose, at least, if a wound is fatal or not. Second, the physician's court declaration as to the gravity and nature of the wound as being fatal was not demolished when he was grilled by the defense on cross-examination. And third, the defense practically failed to present an equally competent and believable piece of evidence that could somehow belie the testimony of Dr. Aldanese, and eventually show for the defense that the gunshot wound sustained by Valentino was merely superficial and non-serious in character, and could not have caused him his life even without medical attention and treatment.

Upon the other hand, this Court is of the well-considered view that the trial court has acted properly when it ruled that the shooting of Gerardo was attended by the qualifying circumstance of treachery so as to graduate the felonious and fatal act of shooting to that of frustrated murder. The Supreme Court pronounced that two essential conditions must concur to properly appreciate the circumstance of treachery or *alevosia*, to wit: (1) the employment of means of execution that necessarily deprives the person attacked of an opportunity to defend himself or to retaliate; and (2) deliberate or conscious adoption by the assailant of the means and methods of execution. Additionally, it has been ruled that to properly sustain a finding of treachery, the means, methods or form of assault must be shown by concrete evidence to have been deliberately adopted by the accused (*People vs. Azugue*, 268 SCRA 711; *People vs. Manalo*, 148 SCRA 98). In the case at bench, Valentino's actions and words that immediately preceded the shooting betrayed the fact that he consciously thought of and reflected upon a specific mode of attack, and thereafter made some calculated preparation to kill Gerardo in such a manner as to insure the execution of the crime or to make it impossible or difficult for Gerardo to offer a defense or retaliation (*People vs. Iligan*, 191 SCRA 643). From what may be gathered from the facts of the case, Valentino uttered the words "Putang ina ninyo, umaangal pa kayo. Matagal na kayong under surveillance sa amin.", and has acted on cue from Ramoncito's order "birahin mo na, upakan mo na." before he eventually shot Gerardo. These words, to the mind of this Court, show that Valentino (and apparently, Ramoncito) purposely sought for and planned to kill Gerardo in the evening in question, thus negating Valentino's theory that his decision to shoot Gerardo was sudden and spontaneous, and not a by-product of previous planning. Moreover, undisputed is the fact that Valentino shot the unarmed Gerardo in a swift and unexpected manner, and without any tinge of warning whatsoever, which are indicia of Valentino's desire to finish Gerardo off with the least chance for the latter to defend himself or retaliate.

Under the premises, the trial court sentenced Valentino with the correct range and duration of imprisonment pursuant to the Article 248 of the Revised Penal Code, in relation with the Indeterminate Sentence Law. As to the propriety of damages for which Valentino was ordered to satisfy in favor of Gerardo, the trial court's award for Actual and Compensatory damages in the sum of Php2,000,000.00 is too excessive and must be reduced so as to conform with what is actually established by documentary evidence. Evidently, Gerardo's hospitalization expenses here in the Philippines amounted to only Php408,895.09 (Exhibits "E – E-384"). On the other hand, Gerardo was able to spend a total of US\$1,847.05 for his treatment abroad. Computed at the peso rate in April 1988 when the medical expenses were incurred (Php21.017 per US dollar), Gerardo's expenses amount to merely Php38,819.45. Clearly, therefore, Gerardo is entitled to the sum of only Php447,714.54 by way of Actual Damages. The award for Moral Damages is proper. Gerardo "had a life", so to speak, before he was shot by Valentino. At present, though, Gerardo is already suffering from permanent secondary paralysis, and half of his body is already useless. Undeniably, Gerardo's pitiful and detestable condition has brought him (and his family) untold moral injury, irreparable trauma and severe emotional pain, which, though unquantifiable monetarily, may somehow be compensated by the award of Php300,000.00. The award for Exemplary Damages must be deleted considering that the crime was not attended by an aggravating circumstance, thus precluding the award thereof pursuant to Article 2230 of the New Civil Code. Finally, as to attorney's fees and expenses of litigation, We hold that the award of Php200,000.00 is excessive, and hence the same is hereby reduced in half.

WHEREFORE, premises considered, the instant appeal is DENIED. Accordingly, the conviction of Valentino for Frustrated Murder, and the manner by which he was sentenced to suffer imprisonment therefore, is hereby AFFIRMED in its entirety. Upon the other hand, this Court hereby MODIFIES the assailed Decision by ordering Valentino to pay Gerardo Mendoza the sums of Php447,714.54, Php300,000.00, and Php100,000.00 by way of actual and compensatory damages, moral damages, and attorney's fees and expenses of litigation, respectively.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

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