

OSCAR SANTOS Y PANGANIBAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 126624. November 11, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari filed by Oscar Santos y Panganiban seeking to reverse and set aside the Decision[1] dated March 15, 1996, of the Court of Appeals in CA-G.R. CR No. 15858, which affirmed in toto the decision[2] of the Regional Trial Court of Malolos, Bulacan, Branch 9, finding the petitioner guilty beyond reasonable doubt of two counts of frustrated homicide. Likewise sought to be reversed and set aside is the appellate court's Resolution of October 1, 1996, denying the petitioner's motion for reconsideration.

The case stemmed from two Informations charging the petitioner with two counts of frustrated homicide. The accusatory portion of the first Information docketed as Criminal Case No. 1929-M-90 reads:

That on or about the 15[th] day of May, 1990, in the municipality of Paombong, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a jungle bolo and with intent to kill one Roy de Borja did then and there wilfully, unlawfully and feloniously attack, assault and hack with the said jungle bolo he was then provided the said Roy de Borja, inflicting upon him physical injuries which ordinarily would have caused his death, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely medical assistance rendered to said Roy de Borja which prevented his death.[3]

The accusatory portion of the second Information, docketed as Criminal Case No. 1930-M-90 reads:

That on or about the 15[th] day of May, 1990, in the municipality of Paombong, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a jungle bolo and with intent to kill one Loreto Hernandez did then and there wilfully, unlawfully and feloniously attack, assault and hack with the said jungle bolo he was then provided the said Loreto Hernandez, inflicting upon him physical injuries which ordinarily would have caused his death, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely medical assistance rendered to said Loreto Hernandez which prevented his death.[4]

At his arraignment, the petitioner, assisted by counsel, pleaded not guilty to the charges against him. A joint trial of the cases ensued.

As culled from the trial court's decision, the evidence for the prosecution, consisting mainly of the testimonies of the victims Roy de Borja and Loreto Hernandez, established the following:

At 7:00 p.m. on May 15, 1990, Loreto Hernandez, a resident of Brgy. Sto. Rosario, Paombong, then employed with the Manila Hotel as a security guard and his companion Roy de Borja, were walking along a narrow footpath

on their way home from a visit to a mutual friend, Fely Jumaquio. Upon reaching that portion of the footpath in front of the house of Rufino Panganiban (a maternal uncle of petitioner Oscar P. Santos), the petitioner and his brother Pedro Santos, Jr. suddenly emerged into view and effectively blocked their way. Hernandez greeted the petitioner by his name "Ka Oscar" but, without much ado, Pedro, Jr. aimed a .45 calibre automatic pistol at the face of Hernandez, and squeezed the trigger of the gun which, fortunately, did not fire. Forthwith, the petitioner hacked Hernandez twice with a jungle bolo. Hernandez was struck; first, at the right forearm which he defensively raised to parry the blow and, second, at the right side of the head. Hernandez fell to the ground semi-unconscious, blood oozing from his wounds. The petitioner then turned to De Borja who attempted to flee. The petitioner stabbed De Borja at the back, near the waistline. De Borja fell to the ground, and saw the petitioner hack another person whom he could not identify. The petitioner even told his brother, "Utol, Jr. alis na tayo; patay na ang mga iyan."

As soon as the petitioner and his brother left the premises, De Borja, although himself already injured, endeavored to help Hernandez to his feet. The two crossed a river and proceeded to the barangay road where, at the foot of a bridge, Hernandez was left behind, as De Borja went to look for any available vehicle that would take them to the hospital. While Hernandez was waiting for De Borja, a tricycle appeared. Hernandez boarded the same and proceeded to the De Leon Clinic in Paombong, where he was refused admission for undisclosed reasons. Thereafter, Hernandez boarded another tricycle which brought him to the provincial hospital at Malolos where he was administered blood transfusion and extended first-aid treatment. Due presumably to the inadequacy of the medical facilities of the provincial hospital, Hernandez was transferred aboard an ambulance in the early morning of the ensuing day (May 16) to the Jose Reyes Memorial Medical Center in Sta. Cruz, Manila. Hernandez underwent immediate surgical operation of the complete fracture of the ulnar bone of his right forearm and confined for medical treatment until his discharge therefrom on June 5.

Dr. Alex Castillo operated on Hernandez and issued a medico-legal certificate, which contains the following findings:

Wound hacked 9 cm. temporo-parietal left sutured
S/P open reduction and internal fixation (K-wire pinning and circlage wiring)
Open fracture complete proximal third ulna right
Abscess proximal third forearm right
Wound lacerated 3 cm. dorsal aspect wrist right
SURGICAL PROCEDURE: Open reduction and K-wire pinning and circlage wiring ulna right.[5]

Because of the eventual onset of massive infection of the injury inflicted on his right forearm, Hernandez underwent a second surgical operation of the affected area on December 20, 1990[6] which necessitated his confinement once more at the Jose Reyes Memorial Medical Center from December 19 to 26 of that year.[7]

For his hospitalization and medical treatment, Hernandez incurred expenses in the aggregate amount of P16,237.71.[8] As a result of the injuries sustained by him, Hernandez was incapacitated to perform his customary work as security guard of the Manila Hotel[9] from May 16, 1990, until he took the witness stand on December 17, 1990. In fact, he was being readied at the time for a contemplated third surgical operation of the same injured forearm.

Hernandez testified that upon boarding a Ford Fiera pick-up, he lost consciousness. He regained consciousness only at the provincial hospital in Malolos where he received initial medical treatment. In the early morning of May 16, he was brought via an ambulance to the Jose Reyes Memorial Medical Center where he was surgically operated on for the various injuries he sustained, and was confined therein up to May 20.

Dr. Renato Vergara treated and attended to De Borja. According to the medico-legal certificate he issued, De Borja sustained a 15-cm. hacking wound at the right posterior lumbar region of the body which penetrated the right hemidiaphragm as well as the right lobe of the liver, necessitating medical attention for more than thirty days. De Borja underwent post-operative treatment at the provincial hospital in Malolos and, on the whole, incurred medical expenses in the amount of P20,000, more or less, the receipts for which were lost when their house was ruined by a typhoon.

The testimonies of Hernandez and De Borja on the hacking incident were corroborated by Aurelio Dionisio and Antonio Bonton who, shortly before the incident, were requested by the wife of Hernandez to fetch the latter at the house of Jumaquio. It was while they were on their way to fulfill the errand that Dionisio and Bonton were able to witness the hacking incident.

Having been hacked himself by the petitioner during the same incident resulting in lacerated wounds on the left cheek, left shoulder and base of the fingers of the left hand for which he was confined in a hospital for five days, Bonton similarly filed a separate complaint for frustrated homicide against the petitioner with another branch of the trial court.[10]

For his part, the petitioner interposed self-defense. He claimed that he hacked Hernandez and De Borja only as an act of self-defense. The trial court summarized the petitioner's testimony as follows:

Testifying on his behalf, the accused declared that having been off-duty on May 15, 1990, he invited his fellow security guard Primo Oria and the latter's wife to his hometown of Paombong to attend a barrio fiesta. Travelling all the way from Pasay City, the group arrived in Paombong at about noon of that day. In the evening, the accused, his wife and children and Mr. and Mrs. Oria attended mass at a chapel in Brgy. San Isidro where the fiesta was being celebrated, after which they returned to his house at Brgy. Sto. Rosario.

Because his TV set was out of order at the time, the accused and the Oria spouses repaired [sic] to the nearby house of Pedro Santos, Jr. in order to view the championship game between "Añejo Rum 65" and "Shell" in connection with the then on-going phase of the Philippine Basketball Association (PBA) competitions. That basketball game was marred by a walk-out staged by "Añejo Rum 65" even before the match was over, which led to the proclamation of the "Shell" team as champion. Thus, the accused and his guests went back to his house for dinner.

As the wife of the accused was preparing supper at around 8:30 o'clock that night, a group of men were heard shouting from outside the house. Curious, the accused peeped thru a window of the house to see for himself who the persons shouting were. With the light emanating from the terrace of the house, he was able to see the persons of Loreto Hernandez, Roy de Borja, Antonio Bonton and Aurelio Dionisio who were already inside the frontyard of his house; three (3) other males whom he was not able to identify were seen near the river beyond the yard. When he was seen peeping thru that window, the accused heard Aurelio Dionisio remark: "Ayan si Oscar, barilin mo na." That utterance prompted the accused and Oria to turn off the lights inside the house in order that the interior would be completely dark as a precautionary measure.

While the commotion outside the house was taking place, the accused heard Dionisio in particular utter the following statements: "Putang ina mo. Lumabas ka ryan. Papatayin ka namin. Iisa-isahin ko ang mga kasama mong ipinagmamalaki. Huwag kang magtayo [sic] sa saya ng asawa mo. Magpakalalake ka. Putang ina mo." Apparently irked by the refusal of the accused to confront them, the group of Hernandez and De Borja started pelting the house with stones, causing some window panes to break and the plaster finish of the walls to chip off as depicted by colored photographs (Exhs. 12, 20-A, 21-A & 22-A).

Rather than be taunted into a likely violent encounter, the accused sneaked out of his house thru a backdoor to seek outside help. Under cover of the darkness of night, the accused went to the house of ex-barangay captain Rey Salamat, but did not find him there. The accused proceeded to the house of Juanito Salamat, a policeman

brother of the ex-barangay captain, but also failed to see him. The accused next knocked at the door of the house of Julian (one of the Salamat brothers) to whom he reported the presence of the group of troublemakers at his yard. After expressing the assurance that he will immediately and personally summon his brother Juanito (who was then on duty at the municipal building), Julian advised the accused to return to his house inasmuch as something untoward might have already befallen the members of his family. Taking heed of Julian's advice, the accused decided to go back home by taking that pathway in front of the house of his uncle, Rufino Panganiban.

On his way home, the accused met Carmelita Panganiban who, after having been apprised of the trouble taking place within the yard of his house, directed the accused to hurry home. However, when the accused was about a meter away from the gate of Rufino Panganiban's house, he met the group of Loreto Hernandez, Antonio Bonton, Roy de Borja, Aurelio Dionisio and several others, who lurked beyond a bend of the pathway. As he came face to face with the accused, Hernandez blurted out: "Eto pala ang hinahanap natin." Already apprehensive, the accused took a step backward but, at that instant, Hernandez drew a gun from his waist and from a distance of some 2 meters aimed the weapon at the head of the accused. Almost simultaneously, the accused heard someone (whom he suspected to be Aurelio Dionisio) exclaim: "Sige, barilin mo na ang putang inang yan." Realizing that his life was in imminent danger and because it was all but impossible for him to run away by then, the accused, with the use of the bolo with which he armed himself when he stepped out of his house to seek assistance from his neighbors, hacked Hernandez's outstretched arm gripping the gun. Because of the hacking blow, the firearm which Hernandez pointed at the accused was flung somewhere; Hernandez himself fell to the ground by the seat of his pants [sic].

At the time, Bonton and Dionisio were each armed with a piece of 2"x 2" wood, while De Borja was holding a fanknife [sic]. Seeing Hernandez subdued, the trio menacingly rushed towards the accused who kept flailing his bolo aimlessly in order to keep his attackers at bay. Even as the accused cannot determine whether he struck anyone in the process, his attackers "moved backward". Given such opportunity, the accused ran away and proceeded directly to the municipal hall to report the incident. He did not surrender his bolo to the police authorities because, in his confusion, he must have thrown the weapon away somewhere along his route.[11]

The petitioner's testimony was corroborated by his first degree cousin Restituto Cardenas, his uncle Rufino Panganiban, the latter's daughter-in-law Carmelita Panganiban, Julian Salamat, Primo Oria, as well as other witnesses whose respective testimonies were synthesized by the trial court, thus:

...

2) Mario Robles, chief barangay tanod of Sto. Rosario and one of his barangay tanods, Pedro Santos, Jr. (a brother of the accused), panting and visibly frightened, arrived at his house between 8:00 and 9:00 p.m. on May 15, 1990 to seek his help because the group of Aurelio Dionisio alias "Boy Kano" attacked the residence of the accused challenging him to a fight-to- death. Responding to the call for assistance, he sought out barangay councilman Oscar Salamat and both went to the scene of the reported incident, but found no one in the place anymore. They investigated the premises of the house of the accused and saw for themselves the stones thrown at the house, the broken window panes and marks of damages on a wall of the house.

3) Marcelo Salamat, a barangay councilman of Sto. Rosario, who testified that on May 16, 1990, he and barangay tanod chief Mario Robles allegedly recovered near a creek beside the footpath where the hacking incident transpired) the plastic toy gun which the defense represented as the same weapon which Hernandez aimed at the accused, thus, precipitating the said hacking incident.

...

8) SP01 Reynaldo D. Cruz, a 55-year old policeman of Paombong, who presented in Court the black plastic toy gun (Exh. 5) that resembles a .45 calibre automatic pistol together with a foot-long 2"x 2" wooden club (Exh.6) which were turned over to him as desk officer on May 16, 1990 by Pablo Santos Senior and Junior, Ramon Salamat and Marcelo Salamat; the foregoing items were represented by the defense as the weapons

which Hernandez and Bonton were armed with during the incident complained of. [12]

The trial court rendered a decision convicting the petitioner of two counts of the crime of frustrated homicide. It gave scant consideration to the petitioner's plea of self-defense, but appreciated in his favor the mitigating circumstance of voluntary surrender. The decretal portion of the trial court's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

in Crim. Case No. 1929-M-90

finding accused OSCAR SANTOS y PANGANIBAN of Sto. Rosario, Paombong, Bulacan, guilty beyond reasonable doubt of the crime of frustrated homicide as charged in the Information and sentencing him to suffer an indeterminate imprisonment of from six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum, plus the accessory penalties provided by law and to indemnify complainant Roy de Borja for actual damages in the amount of P20,000.00 representing medical expenses incurred by the latter for the injuries sustained by him.

in Crim. Case No. 1930-M-90

finding accused OSCAR SANTOS y PANGANIBAN of Sto. Rosario, Paombong, Bulacan, guilty beyond reasonable doubt of the crime of frustrated homicide as charged in the Information and sentencing him to suffer an indeterminate imprisonment of from six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum, plus the accessory penalties provided by law and to indemnify the complainant Loreto Hernandez for actual damages in the amounts of P16,237.71 representing medical expenses incurred by the latter for the injuries sustained by him and P21,000.00 representing his lost earnings covering the period May 16, 1990 to December 17, 1990 at the rate of P3,000.00 per month.

SO ORDERED.[13]

Aggrieved, the petitioner appealed his conviction to the Court of Appeals (CA). The appellate court, finding no reversible error in the findings and conclusions of the trial court, affirmed the petitioner's conviction.[14] Like the trial court, the CA found the prosecution's version of the incident more credible, characterizing the petitioner's claim of self-defense as unsubstantiated by evidence. The assailed decision of the CA stated in part, thus:

In view of the foregoing, we are fully in accord with the trial court that appellant's story to establish self-defense is incongruent with the ordinary observations and experience of man and discordant with the nature and ways of things. It is for that reason doubtful and unconvincing and should be rejected.

That appellant intended to kill Hernandez and De Borja was evidenced by his use of a jungle bolo - a lethal weapon - and the parts of the victim's bodies which he hit. According to undisputed evidence, the wound of Hernandez on his right forearm and wound of De Borja in his back waist are both life threatening. Therefore, the elements of frustrated homicide were fully proven in both cases.[15]

The petitioner moved for a reconsideration of the assailed decision but the CA, in the Resolution[16] of October 1, 1996, denied the same.

The petitioner now comes to the Court alleging that the CA erred (a) in not acquitting him of the crime charged on his plea of complete self-defense; (b) in not appreciating in his favor the mitigating circumstances of incomplete self-defense and voluntary surrender; (c) and in not finding that the prosecution failed to prove the propriety and factual basis for any civil liability for the crimes charged.

On the first issue, the petitioner avers that the CA erred in affirming the trial court's assessment on the credibility of the witnesses for the prosecution and the probative weight thereof, and sustaining its findings on the issue of whether or not the petitioner acted in self-defense. The petitioner asserts that as fortified by his evidence, Loreto

Hernandez and Roy de Borja were the unlawful aggressors, which impelled him to defend himself. He asserts that Hernandez, at close range, aimed his .45 caliber automatic pistol, which turned out to be a toy gun, at the head of the petitioner, even as one of his companions, Aurelio Dionisio, who was armed, urged Hernandez on: "Sige, barilin mo na and putang inang iyan." The petitioner hacked Hernandez with his jungle bolo, hitting the latter on the right arm when he parried the thrust. In the process, the bolo of the petitioner likewise hit the right side of Hernandez' head. When Hernandez fell to the ground, his gun was flung somewhere else. At that point, Roy de Borja, who was armed with a fan knife, Antonio Bonton and Aurelio Dionisio, each armed with a 2" x 2" (dos por dos) piece of wood, rushed towards the petitioner to kill him. To defend himself against their collective assault, the petitioner swung his bolo aimlessly to keep his attackers at bay. In the process, the tip of the petitioner's bolo hit De Borja at the back when the latter and his cohorts turned as they fled from the scene. The petitioner claimed that he must have thrown away his bolo when he rushed to the police station to surrender.

The trial court disbelieved the petitioner's submission and gave credence and probative weight to the testimonies of Hernandez and De Borja, thus:

For more reasons than one, the Court finds for the prosecution.

Firstly, having been privileged with the singular opportunity of having observed the deportment of all the witnesses presented in the instant cases, the Court finds no reason to doubt the testimonies of the complainants and their eyewitnesses whom the Court keenly noted to have testified in a straightforward and unrehearsed fashion. On the other hand, if for his cockiness alone, herein accused was rated by the Court as a witness who hardly inspires belief. With respect to the purported eyewitnesses for the defense, the Court considers their testimonies impaired by bias which motivated them, as their interests so persuaded, to testify as they did. Briefly said, the Court found the complainants and their eyewitnesses relatively more credible than the accused and his own eyewitnesses.

Secondly, the testimonies of the accused and his eye-witnesses, regarding the manner by which the accused adroitly defended himself and the use by Hernandez of a toy gun are too good to be true. This dimension of the case for the defense must have been inspired by the current crop of inane action- movies which have bred entertainment celebrities of the likes of Fernando Poe, Jr., Lito Lapid and Robin Padilla. Such derring-do to be sure, pertains to the theater of the absurd! The Court simply cannot bring itself to believe the pretense of the defense that Hernandez, in carrying out his alleged desire to cause the accused bodily harm, would have armed himself for that end with a mere toy gun; after all, if the version of the defense is to be believed, Hernandez was acting for real and not in accordance with a movie script. To this extent, the theory of the defense is flawed in no small measure.

Thirdly and of transcendent significance, as between the protagonists, it is the accused who had an axe to grind, so to speak. Both the prosecution and the defense revealed that sometime in 1981 at Pasay City, Hernandez stabbed the accused somewhere at the back. Even as such prior incident had already been amicably settled, it is not difficult to imagine that herein accused, as the victim of that previous assault, would harbor ill-will against Hernandez and nurture the hope of eventually getting even. That obsession is but a manifestation of the known machismo of the Filipino. This sour note in his relationship with Hernandez is wholly inconsistent with the avowed self- defense of his person invoked by the accused. Stated differently, Hernandez could not have been the aggressor in the hacking incident involved in the cases at bar; the accused was.

Finally, and let alone the foregoing pronouncements, the Court holds the view that the evidence adduced is insufficient to sustain the contention that the accused validly acted in self-defense when he inflicted the injuries upon complainants Hernandez and De Borja. Not even "incomplete self-defense" obtains.[17]

Like alibi, self-defense is inherently a weak defense which, as experience has demonstrated, can easily be

fabricated.[18] To merit approbation, the accused is burdened to prove with clear and convincing evidence the confluence of the following essential requisites for self-defense: (a) there was unlawful aggression on the part of the victim; (b) that the means employed to prove or repel such aggression was reasonable; and (c) there was lack of sufficient provocation on the part of the person defending himself.[19] Unlawful aggression contemplates an actual, sudden and unexpected attack on the life and limb of a person or an imminent danger thereof; and not merely a threatening or intimidating attitude.[20] There can be no self-defense, complete or incomplete, where there is no unlawful aggression on the part of the victim.[21]

The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution for even if the evidence of the prosecution were weak, the same can no longer be disbelieved after the accused has admitted killing or injuring the victim.[22] Whether or not the accused acted in self-defense is essentially an issue of fact best addressed to the trial court.[23]

The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties and its assessment of the probative weight of the evidence of the parties especially if affirmed by the Court of Appeals, are accorded high respect, if not conclusive effect by the Court unless the trial court and the Court of Appeals ignored, misunderstood, misconstrued or misinterpreted cogent facts and circumstances of substance which, if considered, will change the outcome of the case. The trial court and the CA gave no credence and probative weight to the collective testimonies of the petitioner and his witnesses.

After an incisive consideration of the evidence on record, the Court finds no basis to deviate from the findings of the trial court and the Court of Appeals.

The petitioner's evidence to support his plea of self-defense, complete or incomplete is implausible, if not incredible.

First. The testimony of the petitioner is belied by the physical evidence on record. He testified that when Hernandez aimed his gun at his head, the petitioner raised his right hand, and holding his bolo, swung it downwards. Hernandez then raised his right hand to parry the thrust of the petitioner. In the process, the petitioner's bolo hit Hernandez' right forearm and the right side of his head above the right ear.[24] However, Dr. Castillo who operated on Hernandez, belied the petitioner's testimony and stated that the latter sustained an open fracture on his right forearm and a hacked wound on the temporo-parietal (left) portion of his head, that is, from the middle of the left side of the skull going down to the temple. Hernandez also suffered a third wound, a 3 cm. lacerated wound on the dorsal aspect of the wrist near the joint.[25]

Second. The petitioner wanted the trial court to believe that Hernandez, upon the proddings of Aurelio Dionisio, threatened to shoot him with a toy gun although the petitioner was armed with a bolo. It is, indeed, incredible that Hernandez would have the temerity to threaten the petitioner who was armed with a lethal weapon, such as a bolo, with a mere toy gun.

Third. The petitioner threw away the bolo that he used in hacking Hernandez and De Borja. This circumstance negates the petitioner's plea of self-defense.[26]

Fourth. The petitioner testified that he did not know that he was able to hit and injure De Borja. What he recalls is that De Borja was armed with a knife and Antonio Bonton and Aurelio Dionisio, were each armed with a 2" x 2" piece of wood. When the three rushed towards the petitioner, he swung his bolo indiscriminately from right to left, to prevent Hernandez and his cohorts from attacking him. The petitioner did not know how De Borja was injured. He only heard rumors that De Borja was injured:

Q

Another thing, Mr. Witness, you said that de Borja was also a participant in that incident where [B]onton and Hernandez were injured.

Now, my question to you is, do you know if in that same incident Borja was also injured?

A

I do not know, sir. On that particular night I did not come to know that he sustained any injury. I only know that injury from rumors eventually.

COURT

Q By the way, during the entire incident were you the only one armed with a bolo?

A Yes, sir.

ATTY. SIPIN

Q Now, why is it that you know Borja claimed that you hacked him? Do you know of any reason?

A I do not know of any reason, sir.

Q During that incident, you wielded your bolo, is it not?

A Yes, sir.

Q How?

A

When I saw that they are going to rush towards me I swung my bolo and my eyes were closed and I do not know how I rotated the same.

(witness demonstrating with his right hand and wielded the bolo horizontally. [27])

The petitioner's testimony is thus inconsistent with his plea that he hacked De Borja to defend himself.[28]

Fifth. If the petitioner indeed indiscriminately swung his bolo as De Borja, Aurelio Dionisio and Antonio Bonton rushed to attack him, then De Borja should have been hit on the front portion of his body. However, De Borja was hit on his back, more specifically at the right posterior lumbar region of his body:

Hacking wound 15 cm. posterior lumbar right, penetrating right hemidiaphragm by 3 cm. incising right lobe of liver by 2 cm. Hemoperitoneum 1,500 cc.

Surgical Procedure: Closed Tube Theracostomy right,

Phrenicorrhaphy, Hepatorrhaphy.[29]

Considering the location of the wound sustained by De Borja, his back was clearly against the petitioner when the latter hacked him.

The petitioner's insistence that he did not intend to kill any of the two victims because even after the latter had been hacked and had fallen to the ground, the petitioner and his brother Pedro Santos, Jr. left the scene, does not hold water. In *People v. Delim*, [30] this Court held that evidence of intent to kill may consist inter alia in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words

uttered by the malefactors before, at the time of, or immediately after the killing of the victim. In this case, the petitioner used a bolo and inflicted mortal wounds on the victims, which could have caused their deaths were it not for timely medical intervention. Hernandez sustained a complete open fracture on the right ulnar bone which, according to the orthopedic surgeon who attended to him, would have been fatal were it not for the timely medical treatment. The hack wound on Hernandez located on the temporo- parietal region of his head could have caused his death were it not for timely medical treatment. The wound inflicted on De Borja penetrated his right hemidiaphragm as well as the right lobe of his liver. The presence of these wounds, their location and their seriousness would not only negate self- defense; they likewise indicate a determined effort to kill.[31] The petitioner even told his brother Pedro, Jr. after hacking Hernandez and De Borja: "Utol, Jr. alis na tayo, patay na ang mga iyan." Thus:

Q After the second and the other injury that you received, what happened to you?

A I fell to the ground, sir.

Q You fell to the ground?

A Yes, sir.

Q Did you lose consciousness?

A I sort of felt dizzy because of the blood oozing from my wounds on my head.

Q After that dizziness was gone, what did you do, if you did anything?

A I heard words "Utol, Jr. alis na tayo patay na ang mga iyon."

ATTY. SIPIN

We move for the striking out of the answer on the ground of immateriality.

COURT

Let it remain on record. This is an indictment for frustrated homicide.

PROSECUTOR

Q So, after hearing that remarks, "utol, etc.,"

COURT

Q Do you know who uttered the remarks?

A Yes, sir.

Q Who uttered that remarks?

A Oscar Santos, sir.

COURT

Alright, proceed.

PROSECUTOR

Q

After that... After hearing that remarks, what did you do, if you did anything?

A

I did not do anything except that I felt Roy de Borja tried to help me stand up, sir.[32]

Finally, the petitioner asserts that in the remote event that he is not acquitted, he submits that the appellate court committed reversible error in not appreciating the mitigating circumstance of voluntary surrender. This submission is erroneous. As affirmed by the CA, the trial court in fact appreciated the mitigating circumstance of voluntary surrender in favor of the petitioner.

Proper Penalties for the Felonies

The trial court sentenced the petitioner for each crime to an indeterminate penalty, from six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum, taking into account the mitigating circumstance of voluntary surrender in favor of the petitioner. The penalties imposed by the trial court are not correct. Under Article 249 of the Revised Penal Code, the imposable penalty for homicide is reclusion temporal in its full range. Since the petitioner is guilty of frustrated homicide, the penalty must be reduced by one degree, namely, to prision mayor with a range of six (6) years and one (1) day to twelve (12) years. The maximum of the indeterminate penalty should be taken from the minimum period of prision mayor because of the mitigating circumstance of voluntary surrender, absent any aggravating circumstance. To determine the minimum of the indeterminate penalty, prision mayor should be reduced by one degree, which is prision correccional, with a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate penalty may be taken from the full range of prision correccional. Accordingly, the petitioner should be sentenced to suffer an indeterminate penalty, from two (2) years and four (4) months of prision correccional in its minimum period, as minimum, to six (6) years and one (1) day of prision mayor in its minimum period, as maximum.

Civil Liabilities of the Petitioner

In Criminal Case No. 1929-M-90, the trial court directed the petitioner to indemnify complainant Roy de Borja the amount of P20,000 as actual damages representing medical expenses incurred by the latter for the injuries sustained by him. In Criminal Case No. 1930-M-90, the trial court directed the petitioner to indemnify complainant Loreto Hernandez actual damages in the amount of P16,237.71[33] representing the medical expenses incurred by the latter for the injuries he sustained, and P21,000 representing his lost earnings as security guard of the Manila Hotel covering the period of May 16, 1990 to December 17, 1990 at the rate of P3,000 per month. The trial court failed to award moral damages in favor of the two victims.

The Court has to modify these awards. The actual damages in the amounts of P20,000 in favor of complainant De Borja representing his medical expenses and P21,000 in favor of Hernandez representing his lost earnings, were unsupported by documentary evidence. Nonetheless, where the amount of actual damages cannot be determined because of the absence of documentary evidence to prove the same, but it is shown that the heirs of the victims are entitled thereto, temperate damages may be awarded.[34] The Court finds that the amounts equal to one-half of that claimed by the victims are sufficient temperate damages. The victims are also entitled to moral damages under Article 2219(1), New Civil Code.[35]

Consequently, the petitioner shall indemnify Roy de Borja the amount of P10,000 as temperate damages in Criminal Case No. 1929-M-90. Similarly, the petitioner shall indemnify Loreto Hernandez the amounts of

P16,237.71 representing the medical expenses incurred by him and P10,000 as temperate damages in lieu of his unsubstantiated lost earnings.

WHEREFORE, the Decision dated March 15, 1996 of the Court of Appeals in CA-G.R. CR No. 15858, finding the petitioner guilty beyond reasonable doubt of two counts of Frustrated Homicide is AFFIRMED with MODIFICATION. For each count, the petitioner is sentenced to suffer an indeterminate penalty, from two (2) years and four (4) months of prision correccional in its minimum period, as minimum, to six (6) years and one (1) day of prision mayor in its minimum period, as maximum. Further, the petitioner shall indemnify Roy de Borja the amounts of P30,000 as moral damages; and P10,000 as temperate damages in Criminal Case No. 1929-M-90. Similarly, the petitioner shall indemnify Loreto Hernandez the amounts of P30,000 as moral damages; P16,237.71 representing the medical expenses incurred by him; and P10,000 as temperate damages in Criminal Case No. 1930-M-90.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Jainal D. Rasul and Hector L. Hofileña, concurring.

[2] Penned by Judge D. Roy A. Masadao, Jr.

[3] Records, p. 1 (Crim. Case No. 1929-M-90).

[4] Records, p. 1 (Crim. Case No. 1930-M-90).

[5] Exh. "A," Records, p. 61 (Crim. Case No. 1929-M-90).

[6] Exh. "D," id. at 67.

[7] Exh. "E," id. at 68.

[8] Exhs. "B," "B-1" to "B-105" and Exhibits "H," "H-1" to "H-29."

[9] He was earning a basic salary of P3,000.00 per month.

[10] RTC Decision, p. 5; Records, p. 214 (Crim. Case No. 1929-M-90).

[11] Records, pp. 214-216.

[12] Id. at 216-218.

[13] Id. at 220-221.

[14] Rollo, p. 18.

[15] Id. at 80.

[16] Id. at 223.

[17] Rollo, pp. 91-92.

[18] *People v. Noay*, 296 SCRA 292 (1998).

[19] *People v. Geneblazo*, 361 SCRA 572 (2001).

- [20] Calim v. Court of Appeals, 351 SCRA 559 (2001).
- [21] People v. Camacho, 359 SCRA 200 (2001).
- [22] Jacobo v. Court of Appeals, 270 SCRA 270 (1997).
- [23] Calim v. Court of Appeals, *supra*.
- [24] TSN, 2 October 1992, pp. 9-10.
- [25] TSN, 18 February 1991, pp. 18-20.
- [26] People v. Piamonte, 303 SCRA 577 (1999).
- [27] TSN, 28 October 1992, pp. 46-48.
- [28] See note 20, *supra*.
- [29] Exh. "A," Records, p. 10 (Crim. Case No. 1930-M-90).
- [30] G.R. No. 142773, January 28, 2003.
- [31] People v. Quening, 373 SCRA 42 (2002).
- [32] TSN, 17 December 1990, pp. 18-20.
- [33] Exhibits "H," "H-1" up to "H-29."
- [34] People v. Orcula, Sr., 335 SCRA 129 (2000).
- [35] Article 2219. Moral damages may be recovered in the following and analogous cases:
- (1) A criminal offense resulting in physical injuries;
- ...

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