

**ADONIS ARADILLOS AND ALBINO GALABO, PETITIONERS, VS.
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,
REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL,
RESPONDENTS.**

G.R. No. 135619. January 15, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

For review is the decision dated February 12, 1998 of the Court of Appeals in CA-G.R. CR No. 17316,[1] affirming the conviction of petitioners Adonis Aradillos and Albino Galabo of the crime of Frustrated Homicide, with modification as to the penalty and the award of actual and moral damages.

An Information was filed before the Regional Trial Court (Branch 10) of Davao City, charging petitioners Aradillos and Galabo with the crime of Frustrated Murder, committed as follows:

That on or about February 3, 1992, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with an ax and piece of wood, conspiring, confederating together and helping one another, with intent to kill and taking advantage of their superior strength, willfully, unlawfully and feloniously attacked, assaulted and hacked with said ax and struck with said piece of wood, one Gloria Alviola thereby inflicting upon the latter the following injuries, to wit:

COMPOUND FRACTURE, (R) AND (L) FRONTAL AREA 2° TO HACKING WOUND GCS 15 RLS 1

which injuries would cause the death of the said Gloria Alviola, 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 causes independent of his will, that is, by the timely arrival and intervention of complainant's brother-in-laws and the able medical assistance rendered to the said Gloria Alviola which prevented her death.

CONTRARY TO LAW.[2]

Petitioners pleaded not guilty to the charge[3] and thereafter, trial on the merits ensued.

The prosecution and the defense differ in their versions of the incident.

The gist of the prosecution evidence is as follows:

At around 5:45 in the afternoon of February 3, 1992, Gloria rebuked herein petitioners Aradillos and Galabo when she saw them in the act of cutting the bamboo bridge located on the property of her husband. Thereupon, petitioners chased her and they caught up with her near the house. Galabo then hit her several times with a piece of wood and his carpentry bag causing her to fall down. While Gloria was staggering face down, Aradillos hacked her twice with a carpentry ax, hitting her on the right side of the head and on the forehead. She asked for help from the Visto family, her neighbors, who brought her to the clinic of Dr. Alvarez in Matina, Davao. After Dr. Alvarez gave her first aid treatment, Gloria was advised to go to Davao Medical Center where she was confined in

the ICU for four days.[4]

At the time Gloria reproached petitioners, she was within her bamboo-fenced yard, about ten meters away from them. Her house is located five to six meters away from the place where she was standing. Her children, Rosalito[5] and Rodilyn, and her sister-in-law, Rosa, were also within the premises. Petitioners cut their way through her closed bamboo gate and they overtook her while she was running towards her house. After she was injured, her children brought her to the Visto family's house which is located 200 meters away. Meanwhile, Rosa ran to the Alsa Masa detachment to report the incident. Gloria's four brothers-in-law, namely: Roberto, Modesto, Efren and Nilo, and her sister-in-law, Miguela were also within the premises but were not able to help her because they were nervous.[6]

On the other hand, petitioners invoke self-defense, contending that the victim's injuries on the head were the result of the struggle for the possession of the ax between her and petitioner Aradillos. Petitioners, who are both carpenters, recounted that on their way home from work in the afternoon of February 3, 1992, they stopped by the wooden bridge where they usually pass because of an uprooted "idyok" tree that obstructed their passage. Petitioner Galabo started cutting off the roots of the tree with his carpentry ax. But upon seeing them, Gloria who had been drinking "tuba" with her brothers-in-law, shouted invectives at them and threw stones at Galabo. When Galabo was hit on his left rib, he ran for cover at a nearby coconut tree. Petitioner Aradillos took over the cutting of the tree. Gloria continued throwing stones. Then, she approached Aradillos and grabbed the ax from him. While the two grappled for its possession, Gloria's brothers-in-law were throwing stones at Galabo. In the course of the struggle between Aradillos and Gloria, the ax hit the latter. Seeing that Gloria was injured, Aradillos ran away, followed by Galabo. Aradillos passed by his house, left the ax there, then, went directly to the purok leader, Benjamin Autida, to whom he surrendered.[7]

The trial court believed the prosecution's account, finding that the nature of the injuries sustained by Gloria could not have been caused during the struggle between her and petitioner Aradillos. Thus, the trial court convicted petitioners of the crime of Frustrated Homicide and sentenced them, as follows:

WHEREFORE, finding the guilt of the two (2) accused, Adonis Aradillos and Albino Galabo, proven beyond reasonable doubt of Frustrated Homicide and finding in their favor the provisions of Art. 250 of the Revised Penal Code, they are hereby sentenced to an imprisonment of ONE (1) YEAR each and pay the costs.

For the civil liability, they are ordered to pay jointly and severally, the sum of P10,000.00 for medical expenses and moral damages, of the victim.

SO ORDERED.[8]

On appeal, in sustaining the trial court's findings, the Court of Appeals noted that it is "unnatural and contrary to ordinary human experience for a woman, alone and unarmed, to run towards the two male appellants and grapple for the possession of an axe." [9] The appellate court modified the penalty imposed on petitioners and the damages awarded in favor of the victim, [10] as follows:

ACCORDINGLY, the judgment of conviction is hereby AFFIRMED with the following modifications:

- 1) The accused appellants are sentenced to suffer an imprisonment ranging from two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum; and
- 2) They are ordered to pay the victim jointly and severally, the sum of P1,664.00 for medical expenses as actual damages, and P6,000.00 as moral damages.

SO ORDERED.[11]

In their petition for review on certiorari, petitioners claim that the Court of Appeals' affirmance of their conviction with modification is not in accordance with law, the applicable decisions of this Court and the evidence on record.

It is settled that an appeal in a criminal case throws the whole case wide open for review[12] and it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.[13]

At the outset, the Court notes that while the memoranda of the parties and their appeal briefs focused on petitioners' claim of self-defense, their evidence is actually rooted on the testimony of petitioner Aradillos that the ax accidentally hit Gloria during the struggle for its possession between them, thus:

Q

Before the wounding incident happened, what were you doing?

A

I was looking at Albino Galabo who was cutting the roots of the "idyok".

Q

Where was that "idyok" located at that time while you were watching Albino Galabo cutting it?

A

The "idyok" was along the bridge where it was fallen and which Albino cut.

...

Q

And while Galabo was cutting the "idyok", what happened next?

A

He was stoned by Gloria Alviola.

...

Q

What else transpired aside from the stoning incident?

A

She shouted: "Mga бага mo ug nawong. Mga squatter mo. Mga gagmay ra ba mo ug lawas." (You are shameless. You are squatters. you have small bodies.)

Q

How did you come to know that Gloria Alviola threw stones at Albino Galabo?

A

Because I saw her.

...

Q

Let us go back to the stoning incident. You said Gloria threw stones at Galabo while Galabo was cutting the “idyok” and Gloria at the same time uttered those words you just have quoted, what happened to Galabo, if any, in result of the stoning of Gloria?

A

Galabo was hit at his right rib cage.

Q

And what happened to Galabo?

A

He was in pain.

Q

What else did he do, if any?

A

I got the axe which Galabo used in cutting the “idyok” to continue cutting the said “idyok”, but Gloria continuously threw stones to us and then she grabbed the axe from my hands.

...

Q

I will further clarify, Your Honor. How did it happen that Gloria, the one you said threw stones at Galabo was able to wrestle with you for the possession of the axe?

A

She rushed at me.

Q

After rushing at you, what did Gloria do?

A

She grappled with me for the possession of the axe.

Q

In relation to the wooden bridge, in what particular spot or area were you grappling for possession of the axe?

A

At the edge of the bridge.

Q

Can you demonstrate to the Honorable Court how the grappling for possession of the axe happened between you and Gloria?

A

(Witness demonstrated that he placed his right hand at the lower portion of the handle of the axe; that Gloria's right hand was holding the middle portion; and that his left hand was holding the upper portion; and that Gloria's other hand was on top of his hand.)[14] (Emphasis supplied)

On cross-examination, Aradillos further demonstrated how Gloria sustained her injuries:

Q

Now, with that kind of illustration, Mr. Aradillos, how did Gloria sustain the injuries because you said that it was in the course of grapping (sic)? Will you please demonstrate to the Court how the injuries of Gloria Alviola was inflicted?

A

(Witness makes a demonstration)

...

ASST. CITY PROS. CALIZO:

We would like to make of record that in his earlier demonstration Gloria was holding the middle portion and the upper portion of the axe. Was that the position of the axe during that time?

A

Yes. Sometimes it swung like this - the blade sometimes faced me; sometimes it faced her.

Q

How did she sustain the wound?

A

She was accidentally injured because of the force of the grappling.

...

Q

At that time you pushed the axe, was that the position of your hands?

A

No ma'am. Because of the swinging, I was able to push it accidentally towards Gloria.[15] (Emphasis Ours)

Accident and self-defense are two incompatible defenses. Accident presupposes lack of intention, while self-defense assumes voluntariness, but induced only by necessity.[16]

In view of the above-quoted assertions of petitioner Aradillos before the trial court, the Court adopts a more liberal stance by disregarding the apparent conflict in the defense raised by petitioners in their pleadings. After all, court litigations are primarily for the search for truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth.[17]

In *People vs. Court of Appeals*,[18] the Court ruled that when, during the trial of the case, an accused claims that the crime was the result of an accident, the burden of proving self-defense will not come into play, to wit:

... It is noteworthy that during the trial, petitioner Tangan did not invoke self-defense but claimed that

Generoso was accidentally shot. As such, the burden of proving self-defense, which normally would have belonged to Tangan, did not come into play. Although Tangan must prove his defense of accidental firing by clear and convincing evidence, the burden of proving the commission of the crime remained in the prosecution.[19] (Emphasis supplied)

Accordingly, petitioners need not discharge the burden of proving self-defense, although they must prove their defense of accidental infliction of injuries on the victim, by clear and convincing evidence. On the prosecution remains the burden of proving the commission of the crime beyond reasonable doubt.

It is not disputed that Gloria sustained hacking injuries. The prosecution maintains that these injuries were the result of intentional blows, while petitioners stand by their claim that Gloria sustained the injuries while she and Aradillos were grappling for the possession of the ax.

Generally, the rule is that an assessment made by the trial judge of the credibility of witnesses will not be disturbed on appeal. Having heard the testimony of the witnesses and observed their demeanor on the witness stand, the judge is in a better position to determine the issue of credibility.[20] But when it is shown that some facts or circumstances of weight and substance which would affect the result of the case have been overlooked, misunderstood or misapplied, the Court will not hesitate to make its own evaluation of the evidence. [21]

Records show that aside from the testimony of the victim and petitioners, the evidence for both the prosecution and the defense as to the facts and circumstances surrounding the commission of the crime is based substantially on the corroborating testimonies of their respective relatives, who maintained the respective versions of the prosecution and the defense. Each family has its own ax to grind against the other as they are embroiled in a land dispute. Thus, in order to arrive at a judicious conclusion, these circumstances should have been taken into consideration by the lower courts in the assessment of the respective probative weights of the evidence of the parties.

A review of the records discloses that the prosecution's evidence failed to support Gloria's account on how she sustained the injuries on the head. In fact, her version together with the testimonies of the prosecution witnesses is replete with incredible details that necessarily cast serious doubts on the probative weight of the prosecution evidence which the trial and appellate courts have overlooked.

Gloria testified on direct examination that she was inside her yard while petitioners were at the bridge when the latter chased her, but they were able to catch up with her near her house. Her testimony was totally demolished by the cross-examination conducted by the prosecution. Gloria stated that she was inside her yard while petitioners were at the bridge, ten meters away from her.[22] She likewise asserted that her house is located five to six meters away from where she was standing.[23] If her assertions were true, petitioners had to run ten meters towards her while she had only five to six meters to reach her house. Given the disparity between the distances that petitioners and Gloria had to run, evidently, she had a good head start for her to reach her house before petitioners could be near her.

In addition, Gloria testified that petitioners had to destroy the bamboo gate in order to get inside the yard, thus giving her more time within which to reach her house. Yet, Gloria claims, petitioners were able to overtake her. Unless Gloria leisurely walked towards her house or that she had no intention of taking refuge in her house, it would have been physically impossible for petitioners to have caught up with her before she entered her house. As noted by the trial court, "you will not wait for someone to catch you before [you] ran (sic) away." [24] If at all, Gloria should have already been in the safety of her house by the time petitioners would have negotiated the distance of ten meters, not to mention the time that petitioners would have spent in destroying the bamboo gate.

The prosecution also claims that petitioner Galabo hit Gloria several times on the nape with a carpentry bag and a

piece of wood measuring two feet in length and two inches in diameter[25] which caused her to fall face down.[26] However, aside from the prosecution witnesses' testimonies, no other evidence was presented to support such claim. If their testimonies were true, then Gloria should have suffered injuries, or bruises at the very least, as a result of the blows on her nape with a carpentry bag and a piece of wood. But interestingly, no medical evidence was presented to confirm that Gloria sustained even a scratch from said blows.

Such lack of evidence renders incredible the prosecution's accusation that Galabo inflicted blows on Gloria. Physical evidence is mute but an eloquent manifestation of truth and rates highly in the hierarchy of trustworthy evidence.[27] It enjoys a far more superior probative weight than corroborative testimonies.[28] In this case, the absence of physical injuries and medical findings negate Gloria's claim that she was hit by petitioner Galabo.

Gloria further testified on direct examination that after sustaining injuries, she sought help from her neighbors, the Visto family, who brought her to the clinic of Dr. Generoso B. Alvarez. On cross-examination, Gloria stated that it was her children, Glodilito and Rodilyn,[29] who managed to help her get to the Visto family's house, which is located 200 meters away from her house.[30] It would have been easy to believe such testimony if at the time the fracas occurred, there were no other people within the immediate vicinity who could have come to Gloria's aid. But, the corroborating testimonies of the prosecution witnesses' all declare, that at that time, Gloria's four brothers-in-law were in Rosa Alviola's house, which was merely ten meters away from the place where the alleged hacking occurred. Roberto Alviola testified that he just watched and went inside his house after the incident while his other brothers ran away when the incident took place.[31] It is claimed that they were not able to help Gloria because they were nervous. The Court finds this utterly incredible and totally absurd. No amount of stretch of any one's imagination can it be believed that four able-bodied men will be so unconcerned so as to just watch and let an injured woman, a relative at that, and her two young children, walk 200 meters for help, when they were already close by and could have readily given assistance. They did not even exert any effort to call for their neighbors for assistance or immediately report the incident. In fact, it had to take two women, Rosa and Miguela Alviola, to run to the Alsa Masa detachment and report the incident.

It is even highly improbable that petitioners would pursue Gloria into her yard to harm her. In the first place, the prosecution failed to adduce any plausible reason why petitioners would suddenly run after Gloria. Also, at the time of the alleged chase, Gloria was inside her yard, together with her children, Glodilito and Rodilyn, and her sister-in-law, Rosa Alviola.[32] It is very unlikely that petitioners will have the audacity to attack Gloria inside her premises and within the sight of her family members who could be witnesses to their alleged malevolent intent to kill Gloria.

Most telling of the incredibility of the version of the prosecution, is the testimony of Roberto Alviola, the victim's brother-in-law. According to Roberto, he heard Gloria shouting for help.[33] He went out of his house and saw petitioners ganging up on her. After seeing this, he went back inside his house, remained there and did nothing.[34] Meanwhile, his brothers, Efren, Nilo and Modesto, who were with him earlier, had ran away.[35] Such display of apathy or unconcern for a relative goes against ordinary human behavior, especially for Filipinos who are noted for close-knit familial ties and readiness to help family members at the risk of their own lives.

Testimonial evidence to be credible should not only come from the mouth of a credible witness but should also be credible, reasonable and in accord with human experience, failing in which, it should be rejected.[36]

Moreover, the Court cannot concur with the appellate court's observation that it is "unnatural and contrary to ordinary human experience for a woman, alone and unarmed, to run towards the two male appellants and grapple for the possession of an axe." [37] Such observation cannot be accepted as absolute. The lower courts failed to consider the established facts and the circumstances of the case. It need not be said that there are women who,

when provoked, throw caution to the wind and charge on to fight back. In this case, it is not “unnatural” for Gloria to show aggression against petitioners. It is shown that the petitioners are smaller than Gloria.[38] Moreover, un rebutted defense evidence disclose that on February 2, 1992, a day before the incident, Lydia Galabo, wife of petitioner Albino Galabo and Aradillos’ older sister, filed with their barangay a complaint for “harassment, stoning and slight physical injuries” against Gloria.[39] Summons was served on Gloria through Purok Leader Benjamin Autida in the morning of February 3, 1992.[40] Gloria manifestly harbors an animosity against petitioners and their family, and this explains her frenzied reaction towards petitioners when the incident occurred.

All these facts and circumstances when taken into account engender the Court to suspect the truthfulness of the prosecution’s account. To accuse is one thing, to prove is another. In this case, the prosecution’s accusations do not jibe with their proofs. As such, the Court has no other recourse but to disbelieve the tale as presented by the prosecution.

In contrast, the defense’s account is credible as it is in accord with the natural course of things. As told by petitioner Aradillos, it was Gloria who went near Aradillos who was then cutting the roots of the “idyok” tree, and grabbed the ax, obviously with the intention of stopping Aradillos from cutting the tree. Not wanting to let go of the ax, Aradillos held on to it and the two then struggled for its possession. With both of their hands on the handle, the ax went swaying and swinging, which accidentally hit Gloria.[41] The injuries sustained by Gloria, in fact, confirm that it was not intentional. For if it were so, petitioner Aradillos would have exerted such force that Gloria would have suffered more than what she had sustained. Worse, she would not have survived at all.

That Gloria and her brothers-in-law were drinking tuba in the afternoon of February 3, 1992; that Gloria stoned Galabo and that Aradillos grappled with Gloria for the gun as testified to by petitioners and other defense witnesses are more credible than the testimonies of the prosecution witnesses. This is strengthened by the fact that it was not refuted by the prosecution that her brothers-in-law did not come to her aid, and that after she was injured, she had to seek her neighbor’s assistance who were 200 meters away instead of her relatives who were just nearby. As previously discussed, the Court cannot fathom why her brothers-in-law did not help Gloria, unless, as testified by petitioners, Gloria’s in-laws were drinking tuba prior to the incident and the former were already intoxicated and therefore could not have been of any assistance to Gloria.

The Court likewise finds that conspiracy was not established. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[42] Like the offense itself, conspiracy must be proved beyond reasonable doubt.[43] Thus, it has been held that neither joint nor simultaneous action is per se sufficient proof of conspiracy.[44]

In the present case, the defense sufficiently rebutted the accusation that Galabo and Aradillos acted in concert in harming Alviola. As their evidence shows, it was only Aradillos who struggled with the victim, and Galabo was then fending off the stones being thrown by the victim’s brothers-in-law. Galabo had nothing to do with the injuries sustained by Gloria. Galabo’s only participation in the incident was his presence, but mere presence at the scene of the crime does not imply conspiracy.[45]

Even assuming that the prosecution’s version is true, and Galabo hit Gloria with a carpentry bag and a piece of wood, and thereafter, Aradillos hacked Gloria, still, the seemingly concerted and simultaneous acts of petitioners were more of a spontaneous reaction to what they perceived to be an aggression by Gloria, rather than the result of a common plan to kill the victim. Hence, their liability is individual and not collective.[46] More specifically, Aradillos is solely liable for the injuries sustained by Gloria. There is no evidence that Gloria sustained injuries from the acts of Galabo.

Lastly, the Court cannot agree with the lower courts' finding that the nature of Gloria's injuries justifies the conclusion that these were fatal and intentionally inflicted, and cannot be the result of a mere struggle such that petitioners are guilty of Frustrated Homicide.

Intent to kill is the principal element of attempted or frustrated homicide, or murder.[47] Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.[48] The testimonies of the doctors who treated Gloria did not establish with certainty the nature, extent, depth and severity of the wounds sustained by her. Such medical evidence could have shed light as to the relative position of Aradillos and Gloria at the time the blows were inflicted, whether the wounds sustained by the victim were a result of an intentional infliction or accidental, or whether it was mortal or superficial. In *People vs. Matyaong*,[49] the Court discussed the importance of ascertaining the degree of injury sustained by a victim, viz.:

In considering the extent of injury done, account must be taken of the injury to the function of the various organs, and also the danger to life. A division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity to the simplest cases, and, on the other hand, the favorable termination of some injuries apparently the most dangerous, render any such classification impracticable. The general classification into slight, severe, dangerous, and mortal wounds may be used, but the possibility of the slight wound terminating with the loss of the person's life, and the apparently mortal ending with only a slight impairment of some function, must always be kept in mind. . . .

The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment. . . .[50]

Dr. Generoso B. Alvarez who initially attended to Gloria and gave her first aid treatment, opined that if the bleeding was left untreated, the victim could die in six to twelve hours but at the same time, but also stated on the witness stand that Gloria suffered two lacerations on the head which merely required suturing. Dr. Alvarez testified as follows:

Q

How would you describe the bleeding that you saw?

A

Profuse, I would say.

Q

In your medical studies and experience, what appears to be the most heavy bleeding in the part of the body?

A

Generally, wounds on the head, usually profuse, even small wounds.

Q

After a patient was on your examining table, and you saw blood on her head and on her body, what did you do?

A

I have to examine the patient on the vital signs, whether the pulse rate and state of consciousness was stable,

and because my clinic was very limited, when you feel that there are other colleagues who can do it much better than you, but at that time I was at a loss knowing that it was a medico-legal case, but at that time I had no other recourse because it was at that time that there was a jeepney strike, so it took time for her to be transported for the moment, so I had to control the bleeding and keep the patient stable until she could be transported to the hospital.

...

Q

Since you knew that the patient was stable, what did you do next?

A

After cleaning up the face with blood, I have to inspect the extent of the wound, I put my finger on the wound.

Q

What did you find out on the head of the patient?

A

There were 2 wounds, one on the forehead and there was another wound on the right side up on the scalp, about 2.5 inches.

Q

In that wound in the forehead, what did you do next?

A

I inserted my finger to find out whether there is brain damage or fracture, because you do not close a wound if you suspect there is a fracture inside because the blood will get inside the brain, and I found out there was a depressed fracture, I suppose it was a sharp injury based on the history, there was a depressed fracture and the same on the other wound.

...

ATTY. PALABRICA:

Q

Are these kind of wounds painful?

A

Painful, for a while.

Q

Could that have caused death on the patient?

A

If she was unfortunate, she could have died. Fortunately for her, it was in the area of the brain where it is not very important to us, in fact, you could remove that portion of the brain, and still be alive (sic).

Q

You said that the bleeding was profuse, were you able to stop the bleeding?

A

Yes.

Q

If that bleeding was not stop (sic), would the patient have died?

A

Yes, it was at that time the jeepney was on strike, normally, you do not suture wound on the scalp when you know there is bleeding inside, but under the situation, there was no way to transport her to the hospital, the first thing I did was to stop the bleeding.

Q

If that wound was left to bleed on its own, how many minutes would it have taken to live or die?

A

It could depend, 6 to 12 hours.

...

Q

Multiple laceration, what do you mean?

A

More than one laceration.

Q

When you say laceration, what does it mean?

A

It is a wound.

Q

Laceration could usually be caused by?

A

It could be blunt, it could be sharp instrument.

Q

What do you mean by 2 lacerations?

A

Forehead and the scalp.

Q

Scalp is also the laceration of the other wound?

A

Yes.

...

Q

There is here exploration and repair done.

A

As I said earlier, before you touch anything, you have to explore the head.

Q

How about the repair?

A

Suture.[51] (Emphasis supplied)

Taken in its entirety, it appears that the wounds sustained by Gloria were not so grave so as to sustain the claim of the prosecution that petitioners had the intention to kill Gloria when she was hit with the ax by Aradillos on the head.

Moreover, another prosecution witness, Dr. Rene Elias Lopez, testified that the fractures on the right and left frontal area of Gloria's skull were slight or minimal.[52] This weakened the claim of the prosecution that the injuries sustained by Gloria could have been fatal or were inflicted by Aradillos with such force as to establish the intent to kill.

On direct examination, Dr. Lopez testified that there was no fracture in the skull and that the fracture chip did not present much of a problem. Further, he was not emphatic on the fatal nature of the injuries sustained by Gloria, thus:

Q

"Frontal chip", what do you mean "chip"?

A

It means a small fracture.

Q

How small was that?

A

It's quite small, maybe a finger nail.

Q

What happened to the forehead or frontal bone which was chipped, what happened?

A

This means that the frontal bone had a chip fracture on the bone, left and right areas. There was a break in the continuity of the bone.

Q

In other words, the left frontal area of the head was sort of cut and damaged, is that what you want to tell us?

A

The outer layer of the skull was indeed violated and resulted in the . . .

ATTY. DE VERA:

Objection, Your Honor, the witness is incompetent, and no basis.

Q

Now, as a doctor, what would be the effect of the chip on the left and right frontal area of the head?

COURT:

Lay the basis first.

Q

Doctor, are you familiar with the effects of the chip on the frontal area of the head?

A

Yes, sir.

Q

Now, what would be the effect since you are familiar with the effects?

. . .

Q

In this case you said there was a chip in the left forehead or right frontal bone, what would be the effect doctor of that chip which you identified?

A

The chip itself does not present much of a surgical problem, however there are several instances wherein the chip fractured presented in the skull there might be other injuries which necessitates further management.

Q

In this case doctor what did you discover or find in this patient after you examined her?

A

The patient, as I have said presented with a sutured wound. Further X-ray on the skull showed a fracture on the frontal bone. So, we were entertaining the possibility of an intra-cranial injury inside the skull, and therefore the patient must be admitted and observed for any further consequence of the injury sustained.

Q

In the same manner the wound on the right, what would have been the effect of that?

A

The same, sir.

Q

As far as you know the wound was depressed?

A

There was no depression in the skull.

Q

Doctor, what medication did you advise the patient after she arrived in the hospital?

A

She was under IV, given anti-biotics, anti-tetanus, prophylactic immunization. She was placed in the ICU.

Q

What do you mean by IV?

A

Intravenous fluid.

Q

Why?

A

We were entertaining the possibility of an intra-cranial injury. If there is no IV placed something might develop as a result of the injury. We might lost time and will not be able to give her medication on an emergency basis.

Q

In other words, the patient might die?

ATTY. DE VERA:

Very leading, Your Honor.

COURT:

Reform your question.

Q

What would have been the effect doctor if this has not been done?

A

The purpose of the IV is more or a precautionary measure of any untowards incident as a result of the injury. That's why she was admitted to the ICU.

Q

Doctor, how about anti-tetanus, why do you give anti-tetanus?

A

Any patient presented with a break in the skin must be administered with anti-tetanus.

Q

Doctor, what were the others you said?

A

Anti-biotics, penicillin and chloromphenicol.

Q

Standard doses? Maximum doses?

A

These are maximum doses.

Q

Why?

A

We have to safeguard the possibility of an intra-cranial injury, therefore maximum dosages are what you call recommended on the patient.

Q

In other words, if you do not give the usual medication as you said and administration, what is the danger to the patient, please tell us?

A

The patient would develop skin infection.

Q

And what would happen if there is skin infection?

A

The wound will not heal.

Q

And what else?

A

If it does not heal, then the patient might develop fever later on.[53]

On cross-examination, Dr. Lopez further testified:

Q

So, as you testified a while ago, you were the one who interpreted the X-ray findings, and according to you, you found compound fractures where?

A

Both right and left frontal area of the skull.

Q

Of the forehead?

A

Yes, sir.

Q

But the fracture was minimal or slight because you said earlier “something like the equivalent of a chip”, so it was minimal or slight?

A

Yes, sir.

Q

And there was no other surgical operation performed on the patient with respect to the said fracture that you found?

A

None, sir.

Q

In other words, the fracture could heal by itself through natural process without any outside medical intervention? I am referring to the fracture itself.

A

The fracture could heal by itself, yes.[54] (Emphasis supplied)

Dr. Lopez likewise stated that Gloria was admitted to the Intensive Care Unit (ICU) for further observation as a matter of standard procedure because they cannot discount the possibility of intra-cranial injury.[55] The victim was then taken out of the ICU after 24 hours of observation and discharged from the hospital on February 6, 1992,[56] three days after the alleged hacking incident. In his Medical Certificate, Dr. Lopez made the following diagnosis:

Compound fracture, (R) and (L) Frontal area 2° to hacking wound GCS 15 RLS 1

Probable healing time will be Fourteen (14) days barring complication.[57]

There is therefore, a dearth of medical evidence on record to prove that the nature of injuries inflicted by Aradillos showed any willful intent to kill Gloria.

Nonetheless, Aradillos must be answerable for the injuries he inflicted on Gloria. He cannot hide behind the defense of accident to escape the consequences of his act. Under Article 12, paragraph 4 of the Revised Penal Code, a person, who while performing a lawful act with due care, causes an injury by accident without fault or intention of causing it, is exempt from criminal liability.[58] It cannot be said that Aradillos was performing a lawful act when he struggled with Gloria for the ax as the latter’s act of taking hold of the ax was equivocal, and it cannot be deduced therefrom that he was under the threat of an unlawful aggression from her. The defense of accident, therefore, cannot exempt Aradillos from liability.

Although the Information charged petitioners with Frustrated Murder, a finding of guilt for the lesser offense of

less serious physical injuries may be made considering that the latter offense is necessarily included in the former since the essential ingredients of physical injuries constitute and form part of those constituting the offense of murder.[59] Similarly, an accused may be convicted of slight, less serious or serious physical injuries in a prosecution for homicide or murder, inasmuch as the infliction of physical injuries could lead to any of the latter offenses when carried to its utmost degree despite the fact that an essential requisite of the crime of homicide or murder - intent to kill - is not required in a prosecution for physical injuries.[60]

In conclusion, absent competent proof, and there being no conspiracy, Aradillos should be held liable only for less serious physical injuries under Article 265 of the Revised Penal Code, as amended,[61] as the wounds sustained by Gloria required medical attendance of fourteen days.[62]

Galabo must be absolved from any liability as the prosecution failed to conclusively prove that he conspired with Aradillos in the commission of the crime.

In imposing the proper penalty, the lower courts failed to take into consideration the mitigating circumstance of voluntary surrender in favor of petitioner Aradillos. Evidence show that Aradillos spontaneously and unconditionally surrendered to the authorities immediately after the incident, placing himself at their disposal, and saving them the time and effort attendant to a search.[63] Purok Leader Benjamin Autida testified that Aradillos and Galabo immediately went to him after the incident and surrendered.[64] This was corroborated by SP02 Celso Hernandez who attested that by the time Rosa Alviola reported the incident to them, Autida had already endorsed petitioners Aradillos and Galabo to their office.[65] Thus, the mitigating circumstance should lighten the penalty to be imposed on petitioner Aradillos.

Article 265 of the Revised Penal Code, as amended, penalizes the crime of Less Serious Physical Injuries with arresto mayor, or imprisonment for a period of one month and one day to six months. The Indeterminate Sentence Law is not applicable in this case because the maximum penalty does not exceed one year.[66] Appreciating the mitigating circumstance of voluntary surrender and there being no aggravating circumstance, the penalty should be imposed in its minimum period, or anywhere within a period of one month and one day to two months.

As regards the damages awarded, the Court finds that the award of P1,664.00 as reimbursement for medical expenses is in order, it being supported by evidence.[67] Likewise, the victim having suffered actual injuries, she is entitled to moral damages.[68] The award of P5,000.00 is sufficient under the circumstances.[69]

WHEREFORE, the decision dated February 12, 1998 of the Court of Appeals in CA-G.R. CR No. 17316 is MODIFIED. Petitioner Adonis Aradillos is found GUILTY beyond reasonable doubt of the crime of Less Serious Physical Injuries, and sentenced to suffer two (2) months of imprisonment, and to pay Gloria Alviola the amount of One Thousand Six Hundred and Sixty-Four Pesos (P1,664.000) as actual damages, and Five Thousand Pesos (P5,000.00) as moral damages.

Petitioner Albino Galabo is ACQUITTED and the bail bond posted for his provisional liberty is cancelled and released.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Justice Delilah Vidallon-Magtolis with the concurrence of Justices Artemio S. Tuquero and Rodrigo V. Cosico.

[2] Original Records, p. 1.

- [3] Id., p. 74.
- [4] TSN, Gloria Alviola, October 12, 1993, pp. 174-180.
- [5] Also referred to as Glodilito by the prosecution witnesses.
- [6] TSN, supra., pp. 186-196; TSN, Rosa Alviola, September 21, 1993, October 11, 1993, October 12, 1993; TSN, Roberto Alviola, August 6, 1993, August 11, 1993.
- [7] TSN, Albino Galabo, December 20, 1993, pp. 235-243; TSN, Adonis Aradillos, January 17, 1994, pp. 263-271.
- [8] Original Records, p. 313.
- [9] CA Rollo, p. 191.
- [10] Supra., Note 2.
- [11] CA Rollo, p. 192.
- [12] People vs. Salva, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 64-65.
- [13] People vs. Dorimon, G.R. No. 114267, December 17, 1999, 321 SCRA 43, 50.
- [14] TSN, January 17, 1994, pp. 263-268.
- [15] Id., pp. 274-275.
- [16] People vs. Lao-as, G.R. No. 126396, June 29, 2001, 360 SCRA 386, 392.
- [17] People vs. Ebias, G.R. No. 127130, October 12, 2000, 342 SCRA 678, 690.
- [18] G.R. No. 103613, February 23, 2001, 352 SCRA 599.
- [19] Id, p. 607.
- [20] Madrid vs. Court of Appeals, G.R. No. 130683, May 31, 2000, 332 SCRA 570, 584.
- [21] Ibid.
- [22] TSN, October 12, 1993, p. 186.
- [23] Id., p. 188.
- [24] Id., p. 191.
- [25] TSN, August 18, 1993.
- [26] Ibid.
- [27] People vs. Palijon, G.R. No. 123545, October 18, 2000; People vs. Ubaldo, G.R. No. 129389, October 17, 2001.
- [28] People vs. Atadero, G.R. Nos. 135239-40, August 12, 2002.
- [29] TSN, October 12, 1993, p. 195.
- [30] Id., p. 193.
- [31] TSN, August 6, 1993, pp. 55-62. August 11, 1993, pp. 65-66.

- [32] TSN, October 12, 1993, p. 187.
- [33] TSN, August 6, 1993, p. 50.
- [34] Id., pp. 60-62.
- [35] TSN, August 11, 1993, pp. 65-66.
- [36] People vs. Almazan, G.R. Nos. 138943-44, September 17, 2001, 417 Phil. 697, 705.
- [37] CA Rollo, p. 191.
- [38] TSN, January 17, 1994, pp. 264-265.
- [39] TSN, November 29, 1993, p. 201.
- [40] Id., p. 204.
- [41] TSN, January 17, 1994, pp. 274-276.
- [42] People vs. Bacungay, G.R. No. 125017, March 12, 2002.
- [43] People vs. Miana, Sr., G.R. No. 134565, August 9, 2001, 362 SCRA 457, 470.
- [44] Ibid.
- [45] People vs. Hilario, G.R. No. 123455, January 16, 1998, 284 SCRA 344, 354.
- [46] People vs. Miana, supra. Note 38.
- [47] People vs. Listerio, G.R. No. 122099, July 5, 2000, 335 SCRA 40, 64; People vs. Gonzalez, Jr., G.R. No. 139542, June 21, 2001, 359 SCRA 352, 377.
- [48] People vs. Pagador, G.R. Nos. 140006-10, April 20, 2001, 357 SCRA 299, 309.
- [49] G.R. No. 140206, June 21, 2001, 359 SCRA 392, 399-400.
- [50] Citing Wharton and Stille's, Medical Jurisprudence, vol. III, fifth edition, p. 174 [1905].
- [51] TSN, July 14, 1993, pp. 5-12.
- [52] TSN, September 23, 1993, pp. 133-134.
- [53] TSN, September 21, 1993, pp. 112 to 117.
- [54] TSN, September 23, 1993, pp. 133-134.
- [55] Id, p. 120.
- [56] TSN, September 23, 1993, pp. 134-135.
- [57] Original Records, p. 194, Exhibit "F" ("7").
- [58] People vs. Bantiling, G.R. No. 136017, November 15, 2001, 369 SCRA 47, 60.
- [59] People vs. Vicente, G.R. No. 142447, December 21, 2001, 372 SCRA 765, 776-777.
- [60] Ibid.
- [61] Article 265 of the Revised Penal Code provides that any person who shall inflict upon another physical

injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

[62] *People vs. Pagador*, G.R. Nos. 140006-10, April 20, 2001, 357 SCRA 299, 312.

[63] *People vs. Zate*, G.R. No. 129926, October 8, 2001, 366 SCRA 721, 731.

[64] TSN, August 5, 1993.

[65] TSN, July 14, 1993, pp. 25-25a.

[66] Section 2, Act No. 4103, as amended (*Indeterminate Sentence Law*).

[67] Exhibits “G”, “G-1”, “G-2”, “G-5”, “G-6”, “G-7”, “G-9”; Original Records, pp. 195-197; 200-202, 204.

[68] Article 2219, Civil Code.

[69] *People vs. Tan*, G.R. Nos. 116200-02, June 21, 2001, 359 SCRA 283, 309.

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