

ROLLY ADAME, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 139830. November 21, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioner ROLLY ADAME seeks a reversal of the decision[1] dated May 14, 1999 of the Court of Appeals, sustaining the judgment[2] of the Regional Trial Court which found him guilty of frustrated homicide, and sentencing him to 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 to pay P59,700 as actual damages.

Petitioner and Teresito Adame were indicted as principal and accomplice, respectively, in the crime of frustrated homicide under an information which reads:

The undersigned Third Assistant City Prosecutor hereby accuses Rolly Adame as Principal and Teresito Adame as Accomplice of the crime of Frustrated Homicide, defined and penalized under the provisions of Article 249 in relation to Articles 6 and 50 of the Revised Penal Code, committed as follows:

That on or about November 8, 1995 at around 8:40 o'clock in the evening at Brgy. Wawa, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a handgun of unknown caliber, a deadly weapon, with intent to kill but without any justifiable cause, did then and there, willfully, unlawfully and feloniously attack, assault and shot with said gun one Manolito Lacsamana y Alea, thereby hitting and seriously injuring him at his stomach; thus, said accused performed all the acts of execution which would have produced the crime of homicide as a consequence but which nevertheless did not produce it by reason of some cause independent of the will of the perpetrator, that is, the timely and able medical attendance rendered to said Manolito Lacsamana y Alea which prevented his death.

That accused Teresito Adame, also separately armed with a handgun but not having participated in the act either as principal by direct participation, by inducement, or by indispensable cooperation, nevertheless cooperated in the execution of the offense by previous or simultaneous acts indicating concurrence with the principal in his criminal design by standing by accused Rolly Adame, his son, and even firing a handgun into the air which had direct relation to the felonious act done by the principal accused, Rolly Adame, supplying to latter material and moral aid thereby.

CONTRARY TO LAW.[3]

Upon arraignment, both Rolly and Teresito Adame pleaded not guilty, hence, trial ensued.

The antecedent facts are as follows:

On or about 8:00 P.M. of November 8, 1995, Manolito Lacsamana and his two children, Manolo and Mildred, went to the house of Ruben Lacsamana at Barangay Wawa, Batangas. They wanted to confront Ruben for testifying against Manolo before the Regional Trial Court of Batangas City, where Manolo faced trial related to the killing of one Alfredo Evangelio. At the gate leading to the compound where Ruben Lacsamana and petitioner

Rolly Adame lived, Manolito and Manolo started calling for Ruben. Manolo then threw a stone and hit the window of Ruben's house. After that, Manolo fled the scene leaving Manolito and Mildred behind.[4]

Later, Manolito returned to the compound and challenged Ruben anew. Petitioner Rolly Adame came out of his house and fired two shots at Manolito and Mildred. The first shot missed, but the second hit Manolito in the stomach. Teresito Adame, petitioner's father, also went out and fired four shots upwards. Despite his wound, Manolito was able to make his way to his house. From there he was immediately brought to the Batangas Regional Hospital. With timely medical treatment, Manolito survived.[5]

Petitioner and his co-accused in their defense denied the charges. Petitioner's version of the incident is as follows:

At the time of the incident, according to petitioner, he was about to sleep when he heard Manolito shouting invectives at Ruben Lacsamana. He peeped through the door of his house and saw a drunken Manolito and Mildred grappling for the possession of a gun. At that point, the gun fired twice. Frightened, he closed his door and immediately went to sleep.[6]

On October 9, 1997, the trial court found petitioner Rolly Adame guilty as charged, but acquitted his co-accused Teresito Adame. The fallo reads:

WHEREFORE, finding the accused Rolly Adame guilty of the offense charged of Frustrated Homicide, he is hereby sentenced to suffer imprisonment, with a maximum of prision mayor medium of ten (10) years, with a minimum of six (6) years of prision correccional. He is furthermore sentenced to pay private complainant Manolito Lacsamana in the amount of P29,400.00 for medicines and surgeon's fee and hospitalization of P30,300.00 or a total of P59,700.00.

For failure of the prosecution to prove the guilt of the other accused Teresito Adame beyond reasonable doubt, he is hereby ACQUITTED. His bailbond is hereby ordered cancelled and to be refunded to him upon presentation of the official receipt to the Clerk of Court.

SO ORDERED.[7]

Petitioner appealed seasonably to the Court of Appeals (CA). It affirmed the judgment of the trial court, but modified the penalty imposed. In its decision[8] dated May 14, 1999, the CA reduced petitioner's sentence to an indeterminate prison term of 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.[9] Petitioner moved for reconsideration, but this was denied by the appellate court in its resolution of August 25, 1999.[10]

Hence, this petition for review on certiorari. Petitioner faults the Court of Appeals for giving probative value to the testimonies of the prosecution witnesses and for disregarding the testimonies for the defense. He cites the following as grounds for his petition:

I

THE RESPONDENT COURT OF APPEALS ERRED IN FAILING TO RULE ON THE CLAIM OF ACCUSED-APPELLANT BELOW, PETITIONER HEREIN, THAT THE PROSECUTION'S VERSION OF THE INCIDENT DOES NOT RING WITH THE TRUTH AS IT CONTAINS MANY GLARING AND IRRECONCILABLE CONTRADICTIONS ON MATERIAL AND SUBSTANTIAL POINTS WHICH IF EXPLICITLY AND CATEGORICALLY RULED UPON WILL PATENTLY SHOW THAT THEY WILL MATERIALLY ALTER OR ADVERSELY AFFECT THE CONCLUSION REACHED BY THE APPELLATE COURT.

II

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES RATHER THAN THE WITNESSES FOR THE DEFENSE WHOSE TESTIMONIES ARE MORE CREDIBLE AND BELIEVABLE THAN THE PROSECUTION WITNESSES.

III

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE ACQUITTAL OF PETITIONER ROLLY ADAME'S FATHER AND CO-ACCUSED, TERESITO ADAME, SHOULD BENEFIT HIM, AS THE SAME EVIDENCE WAS UTILIZED BY THE TRIAL COURT AND THE APPELLATE COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED.

IV

ASSUMING BUT WITHOUT ADMITTING THAT THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT PETITIONER HAD SOMETHING TO DO WITH THE SHOOTING OF MANOLITO LACSAMANA, THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT PETITIONER SHOULD BE ADJUDGED GUILTY ONLY OF THE CRIME OF SERIOUS PHYSICAL INJURIES.[11]

The issues in this case are (1) whether the evidence now on record is sufficient to convict petitioner of the crime of frustrated homicide and (2) whether the proper penalty was imposed.

At the outset, petitioner protests that the CA has erroneously given weight to the testimonies of the prosecution's main witnesses, Manolito and Mildred Lacsamana, on the ground that their testimonies were rife with inconsistencies.[12]

For the State, the Office of the Solicitor General (OSG) contends that the defense eyewitnesses' testimony was accorded proper weight and value by both the RTC and the CA. The OSG brushes aside petitioner's imputations of inconsistencies in the testimonies of the Lacsamanas and adds that if there were such inconsistencies, they refer to minor, trivial or inconsequential matters which strengthen the credibility of the prosecution witnesses.[13] According to the OSG, petitioner's flight from the scene, immediately after the incident, betrays his claim of innocence of the crime charged.[14]

We have carefully scrutinized the records of this case and find that we must reject the petitioner's testimony for being obviously contrived. It is a truism that for a testimony to be accorded credence, it must spring from the mouth of a credible witness. The deportment of petitioner at the time of the alleged father and daughter fight and thereafter accentuates the dubiousness of his testimony. He claimed to have seen Manolito and Mildred fighting for the possession of a gun. He also heard two shots thereafter, but he nonchalantly closed his windows and at once went to sleep. Petitioner's apathy is remarkably unnatural and contrary to human experience. His indifference is very disturbing, to say the least. Moreover, it is highly unusual for a person to manage to sleep after witnessing a startling event.

We note that the defense presented no witnesses to corroborate the petitioner's denial apart from Rolly's relatives. The credibility of these relatives, namely Ruben Lacsamana, Teresito Adame, and Felix Cruzat, is undermined by the natural interest to protect their own kin. Corroborative testimony is not credible if tainted with bias, especially in this case where the witness is so closely related to the accused as to naturally wish to help him evade liability for the crime.[15]

Quite telling was petitioner's disappearing act after the incident, posthaste. SPO2 Mario Panaligan testified that

petitioner's house was empty when he checked it at 9:00 P.M. According to the police officer, he gathered from bystanders that petitioner left the place "hurriedly." On this point, we quote with approval the findings of the appellate court:

Appellant could not be telling the truth that because he was "frightened, he closed the door of his house and immediately went to sleep". For, when SPO2 Mario Panaligan went to his residence on November 8, 1995, at past 9:00 in the evening, to investigate the shooting incident, he noticed that the unit was vacant, the lights, windows and door were open, but appellant was not there, and that he was informed by people outside the compound that appellant "hurriedly left the place" (tsn, September 4, 1997, pp. 6-9). Thus, if appellant indeed went to sleep, he should be at home sleeping, but he was nowhere to be found. His act of leaving his residence posthaste could not be the actuation of a man who claims to be innocent of any wrongdoing.[16] (*Italics supplied*).

The act, declaration, or omission of a party as to a relevant fact may be given in evidence against him. One particular act that can be given in evidence is flight. The unexplained flight of an accused may be taken as evidence having the tendency to establish his guilt.[17]

Petitioner argues that the prosecution evidence suffers from a material flaw because of the inconsistencies in the testimonies of the prosecution's main witnesses, Manolito and Mildred Lacsamana. To our mind, however, the alleged inconsistencies in the testimonies of Manolito and Mildred as regards (1) the distance between petitioner's house from the Lacsamana's, and (2) Mildred's loss of consciousness after the shooting, refer to minor or inconsequential details, which even serve to strengthen the credibility of the witnesses as they erase doubts that the testimonies have been coached or rehearsed.[18] More importantly, the testimonies of Manolito and Mildred agree in material points, as found by both the RTC and the CA. Basic is the rule that the trial court's assessment of the credibility of witnesses is entitled to great respect, a rule which becomes more binding when the findings of facts of the trial court receive the concurrence of the appellate court, as in this case.

Equally unavailing is petitioner's defense of lack of motive to kill Manolito especially in the light of the CA's finding that petitioner was, all along, suspecting Manolito's son as his uncle's killer.[19] It is, therefore, not far-fetched that his attempt to kill Manolito was spurred by an underlying desire to avenge his uncle's death. At any rate, whether or not motive was proved is immaterial in determining petitioner's guilt. Proof of motive is immaterial when the identity of the petitioner has been clearly established.[20]

As to the crime committed, a careful reading of the case records leads to no other conclusion than that petitioner is indeed guilty of frustrated homicide. A conviction for frustrated homicide requires proof of intent to kill. In *People vs. Fortich*,[21] it was held that the intent to kill being an essential element of the offense of frustrated or attempted homicide, said element must be proved by clear and convincing evidence. Here, the intent to kill is at once evident from the weapon used by petitioner, in this case, a gun. He shot Manolito in the stomach, with the slug resting in the abdomen near the spinal column.[22] It damaged the victim's ilium, urinary bladder, and rectum.[23] Indeed, the nature of the weapon used for the attack and the direction at which it was aimed unmistakably showed petitioner's intent to kill.[24]

This Court has held that if the victim's wound would normally cause death, then the last act necessary to produce homicide has been performed[25] and death would have resulted were it not for the timely medical attention given to the victim.[26] Thus, the CA did not err in ruling that petitioner should be held liable for frustrated homicide.

While we agree with the CA's verdict, we take exception to the penalty it imposed. Article 249 of the Revised Penal Code[27] provides the penalty of reclusion temporal for the crime of consummated homicide. Under Article 50[28] of the same code, the penalty for a frustrated crime is one degree lower than that prescribed by law; thus, frustrated homicide is only punishable by prision mayor. Applying the Indeterminate Sentence Law, the minimum

penalty to be meted out on petitioner should be anywhere within the range of six (6) months and one (1) day to six (6) years of prision correccional, and the maximum should be taken from the medium period of prision mayor (Article 64, par. 1 of the Revised Penal Code)[29] the range of which is eight (8) years and one (1) day to ten (10) years. Considering that no aggravating or mitigating circumstance attended the commission of the crime, petitioner should be sentenced to an indeterminate prison term of one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum.[30]

As to the matter of damages, this Court observes that the trial court and the CA awarded P59,700 as actual damages to the victim corresponding to expenses for hospitalization and treatment. But the Court can only accept expenses supported by receipts or evidence of a similar nature to show that they were incurred in connection with the medical treatment of the victim. No receipt appears on record, however, to support his claim for said amount. Hence, no actual damages can be granted. However, in a situation such as this case, temperate damages can be awarded. In our view, given the circumstances here, the amount of P20,000 as temperate damages is in order. Further, moral damages which include physical suffering and mental anguish, maybe recovered in criminal offenses resulting in the victim's death or physical injuries,[31] as in this case. The amount of moral damages is left to the discretion of the court. Since the court a quo did not exercise such discretion, this Court may do so because an appeal in a criminal case opens the whole case for review. The award of moral damages to the victim in the amount of P30,000 is sufficient.

WHEREFORE, the assailed decision of the Court of Appeals dated May 14, 1999 is **AFFIRMED** with **MODIFICATION**. Petitioner ROLLY ADAME is found guilty of frustrated homicide and sentenced to a prison term of one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor medium, as maximum. He is also ordered to pay MANOLITO LACSAMANA P20,000 as temperate damages and P30,000 as moral damages. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on leave.

[1] Rollo, pp. 35-46.

[2] Id. at 50-56.

[3] CA Rollo, pp. 24-25.

[4] Rollo, p. 114.

[5] Id. at 114-115.

[6] Id. at 39.

[7] CA Rollo, p. 32.

[8] Rollo, pp. 35-46.

[9] Id. at 46.

[10] Id. at 48-49.

[11] Id. at 14-15.

[12] Id. at 98-103.

[13] Id. at 90.

[14] Id. at 91.

[15] See *People vs. Galvez*, 355 SCRA 246, 263 (2001).

[16] *Rollo*, p. 45.

[17] *People vs. Templo*, 346 SCRA 626, 643 (2000).

[18] See *People vs. Diaz*, 262 SCRA 723, 732 (1996).

[19] *Rollo*, pp. 40-41.

[20] *People vs. Tuvilla*, 259 SCRA 1, 13 (1996).

[21] 281 SCRA 600, 619-620 (1997), citing *Mondragon vs. People*, 17 SCRA 476 (1966).

[22] TSN, February 10, 1997, p. 14.

[23] Id. at 16.

[24] See *People vs. Recto*, G.R. No. 129069, October 17, 2001, p. 25.

[25] See *People vs. Salva*, G.R. No. 132351, January 10, 2002, p. 11. See also *People vs. Bangcado*, 346 SCRA 189, 206-207 (2000).

[26] *Ibid.*

[27] Art. 249. Homicide.—Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[28] Art. 50. Penalty to be imposed upon principals of a frustrated crime.—The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony.

[29] Art. 64. Rules for the application of penalties which contain three periods.— x x x

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

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[30] See *Rabor vs. People*, 338 SCRA 381, 391 (2000).

[31] *People vs. Salcedo*, 273 SCRA 473, 497 (1997).

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