

SOLOMON RABOR, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 140344. August 18, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Through this petition for review on certiorari, Solomon Rabor (petitioner) seeks to reverse and set aside the Decision, dated 11 March 1997, of the Court of Appeals in CA-G.R. CR No. 11542 which affirmed the judgment of the Regional Trial Court, Branch 13 of Davao City finding petitioner guilty beyond reasonable doubt of the crime of Frustrated Murder. Likewise sought to be reversed and set aside is the Resolution, dated 7 September 1999, of the appellate court denying petitioner's motion for reconsideration.

The Information filed against petitioner reads as follows:

That on or about August 17, 1981, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a bolo, with treachery and evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted and hacked with said weapon one Hikaru Miyake, thereby inflicting injuries upon the latter, the following injuries, to wit:

INCISED WOUND, POSTERIOR TEMPORAL AREA (L) 1.5 CM. LONG, 2-3 MM. DEEP.

INCISED WOUND SUPRASCAPULAR AREA (L) 12 CM. LONG, 5-6 CM. DEEP.

INCISED WOUND, BACK OF THE NECK 10-11 CM. LONG, 4-5 MM. DEEP.

INCISED WOUND (L) LUMBAR REGION 6 CM. LONG, 4-5 MM. DEEP.

INCISED WOUND (R) LUMBAR AREA 8 CM. LONG, 3 MM. DEEP.

INCISED WOUND, POSTEROLATERAL ASPECT (L) ELBOW, 6 CM. LONG, 3-4 CM. DEEP WITH CHIP FRACTURE OF LATERAL EPICONDYLE OF THE HUMEROS (L).

thus performing all the acts of execution which should have produced the crime of murder as a consequence but nevertheless, did not produce it by reason of cause independent of his will of said accused, that is because of the timely and able medical assistance immediately rendered to the said Hikaru Miyake.

Contrary to law.[1]

At his arraignment, petitioner pleaded not guilty. Trial ensued. The prosecution's case, based chiefly on the testimony of the victim, Hikaru Miyake,[2] is as follows:

On 17 August 1981, at around 9 o'clock in the evening, Hikaru Miyake, a Japanese national, residing with his Filipina wife and children in Gem Village, Ma-a, Davao City was taking his usual "Japanese-style" bath in a drum behind his house. As he soaked his body inside the drum filled with warm water, he heard a sound which made him turn to the direction where it came from. Miyake sensed that there was something wrong, so he

hurriedly got out of the drum. He then saw petitioner about one and a half meters away rushing towards him with a bolo. Petitioner attacked Miyake who fought and grappled with the former for the possession of the bolo. The struggle lasted for about two (2) minutes.

Petitioner fled when he lost possession of the bolo. As a result of the attack, Miyake sustained injuries on the different parts of his body. Miyake's security guard arrived to give assistance to his employer. The security guard saw petitioner flee towards the direction of his house. Miyake was immediately brought to the Brokenshire Hospital where he was confined for ten (10) days.

Miyake further testified that petitioner and his wife used to perform services to his (Miyake's) family. Petitioner was hired to bring the Miyake children to their school while petitioner's wife gave them piano lessons. This cordial relationship between Miyake and petitioner, however, abruptly ended when their respective wives quarreled with each other over a sum of money which Mrs. Miyake loaned to petitioner's wife. Since then, petitioner became hostile towards the Miyakes.

On one occasion, petitioner threw stones at the house of Miyake. In the afternoon of that same day, Miyake went to his (petitioner's) house, which was just about fifty (50) meters away, to try to patch things up with him. Nonetheless, on account of the strained relations between them, Miyake terminated the services of petitioner and his wife. Thereafter, petitioner, while riding on his motorcycle, would stop in front of the Miyake residence and shout, "I want to fight and I will kill you." Miyake ignored these threats to avoid any trouble. Then came that fateful day of 17 August 1981.

In his defense, petitioner interposed alibi. He claimed that on 17 August 1981, at about 5 o'clock in the afternoon, he met Vicente Panes while he (petitioner) was buying a newspaper at the corner of Bolton and San Pedro Streets in Davao City. Panes asked petitioner to accompany him to Sigaboy, Governor Generoso, Davao Oriental to get coconut seedlings. Petitioner readily agreed and after obtaining permission from his wife, he went to Sigaboy with Panes. They arrived in Sigaboy at around 9 o'clock in the evening. From there, they traveled another thirty (30) kilometers on motorcycle to reach the place of Fernando Perez in Luzon, Governor Generoso, Davao Oriental where they were supposed to get the seedlings. When they arrived in Luzon, however, Perez was not around. They decided to stay there and wait for Perez. They waited for a few days as Perez arrived in Luzon only on 30 August 1981. Petitioner and Panes returned to Davao City on that same day at around 3 or 4 o'clock in the afternoon.[3]

Vicente Panes testified for the defense. He substantially corroborated petitioner's alibi, i.e., he (petitioner) was in Sigaboy, Governor Generoso, Davao Oriental from 17 August 1981 up to 30 August 1981. The two of them were there together to get coconut seedlings from Panes' brother-in-law.[4] Emma Rabor, wife of petitioner, also claimed that petitioner was in Sigaboy, Governor Generoso, Davao Oriental at the time.[5]

After trial, the court a quo rendered judgment convicting petitioner of the crime of frustrated murder. The dispositive portion of the judgment reads as follows:

WHEREFORE, the accused Solomon Rabor is found guilty beyond reasonable doubt as principal of the crime of Frustrated Murder and he is hereby sentenced to suffer an indeterminate sentence for four years, two months and one day of prision correccional, as its minimum, to ten years and one day of prision mayor, as its maximum, and to pay the victim Hikaru Miyake the total sum of P12,000.00 for actual, moral and exemplary damages, plus costs.

SO ORDERED.[6]

Petitioner appealed his conviction to the Court of Appeals. The appellate court, upon review of the records,

affirmed the judgment of the trial court. The dispositive portion of the CA decision reads as follows:

WHEREFORE, the decision of the court a quo, finding the accused guilty of the offense of frustrated murder is AFFIRMED.[7]

Petitioner filed a motion for reconsideration thereof but the same was denied for lack of merit.[8]

In this petition for review on certiorari, petitioner raises the following issues:

A. WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS FINDING THE PETITIONER GUILTY OF FRUSTRATED MURDER IS CONTRARY TO LAW;

B. WHETHER OR NOT THE MEDICAL CERTIFICATE PRESENTED BY THE PROSECUTION IS HEARSAY.

C. WHETHER OR NOT THE CONCLUSION OF THE COURT OF APPEALS IN THE APPLICATION OF EVIDENT PREMEDITATION IN THE INSTANT CASE IS A FINDING GROUNDED ON SPECULATION, SURMISES, CONJECTURES, AND IS MANIFESTLY MISTAKEN.

D. WHETHER OR NOT THE COURT OF APPEALS IN DISREGARDING THE ALIBI OF THE PETITIONER HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISION OF THE HONORABLE COURT.

E. WHETHER OR NOT THE PROSECUTION IS GUILTY OF SUPPRESSION OF EVIDENCE.[9]

The petition is partly meritorious.

The first three issues shall be discussed jointly as they are interrelated. They all pertain to petitioner's contention that he was wrongly convicted of the crime of frustrated murder. Petitioner maintains that the wounds sustained by the victim were not fatal; hence, the crime committed was merely attempted not frustrated. Further, the qualifying circumstance of evident premeditation was not allegedly sufficiently proven in this case. Petitioner thus is of the view that the crime should be homicide and not murder.

Contrary to petitioner's insistence, some of the wounds inflicted on the victim were fatal. This was sufficiently established by the testimony of Dr. Bernardo Adolfo who, together with Dr. Virgilio S. Durban, Jr., attended to the victim when he was confined at the Brokenshire Hospital after the hacking incident. As stated in the trial court's decision:

Dr. Adolfo testified that the first wound may not be fatal, it is at the back of the left ear; the second wound could be fatal, it is at the back left side; the third wound may not be fatal, it is at the back of the neck; the fourth wound may not be fatal, it is at the left waist; the fifth wound may not be fatal, it is at the right back above the waist; and the sixth wound at the "posterior left elbow 6 cm. long, 3-4 cm. deep with chip fracture of lateral epicondyle of the Humerus (L)", is fatal. If no medical treatment were applied the victim could have died.[10]

Given the foregoing testimony that Miyake could have died if not for the timely medical treatment, the trial court correctly held that the stage of execution of the crime was frustrated. A felony is "frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator." [11]

There is merit, however, to petitioner's assertion that the trial court and the CA erroneously appreciated evident premeditation in the commission of the offense. In holding that petitioner committed the offense with evident premeditation, the trial court considered his act prior to the hacking incident of shouting at Miyake, "I want to fight and I will kill you." According to the trial court, this showed that petitioner had long planned to kill Miyake.

On the other hand, the CA merely made a cursory statement that “in qualifying the crime as frustrated murder the trial court considered the circumstance of evident premeditation and not treachery”[12] without elaborating on the bases for the appreciation of the qualifying circumstance of evident premeditation.

In order that evident premeditation may be properly considered in imposing the proper penalty, the following requisites must be established: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[13]

None of these requisites can be inferred from the facts of this case. For one, the records do not show the time when petitioner resolved to commit the crime. The date and, if possible, the time when the offender determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from date and time.[14] Absent this first requisite, evident premeditation was thus incorrectly appreciated in this case.

Further, the second requisite is wanting. The fact that petitioner was heard to have shouted at Miyake, “I want to fight and I will kill you” does not necessarily prove evident premeditation without showing that petitioner performed acts manifestly indicating that he clung to his determination. Petitioner’s threat, unsupported by other evidence which would disclose his true criminal state of mind, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation.[15]

Evident premeditation having been wrongly appreciated in this case and there being no other qualifying circumstance established during the trial, the Court now holds that the crime committed in this case is frustrated homicide.

With respect to the fourth issue raised by petitioner, i.e., the appellate court erred in disregarding his defense of alibi, suffice it to say, that this defense cannot prevail over the victim’s positive identification of petitioner as the person who attacked him.[16] Miyake could not have been mistaken about petitioner’s identity as he is no stranger to the former. They knew each other quite well. Miyake identified petitioner in a categorical, straightforward and consistent manner, thus:

x x x

Q Alright, you said you smell something wrong so you went out from the gasoline drum and clean your body?

A I felt something wrong I heard some sound so I turn over and at that time Mr. Rabor was almost 1-1/2 meters from me and suddenly attacked me.

Q You said when he attacked you, you saw him to be Solomon Rabor?

A Very clear.[17]

x x x

Q Were you investigated by any police officer in connection with this case?

A Yes, sir. I think August 19 in the morning I was investigated by two policemen.

Q And what did you tell these police officers?

A I explained to the police officers about the hacking incident.

Q If the accused Solomon Rabor alias Boy is in Court can you identify him?

A Yes sir.

Q Will you kindly look around the courtroom if he is around?

A He is Mr. Rabor. (The witness pointing to Mr. Solomon Rabor and when the accused was asked he answered that he is Solomon Rabor).

Q You said you told the police officer of what happened to you did you tell them who hacked you?

A Yes sir, because I clearly saw the face so I informed the policeman that I was hacked by Solomon Rabor.[18]

Finally, petitioner impugns the alleged non-presentation of Sammy Babael and one Mr. Tan by the prosecution. Babael and Tan were named by Miyake as the persons who brought him to the hospital. Petitioner is of the view that the prosecution should have presented them as witnesses as their testimonies are vital to the case. This proposition is untenable. The non-presentation of certain witnesses by the prosecution is not a plausible defense and the matter of whom to present as witnesses lies in the sound discretion of the prosecutor handling the case.[19] Besides, as correctly observed by the Office of the Solicitor General in its Comment, assuming that the testimonies of these persons were material and relevant, nothing could have prevented petitioner from presenting them as his witnesses in order to discredit the testimonies of those who testified for the prosecution.[20] The presumption of suppressed evidence does not apply when the same is equally accessible or available to the defense.[21]

In fine, the guilt of petitioner for the crime of frustrated homicide had been sufficiently established beyond reasonable doubt. The penalty imposed on him shall be modified accordingly. Article 249 of the Revised Penal Code provides the penalty of reclusion temporal for the crime of homicide. Under Article 50 of the Revised Penal Code, the penalty for a frustrated crime is one degree lower than that prescribed by law. Frustrated homicide is thus 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) 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 of frustrated homicide, petitioner shall 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 medium, as maximum.

WHEREFORE, premises considered, the assailed Decision, dated 11 March 1997, is hereby MODIFIED. Petitioner 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.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Records, p. 1.

[2] TSN, Testimony of Hikaru Miyake, 12 July 1983, pp. 15-23.

[3] TSN, Testimony of Solomon Rabor, 20 February 1986, pp. 2-5.

[4] TSN, Testimony of Vicente Panes, 16 June 1986, pp. 2-5.

[5] TSN, Testimony of Emma Rabor, 6 December 1986, pp. 2-3.

[6] Decision, Regional Trial Court, Branch 13 of Davao City, Criminal Case No. 7022, p. 16; Records, p. 172.

[7] Rollo, p. 45.

[8] Id., at 48.

[9] Id., at 12-13.

[10] Note 6, at 8; Records, p. 164. Emphasis ours.

[11] Article 6, Revised Penal Code.

[12] Note 7, at 43.

[13] People vs. Espina, G.R. No. 123102, 29 February 2000, p. 11; People vs. Gutierrez, Jr., 302 SCRA 643, 644 (1999); People vs. Realin, 301 SCRA 495, 513 (1999).

[14] REYES, REVISED PENAL CODE, BOOK ONE 385 (13th ed., 1993).

[15] People vs. Fuentesuela, 73 Phil. 553, 554 (1942).

[16] People vs. Bermudez, 309 SCRA 124,135 (1999); People vs. Alshaika, 261 SCRA 637 (1996); People vs. Balamban, 264 SCRA 619 (1996).

[17] Note 2, at 19.

[18] Id., at 23.

[19] People vs. De los Santos, 295 SCRA 583, 604 (1998); People vs. Pabalan, 262 SCRA 574 (1996).

[20] Note 7, at 79.

[21] People vs. Martinez, 205 SCRA 666, 674-675 (1992); People vs. Araja, 105 SCRA 133 (1992).

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