

RAMMEL MONARES ANILAO ALIAS JOJO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 149681. October 15, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari^[1] of the Decision of the Court of Appeals (CA) in CA-GR CR No. 19995 promulgated on January 26, 2001 and its Resolution promulgated on July 24, 2001 denying petitioner's motion for reconsideration.

In its decision, the CA affirmed the Decision of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat dated February 28, 1996 in Crim. Case No. 2170 finding petitioner guilty of frustrated homicide.

The facts are as follows:

Petitioner was charged with the crime of Frustrated Murder in an Information which reads:

That in the evening of January 15, 1994, at Purok Pagkaisa, Barangay Saliao, Municipality of Esperanza, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a bladed instrument, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and stab one RONALD APUD with the use of the aforementioned weapon, thereby inflicting stab wound upon the latter, thus performing all the acts of execution which should have produce[d] the crime of murder as a consequence thereof but which nevertheless did not produce it by reason of causes independent of the will of the accused, that is by the timely and able medical assistance rendered to the victim which prevented his death.

CONTRARY TO LAW, particularly Article 248 in relation to Article 6 of the Revised Penal Code of the Philippines.^[2]

Upon arraignment, petitioner pleaded not guilty.

At the trial, the prosecution presented private complainant Ronald Apud, who narrated the following:^[3]

On January 15, 1994, at around 8:45 p.m., private complainant Ronald Apud, a resident of Banaba, Ampatuan, Maguindanao, was riding on his bicycle on the way to the house of his brother at Purok Masagan, Saliao, Esperanza, Sultan Kudarat, when he met along the way petitioner Rammel Anilao alias "Jojo" with a companion. He allegedly heard petitioner tell his companion, "Ara si Nonoy Apud, birahan ta" (Here comes Nonoy Apud, we will hit him). The companion, however, replied that it was not Nonoy Apud.

Private complainant then proceeded about twenty meters farther but decided to return to the dance hall and look for his brother, Efren Apud alias "Nonoy," to warn him of what he heard from the two men. On his way back, he had to pass by petitioner and his companion again. However, private complainant did not find his brother so he decided to go home to the house of his other brother, Antonio Apud, where he would sleep that night.

Private complainant biked until he reached the junction, near the Notre Dame Cooperative store, where petitioner allegedly grabbed the steering wheel of his bicycle and pulled it toward the right side. Petitioner then stabbed private complainant on the upper right side of his waist towards the back causing him to fall on the ground. Thereafter, petitioner fled.

After a while, Efren Apud alias “Nonoy” arrived and brought private complainant to the house of his uncle, Julian Apud. They then brought private complainant to the clinic of Dr. Jesus Galapate where he stayed for about five hours until he was referred to another clinic due to lack of facilities and for further treatment. Private complainant was brought to the clinic of Dr. Quijano where he was operated on by Dr. Estanislao Duque.

Nine days after the incident or on January 24, 1994, while private complainant was at the house of his uncle Julian with his brother Antonio, he allegedly saw petitioner pass by on a tricycle and identified him as the person who stabbed him. Private complainant testified, thus:

Q

And while you were in the house of your uncle in company with your brother Antonio, what happened there?

A

When we were there, sir, a tricycle passed by and a certain passenger was there and I asked my brother who was that and he told me that it is Jojo Anilao, sir, and I told him he was the one who stabbed me.

Q

This brother whom you asked is Antonio Apud?

A.

Yes, sir.

COURT:

Q

Why did you ask your brother about the identity of the passenger of the tricycle? Does that mean that you did not recognize the person who allegedly stabbed you?

A

I don't know his name, Your Honor, but only I could recognize his face because he actually passed the house of my uncle because I always stayed there in the house of my uncle.[4]

The other prosecution witnesses were Psyche Faith Apud, Arnie Lanado and Dr. Jesus Galapate.

Dr. Galapate testified that he treated private complainant for a stab wound on his right lumbar area, posterior

aspect, and that the wound sustained was serious and could have caused the death of private complainant. He identified the medical certificate he issued in favor of private complainant.

Petitioner had a different version of the incident. He alleged that it was private complainant who suddenly bumped him with his bicycle, hitting him on the left leg. He then held the steering wheel of the bicycle, but private complainant was able to lift the bicycle and thrust it on him, allegedly hitting him on his chest. This prompted him to step backward and box private complainant, causing the latter to move backward. While they were allegedly pulling the bicycle against each other, a certain Joe approached private complainant, boxed him and finally stabbed him on his right back portion and then fled.

The trial court did not give credence to the defense of petitioner. It held that since the qualifying aggravating circumstances of evident premeditation and treachery were not duly proven, petitioner was not guilty of frustrated murder but of the lower offense of frustrated homicide. The dispositive portion of the decision reads:

WHEREFORE, premises above-considered, the Court finds the accused, Rammel Monares Anilao alias Jojo, guilty beyond reasonable doubt of the crime of Frustrated Homicide.

Accordingly, applying the Indeterminate Sentence Law, the Court hereby sentences the accused, Rammel Monares Anilao alias Jojo, to suffer the indeterminate penalty of imprisonment, ranging from FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY of prision correccional, as minimum, to EIGHT (8) YEARS AND ONE (1) DAY of prision mayor, as maximum; to indemnify the private offended victim, Ronald Apud alias Bingbing:

(a)

the total amount of P24,541.50 as actual damages, by way of actual expenses incurred by the latter for his hospitalization arising from the stab wounds inflicted on him by the accused;

(b)

the amount of P6,000.00 as moral damages;

(c)

the amount of P4,000.00 as exemplary damages; and to pay the costs of suit.

IT IS SO ORDERED.[5]

On appeal, the CA affirmed the decision of the RTC in a Decision promulgated on January 26, 2001. Petitioner's motion for reconsideration was denied for lack of merit in a Resolution promulgated on July 24, 2001.

Hence, this petition.

The assigned errors are:

- The Honorable Court of Appeals failed to apply the Equipoise Doctrine which arises from the presumption of innocence and the required quantum of evidence which is that of proof beyond reasonable doubt.
- The Honorable Court of Appeals never considered the brief submitted by the private counsel of petitioner which is tantamount to violation of the right of due process.
- The Honorable Court of Appeals failed to appreciate facts of substance which if considered may result in

petitioner's acquittal.[6]

Petitioner argues that the CA failed to apply the equipoise rule that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused, citing *People v. Lagmay*.^[7]

Petitioner contends that the location of the wound and the position of petitioner in relation to the victim, and the presence of another assailant belie the claim of the prosecution that petitioner stabbed the victim. Besides, one of the witnesses of the prosecution categorically testified that petitioner only boxed the victim. In addition, petitioner never fled the scene of the crime, which fact supports his innocence. The victim himself vacillated by saying that his only reason for pointing at petitioner was that "he is the one who blocked me."^[8]

The material facts stated above were raised in the Appellant's Brief of petitioner, but evidently they were not considered. Such inadvertence on the part of the CA amounts to denial of due process.

Petitioner contends that since the evidence presented does not create moral certainty as to his guilt, he should be acquitted.

Petitioner's arguments are without merit.

Petitioner admits his presence at the scene of the crime, but denies having committed the crime of Frustrated Homicide and points to someone named Joe as the one who stabbed private complainant.

Mere denial by an accused, particularly when not properly corroborated or substantiated by clear and convincing evidence, cannot prevail over the testimony of credible witnesses who testify on affirmative matters.^[9] Denial partakes of the nature of negative and self-serving evidence and is seldom given weight in law.^[10] Positive and forthright declarations of witnesses are often held to be worthier of credence than the self-serving denial of an accused.^[11]

The Court agrees with the Office of the Solicitor General (OSG) that the location of the wound of private complainant does not negate the fact that petitioner was the offender. Aside from private complainant, eyewitnesses Psyche Faith Apud and Arnie Lanado testified that petitioner was the culprit, and the relative positions of private complainant and petitioner did not render it impossible for petitioner to have stabbed the victim.^[12] Positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses testifying on the matter prevails over a denial.^[13]

As stated by the OSG, the circumstances relied upon by petitioner in challenging the narration of private complainant are minor points which cannot overcome the straightforward testimonies of private complainant, Psyche Faith Apud and Arnie Lanado who did not have any ulterior motive in testifying that petitioner was the perpetrator of the offense.

The trial court's evaluation of the testimony of the witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case.^[14]

The Court has reviewed the records of the case and found no cogent reason to alter the conclusions of the trial court and the CA.

Contrary to petitioner's contention, the CA considered the Appellant's Brief filed by petitioner's private counsel in addition to the one filed by the Public Attorney's Office. The CA denied respondent's motion to expunge the Appellant's Brief filed by petitioner's private counsel as evidenced by the Resolution promulgated on February 2, 1998.^[15]

The trial court, therefore, correctly found petitioner guilty beyond reasonable doubt of the crime of Frustrated Homicide under Article 249 of the Revised Penal Code.[16] 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.[17]

Frustrated Homicide carries with it the penalty of prision mayor.[18] Applying the Indeterminate Sentence Law, the imposable penalty is an indeterminate prison term ranging from six months and one day to six years of prision correccional, as minimum, and eight years and one day to ten years of prision mayor, as maximum. The maximum term of the indeterminate penalty is imposed in the medium period since there is no aggravating or mitigating circumstance attending the commission of the offense.

The Court upholds the award of moral damages by the trial court in accordance with par. 1, Art. 2219 of the Civil Code which provides that moral damages may be recovered where a criminal offense resulted in physical injuries, as in the present case.

However, the Court finds that the award of exemplary damages in the amount of P4,000 has no basis. Art. 2230 of the Civil Code provides that “[i]n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.” In this case, the trial court held that that no aggravating nor mitigating circumstance was established in the commission of the crime; hence, the award of exemplary damages by the trial court should be deleted.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-GR CR No. 19995 promulgated on January 26, 2001 and its Resolution promulgated on July 24, 2001 are AFFIRMED with MODIFICATION. Petitioner Rammel Monares Anilao alias Jojo is found GUILTY beyond reasonable doubt of the crime of Frustrated Homicide, and he is hereby penalized with an indeterminate prison term ranging from FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY of prision correccional, as minimum, to EIGHT (8) YEARS AND ONE (1) DAY of prision mayor, as maximum, and ordered to pay private complainant Ronald Apud actual damages in the amount of Twenty-Four Thousand Five Hundred Forty-One Pesos and Fifty Centavos (P24,541.50), and moral damages in the amount of Six Thousand Pesos (P6,000).

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] CA Rollo, p. 5.

[3] Rollo, pp. 17-19.

[4] RTC Judgment, CA Rollo, pp. 13-14. Emphasis supplied.

[5] Id. at 29-30.

[6] Rollo, p. 7.

[7] G.R. No. 125310, April 21, 1999, 306 SCRA 157.

[8] TSN, October 25, 1994, p. 2.

[9] *People v. Mahinay*, G.R. No. 125311, March 17, 1999, 304 SCRA 767, 777.

[10] *Ibid.*

[11] *Id.* at 777-778.

[12] RTC Judgment, CA Rollo, pp. 10-11.

[13] *People v. Bermas*, G.R. Nos. 76416 & 94312, July 5, 1999, 309 SCRA 741.

[14] *People v. Realin*, G.R. No. 126051, January 21, 1999, 301 SCRA 495.

[15] CA Rollo, p. 169.

[16] 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.

[17] Art. 6, Revised Penal Code.

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

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