LEONIDAS EPIFANIO Y LAZARO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, PROMULGATED: RESPONDENT.

G.R. NO. 157057. June 26, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated May 22, 2002 of the Court of Appeals (CA) in CA-G.R. CR No. 17995 which affirmed the Decision[2] dated July 5, 1994 of the Regional Trial Court, Branch 4, Panabo, Davao (RTC) in Criminal Case No. 91-15 finding Leonidas Epifanio y Lazaro (petitioner) guilty of Frustrated Murder, and the CA Resolution[3] dated January 14, 2003 which denied petitioner's Motion for Reconsideration.

The facts of the case, as found by the RTC and the CA, are as follows:

At around 9:00 o'clock in the evening of August 15, 1990, Crisaldo Alberto (Crisaldo) and his cousin, Allan Perez (Allan), were walking to their respective homes in Kilometer 7, Del Monte, Samal, Davao after spending time at the house of Crisaldo's father. Since the pavement going to Crisaldo's house followed a narrow pathway along the local shrubs called banganga, Allan walked ahead of Crisaldo at a distance of about three (3) meters.[4] Suddenly, Crisaldo felt the piercing thrust of a bladed weapon on his back, which caused him to cry out in pain. He made a quick turnaround and saw his attacker, petitioner, also known as "Iyo (Uncle) Kingkoy." Petitioner stabbed Crisaldo again but only hit the latter's left arm.[5]

When Allan heard Crisaldo's outcry, he rushed to Crisaldo's side and said, "Iyo Kingkoy (Uncle Kingkoy), why did you stab Saldo?" which caused petitioner to run away.[6] Allan then brought Crisaldo to his father's house where Crisaldo's wounds were wrapped in a blanket. Crisaldo was then brought to the Peñaplata Hospital where he was given first aid and then transferred to the Davao Medical Center where he stayed for three weeks to recuperate from his wounds.[7] The attending physician, Santiago Aquino, issued a Medical Certificate dated September 4, 1990, with the following findings:

- Stab wound (R) scapular area (Medial border) at level 5-7[th] ICS (L) arm Medial aspect M3rd

- Fracture 7[th] and 8[th] rib, posterior, right.

Probable healing time will be 15-30 days barring complication.[8]

Subsequently, petitioner was charged with Frustrated Murder in Criminal Case No. 91-15. The Information dated January 4, 1991 reads:

> That on or about August 15, 1990, in the Municipality of Samal, Province of Davao, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with treachery and evident premeditation, with intent to kill, armed with a knife, did then and there willfully, unlawfully, and feloniously attack, assault and stab one Crisaldo Alberto, thereby inflicting upon him wounds which ordinarily would have caused his death, thus the accused performed all the acts of execution which would produce the crime of murder, as a

> consequence but which, nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Crisaldo Alberto, and further causing actual, moral and compensatory damages to the offended party.
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> Contrary to law.[9]

During his arraignment on June 25, 1991, petitioner, with the assistance of counsel, pleaded "not guilty."[10]

Petitioner's defense consisted mainly of denial. He claims that at 7:00 o'clock in the morning of August 15, 1990, he went to Anonang, within the Municipality of Kaputian, and harvested coconuts by climbing the coconut trees; that he went back home at 4:30 in the afternoon and he slept at 8:00 o'clock in the evening; that while he was sleeping, his wife awakened him because Salvador Epifanio (Salvador) was asking for help, as somebody was hacked, and he went to the place of incident with Salvador; that he found out that Crisaldo was already wrapped in cloth and he asked Crisaldo who was responsible for stabbing him, but he did not answer; that they loaded Crisaldo in the jeep to take him to the nearby hospital; that he and Salvador took a ride with Crisaldo up to Del Monte where the two of them alighted and reported the incident to the barangay captain; that the following morning, he went to Anonang to harvest coconuts; that at around 1:00 o'clock in the afternoon when he arrived home, policemen Barraga and Labrador were in his house and told him that he was the suspect in the stabbing incident; that he was detained but he was not investigated anymore and was ordered to go home.[11]

On July 5, 1994, the RTC rendered its Decision[12] convicting the petitioner, the dispositive portion of which reads:

> IN THE LIGHT OF THE FOREGOING, finding the accused, Leonidas Epifanio y Lazaro guilty beyond reasonable doubt of the crime of Frustrated Murder punishable under Article 248 in relation to Article 6 of the Revised Penal Code, the Court hereby sentence this accused to an indeterminate imprisonment of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TEN (10) YEARS of prision mayor as maximum together with the accessory penalties provided by law, and to pay the costs.
>
> Accused is hereby ordered to indemnify Crisaldo Alberto the sum of P6,000.00 by way of damages.
>
> SO ORDERED.[13]

Petitioner appealed his conviction to the CA, docketed as CA-G.R. CR No. 17995.[14] On May 22, 2002, the CA rendered a Decision[15] affirming in toto the Decision of the RTC.

Petitioner filed a Motion for Reconsideration[16] but it was denied by the CA in a Resolution[17] dated January 14, 2003.

Petitioner filed the present petition raising a sole issue for resolution, to wit:

> WHETHER THE GUILT OF THE PETITIONER FOR THE CRIME OF FRUSTRATED MURDER WAS PROVEN BEYOND REASONABLE DOUBT.[18]

Petitioner does not seek the reversal of his conviction but only that it be for the lesser offense of attempted murder. He contends that there is no evidence that the injuries sustained by Crisaldo were life-threatening or would have caused his death had it not been for timely medical intervention since the medical certificate only stated that the healing time of the wounds sustained by Crisaldo was "15-30 days barring complication", with no notation or testimony of the attending physician that any of the injuries was life-threatening.

The Office of the Solicitor General (OSG), on the other hand, contends that the failure to present the doctor to testify on the nature of the wounds suffered by Crisaldo was not raised as an issue in the RTC; that petitioner is now barred from raising it in the present petition for review without offending the basic rules of fair play, justice

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and due process; that petitioner did not object to the admissibility of the medical certificate when it was offered in evidence; that the crime is frustrated murder since petitioner performed "all the acts of execution"; that the three-week length of stay in the hospital of Crisaldo is not determinative of whether or not the wounds are fatal.

The petition is impressed with merit.

The non-presentation of the doctor to testify on the nature of the wounds, while not raised as an issue in the RTC, does not bar the petitioner from raising it on appeal. It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.[19]

It must be stressed that it is not the gravity of the wounds alone which determines whether a felony is attempted or frustrated, but whether the assailant had passed the subjective phase in the commission of the offense.

In the leading case of United States v. Eduave,[20] Justice Moreland, speaking for the Court, distinguished an attempted from a frustrated felony. He said that to be an attempted crime, the purpose of the offender must be thwarted by a foreign force or agency which intervenes and compels him to stop prior to the moment when he has performed all the acts which should produce the crime as a consequence, which act it is his intention to perform.[21]

The subjective phase in the commission of a crime is that portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which, with prior acts, should result in the consummated crime. Thereafter, the phase is objective.[22]

In case of an attempted crime, the offender never passes the subjective phase in the commission of the crime. The offender does not arrive at the point of performing all of the acts of execution which should produce the crime. He is stopped short of that point by some cause apart from his voluntary desistance.[23]

On the other hand, a crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that was necessary to consummate the crime; however, the crime is not consummated by reason of the intervention of causes independent of the will of the offender.[24]

In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim barring medical intervention or attendance.[25] If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim; or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim.[26]

Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) words uttered by the offender at the time the injuries were inflicted by him on the victim.[27]

In the present case, the intent to kill is very evident and was established beyond reasonable doubt through the unwavering testimony of Crisaldo on the manner of execution of the attack as well as the number of wounds he sustained. Crisaldo was stabbed from behind by petitioner. When Crisaldo turned around, petitioner continued his assault, hitting Crisaldo on the left arm as the latter tried to defend himself. The treacherous manner in which

petitioner perpetrated the crime is shown not only by the sudden and unexpected attack upon the unsuspecting victim but also by the deliberate manner in which the assault was perpetrated.[28]

Nonetheless, petitioner failed to perform all the acts of execution, because Allan came to the aid of Crisaldo and petitioner was forced to scamper away. He did not voluntarily desist from stabbing Crisaldo, but he had to stop stabbing when Allan rushed to help Crisaldo and recognized petitioner. Thus, the subjective phase of the crime had not been completed.

Moreover, the prosecution failed to present testimonial evidence on the nature of the wounds sustained by Crisaldo. The Court has discussed the importance of ascertaining the degree of injury sustained by a victim in People v. Matyaong,[29] thus:

> 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. x x x
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> 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. x x x[30]

No evidence in this case was introduced to prove that Crisaldo would have died from his wound without timely medical attendance. It is well-settled that where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder.[31]

Accordingly, the imposable penalty for the crime of attempted murder, following Article 51 of the Revised Penal Code, is prision correccional in its maximum period to prision mayor in its medium period. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be within the range of arresto mayor in its maximum period to prision correccional in its medium period, and the maximum of the penalty to be imposed should be within the range of prision correccional in its maximum period to prision mayor in its medium period. Since no generic aggravating or mitigating circumstance attended the commission of the crime of attempted murder, the penalty should be two (2) years and four (4) months of prision correccional, as minimum; and eight (8) years of prision mayor, as maximum.

Anent the award of P6,000.00 as damages, the Court notes that the receipts showing the expenses incurred during Crisaldo's hospitalization amounted only to P853.50.[32] As a general rule, a party seeking the award of actual damages must produce competent proof or the best evidence obtainable to justify such award.[33] Only substantiated and proven expenses will be recognized in court. Nonetheless, in lieu of actual damages, the Court grants temperate damages of P6,000.00, as it cannot be denied that Crisaldo incurred expenses during his three-week stay in the provincial hospital, although the exact amount cannot be proved with certainty.[34]

WHEREFORE, the Decision dated July 5, 1994 of the Regional Trial Court, Branch 4, Panabo, Davao in Criminal Case No. 91-15 is MODIFIED to the effect that petitioner is found GUILTY of ATTEMPTED MURDER and is sentenced to suffer an indeterminate imprisonment of 2 years and 4 months of prision

correccional, as minimum, and 8 years of prision mayor, as maximum together with the accessory penalties provided by law; and petitioner is ordered to indemnify Crisaldo Alberto the sum of P6,000.00 as temperate damages, and costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Eugenio S. Labitoria (retired) and concurred in by Associate Justices Teodoro P. Regino (retired) and Juan Q. Enriquez, Jr., CA rollo, p. 120.

[2] Original Records, p. 134.

[3] CA rollo, p. 149.

[4] TSN, August 20, 1991, Testimony of Crisaldo Alberto, pp. 5-6; TSN, August 21, 1991, Testimony of Crisaldo Alberto, p. 7; TSN, August 21, 1991, Testimony of Allan Perez, pp. 18-19.

[5] TSN, August 20, 1991, Testimony of Crisaldo Alberto, pp. 6, 12-13; TSN, August 21, 1991, Testimony of Crisaldo Alberto, p. 8;TSN, August 21, 1991, Testimony of Allan Perez, pp. 19-20.

[6] TSN, August 20, 1991, Testimony of Crisaldo Alberto, pp. 7, 13; TSN, August 21, 1991, Testimony of Allan Perez, p. 20.

[7] TSN, August 21, 1991, Testimony of Crisaldo Alberto, p. 8; TSN, August 21, 1991, Testimony of Allan Perez, p. 21.

[8] Exh. "A", Original Records, p. 44.

[9] Original Records, pp. 1-2.

[10] Id. at 69.

[11] TSN, October 7, 1993, Testimony of Leonidas Epifanio, pp. 16-20.

[12] Original Records, p. 134.

[13] Id. at 154.

[14] CA rollo, p. 53.

[15] Id. at 120.

[16] Id. at 130.

[17] Id. at 149.

[18] Rollo, p. 17.

[19] Pangonorom v. People, G.R. No. 143380, April 11, 2005, 455 SCRA 211, 220; People v. Saludes, 451 Phil. 719, 728 (2003); People v. Lucero, G.R. Nos. 102407-08, March 26, 2001, 355 SCRA 93, 101-102.

[20] 36 Phil. 209 (1917).

[21] Id. at 212.

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[22] Id. at 213.

[23] United States v. Eduave, supra note 20, at 212.

[24] Ibid.

[25] See People v. Sumalpong, 348 Phil. 501, 522-523; People v. Maguikay, G.R. No. 103226-28, October 14, 1994, 237 SCRA 587, 605.

[26] People v. Caballero, 448 Phil. 514, 534 (2003).

[27] People v. Caballero, id. at 534.

[28] People v. Pacificador, 426 Phil. 563, 595 (2002); People v. Villamor, 424 Phil. 302, 318 (2002); People v. Listerio, 390 Phil. 337, 357 (2000).

[29] 411 Phil. 939 (2001).

[30] People v. Matyaong, supra note 29, at 948 citing Wharton and Stille's, Medical Jurisprudence, vol. III, fifth edition, p. 174 (1905).

[31] People v. Costales, 424 Phil. 321, 334 (2002); People v. De la Cruz, 353 Phil. 363, 386 (1998).

[32] Exhibits "C" to "C-12", Original Records, pp. 89-94.

[33] People v. Agudez, G.R. No. 138386-87, May 20, 2004, 428 SCRA 692, 713; People v. Baño, 464 Phil. 872, 885 (2004).

[34] People v. Ronas, 403 Phil. 613, 630 (2001).

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