

BENJAMIN P. MARTINEZ, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 168827. April 13, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 25436, affirming with modification the trial court's judgment finding Benjamin P. Martinez guilty beyond reasonable doubt of frustrated homicide.

The Antecedents

Dean Dongui-is was a teacher at the Tubao National High School, La Union. Petitioner Benjamin Martinez was the husband of Dean's co-teacher, Lilibeth Martinez. Petitioner eked out a living as a tricycle driver.

On October 28, 1998, Dean and his wife Freda filed a complaint for damages against the spouses Martinez in the Municipal Circuit Trial Court (MCTC) of Tubao, La Union. They alleged that in March 1998, petitioner, a suitor of Elvisa Basallo, had been peddling false reports that Dean and Elvisa had illicit relations; he even told Freda that Elvisa was Dean's mistress. This led to a quarrel between Dean and Freda, and the latter was hospitalized for her heart ailment. Dean requested Lilibeth to stop her husband from spreading lies, and she replied that Elvisa had been her husband's mistress. They prayed that they be awarded moral and exemplary damages and litigation fees in the total amount of P100,000.00.[3] The case was docketed as Civil Case No. 226.

For her part, Elvisa also filed a complaint against the spouses Martinez in the MCTC of Tubao for damages anchored on Article 26 of the New Civil Code. She alleged that on several occasions, petitioner went to the Shaltene Pawnshop and Pharmacy where she was employed and accused her of having an illicit affair with Dean; on one occasion, he held her hand and forcibly pulled her outside, which caused her to scratch his face and run after him with a knife; he also told her husband's cousin, Willy Ordanza, that she had an illicit affair with Dean; Willy, in turn, told her mother-in-law about it; petitioner relayed the same rumors to her co-worker, Melba Dacanay, and his wife spread to people in the Municipality, including Ramil Basallo, her brother-in-law. Elvisa also prayed for damages in the total amount of P100,000.00. The case was docketed as Civil Case No. 227.[4]

The spouses Martinez filed a motion to dismiss the complaint in Civil Case No. 226 which was heard in the morning of February 3, 1999. The court denied the motion.

At about 1:40 p.m. that day, Dean went to the Tubao Credit Cooperative (TCC) office to pick up the dividend certificate of his wife who was a member of the cooperative. He left the building and walked to his car which was parked in front. As he did, he read the dividend certificate of his wife. Dean was about a step away from an L-300 van which was parked in front of the building when petitioner, armed with a bolo, suddenly emerged from behind the vehicle and stabbed him on the left breast. Dean instantly moved backward and saw his assailant. Dean fled to the bank office and was able to gain entry into the bank. Petitioner ran after him and upon cornering him, tried to

stab him again. Dean was able to parry the blow with his right hand, and the bolo hit him on the right elbow. Dean fell to the floor and tried to stand up, but petitioner stabbed him anew on his left breast.[5] Dean managed to run to the counter which was partitioned by a glass. Unable to get inside the counter, petitioner shouted at Dean: "Agporentomeng ka tatta ta talaga nga patayen ka tatta nga aldawen (You kneel down because I will really kill you now this day)."[6]

Meantime, SPO1 Henry Sulatre was at the Tubao Police Station, about 100 meters away. He was informed that a fight was going on in the bank. He rushed to the place on board the police car. When he arrived at the scene, he saw Barangay Captain Rodolfo Oller and his son Nicky Oller.[7] Nicky handed to him the bolo which petitioner had used to stab Dean.[8] He and Rodolfo brought petitioner to the police station. On the way, they passed by the loading area of tricycles, about 40 meters away from the police station. Petitioner shouted: "Sinaksak kon pare, sangsangaili laeng isuna saan isuna to agari ditoy Tubao (I stabbed him, he is just a visitor so he should not act like a king here in Tubao)." SPO1 Sulatre placed Benjamin in jail. Benjamin kept on shouting: "Napatay kon, napatay kon (I killed him, I killed him)."[9]

In the meantime, PO3 Valenzuela brought Dean to the Doña Gregoria Memorial Hospital in Agoo, La Union. The victim was transferred to the Ilocos Regional Hospital (IRH) in San Fernando, La Union where Dean was examined and operated on by Dr. Nathaniel Rimando, with the assistance of Dr. Darius Pariñas.[10] Dean sustained two stab wounds in the anterior chest, left, and a lacerated wound in the right elbow, forearm. Had it not been for the blood clot that formed in the stab wound on the left ventricle that prevented the heart from bleeding excessively, Dean would have died from profuse bleeding.[11]

On February 7, 1999, Dean gave a sworn statement to SPO1 Sulatre.[12] However, he deferred swearing to the truth of his statement before the Public Prosecution because SPO1 Sulatre was waiting for the permanent medical certificate to be issued by the hospital. SPO1 Sulatre deferred the execution and submission of an arrest report also pending the issuance of the medical certificate.

Instead of issuing a permanent medical certificate, the IRH issued on February 8, 1999 the following Temporary Certificate:

TO WHOM IT MAY CONCERN:

According to hospital record, DEAN N. DONGUI-IS, 30 years old, male, married, a resident of Francia West, Tubao, La Union, was examined/treated/confined in this hospital on/from February 3-20, 1999.

WITH THE FOLLOWING FINDINGS AND DIAGNOSIS:

— Stab Wound (L) Chest with Hemothorax (L), (L) Ventricular Perforation;

OPERATIONS:

— Exploratory Thoracotomy (L); Evacuation of Retained Blood Clots; Ventriculorrhaphy Decortication 2/11/99

and would need medical attendance for more than thirty (30) days barring complications.[13]

On March 10, 1999, SPO1 Sulatre filed a criminal complaint for frustrated murder against petitioner in the MCTC.[14] The MCTC opted not to act on the crime pending the arrest report and SPO1 Sulatre's submission of Dean's sworn statement.

The IRH issued a medical certificate on February 28, 1999, stating that Dean's wounds would need medical attendance of more than 30 days.[15] Barangay Captain Oller and SPO1 Sulatre executed an affidavit on petitioner's arrest.[16] Dean had his affidavit sworn before the Public Prosecutor on March 30, 1999.

On September 13, 2000 the Provincial Prosecutor of La Union indicted Benjamin for frustrated murder before the

Regional Trial Court (RTC), Branch 31, of the same province. The accusatory portion of the Information reads:

That on or about the 3[rd] day of February 1999, in the Municipality of Tubao, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery and evident premeditation, being then armed with a small pointed bolo, did then and there willfully, unlawfully and feloniously attack, assault and stab one DEAN DONGUI-IS y Manalo, hitting him on his left breast and right elbow, and thereby inflicting on him injuries that would have produced the crime of Murder as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the accused, mainly the timely rendition of medical assistance of on the said offended party, which prevented his death, to his damage and prejudice.

CONTRARY TO LAW.[17]

On October 13, 2000, the accused, assisted by counsel, was arraigned and entered a plea of not guilty.

The Case for Petitioner

Petitioner declared that he merely defended himself against Dean's assault. Dean was so jealous of him because his mistress, Elvisa, had also been his mistress. Unknown to Dean, he had already terminated his relation with Elvisa sometime in March 1997 when his wife Lilibeth discovered the illicit relationship.[18] Dean also suspected that he (petitioner) had been sending letters to his (Dean's) wife relative to the illicit relationship with Elvisa. Dean also suspected that he was responsible for the raid conducted by the Criminal Investigation Service (CIS) of his house for possession of a gun.[19] As a result, Dean filed a civil complaint against him for damages, docketed as Civil Case No. 266. Before and after the filing of the civil case, Dean had hurled invectives at him in the presence of Joselito Madriaga and other tricycle drivers.[20] Dean even attempted to sideswipe him with his car.[21]

Petitioner declared that the criminal charge against him was Dean's concoction, and intended solely to harass him. He narrated that he went to the TCC office at about 1:30 p.m. on February 3, 1999. His wife had earlier received a note from the cooperative to get the interest on her deposit.[22] He parked his tricycle in front of the building on the left side of the railing going to the entrance of the cooperative.[23] Dean's car was parked on the right side of the railing.[24] On his way, he met his 82-year-old uncle, Godofredo Sarmiento, who was also on his way to the cooperative to update his passbook because he was intending to apply for a loan.[25] He told Godofredo that they could go to the TCC together. When they were about to pass through the entrance door, Dean was about to exit from the cooperative. Dean thought that he was blocking his way and shouted invectives at him and his uncle; Dean also spat on his breast and face; and threw a punch which he was able to parry with his left elbow.[26] Dean kept attacking him, forcing him to move backward through the railing and towards his tricycle. Dean punched him again but he managed to parry the blow with his bolo which he took from his tricycle. He stabbed Dean on his right elbow.[27] He swung his bolo at Dean which forced the latter to run back into the office. He entered the office and stood by the entrance door to see if Dean would get a weapon. Dean continued hurling invectives at him but was later pacified by Patricio Alterado, an employee of the cooperative.[28] When Barangay Captain Oller arrived, he surrendered, along with his bolo.[29] He never boasted on the way to the police station that he had killed Dean.[30]

Godofredo partially corroborated the testimony of petitioner. He declared that Dean spat on the face of petitioner.[31] By the time Dean and petitioner reached the place where the latter's tricycle was parked, he had left; he was afraid of being involved.[32] He did not report the incident to the police authorities.

Joselito Madriaga testified that he and petitioner were bosom buddies with a long history of friendship. Dean had an axe to grind against petitioner because the two maintained a common mistress, Elvisa.[33]

The Trial Court's Decision

On April 30, 2001, the trial court rendered judgment[34] convicting petitioner of frustrated homicide. The fallo of the decision reads —

WHEREFORE, this Court, after a consideration of the evidence adduced in this case, finds accused BENJAMIN MARTINEZ guilty of the crime of Frustrated Homicide as principal. Neither aggravating circumstance nor mitigating circumstance has been appreciated. Applying the Indeterminate Sentence Law, accused Benjamin Martinez is sentenced to suffer the penalty of imprisonment ranging from FOUR (4) YEARS OF PRISION CORRECCIONAL MEDIUM as minimum to EIGHT (8) YEARS and ONE (1) DAY OF PRISION MAYOR MEDIUM as maximum. He is also ordered to pay DEAN DONGUI-IS the amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS, broken into the following:

- (a) Ninety-Two Thousand (P92,000.00) Pesos for medical expenses;
- (b) Twenty-Six Thousand (P26,000.00) Pesos, representing his salaries for two (2) months when he could not attend to teach due to his injuries;
- (c) Twenty-Two Thousand (P22,000.00) Pesos as moral damages; and
- (d) Ten Thousand (P10,000.00) Pesos as complainant's attorney's fees.

SO ORDERED.[35]

The trial court gave credence and full probative weight to the testimony of Dean, Dr. Rimando, SPO1 Sulatre, and the documentary evidence of the prosecution. The court rejected petitioner's twin defenses of denial and self-defense. It declared that his version lacked strong corroboration, and that his witnesses (a close relative and a friend) were biased.

Finding that the prosecution failed to prove the qualifying circumstances of treachery, the trial court convicted petitioner of frustrated homicide. The court declared that the crime involved a "love triangle,"[36] and considered the protagonists' history of personal animosity. There was no evident premeditation because Dean had been "forewarned" of the attack.[37]

On appeal before the CA, petitioner raised the following issues:

- THE TRIAL COURT COMMITTED SERIOUS ERRORS WHEN IT WRONGFULLY GAVE CREDENCE TO THE FABRICATED CLAIMS OF THE SOLE WITNESS FOR THE PROSECUTION.
- THE TRIAL COURT COMMITTED SERIOUS ERROR WHEN IT WRONGFULLY GAVE CREDENCE TO THE FALSE AND SPECIOUS TESTIMONY OF THE COMPLAINANT.
- THE TRIAL COURT COMMITTED SERIOUS ERROR WHEN IT CONVICTED THE ACCUSED FOR FRUSTRATED HOMICIDE FOR INJURIES NOT ATTESTED BY ANY COMPETENT MEDICAL CERTIFICATE.
- THE TRIAL COURT COMMITTED SERIOUS ERROR WHEN IT CONVICTED THE ACCUSED FOR FRUSTRATED HOMICIDE WITHOUT ANY PROOF BEYOND REASONABLE DOUBT.
- THE TRIAL COURT COMMITTED SERIOUS ERROR WHEN IT DISREGARDED THE CONCLUSIVE EVIDENCE FOR THE DEFENSE WHICH COMPLETELY NEGATED ANY PROOF FOR THE PROSECUTION AND WHICH DEFINITELY WARRANTED THE ACQUITTAL OF THE ACCUSED.[38]

Maintaining his innocence, petitioner claimed that he had merely acted in self-defense when Dean insulted him, spat on his face and assaulted him with fist blows on a mere suspicion that he (petitioner) was blocking Dean's

way through the exit door of the cooperative.

The Decision of the Court of Appeals

On February 21, 2005, the CA rendered judgment affirming the assailed decision of the RTC with modification. The fallo reads —

WHEREFORE, the appealed Decision dated April 30, 2001 of the trial court is affirmed, subject to the afforested modification of the minimum period of the sentence. Loss of earnings in the amount of P26,000.00 and attorney's fees in the amount of P10,000.00 are deleted, and the award of actual damages is increased to P92,715.68.

SO ORDERED.[39]

The CA ruled that the case is more of a "retaliation" rather than a case of self-defense. It declared that Dean sustained two fatal stab wounds in his left chest, a fact which belied petitioner's defense and confirmed the prosecution's theory that he purposely and vigorously attacked the victim. The CA ruled that when an unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the aggressor. The appellate court pointed out that in the case before it, the supposed unlawful aggression of Dean ceased from the moment he retreated inside the cooperative building; there was no need for petitioner to follow Dean inside the building and stab him with his bolo. Petitioner should have simply stood his ground and walked away.

In discounting the qualifying circumstances of treachery and evident premeditation, the CA simply adverted to the stipulation of facts contained in the Pre-Trial Order dated December 20, 2000 issued by the RTC, stating "[t]hat the accused stabbed the private complainant when the latter assaulted and boxed him (accused)."[40] Petitioner's plea of voluntary surrender was not appreciated in his favor. However, the appellate court modified the minimum sentence imposed by the trial court to four (4) years and two (2) months of prision correccional, as minimum.

As to damages, the CA deleted the RTC's award of loss of earning capacity and attorney fees, holding that they lack factual and legal basis. It, however, increased the award of actual damages from P92,000.00 to P92,715.68 reasoning that latter amount was duly receipted. The CA denied the appellant's motion for reconsideration.[41]

Before this Court, petitioner assigns the following errors allegedly committed by the CA —

- THE ASSAILED DECISION AND RESOLUTION HAVE TO BE SET ASIDE, AS THEY AROSE FROM MISAPPREHENSION OF FACTS THAT PROVE THAT THE PROCEEDINGS AND THE FINDINGS MADE IN THE DECISION OF THE TRIAL COURT AS WELL AS IN THE ASSAILED DECISION ITSELF, WERE BASED ON A FALSE CHARGE WHICH IS PATENTLY FABRICATED BY A POLICE INVESTIGATOR AND WHICH COMPRISES MALICIOUS PROSECUTION.

- THE ASSAILED DECISION AND RESOLUTION HAVE TO BE SET ASIDE, AS THEY ARE BASED ON THE FABRICATED STATEMENT AS WELL AS ON THE SOLE, SELF-SERVING, CONTRADICTORY AND UNCORROBORATED TESTIMONY OF THE COMPLAINANT, WHICH ARE MANIFESTLY CONCOCTED AND CANNOT ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

- THE ASSAILED DECISION AND RESOLUTION HAVE TO BE SE[T] ASIDE, AS THERE IS TOTAL ABSENCE OF EVIDENCE TO PROVE THE VACUOS CHARGE AS WELL AS THE SAID DECISION AND RESOLUTION, FOR WHICH REASON THE GUILT OF THE ACCUSED WAS NOT DULY PROVED BEYOND REASONABLE DOUBT[.]

- THE ASSAILED DECISION AND RESOLUTION HAVE TO BE SET ASIDE, AS THE SAME WERE

RENDERED IN ALL GRAVE ABUSE OF DISCRETION AND IN TOTAL DISREGARD OF THE COMPETENT AND UNREBUTTED TESTIMONY FOR THE DEFENSE, WHICH NEGATE ANY REASONABLE DOUBT ON THE GUILT OF THE ACCUSED.

- THE ASSAILED DECISION AND RESOLUTION HAVE TO BE SET ASIDE, AS THE INFERENCES MADE ON THE UNDISPUTED FACTS ARE CONTRARY TO LAW AND JURISPRUDENCE AND CANNOT JUSTIFY ANY FINDING OF ANY PROOF BEYOND REASONABLE DOUBT.[42]

Petitioner insists that the criminal complaint filed by SPO1 Sulatre was a fabrication because the latter never conducted a formal investigation of the stabbing incident or of any witness to the incident. The police officer filed the criminal complaint against petitioner on the basis of a sworn statement by Dean which was taken only on March 10, 1999, long after the criminal complaint was filed in the MCTC. Worse, when he testified on cross-examination, Dean admitted that he did not see the questions prepared by SPO1 Sulatre at the hospital, nor his answers to the policeman's questions. The affidavit dated March 10, 1999 was not typewritten in the hospital, and he was not present when the affidavit was typewritten in the police station. Thus, the testimony of the victim was self-serving and uncorroborated, tailored solely to support the charge filed by SPO1 Sulatre.

In its comment on the petition, respondent, through the Office of the Solicitor General (OSG), avers that the issues raised by petitioner are factual, hence, inappropriate in a petition for review on certiorari in this Court.

The OSG maintains that the Revised Rules of Criminal Procedure does not require that the affidavit of the offended party or the witnesses to the crime charged be appended to the criminal complaint filed in court. Moreover, the issue of the validity of the criminal complaint in the MCTC had become moot and academic after the Information was filed in the trial court, and when petitioner was arraigned, assisted by counsel, and entered a plea of not guilty.

It insists that Dean's testimony, by itself, is sufficient to warrant the conviction of petitioner for frustrated homicide. Petitioner's conviction may be anchored on Dean's testimony since the trial court found it credible and entitled to full probative weight. Petitioner failed to prove his plea of self-defense by clear and convincing evidence.

The Court's Decision

The petition is denied for lack of merit.

Section 3(a) and (b), Rule 112 of the Revised Rules of Criminal Procedure[43] provide:

Sec. 3. Procedure. — The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

It bears stressing that the officer conducting the preliminary investigation has to determine whether to dismiss the complaint outright based on the averments of the complaint and the appendages thereof if it finds no ground to continue with the investigation. If he finds ground to continue with the investigation of the accused, a subpoena

should be issued to the accused, appending thereto a copy of the complaint and the supporting affidavits. Unless the affidavits of the witnesses named in the complaint and supporting documents are appended to the complaint, the investigating officer may not be able to determine whether to dismiss the complaint outright or to conduct an investigation and issue a subpoena to the accused.[44]

We agree with petitioner that the criminal complaint filed by SPO1 Sulatre with the MCTC on March 10, 1999 was defective. As gleaned from the RTC records, the criminal complaint was not accompanied by any medical certificate showing the nature and number of wounds sustained by the victim, the affidavits of any of the witnesses listed at the bottom of the criminal complaint (particularly the victim himself), and the arrest report of SPO1 Sulatre, Brgy. Capt. Rodolfo Oller, and his son Nicky.

The MCTC had the option not to act one way or the other on the criminal complaint of SPO1 Sulatre because the latter failed to comply with Section 3(a) and (b), Rule 112 of the Revised Rules of Criminal Procedure; or to order SPO1 Sulatre to comply with the aforementioned rule; or to dismiss the complaint without prejudice to its refile with the requisite documents. However, the MCTC opted not to act on the complaint until after SPO1 Sulatre shall have submitted the requisite affidavits/medical certificate/arrest report. When SPO1 Sulatre filed with the MCTC, on March 10, 1999, the permanent medical certificate issued by the IRH, the affidavit of Dean and his and Brgy. Capt. Oller's affidavit of arrest of petitioner, the MCTC forthwith issued a subpoena to petitioner appending thereto the said medical certificate, affidavit of Dean and the affidavit of arrest of SPO1 Sulatre.[45] Hence, SPO1 Sulatre had complied with Section 3(a) and (b), Rule 112 of the Revised Rules of Criminal Procedure.

Moreover, petitioner submitted his counter-affidavit without any protest. Neither did he assail the validity of the criminal complaint or the tardy submission by SPO1 Sulatre of the medical certificate, the affidavit of Dean and the affidavit of arrest of SPO1 Sulatre. Aside from this, petitioner was arraigned in the RTC, assisted by counsel, and entered a plea of not guilty.

On the second issue, the rulings of the trial court and the appellate court are correct. Whether or not petitioner acted in self-defense whether complete or incomplete is a question of fact,[46] the well-entrenched rule is that findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record affirmed, on appeal, by the CA are accorded high respect, if not conclusive effect, by the Court and in the absence of any justifiable reason to deviate from the said findings.[47]

In this case, the trial court gave no credence and probative weight to the evidence of petitioner to prove that he acted in self-defense, complete or incomplete. Petitioner failed to establish that the trial court and the appellate court misconstrued, misappropriated or ignored facts and circumstances of substance which, if considered, would warrant a modification or reversal of the decision of the CA that petitioner failed to establish clear and convincing evidence that he acted in self-defense, complete or incomplete.

Like alibi, petitioner's claim of self-defense is weak; it is also settled that self-defense is easy to fabricate and difficult to disprove. Such a plea is both a confession and avoidance.[48] One who invokes self-defense, complete or incomplete, thereby admits having killed the victim by inflicting injuries on him. The burden of evidence is shifted on the accused to prove the confluence of the essential elements for the defense as provided in Article 11, paragraph 1 of the Revised Penal Code:

x x x (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. x x x[49]

The accused must rely on the strength of his own evidence and not on the weakness of that of the prosecution because even if the evidence of the prosecution is weak, the same can no longer be disbelieved.[50] The accused

cannot escape conviction if he fails to prove the essential elements of complete self-defense.

In *Garcia v. People*,^[51] the Court defined unlawful aggression:

x x x Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person — a mere threatening or intimidating attitude is not sufficient. There must be actual physical force or a threat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury. Aggression, if not continuous, does not constitute, aggression warranting self-defense.^[52]

Aggression, if not continuous, does not constitute aggression warranting self-defense.^[53] When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor.^[54]

There can be no self-defense, complete or incomplete, unless the accused proves unlawful aggression on the part of the victim.^[55] Unlawful aggression is a sudden and unexpected attack or an imminent danger thereof, and not merely a threatening or an intimidating attitude.^[56]

Petitioner failed to discharge his burden.

First. Petitioner failed to surrender himself to the responding authorities who arrived at the situs criminis, as well as the bolo he used in stabbing the victim. One who acted in self-defense is expected to surrender, not only himself, but also the weapon he used to kill or inflict physical injuries on the victim.^[57]

Second. The victim sustained three stab wounds on different parts of his body. Two were fatal stab wounds at his left chest. The presence of a large number of wounds on the part of the victim, their nature and location disprove self-defense and instead indicate a determined effort to kill the victim.^[58]

Third. Petitioner testified that he was punched by the victim. However, there is not a scintilla of evidence to show that petitioner suffered even a scratch as a result of the alleged fist blows.

Neither can the RTC nor the CA be faulted for giving credence to the testimony of SPO1 Salutare. No evidence was adduced by the defense to show that he harbored any ill-motive against petitioner to charge him with such a crime. Absent any proof of improper motive, the prosecution witness who is law enforcer is presumed to have regularly performed his duty in arresting and charging petitioner.^[59] His testimony is thus entitled to full faith and credit. Moreover, the conviction of petitioner was not based solely on the testimony of the SPO1 Salutare. The unimpeached testimony of Dean categorically established the crime; this was corroborated by the testimony of Dr. Nathaniel Rimando.

Petitioner's argument that he should be acquitted because the criminal complaint against him was not supported by the victim's sworn statement or by an affidavit of any witness is totally untenable. This issue should have been raised during the preliminary investigation. It is much too late in the day to complain about this issue after a judgment of conviction has been rendered against him.

Contrary to petitioner's stance, the testimonies of his corroborating witnesses are unimpressive. For one, Godofredo's testimony was limited only to the alleged fact that happened outside of the cooperative building. He himself admitted that when the protagonists started fighting each other, for fear for his life, he hurriedly flagged and boarded a tricycle which revved up to the highway; it was from there that he saw petitioner slumped on his tricycle. In other words, he did not witness what transpired thereafter or how the fight ended.

Joselito's testimony did not fare any better. It was given neither credence nor weight by the trial court. And even if it had been proved that the victim was rabid against petitioner, such evidence would only have established a

probability that he had indeed started an unlawful assault on petitioner. This probability cannot, however, overcome the victim's positive statement that petitioner waylaid and assaulted him without any provocation. The theory that Dean may have started the fight since he had a score to settle against petitioner is flimsy, at best. Furthermore, Joselito admitted that he was petitioner's best friend; hence, his bias cannot be discounted.

The Crime Committed by the Petitioner

Petitioner next argues that should he be convicted of any crime, it should be of less serious physical injuries only, absence the element of intent to kill. He advances the argument that the single wound suffered by the victim was not life threatening and that the latter was transferred to undergo operation in another hospital only because the medical staff where he was first rushed bungled their job. He makes much of the fact that Dr. Darius R. Pariñas who issued the Medical Certificate never testified for the prosecution.

Again, the Court is not swayed.

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. Intent to kill may be proved by evidence of the following: (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 are inflicted by him on the victim.[60]

Petitioner insists that he had no intent to kill Dean. However, the physical evidence belies petitioner's pose.

To begin with, as between petitioner and the victim, the former had more hatred to harbor arising from the fact that the victim filed a lawsuit against him and his wife. Petitioner thus had more motive to do harm than the victim. By his own account, he and Dean had a history of personal animosity.

Secondly, petitioner was armed with a deadly 14½-inch bolo.

Thirdly, if it were true that petitioner stabbed Dean merely to defend himself, it defies reason why he had to stab the victim three times. Petitioner's claim that Dean suffered only a single non-life threatening wound is misleading. Dr. Rimando, who attended to and operated on Dean, testified that the victim sustained three (3) stab wounds, two (2) of which penetrated his heart and lung, causing massive blood clotting necessitating operation; the other lacerated Dean's his right elbow. The presence of these wounds, their location and their seriousness would not only negate self-defense; they likewise indicate a determined effort to kill.[61] Moreover, physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses.[62]

Neither does the non-presentation of Dr. Darius R. Pariñas, the doctor who signed the medical certificate, would dent a bit the evidence for the prosecution. This is so because Dr. Pariñas, who assisted Dr. Rimaldo during the operation of Dean, would merely corroborate Dr. Rimaldo's testimony. As such, his testimony is not indispensable.

Fourthly, from the manner the crime was committed, there can hardly be any doubt that intent to kill was present. It has been clearly established that petitioner ambushed Dean and struck him with a bolo. Dean was defenseless and unarmed, while petitioner was deadly armed.

Lastly, the words of the petitioner while he was assaulting Dean were most revealing:

Atty. Atitiw:

Q :

When you were in the counter, what was accused Benjamin doing?

A :

When I was inside the counter and he's outside and between us is a glass and there he shouting at me telling in Ilocano that AGPARENTONG KA TATTA TA TALAGA NGA PATAYEN KA TATTA NGA ALDAWEN "You kneel down because I will really kill you now." [63]

x x x x

Atty. Atitiw:

Q :

While passing through the loading area of the tricycle, do you remember anything that transpired there at the loading area?

A :

Yes, Sir.

Q :

What is that, Mr. Witness?

A :

While Benjamin Martinez, Barangay Captain Oller and I were walking proceeding to our Police Station and when we were near the area, at the loading area if the tricycle, Benjamin Martinez shouted and I quote: "SINAKSAK KON PARE, SANGSANGAILI LAENG ISUNA SAAN NGA ISUNA TI AGARI DITOY TUBAO," that was the utterance, Sir. [64]

x x x x

Q : After bringing him to the Police Station, what did you do next?

A : We put him in jail, Sir.

Q : And while in jail do you remember whether accused Benjamin Martinez did anything while in jail?

A : Yes, Sir.

Q : What is that, Mr. Witness?

A : He kept on shouting words, Sir.

Q : What are those words if you can remember?

A : He kept on shouting "NAPATAY KON, NAPATAY KON," Sir. [65]

Anent the allegation of negligence on the part of the medical staff of Doña Gregoria Memorial Hospital where Dean was rushed, suffice it to say that this is a new theory being foisted by petitioner. It was never raised in the two courts below and thus it will not be entertained here. At any rate, this allegation finds no support in the records of the case.

It cannot be denied that petitioner had the intention to kill Dean. Petitioner performed all the acts of execution but the crime was not consummated because of the timely medical intervention applied on the victim.

An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[66] In this regard, we find ample evidence to establish treachery. The CA's advertence to the stipulation of facts contained in the Pre-Trial Order dated December 20, 2000[67] is misplaced. This alleged stipulation was stricken off the record on motion of the prosecution on the ground that no stipulation of such fact was made.[68]

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might take.[69]

In the present case, the prosecution had met the requisites for alevosia to be appreciated: (1) at the time of the attack the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method, or form of the attack employed by him.[70] Dean lived to tell about the swiftness of the attempt against his life:

Q :

After getting the dividend certificate where did you proceed next?

A : I went out from the bank, sir. I was able to go to school.

Q : Where you able to go to the school?

A : No, Sir.

Q : Why were you not able to reach the school?

A : Because I was suddenly stabbed by Benjamin Martinez.

Q : Where did Benjamin Martinez stab you?

A : In front of the bank, Sir.

Q : And how did Benjamin Martinez stab you?

A : I was about to go to my car, Sir. I was reading the dividend certificate that I got from the bank but when I was about one step away from the back of the L300 van that was parked in front of the bank, I was suddenly stabbed by him.

Q : Where was Benjamin Martinez at that time when he was stabbed you?

A : Probably he was hiding at the back of the L300 van, Sir.[71]

When Dean was attacked he was unarmed. He had just exited the cooperative building and had no inkling that he would be waylaid as he made his way towards his car. Upon the other hand, petitioner was armed with a deadly 14½-inch bolo. The attack on Dean was swift and unannounced; undeniably, petitioner's attack was treacherous.

Petitioner is guilty of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code which reads:

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it 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.

The essential elements of a frustrated felony are as follows:

- The offender performs all the acts of execution;
- All the acts performed would produce the felony as a consequence;
- But the felony is not produced;
- By reason of causes independent of the will of the perpetrator.[72]

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 is necessary to consummate the crime. However, the crime was not consummated by reason of the intervention of causes independent of the will of the offender. 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.[73]

The penalty for frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion temporal.[74] The latter penalty has a range of 12 years and 1 day to 20 years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from reclusion temporal, the penalty for the crime, taking into account any modifying circumstances in its commission. The minimum of the indeterminate penalty shall be taken from the full range of prision mayor which is one degree lower than reclusion temporal. Since there is no modifying circumstance in the commission of frustrated murder, the appellants should be meted an indeterminate penalty of from nine (9) years and four (4) months of prision mayor in its medium period as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum.

Petitioner, likewise, insists that he voluntarily surrendered to Barangay Captain Rodolfo Oller. He faults the trial and appellate courts for relying on the prosecution's Affidavit of Arrest, arguing that the same is inadmissible as hearsay, the affiants not having testified to affirm their declarations.

For voluntary surrender to be appreciated, the following requisites should be present: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority or the latter's agent; and (3) the surrender was voluntary. The surrender must be spontaneous, made in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or he wishes to save them the trouble and expenses that would necessarily be incurred in the search and capture.[75]

In the case at bar, SPO1 Salutre testified that petitioner did not voluntarily surrender but was forcibly apprehended by Barangay Captain Oller, and thereafter turned over to him. Petitioner however insists that said testimony is hearsay inasmuch as SPO1 Salutre was not the person who actually arrested him. We disagree. During SPO1 Salutre's testimony, petitioner failed to object to the questions propounded to SPO1 Salutre regarding his apprehension. Consequently, he cannot now claim that SPO1 Salutre's testimony on the arrest was hearsay. Petitioner's assertion of having voluntarily surrendered to Barangay Captain Oller was not corroborated by any competent and reliable evidence. Considering the damning averments in the Affidavit of Arrest, petitioner should have at least called Barangay Captain Oller to the witness stand just to shed light on his alleged voluntary surrender.

We agree with the trial court that the qualifying circumstance of evident premeditation has not been adequately shown. To properly appreciate the same, it is necessary to establish: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to this determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the

consequences of his act.[76] Since there is dearth of evidence on when petitioner first conceived of killing Dean and that he was afforded sufficient time to reflect on the consequences of his contemplated crime before its final execution, the circumstance of evident premeditation cannot be appreciated.

Civil Liabilities of Petitioner

The trial court awarded Dean the amount of P92,000.00 representing his hospitalization and medical expenses which was increased by the CA to P92,715.68. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party.[77] For Dean's hospitalization and medical expenses, the receipts submitted to support said claim amounted only to P56,275.48; hence, Dean is entitled only to the said amount.

The Court awards exemplary damages in the amount of P25,000.00, inasmuch as the qualifying circumstance of treachery attended the commission of the crime. In *People v. Catubig*,[78] we emphasized that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of P25,000.00 is recoverable if there is present an aggravating circumstance, whether qualifying or ordinary, in the commission of the crime.

The CA is correct in deleting Dean's claim for lost salary while recuperating, since this was not supported by evidence. However, the trial court's award of P10,000.00 as attorney's fees should be reinstated, Dean having hired a private prosecutor to prosecute his case.

Lastly, for the suffering Dean endured from petitioner's felonious act, the award of P22,000.00 moral damages is increased to P25,000.00, in keeping with the latest jurisprudence.[79]

IN LIGHT OF ALL THE FOREGOING, the assailed Decision is hereby **AFFIRMED WITH MODIFICATION**. Petitioner is hereby found guilty beyond reasonable doubt of Frustrated Murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty from nine (9) years and four (4) months of prision mayor in its medium period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum.

Petitioner is ordered to pay Dean Dongui-is the amount of P56,275.48 as actual damages; P25,000 as moral damages; P25,000.00 as exemplary damages; and P10,000.00 as attorney's fees.

SO ORDERED.

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

[1] Penned by Associate Justice Fernanda Lampas-Peralta, with Presiding Justice Ruben T. Reyes and Associate Justice Josefina Guevara-Salonga, concurring; rollo, pp. 47-64.

[2] Rollo, pp. 66-67.

[3] Exhibit "A."

[4] Exhibit "B."

[5] TSN, January 15, 2001, pp. 11-15.

[6] Id. at 18.

[7] TSN, December 13, 2000, pp. 6-7.

- [8]Exhibit "F-1."
- [9] TSN, December 13, 2000, pp. 9-10.
- [10] TSN, January 15, 2001, p. 19.
- [11]TSN, January 29, 2001, p. 23.
- [12] Exhibit "C."
- [13] Records, p. 2.
- [14] Id. at 1.
- [15]Id. at 2.
- [16]Exhibit "E."
- [17] Records, p. 44.
- [18] TSN, March 26, 2001, pp. 4-5.
- [19]Id. at 12.
- [20] Id. at 8.
- [21]Id. at 9.
- [22] Id. at 13-14.
- [23]Exhibit "1-A."
- [24]Exhibit "1-C."
- [25]TSN, February 19, 2001, pp. 2-4.
- [26]TSN, March 26, 2001, p. 17.
- [27]Id. at 19.
- [28] Id. at 21-22.
- [29]Id. at 22-23.
- [30]Id. at 32-33.
- [31]TSN, February 19, 2001, p. 9.
- [32]Id. at 12.
- [33]TSN, March 8, 2001, pp. 4-16.
- [34]Penned by Executive Judge Clifton U. Ganay; records, pp. 224-293.
- [35]Records, pp. 292-293.
- [36] Id. at 286.
- [37]Id. at 287.
- [38]Rollo, p. 52.

[39]Id. at 63-64.

[40]Id. at 50.

[41]Id. at 67.

[42]Id. at 17.

[43] As amended by the Court's Resolution in A.M. No. 05-8-26-SC dated August 30, 2006.

[44]Section 3(b), Rule 112, Revised Rules of Criminal Procedure.

[45]Records, p. 9.

[46]People of the Philippines v. De los Reyes, G.R. 140680, May 28, 2004, 430 SCRA 166; Senoja v. People of the Philippines, G.R. No. 160341, October 19, 2004, 440 SCRA 695; Garcia v. People of the Philippines, G.R. No. 144699, March 10, 2004, 425 SCRA 221, 229.

[47]Rugas v. People of the Philippines, G.R. No. 147789, January 14, 2004, 419 SCRA 399, 406-407; People v. De los Reyes, *supra* note 46, at 173.

[48]Garcia v. People of the Philippines, *supra* note 46, at 228.

[49]People of the Philippines v. De los Reyes, *supra* note 46, at 172.

[50]Senoya v. People of the Philippines, *supra* note 46, at 704-705.

[51]*Supra* note 46.

[52]Id. at 229.

[53] People of the Philippines v. Saul, 423 Phil. 924, 934 (2001).

[54]People of the Philippines v. Tagana, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 635.

[55] People of the Philippines v. Gumayao, 460 Phil. 735, 746 (2003).

[56]People of the Philippines v. Dala, 460 Phil. 727, 732 (2003).

[57]People of the Philippines v. Marcelo, *supra* note 55.

[58] People of the Philippines v. Rubiso, 447 Phil. 374, 382 (2003).

[59] People of the Philippines v. Fernandez, G.R. No. 90019, December 8, 1993, 228 SCRA 301, 308-309.

[60]People of the Philippines v. Caballero, 448 Phil. 514, 534 (2003).

[61] Santos v. Court of Appeals, G.R. No. 126624, November 11, 2003, 415 SCRA 384, 399.

[62]Garcia v. People of the Philippines, *supra* note 48, at 233.

[63] TSN, January 15, 2001, p. 18.

[64]TSN, December 13, 2000, pp. 7-8.

[65] Id. at 9-10.

[66]People of the Philippines v. Estoya, G.R. No. 153538, May 19, 2004, 428 SCRA 544, 560.

[67] Records, p. 155.

[68]Id. at 199.

[69]REVISED PENAL CODE, Art. 14, par. 16.

[70] People of the Philippines v. Escote, Jr., 448 Phil. 749, 786 (2003).

[71]TSN, January 15, 2001, p. 12.

[72] People of the Philippines v. Caballero, supra note 61, at 533.

[73]Id. at 534.

[74]REVISED PENAL CODE, Art. 61, par. 2.

[75]People of the Philippines v. Cariño, G.R. No. 131117, June 15, 2004, 432 SCRA 57, 83.

[76]People of the Philippines v. Torpio, G.R. No. 138984, June 4, 2004, 431 SCRA 9, 16.

[77]People of the Philippines v. Demante, G.R. No. 132310, January 20, 2004, 420 SCRA 229, 247.

[78] 416 Phil. 102 (2001).

[79] People of the Philippines v. Caballero, supra note 60, at 538.

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