

EDGAR ESQUEDA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 170222. June 18, 2009

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a Petition for Review on Certiorari of the Decision[1] dated August 19, 2004 and the Resolution[2] dated April 26, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 26235, affirming the trial court's judgment finding Edgar Esqueda guilty beyond reasonable doubt of the crime of frustrated homicide.

Edgar Esqueda and one John Doe were charged with two (2) counts of Frustrated Murder in two (2) separate Amended Informations, which read:

In Criminal Case No. 14609

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one VENANCIA ALISER with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said Venancia Aliser which prevented her death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.[3]

In Criminal Case No. 14612

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one GAUDENCIO QUINIKUITO with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said GAUDENCIO QUINIKUITO which prevented his death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.[4]

Accused Edgar entered a plea of not guilty. Accused John Doe remains at-large.

During the pre-trial, the parties admitted the identities of the accused and of the private offended parties, the

jurisdiction of the court and that the accused and the private offended parties were all residents of Nagbinlod, Sta. Catalina, Negros Oriental. Since the evidence to be presented were common to both cases, the parties through their respective counsels agreed to a joint trial.[5]

The prosecution presented the testimonies of Venancia Aliser, Gaudencio Quiniquito and Dr. Fidencio G. Aurelia, hospital chief of the Bayawan District Hospital. The evidence of the prosecution tends to establish the following course of events:

Venancia Aliser (Venancia) and Gaudencio Quiniquito (Gaudencio) are live-in partners, living at Sitio Nagbinlod, Sta. Catalina, Negros Oriental, together with their children from their first marriages. They were already in bed when, at around 11:30 o'clock in the evening of March 3, 1999, Gaudencio was awakened by a voice coming from the outside of their house calling his live-in partner and asking for a drink. He immediately awakened his live-in partner. While inside the house, Venancia asked the person outside to identify himself. In response, the voice replied that he and his companions are men of Sgt. Torres conducting a roving patrol. When Venancia asked how many they were, the person replied that they are many and with them is Toto Vibar, the son of their Barangay Captain. Venancia directed Gaudencio to light a lamp. After lighting the lamp, Gaudencio proceeded to open the door and went out, while Venancia tailed him and stayed by the door. Outside, at the porch, they found a person sitting on a bamboo bench whom they could not identify, while a person whom they identified as Edgar Esqueda (petitioner herein) was standing at the side of the door leading to the porch. Suddenly, the unidentified man stood up and stabbed Gaudencio hitting him on the chest. When Venancia saw the stabbing, she shouted "watch out Dong!" and she turned her back to run away but was stabbed by petitioner. She then fell to the ground, but petitioner continued stabbing her on different parts of her body. Gaudencio lost his consciousness. Their children brought them to the crossing in Nagbinlod and they were brought to the Bayawan District Hospital by a barangay councilman. Dr. Patrocinio Garupa was the attending physician who treated them. The medical certificate of Gaudencio showed that he sustained a perforating stab wound at the left anterior chest, stab wounds at the neck, left arm and left part of the axillary area.[6] Venancia's certificate showed that she suffered from multiple stab and incised wounds.[7] SPO1 Jamandron conducted his initial investigation at the hospital by interrogating Venancia and Gaudencio. The offended parties were referred to the Negros Oriental Provincial Hospital, where they were confined for more than a week.

The defense, on the other hand, presented the testimonies of Claudio Babor, Domingo Dimol, SPO4 Hermenegildo Cadungog, SPO1 Winefredo Jamandron, Viviana Namoco and the accused Esqueda. The evidence of the defense was intended to establish the following:

On March 3, 1999, from 8 o'clock in the evening to 2 o'clock in the morning of March 4, 1999, petitioner was trawl-fishing in the sea of Cawitan, Sta. Catalina. Claudio Babor testified that he was also trawl-fishing at the same time. He and petitioner, together with their respective companions, were on different boats, which were side by side. Both were able to catch Atay-atay and Tulakhang.

Domingo Dimol was at the beach of Cawitan, Sta. Catalina. He stayed there from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of the following day waiting for petitioner and Claudio to buy fish from them. At 2 o'clock in the morning, petitioner came ashore and Domingo bought fish from him.

Viviana was at the seashore of Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of March 4, 1999. She, together with twenty other persons, helped the group of petitioner in pulling the rope of the fishing net. Petitioner was manning the rudder. She said that there were two fishing groups. At 2 o'clock in the morning, they all went home and petitioner gave her fish for free.

SPO1 Jamandron conducted the initial investigation in the morning of March 4, 1999 at the Bayawan Emergency

Hospital where Gaudencio and Venancia were confined. His investigation revealed that Gaudencio and Venancia could not identify their assailants. He also testified that Gaudencio and Venancia were both conscious, but were in pain during the investigation. He recorded the result of his investigation in the police blotter.

Petitioner denied having committed the crime imputed against him.

On December 12, 2001, the Regional Trial Court (RTC) of Dumaguete City, Branch 33, rendered a Decision[8] acquitting the petitioner in Criminal Case No. 14612 and convicting him in Criminal Case No. 14609. The dispositive portion of the Decision is as follows:

WHEREFORE, from the foregoing considerations, this Court finds accused, Edgar Esqueda, guilty beyond reasonable doubt of the crime of frustrated homicide in Criminal Case No. 14609. Since there is (sic) no mitigating and aggravating circumstances to offset each other and after applying the Indeterminate Sentence Law, accused Edgar Esqueda is hereby sentenced to suffer the penalty of imprisonment of two (2) years, six (6) months and twenty (20) days of prision correccional, as minimum, to eight (8) years, four (4) months and ten (10) days of prision mayor medium, as maximum. Since the complainant, Venancia Aliser, was not able to produce evidence as to how much she spent for her hospitalization nor presented evidence to prove other damages, this Court is constrained not to award her damages.

Since the element of conspiracy had not been sufficiently established by the prosecution and as had been admitted that it was the unknown person who stabbed Gaudencio Quiniquito, accused Edgar Esqueda is hereby acquitted in Criminal Case No. 14612.

Petitioner filed a Notice of Appeal[9] and the records of the case were transmitted to the CA.

The CA rendered a Decision[10] dated August 19, 2004 dismissing the appeal and affirming the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the decision dated December 12, 2001 of the RTC of Dumaguete City in Criminal Case No. 14609.

Hence, this petition assigning the following error:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF FRUSTRATED HOMICIDE AND IN TOTALLY DISREGARDING HIS DEFENSE.

Petitioner's defense is anchored on alibi and denial. His witnesses, Claudio, Domingo and Viviana, aver that during the time of the incident, petitioner was out at sea fishing. Petitioner, when called to the witness stand, denied having committed the crime.

Further, in his petition, petitioner alleges that Venancia may have had a motive in falsely accusing him of crime.

Furthermore, the private offended parties failed to identify the perpetrators during the initial investigation. Petitioner averred that the private offended parties should have informed the authorities of the identities of their assailant during the initial investigation. He insisted that the trial court erred in totally disregarding his defense, which resulted in his conviction.

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

The petition is denied for lack of merit.

We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.[11] In the present case, petitioner was positively identified by Venancia and Gaudencio as the author of the crime. We quote from the transcript of the stenographic notes:

Venancia on Direct-Examination

PRIVATE PROSECUTOR MARCELO FLORES:

Q.

What did you do when your live-in partner opened the door?

A.

He went out and I followed him.

Q.

What transpired after that?

A.

When he went out, I saw that he was stabbed by the person who was seated.

Q.

Where was that person seated?

A.

On a chair in the balcony.

Q.

What kind of chair?

A.

A bench.

Q.

When he was stabbed, what did you do, if any?

A.

When I saw it, I called out saying, "watch out Dong," and I turned my back, and when I turned my back, I was stabbed by Edgar Esqueda.

Q.

When your live-in partner was stabbed, was he hit?

A.

Yes.

Q.

What part of his body was hit?

A.

The first stab he was hit on the chest.

Q.

When you saw your husband hit on the chest, what did you do?

A.

I shouted "watch out Dong," and when I turned my back, I was stabbed by Edgar Esqueda.

Q.

When that person stabbed your husband hitting him on the chest, where was Edgar Esqueda?

A.

Inside, and he already stabbed me inside the house.

Q.

When you were stabbed for the first time by Esqueda, were you hit?

A.

I was hit here (witness showing a scar located at the left side of her back, located at the waistline).

Q.

How many times were you stabbed at the back?

A.

Nine times.

Q.

At the back only.

A.

Twice.

Q.

After you were stabbed twice at the back, what happened to you?

A.

I fell.

Q.

When you fell, what did Edgar Esqueda do?

A.

He continued stabbing me.

Q.

How many wounds did you suffer by (sic) the stabbing of Edgar Esqueda?

A.

Nine.

Q.

Is that Edgar Esqueda who stabbed you nine times the same Edgar Esqueda the accused in this case?

A.

Yes.[12]

x x x x

Venancia on Cross-Examination.

ATTY. ELMIDO

Q.

By requesting your live-in partner to light the kerosene lamp, we are correct to assume that the place around your house was dark, especially it was 11:30 in the evening.

A.

Yes, because it was 11:30 in the evening, but if you go out there was a light from the moon.

Q.

It was a moon-lit night.

A.

Yes.

Q.

You still have to light the kerosene lamp even if it was a moon-lit night?

A.

Yes.

Q.

Can you see the faces of those waking you up, calling you outside even if you have not yet lighted the kerosene lamp?

A.

Yes, I saw their faces.

Q.

You are sure of that?

A.

Yes, because there was a light coming from the moon, besides, our house has no wall.

Q.

You are sure, even if you did not light the kerosene lamp, you could see the faces of those calling you?

A.

Yes, but I only knew Edgar Esqueda.

Q.

You could identify Edgar Esqueda even without lighting the kerosene lamp?

A.

Yes.[13]

It was firmness born of certainty that Venancia positively identified the petitioner as the one who stabbed her. She testified that she was able to see the petitioner even if the crime was committed at night. It was not completely dark, as the light coming from the moon illuminated the porch of their house.

Notably, another witness, Venancia's live-in partner, Gaudencio, corroborated Venancia's testimony. Gaudencio's testimony on direct examination reveals the following:

PRIVATE PROSECUTOR MARCELO FLORES:

Q. Then, what did you do after hearing the request of Venancia Aliser?

A. After that, I lighted the lamp and we went out. I was ahead and she was following me.

Q. Were you able to reach the door that night?

A. While we were already outside we saw two persons. One was standing near the door, while the other one was sitting down.

Q. Who was that sitting?

A. I do not know the person who was sitting.

Q. How about the one standing?

A. I know him.

Q. Who was he?

A. Edgar Esqueda alias "Loloy."

Q. Edgar Esqueda, the accused you identified in these cases?

A. Yes, Sir.

Q. Upon seeing those two persons, one sitting, the other one accused Edgar Esqueda was standing, what transpired, if any?

A. The person who was sitting down stabbed me.[14]

x x x x

Q. Now, let us go to your first stabbing. When you were first stabbed, where was your common-law wife, Venancia Aliser?

A. Inside the house standing near the door.

Q. What happened to her, if any?

A. She was also stabbed by Edgar Esqueda alias "Loloy."

Q. Do you know what did (sic) accused Edgar Esqueda used (sic) in stabbing Venancia Aliser?

A. A hunting knife.

Q. Was Venancia Aliser hit by the first stabbing by Edgar Esqueda?

A. Yes.

Q. Whereat?

A. On her side (witness touching the left side of his body on the waistline).[15]

In fine, Venancia and Gaudencio both testified in a straightforward and categorical manner regarding the identity of the petitioner as the author of the wounds sustained by Venancia.

In the present case, there appears to be a clash between the categorical statement of the prosecution, on one hand, and the defense of denial by the petitioner, on the other hand. We rule that the rivalry should be resolved in favor of the prosecution.

Between the categorical statements of the prosecution witnesses and the bare denial of the petitioner, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony, especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable, but also because they are easily fabricated and concocted.[16] In light of the foregoing, the defense of denial collapses.

The same fate awaits the defense of alibi.

Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[17] Where there is least chance for the accused to be present at the crime scene, the defense of alibi must fail.[18]

Aside from the testimonies of petitioner's witnesses that he was fishing at Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning the following day, petitioner was unable to show that it was physically impossible for him to be at the scene of the crime.

During the trial of the case, both the prosecution and defense witnesses testified that Nagbinlod and Cawitan, Sta. Catalina, were merely more than 5 kilometers apart which would only take about 20 to 40 minutes' ride. Thus, it was not physically impossible for the petitioner to be at the locus criminis at the time of the incident.

In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[19]

Petitioner's allegation that Venancia may have had a motive in falsely accusing him of a crime is bereft of merit.

Although there is a possibility that Venancia and petitioner's mother were not in good terms due to a case of grave slander by deed that Venancia filed against petitioner's mother, We believe that such incident is not sufficient

provocation for Venancia to give perjured evidence in order to impute a grave felony against the petitioner.

If petitioner had really nothing to do with the crime, it is against the natural order of events and human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him.[20]

Further, assuming that Venancia may have had a grudge against petitioner's mother due to the foregoing case, still, the same would not affect the credibility of her testimony.

In *People v. Medina*[21] and *People v. Oliano*[22] the existence of a grudge or an ill motive does not automatically render the testimony of a witness to be false and unreliable. Petitioner's allegation of false motive in charging him with a crime cannot overcome the affirmative and categorical statements of the prosecution witnesses pointing to him as the malefactor.

Petitioner insisted that the offended parties failed to identify the perpetrators during the initial investigation by the police, thus, casting doubt on the identity of the perpetrator.

The argument is way off the mark.

Delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[23]

In her Affidavit,[24] Venancia explained that she did not immediately disclose the identity of the accused because she was afraid that the perpetrators would kill her and her husband in the hospital. Further, they feared that a certain Cardo Quiniquito, who was said to have tailed the perpetrators after the incident, was missing. This prompted the private offended parties to seek police assistance to locate Cardo's whereabouts. When investigated, Cardo Quiniquito said that he did not follow the suspect, but he escaped because of fear. From the foregoing, it is clear that Venancia's failure to disclose the identity of the perpetrators was due to fear of reprisal.

In *People v. Ompad, Jr.*,[25] it was settled that delay in divulging the names of perpetrators of crimes, if sufficiently explained, does not impair the credibility of the witness and his testimony. The initial reluctance of a witness due to fear of reprisal is common and does not impair his credibility. What matters is that Venancia and Gaudencio testified, and the trial court found their testimonies credible.

In sum, we find that the evidence of petitioner's guilt was sufficiently established. The trial court had the unique opportunity of observing the witnesses firsthand as they testified, and it was, therefore, in the best position to assess whether these witnesses were telling the truth or not. The substance of the testimonies for the prosecution corresponded with the trial court's findings and intrinsically merited full faith and credence. The defense's evidence, on the other hand, provided no facts and circumstances of weight and substance sufficient to cast doubt on the trial court's evaluation of the credibility of the prosecution's witnesses.[26]

However, with regard to the proper crime committed, We are inclined to modify the trial court's ruling.

Petitioner was charged with frustrated murder in an Amended Information. After trial on the merits, the court found that petitioner committed the crime of frustrated homicide. The trial court found that treachery, which would qualify the crime to frustrated murder, was wanting in the present case.

The trial court found that Venancia was already aware of what would happen to Gaudencio because she shouted "watch out Dong" before Gaudencio was stabbed. Before Venancia was stabbed by petitioner, she too was aware of the fate that befell her, because she tried to retreat to the confines of her house when she herself was unfortunately stabbed. The trial court postulated that Venancia must have already been alerted and forewarned of the impending attack; thus, there was no treachery.

We rule that the trial court's finding that there was no treachery is misplaced.

To begin with, an appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[27] We find ample evidence to establish that treachery attended the commission of the crime.

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 especially to insure its execution, without risk to himself arising from the defense which the offended party might take.[28]

There is treachery when the following essential elements are present, viz.: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[29]

In the present case, treachery in the commission of the crime was sufficiently proven by the prosecution. When Gaudencio opened the door and went outside, Venancia tailed him. There they found two persons at the porch, one sitting at the bench and the other standing. Without warning, the unidentified man stood up and stabbed Gaudencio in the chest. Upon seeing this, Venancia shouted "Watch out, Dong!" She then turned her back, but was stabbed by petitioner and fell on the ground. While in this position, petitioner continued hitting her on different parts of her body. Clearly, the hapless Venancia was stabbed immediately after the unidentified person stabbed her live-in partner, thus, giving her no opportunity to retaliate or defend herself. It could not have taken Venancia more than a second or two to run after Gaudencio was stabbed.

The method of attack adopted by the petitioner placed Venancia in a situation where it would be impossible for her to resist the attack or defend her person.

The suddenness of the attack is shown by the fact that Venancia was immediately stabbed by petitioner right after she turned her back to run. She was not able to safely distance herself due to the suddenness of the attack. Further, before opening the door, she and her live-in partner had no inkling that they would be attacked, since petitioner did not reveal his true identity to the victims. His partner in crime misrepresented that they were the men of Sgt. Torres and with them was Toto Vibar, the son of the barangay captain. Petitioner misled the victims, so the latter lowered their guard and suspicion. Thereafter, when the door was opened, the malefactors attacked them. Indeed, all these circumstances indicate that the assault on the victims was treacherous. Venancia, in her testimony, said:

PRIVATE PROSECUTOR MARCELO FLORES

Q.

When you saw your husband hit on the chest, what did you do?

A.

I shouted "watch out Dong," and when I turned my back I was stabbed by Edgar Esqueda.[30]

Treachery may also be appreciated even if the victim was warned of the danger to her life if she was defenseless and unable to flee at the time of the infliction of the coup de grace.[31]

Although Venancia witnessed the stabbing of Gaudencio and was able to warn Gaudencio of further assaults, she too, was immediately attacked while she was defenseless. She was unable to safely distance herself due to the swiftness of the attack.

From the foregoing, it is evident that the crime was committed with alevosia.

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:

1. The offender performs all the acts of execution;
2. All the acts performed would produce the felony as a consequence;
3. But the felony is not produced; and
4. By reason of causes independent of the will of the perpetrator.[32]

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 is 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.[33]

In the case at bar, petitioner commenced the performance of his unlawful act by stabbing Venancia at the back. After she was stabbed and fell on the ground, petitioner's intent to consummate the crime was shown by the fact that he continued stabbing Venancia even while she was on the ground.

Venancia on Direct Examination

PRIVATE PROSECUTOR MARCELO FLORES

Q.

After you were stabbed twice at the back, what happened to you?

A.

I fell.

Q.

When you fell, what did Edgar Esqueda do?

A.

He continued stabbing me.[34]

Petitioner did all that was necessary to bring an end to the life of Venancia. However, the crime was not produced by reason of the timely medical intervention. Dr. Aurelia said that the wounds suffered by Venancia might have been caused by a sharp, pointed and sharp-edged instrument, and without proper medical attendance it might have resulted to death.

Dr. Fidencio G. Aurelia on Direct Examination

PRIVATE PROSECUTOR MARCELO G. FLORES

Q.

I am showing to you another medical certificate of one Venancia Aliser dated March 6, 2001, which alleged that she was admitted thereat on March 4, 1999, 1:30 A.M., please examine this and tell us if you can identify that?

A.

Still I signed in behalf of Dr. Garupa and noted by myself as the chief of hospital.

Q.

Will you please read to us the findings of (sic) the wounds she suffered?

A.

"Multiple stab and incised wound," this is a general statement which was taken from the clinical records based on the medical records.

Q.

What does your medical records state?

A.

Multiple stab and incised wounds.

Q.

What could have caused these wounds?

A.

It might be caused by a sharp, pointed and a sharp-edged instrument.

Q.

Could this cause death without medical attendance?

A.

Without proper medical attendance it may result to death.[35]

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: (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) the words uttered by the offender at the time the injuries are inflicted by him on the victim.[36]

In the case at bar, the intent to kill was sufficiently proven by the prosecution. The manner in which the crime was committed was shown by the fact that petitioner was armed with a knife. Petitioner's attack on the unarmed Venancia was swift and sudden. She had no means and there was no time to defend herself. Further, after she was stabbed and fell to the ground, the petitioner continued hitting her on different parts of her body, thereby showing petitioner's intent to kill her.

Dr. Fidencio G. Aurelia, Chief of the Bayawan District Hospital, read the medical certificate of Venancia which he signed for and in behalf of Dr. Patrocinio Garupa. The certificate showed that she suffered from multiple stab and incised wounds[37] on the left lumbar, left upper posterior chest, and on the left leg and left thigh.[38] Dr. Aurelia said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument, and may have resulted to death without proper medical attendance. Venancia was also hospitalized for more than a week because of the injuries. In fact, at the trial, Venancia showed the scar located at the left side of her back, near her waistline.[39] All these tend to show the nature and seriousness of the wounds suffered by Venancia, which might have caused her death had it not been for the timely intervention of medical science.

The penalty for frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion temporal.[40] Applying the Indeterminate Sentence Law,[41] the maximum of the indeterminate penalty should be taken from reclusion temporal in its medium period, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. 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, an indeterminate penalty of eight (8) years and one (1) day of prision mayor medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum, is considered reasonable for the crime of frustrated murder under the facts of this case.

The trial court did not award damages to Venancia because the prosecution failed to present any evidence to substantiate her hospitalization expenses nor did it present evidence to prove other damages.

We rule that Venancia is entitled to damages.

Where the amount of actual damages cannot be determined because of the absence of supporting receipts but entitlement is shown by the facts of the case, temperate damages in the amount of P25,000.00 may be awarded.[42] In light of the fact that Venancia suffered injuries, was actually hospitalized and underwent medical treatment, it is prudent to award temperate damages in the amount of P25,000.00, in lieu of actual damages.

Further, the award of exemplary damages is also in order, considering that the crime was attended by the qualifying circumstance of treachery. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P30,000.00 as exemplary damages in accordance with Article 2230 of the New Civil Code and under existing jurisprudence is justifiable. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[43]

Furthermore, Venancia is entitled to moral damages which this Court hereby awards in the amount of P40,000.00. Although she did not testify on the moral damages she suffered, the medical certificate issued by the hospital indicated that she suffered multiple stab wounds and incised wounds inflicted by the petitioner. This is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on her would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[44]

Finally, since Venancia hired a private prosecutor to prosecute her case, an award of attorney's fees in the amount of P10,000.00 is in order. Under Article 2208(11) of the Civil Code, attorney's fees can be awarded where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[45]

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals in CA-G.R. CR No. 26235, affirming the Decision of the RTC of Dumaguete City, Branch 33, which found petitioner Edgar Esqueda

guilty of the crime of Frustrated Homicide is SET ASIDE and a new one entered finding petitioner guilty beyond reasonable doubt of the crime of Frustrated Murder under Article 248, in relation to Article 6, first paragraph of the Revised Penal Code, and is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum.

Additionally, petitioner is ordered to pay Venancia Aliser the amount of P25,000.00 as temperate damages; P40,000.00 as moral damages; P30,000.00 as exemplary damages; and P10,000.00 as attorney's fees.

SO ORDERED.

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

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Elvi John S. Asuncion and Ramon Bato, Jr., concurring; rollo, pp. 48-56.

[2] Id. at 61-63.

[3] Records, p. 128.

[4] Id. at 129.

[5] Id. at 136.

[6] Id. at 190.

[7] Id. at 191.

[8] Rollo, pp. 29-35.

[9] Records, pp. 246-247.

[10] Rollo, pp. 48-56.

[11] People v. Mapalo, G.R. No. 172608, February 6, 2007, 514 SCRA 689, 708-709, citing People v. Clores, Jr., 431 SCRA 210, 218 (2004).

[12] TSN, October 18, 2000, pp. 5-7. (Emphasis supplied.)

[13] Id. at 13. (Emphasis supplied.)

[14] TSN, October 30, 2000, pp. 10-11. (Emphasis supplied.)

[15] Id. at 12-13.

[16] People v. Togahan, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 573-574.

[17] People v. Delim, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

[18] People v. FO1 Felipe Dela Cruz, Audi Dona, Alfredo Baracas, Eduardo Palacpac, Bernardo Ranara, Joemari Delos Reyes, Dominador Recepcion and Robert Alfonso, G.R. No. 168173, December 24, 2008.

[19] People v. Casitas, Jr. G.R. No. 137404, February 14, 2003, 397 SCRA 382, 397.

[20] People v. Enciso, G.R. No. 105361, June 25, 1993, 223 SCRA 675, 686.

- [21] G.R. No. 155256, July 30, 2004, 435 SCRA 610, 620.
- [22] G.R. No. 119013, March 6, 1998, 287 SCRA 158, 169.
- [23] *People v. Lovedor*, G.R. No. 139340, January 17, 2001, 349 SCRA 402, 415.
- [24] Records, p. 8.
- [25] G.R. Nos. 93730-31, June 10, 1994, 233 SCRA 62, 66.
- [26] *People v. Felipe Dela Cruz, et al.*, *supra* note 18.
- [27] *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 200.
- [28] Revised Penal Code, Art. 14, par. 16.
- [29] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.
- [30] TSN, October 18, 2000, p. 6.
- [31] *People v. Escote, Jr.*, *supra* note 29, at 633.
- [32] *People v. Caballero*, G.R. Nos. 149028-30, April 2, 2003, 400 SCRA 424, 441.
- [33] *Id.* at 442.
- [34] TSN, October 18, 2000, pp. 6-7. (Emphasis supplied.)
- [35] TSN, March 27, 2001, pp. 8- 9.
- [36] *People v. Caballero*, *supra* note 32, at 442.
- [37] TSN, March 27, 2001, pp. 8-9.
- [38] *Id.* at 18.
- [39] TSN, October 18, 2000, p. 6.
- [40] Revised Penal Code, Art. 61, par. 2.
- [41] Act No. 4103, as amended by Act No. 4225.
- [42] *People v. FOI Felipe Dela Cruz, et al.*, *supra* note 18, citing *People v. Abrazaldo*, 397 SCRA 137, 149-150 (2003).
- [43] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 701-702.
- [44] *Id.* at 701, citing *People v. Ibañez*, 407 SCRA 406, 431 (2003).
- [45] *Ungsod v. People*, G.R. No. 158904, December 16, 2005, 478 SCRA 282, 297.

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