

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL LANUZA Y BAGAOISAN, ACCUSED-APPELLANT.

G.R. No. 188562. August 17, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated April 27, 2009 of the Court of Appeals in CA-G.R. CR. No. 31406, which affirmed the Judgment[2] dated January 30, 2008 of Branch 14 of the Regional Trial Court (RTC) of Laoag City in Criminal Case No. 13388-14, finding accused-appellant Rodel Bagaoisan Lanuza guilty beyond reasonable doubt of the crime of frustrated homicide. The RTC, taking into consideration the mitigating circumstance of voluntary surrender and applying the indeterminate sentence law, sentenced accused-appellant to imprisonment from four (4) years of prision correccional, as minimum, to seven (7) years of prision mayor, as maximum.

The criminal information, charging accused-appellant with the crime of frustrated homicide, as defined and penalized under Article 249 in relation to Article 6 of the Revised Penal Code, reads:

That on or about the 1[st] day of April 2007 in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot by the use of a 12 gauge shotgun, Joel G. Butay, performing all the acts of execution which would produce the crime of homicide as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the accused and that is the timely medical attention extended to said Joel G. Butay.[3]

On July 11, 2007, accused-appellant was arraigned and he pleaded not guilty to the criminal charge.[4]

During the preliminary conference, the parties admitted, among other facts, that accused-appellant shot private complainant Joel G. Butay; that as a result of the shooting, private complainant sustained a gunshot wound which caused his confinement at the provincial hospital for 12 days; that accused-appellant voluntarily surrendered to the Philippine National Police (PNP), Laoag City, surrendering a shotgun, five live bullets, and one empty shell; and that private complainant suffered actual damages amounting to P70,000.00. Accused-appellant, however, asserted that the shooting was accidental, as contemplated under Article 12(4) of the Revised Penal Code, which exempts from criminal liability "any person who, while performing a lawful act with due care, causes injury by mere accident without fault or intention of causing it." Private complainant, however, insisted that accused-appellant pulled the trigger of the gun with the intention of killing him.

In view of accused-appellant's assertion of an exempting circumstance in his favor, the RTC, in its Pre-Trial Order[5] dated July 26, 2007, ordered a reverse trial of the case.

Thereafter, trial ensued.

Accused-appellant testified on November 21, 2007,[6] while private complainant testified on November 29, 2007.[7] The RTC summarized the evidence presented by the parties as follows:

From the defense evidence, it appears that the incident subject of this case took place at the basement of the BIR office in Laoag City in the morning of April 1, 2007, while the private complainant as outgoing security guard was handing his shotgun to the accused, the incoming security guard. Because the accused did not report for duty on the scheduled time, the private complainant reprimanded him. After the accused had affixed his signature on the pertinent portion of the logbook enumerating the items turned-over to him by the outgoing security guard, the private complainant handed to him their service firearm, a shotgun. Allegedly, the private complainant held it with both hands, with the muzzle pointed at him and the butt towards the accused. At that moment, the accused gripped the firearm with one hand, with his pointer finger inside the trigger guard and on top of the trigger itself. In his affidavit which was adopted as part of his direct testimony, the accused stated that "I immediately held opposite the muzzle of the gun where the trigger is, I almost slip with it while in the act of gripping and then immediately the gun went off; the incident happened so fast that I was stunned then realized that I accidentally shot my fellow guard." The private complainant was hit on the left side of his waist. With the private complainant bleeding and unconscious, the accused went to the telephone upstairs to call for an ambulance. There, however, the accused heard the sound of a motorcycle leaving the BIR premises. He went down and discovered that the private complainant was no longer at the place where he had left him. The accused, thereafter, proceeded to the Laoag City police station and surrendered.

The prosecution presented a different scenario. According to the private complainant, he did not actually hand the shotgun to the accused. Instead, he merely placed it, together with one bullet, on top of the security guard's table. Although he was turning over six bullets to the accused, the private complainant asserted that the five others were inside a drawer on the security guard's table at their office upstairs. While the private complainant who was about to go home was asking why the accused did not report on his scheduled shift, the latter got the shotgun, placed the ammunition inside it, and shot him. The private complainant fell down on his buttocks. The accused went near the private complainant and pulled the trigger a second time, but the shotgun did not fire and the private complainant heard only a click. The accused ran upstairs, and the private complainant crawled to his motorcycle and drove it himself to the provincial hospital. The medical certificate issued by his attending physician, Dr. Frankie Pete Albano, shows that the private complainant sustained the following:

- "- Gunshot wound 3cm. in diameter left lumbar area thru and thru left paravertebral area
- Fractured spleen / Hemoperitoneum 100 cc thru and thru left kidney (2 points)."

The medical certificate also indicated that exploratory laparotomy was conducted on the private complainant, his spleen was repaired, and a drain was placed on his left perirenal area.[8]

At the end of the trial, the RTC promulgated its Judgment dated January 30, 2008, finding accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the said Judgment reads:

WHEREFORE, the accused RODEL LANUZA y BAGAOISAN is hereby found GUILTY beyond reasonable doubt of frustrated homicide under Article 249 in relation to Article 6 of the Revised Penal Code and, with the mitigating circumstance of voluntary surrender, is hereby sentenced to an indeterminate penalty ranging from four years of prision correccional as minimum to seven years of prision mayor as maximum. He is further ordered to pay the private complainant P70,000.00 as actual damages and P25,000.00 as moral damages. Costs against the accused.[9]

Accused-appellant filed his Appellant's Brief[10] before the Court of Appeals on July 23, 2008 to assail the foregoing judgment of conviction rendered against him by the RTC.

In his Brief, accused-appellant maintained that he shot private complainant by mere accident. In the event the Court of Appeals is not convinced that accused-appellant acted with due care, one of the elements for the exempting circumstance of accident under Article 12(4) of the Revised Penal Code, accused-appellant urged the appellate court to impose upon him a sentence in accord with Article 67 of the same Code, which specifically

provided for the "[p]enalty to be imposed when not all the requisites of exemption of the fourth circumstance of Article 12 are present."

In the alternative, accused-appellant contended in his Brief that, at the most, he could only be held accountable for the crime of physical injuries in the absence of proof of his intent to kill private complainant.

Accused-appellant argued that if he really had the intent to kill, he could have shot private complainant with precision. Accused-appellant claimed that private complainant's version of events immediately after the latter was shot was incredible. By private complainant's own admission, accused-appellant did not say anything to him, did not hit him with the gun, and did not kick him while he sat on the floor after being shot. Private complainant even pleaded for help from accused-appellant after sustaining the gunshot wound.

Accused-appellant further raised doubts as to the credibility of private complainant given the inconsistencies in the latter's testimony. The private complainant allegedly testified that he placed the shotgun and one bullet on top of the security guard's table for turn-over to accused-appellant. The five other bullets for the shotgun were in a drawer in another security guard's table on the upper floor. Private complainant claimed to have seen accused-appellant load one bullet in the shotgun. However, during cross-examination, private complainant said that all six bullets for the shotgun could not be seen during the turn-over. Thus, private complainant could not have seen accused-appellant load any bullet into the shotgun. Private complainant also initially narrated that he was about to board his motorcycle when he was shot by accused-appellant; yet, when cross-examined, private complainant stated that he had already boarded his motorcycle at the time he was shot.

In its Brief[11] filed on November 27, 2008, plaintiff-appellee People of the Philippines countered with the following arguments:

I.

ACCUSED-APPELLANT FAILED TO PROVE THAT HE IS ENTITLED TO THE EXEMPTING CIRCUMSTANCE OF ACCIDENT.

II.

THE PROSECUTION PROVED BEYOND REASONABLE DOUBT THAT THE OFFENSE COMMITTED WAS A RESULT OF A DELIBERATE AND INEXCUSABLE ACT.

III.

ACCUSED-APPELLANT WAS CORRECTLY FOUND BY THE TRIAL COURT GUILTY OF THE CRIME OF FRUSTRATED HOMICIDE.[12]

Upon review of the evidence presented, the Court of Appeals rendered its assailed Decision on April 27, 2009, dismissing accused-appellant's appeal and affirming his conviction for the crime of frustrated homicide, as well as the prison sentence handed down against him by the RTC. The dispositive portion of said Decision reads:

WHEREFORE, the appeal is hereby DISMISSED and the January 30, 2008 Judgment of the Regional Trial Court of Laoag City, Branch 14, in Criminal Case No. 13388-14 finding Rodel Lanuza y Bagaoisan guilty beyond reasonable doubt of the crime of frustrated homicide is AFFIRMED.[13]

Instead of seeking reconsideration of the aforementioned Court of Appeals decision, accused-appellant filed a Notice of Appeal.[14] The Court then issued a Resolution[15] dated August 19, 2009 requiring the parties to submit their respective supplemental briefs, if they so desire. In response to said Resolution, plaintiff-appellee filed a Manifestation[16] stating that it was adopting its Brief before the Court of Appeals since there was no new issue raised in accused-appellant's appeal before this Court; while accused-appellant did not file any pleading at

all.

The Court sustains the verdict of guilt against accused-appellant.

The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[17] Evidence to prove intent to kill in crimes against persons may consist, inter alia, of the means used by the malefactors; the nature, location and number of wounds sustained by the victim; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; the circumstances under which the crime was committed; and the motive of the accused.[18] These elements are extant in the case at bar.

The prosecution has satisfactorily proven that accused-appellant intended to kill private complainant based on the method of attack, the weapon used, and the location of the gunshot wound. Accused-appellant shot private complainant with a shotgun at close range hitting the latter's abdomen. Resultantly, private complainant sustained a wound that could have caused his death if not for the timely medical attention given to him. As aptly elaborated by the RTC:

[T]he medical certificate shows that the gunshot hit the body of the private complainant, causing injuries to his spleen and left kidney. In fact, the 'hemopentoneum' referred to therein means that there was bleeding inside his abdomen and that 100 cc of blood was taken from it. As a result, the attending physician had to operate on him, repair his spleen and place a drain in the vicinity of the kidney. Moreover, the private complainant had to be confined at the provincial hospital for twelve days, a fact underscoring the gravity of his condition. Clearly, one does not have to be a physician to realize that a person would die if the said injuries would remain untreated. Accordingly, the accused must be deemed to have performed the last act necessary to kill the private complainant.[19]

As both the RTC and the Court of Appeals observed, the version of events as recounted by the private complainant was highly credible, while that narrated by accused-appellant strains human credulity.

The RTC did not give probative weight to accused-appellant's testimony that his shooting of private complainant was completely accidental, for the following reasons:

It is axiomatic that a person who invokes accident must prove that he acted with due care. This was belied by the conduct of the accused when he allegedly received the shotgun from the private complainant. As he himself admitted, he received the shotgun by placing his pointer finger, also known as the trigger finger because it is used to squeeze the trigger, inside the trigger guard and over the trigger itself. Worse, he did so while the barrel of the gun was pointed at the private complainant. Worst, he had been a security guard for three years prior to the incident and had undergone lessons on gun safety. According to him, he knew that it was not proper for a person to receive a firearm from another by immediately inserting a finger inside the trigger guard. Likewise, he knew that the hand-over of a firearm with its barrel pointed towards the giver or any other person was not proper. That he did these improper acts despite his training and experience as a security guard undermines any notion that he had acted with due care during the subject incident.

In any case, the version of events narrated by the accused is unworthy of credence. To repeat, that the accused did the abovementioned acts despite his experience and training as a security guard is difficult to believe. No one can be a security guard and receive a firearm by immediately inserting the trigger finger inside the trigger guard. In the same vein, no person can be a security guard and still point a firearm at himself or herself or any other person while handing it to another. Clearly, no one who has undergone lessons in gun safety, much less one who earns a living by providing security, can be capable of the acts admitted by the accused. Simply put, his claim that he performed those acts is unbelievable.

There are other reasons for withholding credence from the claim of the accused. According to him, after the private complainant was shot and rendered unconscious, he did not go near him. For ten seconds before he finally decided to go upstairs, he did nothing. Moreover, he made no attempt to check if he was still alive or if he could help him in any way. That he offered no help to the wounded private complainant undermines his claim of accident. As observed in *People v. Reyes*, "had [the shooting] really been accidental, then the natural tendency of the accused would have been to immediately give help to his unfortunate victim and even to plead and express his regret to the mother of the deceased." [20]

In contrast, private complainant's testimony passed muster with the RTC, to wit:

Indeed, the version of the private complainant deserves more credence. Contrary to the strained and unbelievable scenario posited by the defense, the private complainant's account was straightforward and credible; allegedly, he reprimanded the accused that morning for not reporting on his scheduled shift, but the latter got mad and shot him. It must be stressed that the accused himself admitted that the private complainant had reprimanded him that morning. Clearly, there was reason - no matter how flimsy - for the accused to get angry and to shoot the private complainant deliberately.

In any event, the Court has carefully examined the testimony of the private complainant as well as his demeanor at the witness stand, and has found no reason to withhold credence from him. At the outset, the accused failed to show any motive - and the records show none - for the private complainant to concoct a story and to testify falsely against him. Moreover, the records show the private complainant's positive and forthright testimony to be consistent even under able cross-examination. It has been held that "the best test of credibility is its compatibility with the common experience of man. A testimony deserves credence if it does not run counter to human knowledge, observation and experience; whatever is repugnant to these standards becomes incredible and lies outside of judicial cognizance. Applying that standard, the Court finds no sufficient reason to withhold credence from the private complainant's testimony." [21]

Hence, the RTC ultimately concluded:

In that light, credibility leans heavily in favor of the private complainant. The contrary testimony of the accused does not deserve credence, and his claim of accident must consequently be rejected. For this reason, his alternative - albeit implicit - claim that he should be held liable only for criminal negligence resulting in physical injuries must also be rejected. Thus, the Court holds that the shooting of the victim took place not because of accident or criminal negligence; rather, it was the result of a deliberate and inexcusable act, for which the accused must be held criminally liable. [22]

The Court of Appeals affirmed in toto the findings of the RTC. The appellate court reasoned that private complainant simply lacked the motive to concoct a story or falsely testify against accused-appellant.

There is no cogent reason for the Court to disturb the foregoing findings and conclusions of both the RTC and the Court of Appeals. Accused-appellant's implausible alibi of accident cannot overcome private complainant's positive and forthright testimony that accused-appellant shot private complainant with intent to kill.

It must be emphasized that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. [23]

The inconsistencies in private complainant's testimony are not as serious or damaging as accused-appellant wants this Court to believe. The Court agrees with the Court of Appeals that the purported inconsistencies in private complainant's testimony pertain to details which are inconsequential to the credibility of his overall testimony,

thus:

While there may be some inconsistencies in private complainant's testimony, these incompatible declarations do not pertain to the essential elements of the crime of which the accused-appellant was convicted. They refer only to minor matters and are inconsequential as they do not impair the credibility of the prosecution witness. In fact, inaccuracies may suggest that the witness is telling the truth and has not been rehearsed. This is because a witness is not expected to remember every single detail of an incident with perfect or total recall.[24]

Questions on whether or not private complainant had actually seen accused-appellant load the shotgun with a bullet, or whether or not private complainant was already on board his motorcycle when he was shot by accused-appellant, would have no bearing on the fact that private complainant was shot by accused-appellant with the service shotgun turned-over by the former to the latter. The Court stresses that accused-appellant himself admitted the fact of shooting, and only disputed any intent to kill private complainant. The conclusion of the RTC, as affirmed by the Court of Appeals and this Court, that accused-appellant intended to kill private complainant was not based entirely on accused-appellant deliberately loading the shotgun, but also on the existence of motive on accused-appellant's part, the location and severity of private complainant's injury, and accused-appellant's behavior immediately after the shooting.

Finally, the Court likewise sustains the penalty and damages imposed against accused-appellant.

The penalty prescribed by law for the crime of frustrated homicide is one degree lower than that prescribed by law for the crime of homicide.[25] Under the indeterminate sentence law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Considering that the penalty prescribed by law for the crime of homicide is reclusion temporal, the penalty for the crime of frustrated homicide would be prision mayor. Applying the indeterminate sentence law, there being the mitigating circumstance of voluntary surrender and no aggravating circumstance, the maximum of the sentence should be within the range of prision mayor in its minimum term which has a duration of six (6) years and one (1) day to eight (8) years, and that, on the other hand, the minimum should be within the range of prision correccional which has a duration of six (6) months and one (1) day to six (6) years. Thus, the imposition of imprisonment from four (4) years of prision correccional, as minimum, to seven (7) years of prision mayor, as maximum, is in order.

There is similarly no reason for the Court to disturb the award of damages made by the court a quo. Accused-appellant shall compensate private complainant for actual damages in the amount of P70,000.00 as the parties voluntarily stipulated during the pre-trial conference that private complainant incurred actual expenses in said amount because of his injuries. Accused-appellant shall also be liable for moral damages suffered by private complainant in the amount of P25,000.00, in accordance with jurisprudence.[26]

WHEREFORE, the instant appeal of accused-appellant is DENIED for lack of merit and the Decision dated April 27, 2009 of the Court of Appeals in CA-G.R. CR. No. 31406 is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Brion,[*] Bersamin, and Villarama, Jr., JJ., concur.

* Per Raffle dated August 17, 2011.

[1] Rollo, pp. 3-13; penned by Associate Justice Mariano C. del Castillo (now a member of this Court) with

Associate Justices Pampio A. Abarintos and Marlene Gonzales-Sison, concurring.

[2] CA rollo, pp. 48-55; penned by Judge Francisco R.D. Quilala.

[3] Records, p. 1.

[4] Id. at 43.

[5] Id. at 72-74.

[6] TSN, November 21, 2007.

[7] TSN, November 29, 2007.

[8] CA rollo, pp. 48-50.

[9] Id. at 55.

[10] Id. at 34-47.

[11] Id. at 66-88.

[12] Id. at 73-74.

[13] Rollo, p. 12.

[14] CA rollo, p. 107.

[15] Rollo, p. 18.

[16] Id. at 19-22.

[17] *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 339.

[18] *Mahawan v. People*, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 752-753.

[19] CA rollo, p. 53.

[20] Id. at 51.

[21] Id. at 51-52.

[22] Id. at 52.

[23] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

[24] Rollo, p. 10.

[25] Revised Penal Code, Article 50.

[26] *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 458; *Rugas v. People*, 464 Phil. 493, 507 (2004).

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