

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FORD GUTIERREZ Y DIMAANO, APPELLANT.

G.R. No. 188602. February 04, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal is the March 12, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 02680, which affirmed with modifications the August 7, 2006 decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 62, in Criminal Case Nos. 03-3639, 03-3640, and 03-3641-43, finding appellant Ford Gutierrez y Dimaano (appellant) guilty beyond reasonable doubt of murder, frustrated murder and three (3) counts of attempted murder.

On August 15, 2003, five (5) separate Informations for murder, frustrated murder and three (3) counts of attempted murder were filed against appellant. The accusatory portions of the Informations read:

Criminal Case No. 03-3639

For: Murder

That on or about the 17[th] day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with [a] gun, by means of treachery and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards the person of LEO SALVADOR REGIS, thereby hitting him and inflicting mortal wounds which caused his death.[3]

Criminal Case No. 03-3640

For: Frustrated Murder

That on or about the 17[th] day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with [a] gun, by means of treachery and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot one ALEXIS DALIT y BALOSBALOS hitting him on the arm, thus performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of a cause independent of the will of the accused, that is due to the timely and able medical attendance rendered to the said ALEXIS DALIT y BALOSBALOS which prevented his death.[4]

Criminal Case No. 03-3641

For: Attempted Murder

That on or about the 17[th] day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Jaypee S. Boneo, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Jaypee S. Boneo.[5]

Criminal Case No. 03-3642

For: Attempted Murder

That on or about the 17[th] day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Randy S. Marcelo, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Randy S. Marcelo.[6]

Criminal Case No. 03-3643

For: Attempted Murder

That on or about the 17[th] day of May 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Jefferson S. Gallemmit, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Jefferson S. Gallemmit.[7]

When arraigned, appellant, with the assistance of counsel de oficio, entered a plea of not guilty to the charges. Trial on the merits then ensued.

The Office of the Solicitor General (OSG) summed up the prosecution's version as follows:

On May 17, 2003 at nine o'clock in the evening, the deceased Leo Salvador Regis, private complainants Randy Marcelo, Jefferson Gallemmit, Jaypee Boneo and Alexis Dalit were talking to each other in front of the house of the deceased at 477 Narra St., Cembo, Makati City. They noticed the presence of appellant along the street and thought that appellant would just pass by. However, when appellant was two (2) arms length away in front of them, appellant suddenly raised his arm and shot the deceased Regis with a .45 caliber pistol. After he was hit on the chest, Regis said "Aray!," embraced Randy Marcelo who was seated on his left, and fell off his chair to the ground (TSN, June 2, 2004, pp. 8-11, 17-26).

Jefferson Gallemmit, Jaypee Boneo and Alexis Dalit stood from their seats. Appellant fired several shots thereafter, one of which hit Dalit's arm. Boneo and Gallemmit ran up the street while Dalit ran in the opposite direction and hid behind a car. In the meantime, the deceased Leo Salvador Regis and Randy Marcelo were still huddled together at the spot where the deceased fell. Appellant stayed at the same spot where he fired the first shot even after the three ran away. (Ibid., pp. 26-31).

Appellant then pursued Dalit down the street but did not catch him, prompting appellant to say: "Pagnaabutan ko kayo, pagpapatayin ko kayo!" Dalit then sought refuge at BLISS Makati and contacted the police from there (Ibid., pp. 31-34).

The police arrived at the scene after twenty (20) minutes. Dalit was brought to the Ospital ng Makati where his wound was dressed. He was operated on at the Philippine Orthopedic Hospital (Ibid., pp. 34-41). Regis was brought to the Ospital ng Makati by Randy Marcelo where he died that night (TSN, June 22, 2005, p. 14). [8]

Appellant for his part asserted self-defense. He testified that:

At around 8 o'clock p.m. of May 17, 2003, he went to an ihaw-ihaw restaurant with live band in Guadalupe in order to relax. After taking two (2) bottles of beer, he decided to go home, took a jeepney ride and alighted in front of a bakery owned by Barangay Captain Leo Magbantay, one hundred twenty (120) meters away from his house. While passing by, he noticed a group of five youngsters who were at the right side of the street. Among them, he only knew Loloy (Jaypee) Boneo, whom he used to babysit when the latter was still young.

While walking, one in the group cursed him and shouted "tang ina mo!" Since he was the only passerby, he stopped and looked at them, but two (2) from the group approached him. He was suddenly boxed by Regis Ado, while Dalit was just beside Ado. When he fell on the ground, Ado continuously beat him, then suddenly, a gun fell from Leo Regis. He immediately got hold of it, and when Leo Regis was supposed to attack him again, he kicked Leo which made him [to fall] down. When he stood up and saw Regis standing up, he fired a shot at him. He continuously fired the gun, which was directed towards the ground so as to warn the others.

Thereafter, he fled the scene, and threw the gun on a vacant lot. Since he did not know what to do, and confused, he took a jeepney going to Pateros, but since, he had no money, he alighted somewhere, and rested. When he finally regained his senses, he went to Cubao and borrowed money from one of their retailers. [9]

Not finding credence in appellant's claim of self-defense, the RTC convicted him of murder, frustrated murder and attempted murder on three (3) counts:

WHEREFORE, in view of the foregoing, finding the accused guilty beyond reasonable doubt of the murder of Leo Salvador Regis, the frustrated murder committed against Alexis B. Dalit, and the three counts of attempted murder committed against Jaypee S. Boneo, Randy S. Marcelo & Jefferson S. Gallemmit, the court hereby imposes the following penalties:

- in criminal case no. 03-3639 for murder of Leo Salvador E. Regis, the court hereby sentences him to suffer the penalty of imprisonment reclusion perpetua, to pay the heirs of the victim the sum of P50,000.00 as civil indemnity and the amount of Php 102,337.25 as actual damages;

- in criminal case no. 03-3640 for the frustrated murder committed against Alexis B. Dalit, the [c]ourt hereby sentences him to suffer the penalty of imprisonment of 8 years and 20 days as minimum to 14 years, 10 months and 20 days as maximum and to indemnify the sum of Php 22,596.50, representing the victim's expenses for medical services and medicine;

- in criminal case no. 03-3641 for the attempted murder committed against Jaypee S. Boneo, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum;

- in criminal case no. 03-3642 for the attempted murder committed against Randy S. Marcelo, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum;

- in criminal case no. 03-3643 for the attempted murder committed against Jefferson S. Gallemmit, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum.

SO ORDERED.[10]

Appellant filed an appeal before the CA, assigning in his brief this lone error allegedly committed by the trial court:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED, WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT, BY GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY TESTIMONIES OF THE PROSECUTION EYEWITNESSES.[11]

The OSG, on behalf of the People, also filed its brief[12] with a recommendation for the modifications of the

felony and of the award for damages. It asserted that the trial court correctly gave credence to the testimonies of the prosecution witnesses and rejected appellant's claim of self-defense. The OSG insisted that appellant's guilt for murder in Criminal Case No. 03-3639 and attempted murder on three (3) counts in Criminal Case Nos. 03-3641-43 was proven beyond reasonable doubt. However, in Criminal Case No. 03-3640, appellant should be held liable only for attempted murder and not for frustrated murder, since the wound inflicted on Alexis B. Dalit was not life-threatening. The OSG, therefore, prayed that appellant's conviction for frustrated murder be reduced to attempted murder with the corresponding reduction of penalty. Finally, it prayed for modification of the actual damages awarded, and for the grant of moral and exemplary damages to the heirs of Leo Salvador E. Regis.

On March 12, 2009, the CA rendered the assailed Decision, affirming, but with modifications, the RTC decision, viz.:

WHEREFORE, premises considered, the 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case No. 03-3639 for murder is AFFIRMED with MODIFICATION as to the award of damages. The award of actual damages in favor of the heirs of Leo Salvador E. Regis is reduced to P42,337.25. Moral damages of P50,000.00, temperate damages of P10,000.00, and exemplary damages of P10,000.00 are additionally awarded to the heirs of Leo Salvador E. Regis.

The 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case No. 03-3640 for frustrated murder is MODIFIED. Accused-appellant Ford D. Gutierrez is found GUILTY of committing the crime of ATTEMPTED MURDER and sentenced to suffer the indeterminate imprisonment of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum. The award of actual damages in favor of the victim Alexis B. Dalit is AFFIRMED.

The 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case Nos. 03-3641, 03-3642 and 03-3643 for attempted murder is AFFIRMED.

SO ORDERED.[13]

Appellant is now before this Court, submitting for resolution the same matters argued before the CA. Through his Manifestation in Lieu of Supplemental Brief,[14] appellant states that he will not file a Supplemental Brief and, in lieu thereof, he will adopt the Appellant's Brief he filed before the appellate court. The OSG, likewise, manifests that it is no longer filing a supplemental brief.[15]

Appellant assails the trial court and the CA for giving credence to the prosecution's evidence. He admits having killed Regis and wounding Dalit, but insists that he did so in self-defense.

Self-defense is an affirmative allegation and offers exculpation from liability for crimes only if satisfactorily proved. It requires (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to repel it; and (c) lack of sufficient provocation on his part.[16]

In *People of the Philippines v. Bienvenido Mara*, we explained:

One who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person claiming self-defense. By invoking self-defense, the burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. [17]

In this case, appellant utterly failed to discharge the burden of proving unlawful aggression. His version of the

events was uncorroborated, and his testimony was found to be less credible by the trial court. On the other hand, the surviving victims were unanimous that appellant suddenly fired at them, without any provocation on their part. The credibility of the prosecution witnesses had been weighed by the trial court, and it found their testimonies to be more convincing. As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses, since the trial judge has the best opportunity to observe their demeanor.[18] While this rule admits of exceptions, none of such exceptions obtains in this case.

In *Razon v. People*,[19] we held:

Self-defense cannot be justifiably appreciated when uncorroborated by independent and competent evidence or when it is extremely doubtful by itself. Indeed, in invoking self-defense, the burden of evidence is shifted and the accused claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[20]

The trial court and the CA cannot, therefore, be faulted for rejecting appellant's plea of self-defense.

This Court also agrees with the trial court in appreciating treachery as a qualifying circumstance. The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[21]

The pieces of evidence gleaned by the trial court, the facts, are enough to show that treachery was employed by appellant. The attack was sudden, as testified to by the witnesses, and unexpected. Provocation on the part of the victims was not proven, and appellant's testimony that the victims were about to attack him cannot be given credence. The victims had no inkling that an attack was forthcoming and had no opportunity to mount a defense. Thus, treachery was correctly appreciated as a circumstance to qualify the crime to murder.

Under Article 248[22] of the Revised Penal Code (RPC), as amended, the penalty imposed for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is reclusion perpetua, pursuant to Article 63, paragraph 2[23] of the RPC. The prison term imposed by the trial court in Criminal Case No. 03-3639 is correct.

We also affirm the CA ruling that appellant is guilty of attempted murder, not of frustrated murder, in Criminal Case No. 03-3640 for the injury sustained by Dalit. No convincing proof was offered to show that the wound inflicted on Dalit was fatal and would have caused his death had medical help not been provided. It is well settled that where the wounds inflicted on the victim are not sufficient to cause his death, the crime is only attempted murder, as the accused had not performed all the acts of execution that would have brought about the victim's death.[24]

The CA correctly assessed the penalty to be imposed on appellant for attempted murder in Criminal Case Nos. 03-3640 to 03-3643. The penalty for attempted murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC. Accordingly, the imposable penalty is prision mayor. Absent any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed should be within the range of prision correccional, and the maximum penalty to be imposed should be within the range of prision mayor in its medium period. Hence, for the crime of attempted murder, appellant was rightly sentenced by the CA to suffer the penalty of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

And now, the award of damages. When death occurs due to a crime, the following may be recovered: (1) civil

indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[25]

The CA awarded P42,337.25 as actual damages and P10,000.00 as temperate damages to the heirs of Regis. In *People v. Villanueva*[26] and *People v. Abrazaldo*,[27] we ruled that temperate and actual damages are mutually exclusive in that both may not be awarded at the same time. Hence, no temperate damages may be awarded if actual damages have already been granted. The award of P10,000.00 as temperate damages must, therefore, be deleted.

The grant of P50,000.00 as civil indemnity and P50,000.00 as moral damages is proper, and thus, we sustain the same. In murder, the grant of civil indemnity, which has been fixed by jurisprudence at P50,000.00, requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor.[28] Moral damages, on the other hand, are awarded in view of the violent death of the victim. There is no need for any allegation or proof of the emotional sufferings of the heirs.[29]

Likewise, the award of exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying,[30] as in this case. Accordingly, we sustain the CA's award of exemplary damages to the heirs of Regis, but we increase the award to P30,000.00.

Similarly, we affirm the award of P22,596.50 as actual damages to Dalit, who is, likewise, entitled to moral damages, which this Court fixes in the amount of P40,000.00. Ordinary human experience and common sense dictate that the wounds inflicted on the surviving victims would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries. Finally, the award in the amount of P20,000.00, as exemplary damages to Dalit, is also in order considering that the crime was attended by the qualifying circumstance of treachery.[31]

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02680 is AFFIRMED with MODIFICATIONS. Appellant Ford Gutierrez y Dimaano is found GUILTY beyond reasonable doubt of MURDER (Criminal Case No. 03-3639) and is hereby sentenced to suffer the penalty of reclusion perpetua. Appellant is also ordered to pay the heirs of Leo Salvador E. Regis the amounts of P42,337.25 as actual damages, P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

Ford Gutierrez y Dimaano is also found guilty beyond reasonable doubt of four (4) counts of ATTEMPTED MURDER (Criminal Case Nos. 03-3640 to 03-3643) and is hereby sentenced to suffer the penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, on each count, with all the accessory penalties imposed by law. Appellant is further ordered to pay Alexis B. Dalit the amounts of P22,596.50 as actual damages, P40,000.00 as moral damages, and P20,000.00 as exemplary damages.

SO ORDERED.

Carpio[*], Corona, (Chairperson), Velasco, Jr., and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 818 dated January 18, 2010.

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican, concurring; rollo, pp. 2-18.

[2] CA rollo, pp. 30-48.

- [3] Id. at 25.
- [4] Id. at 26.
- [5] Id. at 27.
- [6] Id. at 28.
- [7] Id. at 29.
- [8] Id. at 132-133.
- [9] Id. at 80-81.
- [10] Id. at 48.
- [11] Id. at 69.
- [12] Id. at 123-160.
- [13] Rollo, p. 17.
- [14] Id. at 37-39.
- [15] Id. at 33-34.
- [16] Sanchez v. People, G.R. No. 161007, December 6, 2006, 510 SCRA 365, 369.
- [17] People of the Philippines v. Bienvenido Mara y Bolaqueña alias "Loloy," G.R. No. 184050, May 8, 2009.
- [18] Id.
- [19] G.R. No. 158053, June 21, 2007, 525 SCRA 284.
- [20] Id. at 297.
- [21] People of the Philippines v. Bienvenido Mara y Bolaqueña alias "Loloy," supra note 17.
- [22] ART. 248. Murder. - Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:
1. With treachery, x x x.
- [23] ART. 63. Rules for the application of indivisible penalties. - x x x.
- x x x x
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- [24] People v. Ronas, G.R. Nos. 128088 & 146639, January 31, 2001, 350 SCRA 663, 677.
- [25] People v. Tolentino, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.
- [26] G.R. No. 139177, August 11, 2003, 408 SCRA 571.
- [27] G.R. No. 124392, February 7, 2003, 397 SCRA 137.
- [28] People v. Goleas, G.R. No. 181467, August 6, 2008, 561 SCRA 380.

[29] *People v. Balais*, G.R. No. 173242, September 17, 2008, 565 SCRA 555.

[30] *Id.*

[31] *People v. Tolentino*, *supra* note 25, at 701.

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