

PETRONILO NAPONE, JR. AND EDGAR NAPONE, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 193085. November 29, 2017

Ponente: MARTIRES, J.

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MARTIRES, J.:

This is a petition for review seeking the reversal of the 9 December 2009 Decision[1] and 21 July 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 00384 which affirmed with modification the 14 November 2006 Decision[3] of the Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon (RTC), in Criminal Case No. 1190 finding accused--appellants Petronilo Napone, Jr. (Junior) and Edgar Napone (Edgar) guilty of the crime of homicide.

THE FACTS

Junior and Edgar, together with their father, Petronilo Napone, Sr. (Senior; collectively, the Napones), were charged with the crime of murder for the death of Salvador Espelita (Salvador) under an information, dated 13 November 1992, the accusatory portion of which reads:

That on or about the 22nd day of September, 1992, in the evening at [B]arangay Mabunga, [M]unicipality of Baungon, [P]rovince of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and superior strength, armed with a bolo, firearm and stone, did then and there willfully, unlawfully and criminally attack, hack, shoot and throw stone at SALVADOR ESPELITA, inflicting mortal wounds to wit:

- Hack wounds, frontal left side of the head, (1) 4 x 1 cm. (2) 2.5 x 1 cm. (3) 3.5 cm. (4) 1 cm.

- Gunshot wound, left chest measuring 8 cm. in diameter, 2 inches from the midline, at the 4[th] intercostal space [surrounded] by contusion collar, directed straight forward penetrating [and] perforating the left ventricle thru [and] thru, traversing towards the right piercing the intervertebral muscle at the back at the level 5[th] inter space 4 inches from the vertebral column.

that caused his death thereafter.

To the damage and prejudice [of] the heirs of the deceased SALVADOR ESPELITA in such sum they are entitled to under the law.

Contrary to and in violation of Article 248 of the Revised Penal Code.[4]

On 4 May 1993, the Napones were arraigned and pleaded not guilty.[5] Trial ensued.

On 17 January 2005, the trial court ordered the dismissal of the case against Senior due to his death on 8 October 2003, a month after he completed his testimony.

Evidence for the Prosecution

The prosecution anchored mainly on the testimonies of three (3) witnesses, namely: Jocelyn Janioso (Janioso), Dante Sadaya (Sadaya), Janioso's storekeeper, and Dr. Apolinar Vacalares, M.D. (Dr. Vacalares), the medico-legal officer who conducted the post-mortem examinations on Salvador's cadaver. Their combined testimonies tended to establish the following:

On 22 September 1992, at about 8:00 o'clock in the evening, at Barangay Mabunga, Municipality of Baungon, Province of Bukidnon, Salvador and his son, Robert Espelita (Robert) arrived at Janioso's house calling out for help. When Janioso came out of her house, she saw Salvador whose forehead was oozing with blood,[6] and Calib Napone (Calib) likewise bloodied on the face, mud-laden,[7] and trying to extricate himself from Salvador who held him by the back collar of his shirt.[8] Calib is the son of Senior and the brother of Junior and Edgar.

When Janioso asked what happened, Salvador replied that Calib waylaid him and struck him with an iron bar while he and Robert were on their way home from their farm.[9] Salvador turned over to Janioso the iron bar which he allegedly wrested from Calib. Thereafter, Janioso directed one of her employees to find a vehicle to be used to bring Salvador and Calib to the hospital.[10] Janioso was Salvador's balae.[11]

After a while, the Napones arrived in a vehicle.[12] To avoid further conflict, Janioso pulled Salvador inside her house. Unfortunately, Senior followed them and immediately hacked Salvador from behind using a borak, a big bolo ordinarily used for chopping wood, hitting Salvador at the back of his head.[13] Salvador, in retaliation, also hacked Senior.

Meanwhile, Edgar and Junior also alighted from the vehicle. Edgar threw a stone the size of a fist at Salvador.[14] Junior then shot Salvador three (3) times with a small firearm, hitting the latter on the chest which caused him to fall.[15] Janioso immediately rushed to Salvador's aid. While she was trying to lift Salvador, she saw Junior running away with the gun. She no longer took notice of Edgar and Senior as her concern was to bring Salvador to the hospital. At the hospital, Salvador was pronounced dead.[16]

The post-mortem findings on Salvador revealed that he sustained four (4) hack wounds on the left side of his head and a gunshot wound on his chest.[17] Dr. Vacalares, the medico-legal officer who conducted the autopsy, concluded that the cause of death was the perforation of the left ventricle due to gunshot wound,[18] which necessarily proved to be the fatal wound. Dr. Vacalares also took the witness stand where he elaborated that the bullet perforated Salvador's left ventricle resulting in his death in less than ten (10) minutes.[19] As regards the hack wounds, Dr. Vacalares stated that they were caused by a sharp bladed instrument.[20] However, he did not state whether these hack wounds were fatal or not.

Evidence for the Defense

The defense presented Senior, Junior, and Johnny Palasan (Palasan) as witnesses. Calib was also presented as a witness but his testimony was deemed inadmissible in evidence for being hearsay because he was not sworn in when he took the witness stand. The testimonies of the defense witnesses tended to establish that the Napones acted in self-defense and in defense of a relative, as follows:

On 22 September 1992, at around 8:00 o'clock in the evening, while Senior was chopping firewood, and while Junior and Edgar were conversing inside their house at Mabunga, Baungon, Bukidnon, a certain Ervin "Ungat" Tagocon (Tagocon) came and told them that he saw Calib bloodied and dragged by Salvador and Robert to the house of Janioso, located approximately 100 meters from their house. Upon hearing the news, Junior hurriedly ran towards Janioso's house, while Edgar and Senior immediately followed.[21] Before running to Calib's aid, Senior got hold of his borak,[22] because he suspected that the Espelitas had hacked Calib.[23]

Upon arriving at Janioso's place, the Napones saw Calib bloodied and being held by the Espelitas who, upon

seeing them coming, dropped Calib, who was then prostrate and unconscious. The Espelitas then went inside the fenced premises of Janioso's house. When Senior attempted to lift Calib from the ground, Salvador rushed towards him and hacked him with a bolo multiple times. Senior, unable to retaliate because he was lifting Calib,[24] parried the attacks with his left hand but was unsuccessful. His ring and middle fingers were severed from his left hand and his forehead was wounded. Thereafter, Senior fell to the ground and lost consciousness.[25]

Edgar tried to defend his father from Salvador by throwing a stone at the latter. Because of this, Salvador shifted his attention towards Edgar and chased him with a bolo.[26]

Meanwhile, Junior was about to rush to Senior's aid when a man, later identified to be Palasan, alerted him that Robert was aiming a firearm at him. Junior wrestled with Robert for the possession of the firearm. When Junior got hold of the firearm, Robert allegedly shouted "watch out, my firearm was taken" and ran away.[27] Salvador stopped chasing after Edgar, turned to Junior, and hacked him three (3) times: the first blow missed, the second hit Junior's belt buckle, but the third struck Junior's left leg.[28]

Junior fell to the ground face down from the third strike. With Salvador still behind him, he crawled away from his assailant. When he stood up and saw that Salvador was still coming after him, Junior fired his gun at Salvador.[29] Junior claimed that was the first time he had fired a gun.[30] Despite the first shot, Salvador kept advancing towards Junior; thus, he again shot at Salvador hitting him in the chest.[31] Thereafter, Junior left the gun by Janioso's fence and took Senior and Calib to the provincial hospital in Cagayan de Oro City, for treatment.[32]

On 23 June 1992, Junior surrendered to the authorities in Baungon, Bukidnon.[33] However, the firearm he used to shoot Salvador was never recovered.

The RTC Ruling

In its 14 November 2006 decision, the RTC found Junior and Edgar guilty beyond reasonable doubt of the crime of homicide. It gave more weight to the version of the prosecution witnesses finding them to be more credible, straightforward, and duly supported by the post-mortem findings. The trial court rejected petitioners' claim of self-defense and in defense of a relative ratiocinating that they failed to establish the presence of unlawful aggression on the part of Salvador. It further ruled that a conspiracy among the Napones existed as shown by their successive attacks on Salvador. The trial court also ruled that no aggravating or mitigating circumstance attended the felony. The dispositive portion of the decision reads:

WHEREFORE, IN VIEW OF THE ABOVE, judgment is hereby rendered finding the two (2) remaining accused PETRONILO NAPONE, Jr. and EDGAR NAPONE GUILTY beyond reasonable doubt of the felony of HOMICIDE, and applying the indeterminate sentence law, the court hereby sentences the two (2) remaining accused aforecited to suffer the penalty of imprisonment of TWELVE (12) YEARS OF PRISION MAYOR IN ITS MAXIMUM PERIOD AS MINIMUM TO SEVENTEEN (17) YEARS FOUR (4) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM.

The two (2) remaining accused further hereby ordered to PAY, solidarily, the heirs of SALVADOR ESPELITA in the sum of One Hundred Eighty Thousand (P180,000.00) Pesos, as actual damages, Forty Three Thousand (P43,000.00) Pesos, as Attorney's Fees, and the amount of Seventy Five Thousand (P75,000.00) Pesos, as moral damages for the death of SALVADOR ESPELITA. The Bond for the provisional liberty of the accused are hereby CANCELLED. Let warrant of arrest issue and the accused are hereby ordered committed to serve their sentence [at] the DAVAO PENAL COLONY, PANABO, DAVAO DEL NORTE.

Costs against [the] accused.[34]

Aggrieved, petitioners appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC decision, with modifications.

The appellate court concurred that the testimonies of Janioso and Sadaya were more truthful and candid, but disagreed with the RTC with regard to the appreciation of modifying circumstance. While it conceded that no aggravating circumstance attended the killing of Salvador, it opined that the trial court failed to appreciate the mitigating circumstance of passion and obfuscation. It observed that the unfortunate incident occurred at the "spur of the moment" and because of the Napones' "impulse reaction" upon seeing Calib wounded and lying on the ground. It also noted that the testimonies of both the prosecution and defense witnesses showed that there was no prior animosity between the Espelitas and the Napones. In fact, Senior testified that Salvador was his friend or "compadre."

Likewise, the CA ruled that conspiracy could not be appreciated considering that the incident happened at "the spur of the moment." Thus, the appellate court reduced Edgar's liability to that of a mere accomplice reasoning that his participation in throwing a stone at Salvador during the incident, while showing community of criminal design, was otherwise not indispensable to the commission of the felony.

The dispositive portion of the assailed decision reads:

WHEREFORE, the assailed Judgment is hereby AFFIRMED with MODIFICATION that appellants Petronilo Napone, Jr. and Edgar Napone are found GUILTY beyond reasonable doubt of HOMICIDE, as PRINCIPAL and ACCOMPLICE, respectively, and accordingly SENTENCED to suffer the penalt[ies] of:

As to PETRONILO NAPONE, JR. - eight (8) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum.

As to EDGAR NAPONE. - four (4) years and two (2) months of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.

They are also mandated to PAY jointly the heirs of deceased Salvador Espelita, the following:

- Fifty Thousand Pesos (P50,000.00) as death indemnity;
- Fifty Thousand Pesos (P50,000.00) as moral damages; and
- Twenty Five Thousand Pesos (P25,000.00) as temperate damages, in lieu of the award of actual damages which the prosecution failed to prove.

And, pursuant to the Tampus[35] ruling, (re: graduation of pecuniary penalties vis-a-vis the different degrees of liability in the commission of the felony), Petronilo Napone, Jr. (as a principal) has to pay 2/3 of the sum total of the above-mentioned amounts, i.e., a total of EIGHTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE PESOS and THIRTY-FOUR CENTAVOS (P83,333.34), while Edgar Napone (as an accomplice) shall bear 1/3 thereof, i.e., a total of FORTY-ONE THOUSAND SIX HUNDRED SIXTY-SIX PESOS and SIXTY-SIX CENTAVOS (P41,666.66).

With subsidiary imprisonment, in case of non-payment.[36]

Petitioners moved for reconsideration, but the same was denied by the CA in its Resolution, dated 21 July 2010.

Hence, the present petition.

THE ISSUE

WHETHER THE TRIAL AND APPELLATE COURTS ERRED WHEN THEY RULED THAT THE PETITIONERS DID NOT ACT IN SELF-DEFENSE AND/OR DEFENSE OF RELATIVES

THE COURT'S RULING

The petition lacks merit.

Justifying circumstances of self--defense and defense of relatives

The petitioners interpose self-defense and defense of relatives. They insist that the actions they committed and which resulted in Salvador's death were necessary and reasonable under the circumstances to repel the latter's unlawful aggression towards them and their father.

It has been held that when the accused invokes the justifying circumstance of self-defense and, hence, admits to killing the victim, the burden of evidence shifts to him. The rationale for this shift is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense.[37] Thus, it is incumbent upon the accused to prove his innocence by clear and convincing evidence.[38] For this purpose, he must rely on the strength of his evidence and not on the weakness of that of the prosecution for, even if the latter is weak, it could not be denied that he has admitted to be the author of the victim's death.[39]

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of all of its elements, which are: (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.[40] Similarly, for defense of a relative to prosper, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[41]

In both self-defense and defense of relatives, whether complete or incomplete, it is essential that there be unlawful aggression on the part of the victim. After all, there would be nothing to prevent or repel if such unlawful aggression is not present. For unlawful aggression to be appreciated there must be an actual, sudden, and unexpected attack or imminent danger thereof, not merely a threatening or intimidating attitude.[42]

The defense failed to prove self--defense and defense of relative.

After a careful examination of the records, the Court finds that the defense failed to discharge the burden of proving that the petitioners acted in self-defense or defense of relatives.

The defense would have this Court believe that the Napones proceeded to the place of Janioso without any malice in mind and with the only goal of rescuing Calib. To refute the accusations against them, they painted a picture of Salvador mercilessly attacking Senior who merely wanted to carry his son who was then lying on the ground and covered with blood. They maintain that the petitioners were forced to retaliate against Salvador who was unlawfully attacking their father.

The Court is not persuaded.

The version of the defense may be amusing, yet it still pales in comparison in terms of credibility when faced with the testimonies of the eyewitnesses Janioso and Sadaya and the post-mortem report by Dr. Vacalares. Needless to state, the Court concurs with the findings of the trial and appellate courts.

It is doctrinally settled that findings of trial courts on the credibility of witnesses deserve a high degree of respect

and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant.[43] Furthermore, factual findings of the trial court, when affirmed by the CA, are deemed binding and conclusive.[44] While this rule admits of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could affect the result of the case,[45] the Court is of the view that none of these exceptions is present in this case.

The prosecution was able to establish that the Napones, and not the Espelitas, were the unlawful aggressors. During her direct and cross--examinations, Janioso was steadfast in her account that Senior immediately hacked Salvador, thus:

ATTY. ADAZA:

Q. When you saw Petronilo Napone, Sr. and Petronilo Napone, Jr. with others arrive, what happened next?

A. When Petronilo Napone, Sr. arrived he immediately hacked Salvador Espelita.

Q. What instrument did he use?

A. A bolo.

Q. Where was Salvador Espelita hit?

A. In the head.

Q. Which part of the head?

A. Back of the head.[46] (emphasis supplied)

x x x

ATTY. MUSNI:

Q. When Petronilo, Sr. arrived together with Petronilo, Jr., there was no exchange of words between Salvador Espelita and Petronilo, Sr.?

A. With Petronilo Napone, Sr., none.

Q. And immediately, Petronilo Napone, Sr. immediately hack Salvador Espelita?

A. Yes.[47] (emphasis supplied)

The view that Senior initiated the hostility was actually consistent with his testimony. During the trial, Senior narrated that he brought his borak to defend himself against the Espelitas because he was of the belief that they hacked Calib, thus:

ATTY. ADAZA:

Q. Alright, now, according to you, you believed that your son was already dead that is why you brought along that weapon on that evening of September 22, 1992. Question, Mr. Napone, when you brought along that weapon, and you said in your affidavit that you wanted to defend yourself against whom and from whom?

A. It is to defend myself if he will include me.[48]

x x x

Q. How did you know that it was Salvador Espelita who hacked your son when you never talked to your son according to you, your son was sprawled on the ground bloodied?

A. What I have said before, it was Ungat Tagocon who told me.

Q. But according to you, Ungat Tagocon never told you that these Espelitas injured your son, it was only the information that your son was bloodied, which is which now?

A. Because he was bloodied, I presumed that it was Salvador Espelita who caused the injury because they were the ones who brought him to the store of Jocelyn Janioso.[49]

Clearly, Senior armed himself with a bolo and was ready to use it against the Espelitas making them his specific targets because of his belief that they were his son's assailants. At this juncture, it is well to emphasize that the fact that Calib was seen lying on the ground is not the unlawful aggression required under the law. It was established during trial that any attack on the person of Calib by the Espelitas, if there was any, had already ceased at the time the Napones arrived. No actual, sudden, and unexpected attack or imminent danger on the life or limb of Calib, therefore, could justify Senior's attack on Salvador.

Coming now to the actual shooting of Salvador, both Janioso and Sadaya's testimonies were positive and categorical with respect to its material aspects. They were consistent and corroborated each other in their narration of who committed the crime, and when and how it was committed. During her direct and cross-examinations, Janioso recounted how the events transpired, thus:

ATTY. ADAZA:

Q. When he was hit at the back of his head, what happened next?

A. He face[d] Petronilo Napone, Sr. and retaliated by hacking then he was shot by Petronilo Napone, Jr.

Q. How many times did you hear a shot?

A. Three (3) shots.[50] (emphasis supplied)

x x x

ATTY. MUSNI:

Q. When Petronilo, Sr. arrived together with Petronilo, Jr., there was no exchange of words between Salvador Espelita and Petronilo, Sr.?

A. With Petronilo Napone, Sr., none.

Q. And immediately, Petronilo Napone, Sr. immediately hacked Salvador Espelita?

A. Yes.[51] (emphasis supplied)

On Sadaya's part, his testimony was unwavering despite the defense counsel's apparent attempts to confuse him during cross-examination, in this wise:

ATTY. MUSNI:

Q. You said in your affidavit that you already heard the two gunshots when you were already inside the sala of the house of Jocelyn Janioso, is that right?

A. I heard two gunshots when I was already inside the house of Janioso.

Q. Now, you have read your affidavit, please go over your affidavit again Mr. Sadaya and tell the Honorable

Court whether you have stated that you have first heard a gunshot when you were still inside the house, if there is a statement aside from hearing two shots when you were already inside the house?

A. The answer of Question No. 11, last sentence "because of fear I entered the house through the kitchen and when I was already at the sala I heard two gunshots."

Q. So, that is your answer, you are referring to the last sentence of Question No. 11 of your affidavit?

A. Yes sir.

Q. In this last sentence in your Answer to Question No. 11, it refers only to Mr. Sadaya to two gunshots that you heard when you were inside the sala, is that correct?

A. Yes sir.

Q. It did not refer in any way to what you have testified that you heard a gunshot while you were outside the house?

A. It's not placed in the affidavit.

Q. Because the truth of the matter Mr. Sadaya is that, you only heard two gunshots on that particular night of September 22, 1992, is that correct?

A. I saw the actual shooting then when I turned around and went inside the house I heard two gunshots.[52]

x x x

Q. So, that at the time you claimed that you have seen somebody shot Salvador Espelita, your back was turned to where Salvador Espelita was standing, is that correct?

A. After he made the shot.

Q. But you did not see at the time the shot was made, is that correct?

A. I saw it.[53] (emphasis supplied)

The prosecution witnesses were not only credible but were also not shown to have harbored any ill motive toward the Napones. Thus, the Court has no reason to doubt their respective testimonies. They were surely entitled to full faith for those reasons, and both the RTC and the CA properly accorded them such credence. Their positive and categorical statements that the Napones assaulted Salvador without any unlawful aggression on his part prevail over the claim of self-defense and defense of relative which were unsubstantiated by clear and convincing proof.

Petitioners capitalize on the apparent inconsistencies between the testimonies of Janioso and Sadaya, who testified that Senior was hacked at the back of his head, and the post-mortem report by Dr. Vacalares, which revealed that Senior sustained hacks wound on the "frontal left side of the head." The variance as to the location of the hack wounds, however, is a relatively minor matter which does not necessarily discredit Janioso and Sadaya as witnesses. This supposed discrepancy could be easily explained by the fact that the incident happened at nighttime, at on or about 8 o'clock in the evening, which might have caused some minor departures in the witnesses' perception. Such minor inconsistency does not weaken, as in fact it serves to strengthen, the credibility of the prosecution witnesses.

Thus, the defense's claim of self-defense and defense of relatives, which have been held to be inherently weak defenses because they are easy to fabricate,[54] were reduced into incredulity when scrutinized against the prosecution's evidence. The Court, therefore, sees no reason to disturb the trial and the appellate courts' findings that the killing of Salvador was not attended by any justifying circumstance.

Conspiracy did not attend the commission of the felony.

The Court agrees with the appellate court that conspiracy does not obtain in the present case. Settled is the rule that much like the criminal act itself, proof beyond reasonable doubt is necessary to establish the existence of conspiracy. It cannot be established by conjectures, but by positive and conclusive evidence.[55]

In this case, no other evidence was presented by the prosecution to establish conspiracy aside from the circumstances that the accused were members of the same family, that they arrived at the scene of the crime at about the same time, and that they attacked Salvador successively. These pieces of circumstantial evidence would not suffice to establish conspiracy. It has been held that the fact that the defendants were relatives and had acted with some degree of simultaneity in attacking their victim does not prove conspiracy in the absence of other independent evidence positively and convincingly showing its presence.[56]

From the foregoing, no concerted action pursuant to a common criminal design could be attributed to the petitioners. In the absence of conspiracy, each of the accused, herein petitioners, is responsible only for the consequences of his own acts.[57]

Edgar is liable only as an accomplice to the attempted homicide.

While the appellate court ruled that no conspiracy could be ascribed to the Napones, it, nevertheless, opined that Edgar's act of throwing a stone at Salvador sufficiently showed that he agreed with Junior's criminal design to kill Salvador thereby establishing his complicity to the felony.

The Court disagrees.

In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[58]

Edgar's act which ensued prior to the shooting of Salvador did not necessarily demonstrate his concurrence with Junior's criminal purpose. There was no showing that Edgar committed the deed knowing that Junior would shoot or otherwise harm Salvador moments after. Community of design was lacking. Thus, Edgar could not be held liable as an accomplice to the consummated homicide because the cooperation which the law punishes is the assistance knowingly or intentionally given and which is not possible without previous knowledge of the principal's criminal purpose.[59]

Nevertheless, while Edgar's complicity and participation in the consummated homicide was not sufficiently shown, he should still be held liable for his participation in and concurrence with Senior's criminal purpose.

In *Araneta, Jr. v. CA*, [60] the Court ruled that absent conspiracy, the liability of an accused who, with the intent to kill, slightly wounded the victim who was killed by his co-accused is limited to the "slight injury" he had caused the victim.

The prosecution was able to prove that Senior hacked Salvador at least four (4) times, inflicting upon the latter four (4) hack wounds. Senior's intent to kill Salvador was also established by the nature of the weapon he used and the location of the wounds. However, there was no showing that these hack wounds had caused or would have caused Salvador's death. In fact, Dr. Vacalares, both in his Post-Mortem Findings and during his testimony, was silent whether there was any mortal risk from the hack wounds. Instead, Dr. Vacalares was categorical that the mortal wound was the gunshot wound which caused Salvador's death.

Clearly, and considering that conspiracy is not attendant in this case, Senior would not be liable for the death of Salvador. Instead, he would have been held liable as a principal by direct participation in the crime of attempted homicide, were it not for the total extinction of his criminal liability as a consequence of his demise during trial.

Knowledge of the principal's criminal design is shown by the fact that the person accused as an accomplice has seen the criminal acts of the principal. It has been established that the Napones arrived at the scene of the crime at the same time on board a jeepney. It is also beyond dispute that Edgar threw a stone at Salvador during the latter's struggle with Senior which fact the defense had admitted but with the assertion that it was committed in defense of a relative.

The Court opines that Edgar witnessed his father's assault on Salvador and was thus knowledgeable of his criminal design. The simultaneous act of throwing a stone at Salvador was made to assist Senior in achieving his criminal purpose. Thus, Edgar's assent and participation to the criminal acts of his father were sufficiently established. As Edgar's participation was not indispensable to the felony, he must be held liable as an accomplice to the criminal acts of Senior. Therefore, Edgar is guilty as an accomplice to the crime of attempted homicide.

Mitigating circumstances which attended the case; Appropriate penalties

The appellate court erred when it credited passion or obfuscation in favor of the petitioners. Acts done in the spirit of revenge cannot be considered acts done with passion or obfuscation.[61] Thus, to avail of the mitigating circumstance, it is necessary to show that the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.[62]

The acts of the Napones after they were informed that Calib was dragged by the Espelitas were more consistently driven by revenge rather than mere impulsive reaction. Senior even got hold of his weapon first before going to the place where his son was reportedly harmed. Thus, the extenuating circumstance of passion or obfuscation could not be appreciated in petitioners' favor.

Nevertheless, the circumstances surrounding the unfortunate incident merit the appreciation of the mitigating circumstance of vindication for a grave offense. For such to be credited, the following requisites must be satisfied: (1) that there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees; and (2) that the felony is committed in vindication of such grave offense.[63]

Although it was not witnessed by the Napones, the attack on Calib which put his life at risk must have infuriated them. The belief that the Espelitas were responsible for the grave injuries sustained by a member of their family created rage in their minds which clouded their judgment. Upon seeing Calib bloody, prostrate on the ground and possibly clinging for dear life, the Napones were filled with resentment that resulted in the assault on Salvador. Their acts, therefore, were committed in vindication of a grave offense.

The CA also erred when it failed to appreciate voluntary surrender in favor of Junior. In denying him the benefit of this mitigating circumstance, the appellate court reasoned that no evidence on record other than Junior's own testimony was offered to prove that he voluntarily surrendered to the authorities.

In *People v. Malabago*, [64] we held that where the accused testified that he voluntarily surrendered to the police and the prosecution did not dispute such claim, the mitigating circumstance should be appreciated in his favor. A perusal of the record revealed that the prosecution did not dispute Junior's claim that he surrendered to the police authorities in Baungon, Bukidnon, on 23 June 1992. Hence, the mitigating circumstance of voluntary surrender must be credited in his favor.

In fine, the Court finds Junior liable as principal for the crime of homicide with the prescribed penalty of reclusion temporal. Considering, however, that the two mitigating circumstances could be credited in his favor, and no aggravating circumstance attended the commission of the felony, the imposable penalty is prision mayor,[65] lower than reclusion temporal, and within which the maximum term of the indeterminate sentence shall be taken.

The Court finds Edgar liable as an accomplice to the attempted homicide and, thus, should be meted a penalty three (3) degrees lower than that prescribed by the code for homicide. Further, the mitigating circumstance of vindication of a grave offense shall be credited in his favor.

Appropriate monetary awards

Since Edgar and Junior are liable for separate crimes which arose from different criminal resolutions, they must also be separately liable for civil indemnities arising from these crimes.

In *People v. Jugueta*,[66] the Court summarized the amounts of damages which may be awarded for different crimes. In said case, the Court held that for the crime of consummated homicide, the following amounts may be awarded: (1) P50,000.00, as civil indemnity; (2) P50,000.00, as moral damages; and (3) P50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court. On the other hand, for attempted homicide, the following amounts may be awarded: (1) P20,000.00, as civil indemnity; and (2) P20,000.00, as moral damages.

In *People v. Tampus*,[67] the Court ruled that the penalty and liability, including civil liability, imposed upon an accused must be commensurate with the degree of his participation in the commission of the crime. Thus, the Court held that the principal must be adjudged liable to pay two-thirds (2/3) of the civil indemnity and moral damages; while the accomplice should pay one-third (1/3) portion thereof. The Court further advanced that the accomplice would not be subsidiarily liable for the amount allotted to the principal if the latter dies before the finality of the decision. The reason for this is that there would be nothing that could be passed to the accomplice as the principal's criminal liability, including the civil liability arising thereon, had been extinguished by his death.

WHEREFORE, the assailed Decision, dated 9 December 2009 of the Court of Appeals in CA-G.R. CR No. 00384, which affirmed with modification the decision, dated 14 November 2006, of the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11 in Criminal Case No. 1190, is hereby **AFFIRMED** with **MODIFICATIONS**. Petitioner Petronilo Napone, Jr. is found **GUILTY** beyond reasonable doubt as principal for the crime of homicide and is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum. He is further ordered to pay the heirs of the deceased Salvador Espelita the following amounts: (1) P50,000.00, as civil indemnity; (2) P50,000.00, as moral damages; and (3) P50,000.00 as temperate damages in lieu of the award of actual damages which the prosecution failed to prove.

Petitioner Edgar Napone is found **GUILTY** beyond reasonable doubt as an accomplice to the crime of attempted homicide and is sentenced to suffer the penalty of two (2) months of arresto mayor. Further, he is ordered to pay the following amounts: (1) P6,667.00, as civil indemnity; and (2) P6,667.00, as moral damages. All monetary awards shall earn interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until its full payment.[68]

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, and Leonen, JJ., concur.
Gesmundo, J., on leave.

December 12, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on November 29, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 12, 2017 at 1:20 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 40-58, penned by Associate Justice Leoncia R. Dimagiba, and concurred in by Associate Justices Edgardo A. Camello, and Edgar T. Lloren.

[2] Id. at 61.

[3] Records, pp. 462-474; penned by Presiding Judge Jose U. Yamut, Sr.

[4] Id. at 2-3.

[5] Id. at 92.

[6] TSN, 29 July 1993, p. 4.

[7] Id. at 6.

[8] Id. at 15-16.

[9] Id. at 4.

[10] Id. at 6.

[11] Id. at 11.

[12] Id. at 6-7.

[13] Id. at 5-7.

[14] TSN, 17 June 1993, pp. 6-7.

[15] Id.; TSN, 29 July 1993, p. 7.

[16] TSN, 29 July 1993, p. 8.

[17] Records, p. 130.

- [18] Id.
- [19] TSN, 10 August 1993, pp. 7-8.
- [20] Id. at 8-9.
- [21] TSN, 9 March 1994, p. 4.
- [22] TSN, 29 September 1993, pp. 4-5.
- [23] Id. at 22, 27.
- [24] TSN, 29 September 1993, p. 29.
- [25] Id. at 6-7, 29-30; TSN, 9 March 1994, pp. 5-6.
- [26] TSN, 30 September 1996, pp. 6-7.
- [27] TSN, 9 March 1994, p. 6.
- [28] Id. at 7-8.
- [29] Id. at 8.
- [30] TSN, 25 May 1994, p. 8.
- [31] TSN, 9 March 1994, p. 8.
- [32] TSN, 25 May 1994, p. 9.
- [33] TSN, 9 March 1994, p. 9.
- [34] Records, pp. 473-474.
- [35] 607 Phil. 296, 330-331 (2009).
- [36] Rollo, p. 58.
- [37] *People v. Roman*, 715 Phil. 817, 832 (2013), citing *People v. Del Castillo*, 679 Phil. 233, 251 (2012).
- [38] *Flores v. People*, 705 Phil. 119, 133 (2013).
- [39] *People v. Delima and Area*, 452 Phil. 36, 44 (2003).
- [40] *Nacnac v. People*, 685 Phil. 223, 229 (2012).
- [41] *Medina, Jr. v. People*, 724 Phil. 226, 237 (2014).
- [42] *People v. Arnante*, 439 Phil. 754, 758 (2002).
- [43] *People v. Castellano*, 427 Phil. 309, 326-327 (2002).
- [44] *People v. Gallanosa*, G.R. No. 219885, 17 July 2017.
- [45] *People v. Enfectana*, 431 Phil. 64, 75 (2002).
- [46] TSN, 29 July 1993, p. 7.
- [47] Id. at 17-18.
- [48] TSN, 29 September 1993, p. 24.

- [49] Id. at 27.
- [50] TSN, 29 July 1993, p. 7.
- [51] Id. at 17-18.
- [52] TSN, 17 June 1993, pp. 15-16.
- [53] Id. at 18.
- [54] *People v. Roman*, supra note 37 at 831.
- [55] *People v. Furugganan*, 271 Phil. 496, 507 (1991).
- [56] *People v. Geronimo*, 153 Phil. 1, 11 (1973), citing *People v. Portugueza*, 127 Phil. 288, 292-293 (1967).
- [57] *Araneta, Jr. v. CA*, 265 Phil. 127, 136 (1990).
- [58] *People v. Gambao*, 718 Phil. 507, 527 (2013).
- [59] *People v. Cruz*, 269 Phil. 399, 408 (1990).
- [60] *Araneta Jr. v. CA*, supra note 57 at 136.
- [61] *People v. Oloverio*, 756 Phil. 435, 454 (2015).
- [62] *People v. Caber, Sr.*, 399 Phil. 743, 753 (2000).
- [63] Revised Penal Code, Article 13(5).
- [64] 333 Phil. 20, 35-36 (1996).
- [65] Revised Penal Code, Article 64(5).
- [66] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 386-388.
- [67] Supra note 35 at 323.
- [68] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

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