

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REGIE LABIAGA, APPELLANT.

G.R. No. 202867. July 15, 2013

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is an appeal assailing the Decision[1] dated 18 October 2011 of the Court of Appeals-Cebu (CA-Cebu) in CA-G.R. CEB CR-HC No. 01000. The CA-Cebu affirmed with modification the Joint Decision[2] dated 10 March 2008 of the Regional Trial Court of Barotac Viejo, Iloilo, Branch 66 (RTC), in Criminal Case No. 2001-1555 convicting Regie Labiaga alias “Banok” (appellant) of murder and Criminal Case No. 2002-1777 convicting appellant of frustrated murder.

The Facts

In Criminal Case No. 2001-1555, appellant, together with a certain Alias Balatong Barcenas and Cristy Demapanag (Demapanag), was charged with Murder with the Use of Unlicensed Firearm under an Information[3] which reads:

That on or about December 23, 2000 in the Municipality of Ajuy, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with unlicensed firearm, with deliberate intent and decided purpose to kill, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot JUDY CONDE alias ‘JOJO’ with said unlicensed firearm, hitting her and inflicting gunshot wounds on the different parts of her breast which caused her death thereafter.

CONTRARY TO LAW.

The same individuals were charged with Frustrated Murder with the Use of Unlicensed Firearm in Criminal Case No. 2002-1777, under an Information[4] which states:

That on or about December 23, 2000 in the Municipality of Ajuy, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with unlicensed firearm, with deliberate intent and decided purpose to kill, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Gregorio Conde with said unlicensed firearm, hitting him on the posterior aspect, middle third right forearm 1 cm. in diameter; thereby performing all the acts of execution which would produce the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused; that is by the timely and able medical assistance rendered to said Gregorio Conde which prevented his death.

CONTRARY TO LAW.

Alias Balatong Barcenas remained at large. Both appellant and Demapanag pled not guilty in both cases and joint

trial ensued thereafter. The prosecution presented four witnesses: Gregorio Conde, the victim in Criminal Case No. 2002-1777; Glenelyn Conde, his daughter; and Dr. Jeremiah Obañana and Dr. Edwin Jose Figura, the physicians at the Sara District Hospital where the victims were admitted. The defense, on the other hand, presented appellant, Demapanag, and the latter's brother, Frederick.

Version of the prosecution

The prosecution's version of the facts is as follows: At around 7:00 p.m. on 23 December 2000, Gregorio Conde, and his two daughters, Judy and Glenelyn Conde, were in their home at Barangay Malayu-an, Ajuy, Iloilo. Thereafter, Gregorio stepped outside. Glenelyn was in their store, which was part of their house.

Shortly thereafter, appellant, who was approximately five meters away from Gregorio, shot the latter. Gregorio called Judy for help. When Judy and Glenelyn rushed to Gregorio's aid, appellant shot Judy in the abdomen. The two other accused were standing behind the appellant. Appellant said, "[s]he is already dead," and the three fled the crime scene.

Gregorio and Judy were rushed to the Sara District Hospital. Judy was pronounced dead on arrival while Gregorio made a full recovery after treatment of his gunshot wound.

Dr. Jeremiah Obañana conducted the autopsy of Judy. His report stated that her death was caused by "cardiopulmonary arrest secondary to Cardiac Tamponade due to gunshot wound." [5]

Dr. Jose Edwin Figura, on the other hand, examined Gregorio after the incident. He found that Gregorio sustained a gunshot wound measuring one centimeter in diameter in his right forearm and "abrasion wounds hematoma formation" in his right shoulder. [6]

Version of the defense

Appellant admitted that he was present during the shooting incident on 23 December 2000. He claimed, however, that he acted in self-defense. Gregorio, armed with a shotgun, challenged him to a fight. He attempted to shoot appellant, but the shotgun jammed. Appellant tried to wrest the shotgun from Gregorio, and during the struggle, the shotgun fired. He claimed that he did not know if anyone was hit by that gunshot.

Demapanag claimed that at the time of the shooting, he was in D&D Ricemill, which is approximately 14 kilometers away from the crime scene. This was corroborated by Frederick, Demapanag's brother.

The Ruling of the RTC

In its Joint Decision, the RTC acquitted Demapanag due to insufficiency of evidence. Appellant, however, was convicted of murder and frustrated murder. The dispositive portion of the Joint Decision reads:

WHEREFORE, in light of the foregoing, the court hereby finds the accused Regie Labiaga @ "Banok" GUILTY beyond reasonable doubt of the Crime of Murder in Crim. Case No. 2001-1555 and hereby sentences the said accused to reclusion perpetua together with accessory penalty provided by law, to pay the heirs of Judy Conde P50,000.00 as civil indemnity, without subsidiary imprisonment in case of insolvency and to pay the costs.

In Crim. Case No. 2002-1777, the court finds accused Regie Labiaga @ "Banok" GUILTY beyond reasonable doubt of the crime of Frustrated Murder and hereby sentences the said accused to a prison term ranging from six (6) years and one (1) day of prision mayor as minimum to ten (10) years and one (1) day of reclusion temporal as maximum, together with [the] necessary penalty provided by law and without subsidiary imprisonment in case of insolvency and to pay the costs.

Accused[’s] entire period of detention shall be deducted from the penalty herein imposed when the accused serves his sentence.

For lack of sufficient evidence, accused Cristy Demapanag is acquitted of the crime[s] charged in both cases. The Provincial Warden, Iloilo Rehabilitation Center, Pototan, Iloilo is hereby directed to release accused Cristy Demapanag from custody unless he is being held for some other valid or lawful cause.

SO ORDERED.[7]

The Ruling of the CA-Cebu

Appellant impugned the RTC’s Joint Decision, claiming that “[the RTC] gravely erred in convicting the [appellant] of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.”[8] The CA-Cebu, however, upheld the conviction for murder and frustrated murder.

The CA-Cebu also modified the Joint Decision by imposing the payment of moral and exemplary damages in both criminal cases. The CA-Cebu made a distinction between the civil indemnity awarded by the RTC in Criminal Case No. 2001-1555 and the moral damages. The CA-Cebu pointed out that:

The trial court granted the amount of P50,000.00 as civil indemnity in Criminal Case No. 2001-1555. It did not award moral damages. Nonetheless, the trial court should have awarded both, considering that they are two different kinds of damages. For death indemnity, the amount of P50,000.00 is fixed “pursuant to the current judicial policy on the matter, without need of any evidence or proof of damages. Likewise, the mental anguish of the surviving family should be assuaged by the award of appropriate and reasonable moral damages.”[9]

The dispositive portion of the Decision of the CA-Cebu reads:

WHEREFORE, premises considered, the appeal is DENIED. The Joint Decision dated March 10, 2008 of the Regional Trial Court, Branch 66, in Barotac Viejo, Iloilo is AFFIRMED with MODIFICATIONS. The dispositive portion of the said Joint Decision should now read as follows:

WHEREFORE, in light of the foregoing, the court hereby finds the accused Regie Labiaga @ “Banok” GUILTY beyond reasonable doubt of the crime of Murder in Crim. Case No. 2001-1555 and hereby sentences the said accused to reclusion perpetua together with the accessory penalty provided by law, to pay the heirs of Judy Conde P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency and to pay the costs.

In Crim. Case No. 2002-1777 the court finds accused Regie Labiaga @ “Banok” GUILTY beyond reasonable doubt of the crime of Frustrated Murder and hereby sentences the said accused to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, together with the accessory penalty provided by law, to pay Gregorio Conde P25,000.00 as moral damages and P25,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency and to pay the costs

Accused(’s) entire period of detention shall be deducted from the penalty herein imposed when the accused serves his sentence.

For lack of sufficient evidence, accused Cristy Demapanag is acquitted of the crime(s) charged in both cases. The Provincial Warden, Iloilo Rehabilitation Center, Pototan, Iloilo is hereby directed to release accused Cristy Demapanag from custody unless he is being held for some other valid or lawful cause.

SO ORDERED.

SO ORDERED.[10]

Hence, this appeal.

The Ruling of the Court

Our review of the records of Criminal Case No. 2002-1777 convinces us that appellant is guilty of attempted murder and not frustrated murder. We uphold appellant's conviction in Criminal Case No. 2001-1555 for murder, but modify the civil indemnity awarded in Criminal Case No. 2001-1555, as well as the award of moral and exemplary damages in both cases.

Justifying circumstance of self-defense

Appellant's feeble attempt to invoke self-defense in both cases was correctly rejected by the RTC and the CA-Cebu. This Court, in *People v. Damitan*,^[11] explained that:

When the accused admits killing a person but pleads self-defense, the burden of evidence shifts to him to prove by clear and convincing evidence the elements of his defense. However, appellant's version of the incident was uncorroborated. His bare and self-serving assertions cannot prevail over the positive identification of the two (2) principal witnesses of the prosecution.^[12]

Appellant's failure to present any other eyewitness to corroborate his testimony and his unconvincing demonstration of the struggle between him and Gregorio before the RTC lead us to reject his claim of self-defense. Also, as correctly pointed out by the CA-Cebu, appellant's theory of self-defense is belied by the fact that:

x x x [T]he appellant did not even bother to report to the police Gregorio's alleged unlawful aggression and that it was Gregorio who owned the gun, as appellant claimed. And, when appellant was arrested the following morning, he did not also inform the police that what happened to Gregorio was merely accidental.^[13]

Appellant's claim that he did not know whether Gregorio was hit when the shotgun accidentally fired is also implausible.

In contrast, we find that the Condes' account of the incident is persuasive. Both the CA-Cebu and the RTC found that the testimonies of the Condes were credible and presented in a clear and convincing manner. This Court has consistently put much weight on the trial court's assessment of the credibility of witnesses, especially when affirmed by the appellate court.^[14] In *People v. Mangune*,^[15] we stated that:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity [to] take advantage of these aids.^[16]

Since the conclusions made by the RTC regarding the credibility of the witnesses were not tainted with arbitrariness or oversight or misapprehension of relevant facts, the same must be sustained by this Court.

Attempted and Frustrated Murder

Treachery was correctly appreciated by the RTC and CA-Cebu. A treacherous attack is one in which the victim was not afforded any opportunity to defend himself or resist the attack.^[17] The existence of treachery is not solely determined by the type of weapon used. If it appears that the weapon was deliberately chosen to insure the execution of the crime, and to render the victim defenseless, then treachery may be properly appreciated against

the accused.[18]

In the instant case, the Condes were unarmed when they were shot by appellant. The use of a 12-gauge shotgun against two unarmed victims is undoubtedly treacherous, as it denies the victims the chance to fend off the offender.

We note, however, that appellant should be convicted of attempted murder, and not frustrated murder in Criminal Case No. 2002-1777.

Article 6 of the Revised Penal Code defines the stages in the commission of felonies:

Art. 6. Consummated, frustrated, and attempted felonies.— Consummated felonies as well as those which are frustrated and attempted, are punishable.

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.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

In *Serrano v. People*,[19] we distinguished a frustrated felony from an attempted felony in this manner:

- 1.) In [a] frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in [an] attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.
- 2.) In [a] frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in [an] attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.[20]

In frustrated murder, there must be evidence showing that the wound would have been fatal were it not for timely medical intervention.[21] If the evidence fails to convince the court that the wound sustained would have caused the victim's death without timely medical attention, the accused should be convicted of attempted murder and not frustrated murder.

In the instant case, it does not appear that the wound sustained by Gregorio Conde was mortal. This was admitted by Dr. Edwin Figura, who examined Gregorio after the shooting incident:

Prosecutor Con-El:

Q: When you examined the person of Gregorio Conde, can you tell the court what was the situation of the patient when you examined him?

A: He has a gunshot wound, but the patient was actually ambulatory and not in distress.

x x x x

Court (to the witness)

Q: The nature of these injuries, not serious?

A: Yes, Your Honor, not serious. He has also abrasion wounds hematoma formation at the anterior aspect right shoulder.[22]

Since Gregorio's gunshot wound was not mortal, we hold that appellant should be convicted of attempted murder and not frustrated murder. Under Article 51 of the Revised Penal Code, the corresponding penalty for attempted murder shall be two degrees lower than that prescribed for consummated murder under Article 248, that is, prision correccional in its maximum period to prision mayor in its medium period. Section 1 of the Indeterminate Sentence Law provides:

x x x the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the [Revised Penal] Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

Thus, appellant should serve an indeterminate sentence ranging from two (2) years, four (4) months and one (1) day of prision correccional in its medium period to eight (8) years and one (1) day of prision mayor in its medium period.

Award of damages

In light of recent jurisprudence, we deem it proper to increase the amount of damages imposed by the lower court in both cases. In Criminal Case No. 2001-1555, this Court hereby awards P75,000.00 as civil indemnity[23] and P30,000.00 as exemplary damages.[24] The award of P50,000.00 as moral damages in the foregoing case is sustained. Appellant is also liable to pay P40,000.00 as moral damages and P30,000.00 as exemplary damages, in relation to Criminal Case No. 2002-1777.

WHEREFORE, we AFFIRM the 18 October 2011 Decision of the Court of Appeals-Cebu in CA-G.R. CEB CR-HC No. 01000 with MODIFICATIONS. In Criminal Case No. 2002-1777, we find that appellant Regie Labiaga is GUILTY of Attempted Murder and shall suffer an indeterminate sentence ranging 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, and pay P40,000.00 as moral damages and P30,000.00 as exemplary damages. In Criminal Case No. 2001-1555, appellant shall pay P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

SO ORDERED.

Del Castillo, Perez, Mendoza,[*] and Perlas- Bernabe, JJ., concur.

[*] Designated Acting Member per Special Order No. 1484 dated 9 July 2013.

[1] Rollo, pp. 2-18. Penned by Acting Executive Justice Pampio A. Abarintos, with Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring.

[2] CA-Cebu rollo, pp. 32-39. Penned by Judge Rogelio J. Amador.

[3] Records (Criminal Case No. 2001-1555), p. 1.

[4] Records (Criminal Case No. 2002-1777), p. 1.

[5] Records (Criminal Case No. 2001-1555), p. 7.

[6] TSN, 29 September 2005, p. 6.

[7] CA-Cebu rollo, pp. 38-39.

[8] Id. at 26.

[9] Rollo, p.15, citing *People v. Mayingque*, G.R. No. 179709, 6 July 2010, 624 SCRA 123.

[10] Id. at 17-18.

[11] 423 Phil. 113 (2001).

[12] Id. at 121.

[13] Rollo, p. 13.

[14] *Ingal v. People*, 571 Phil. 346 (2008).

[15] G.R. No. 186463, 14 November 2012, 685 SCRA 578.

[16] Id. at 589, citing *People v. Dion*, G.R. No. 181035, 4 July 2011, 653 SCRA 117, 133.

[17] *People v. Albarido*, 420 Phil. 235 (2001).

[18] *People v. Gonzalez, Jr.*, 411 Phil. 893 (2001).

[19] G.R. No. 175023, 5 July 2010, 623 SCRA 322.

[20] Id. at 337-338, citing *Palaganas v. People*, 533 Phil. 169 (2006).

[21] *People v. Costales*, 424 Phil. 321 (2002), citing *People v. Dela Cruz*, 353 Phil. 362 (1998) and *People v. Zaragosa*, 58 O.G. 4519.

[22] TSN, 29 September 2005, pp. 4-6.

[23] *People v. Lucero*, G.R. No. 179044, 6 December 2010, 636 SCRA 533.

[24] Id.

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