PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY ALMAZAN, ACCUSED-APPELLANT.

G.R. Nos. 138943-44. September 17, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is an appeal from the Joint Decision[1] of the trial court declaring accused-appellant Henry Almazan guilty of murder and frustrated murder. It traces its origin to two (2) Informations charging Henry Almazan with shooting Noli S. Madriaga with a handgun, aggravated by treachery and evident premeditation, which caused the latter's death; and with shooting Noel Madriaga with the same handgun which would have produced the latter's death if not for timely medical attendance, docketed as Crim. Cases Nos. C-51276 and C-51277 respectively. These cases were tried jointly pursuant to Sec. 14, Rule 119, of the 1985 Rules on Criminal Procedure.

On 28 September 1996, at about 4:00 o'clock in the afternoon, Vicente Madriaga and a certain Allan played chess in front of the former's house at Pag-asa, Camarin, Caloocan City. Spectators were Vicente's son Noli, who was carrying his 2-year old daughter, Vicente's grandson Noel, and a neighbor named Angel Soliva. While the game was underway, Henry Almazan unexpectedly arrived and brandished a .38 caliber revolver in front of the group. Almazan's fighting cocks had just been stolen and he suspected Angel, one of the spectators, to be the culprit. Thus he said, "manos-manos na lang tayo,"[2] aimed his gun at Angel and pulled the trigger. It did not fire. He tried again, but again it failed.

At this juncture, Vicente Madriaga stood up and tried to calm down Henry, but the latter refused to be pacified ("ayaw paawat"). Angel ran away and Henry aimed his gun instead at Noli. Noli cried for mercy, for his life and that of his daughter, but to no avail.[3] Henry shot Noli at the left side of his stomach sending him immediately to the ground. His daughter, unscathed, held on to Noli, crying. Henry then turned on Noel and shot him on the left thigh. Noel managed to walk lamely ("paika-ika") but only to eventually fall to the ground. Thereafter, Vicente Madriaga called on his neighbors who brought Noli and Noel to the hospital. Noli however died before reaching the hospital, while Noel survived his injuries.

Dr. Ma. Cristina Freyra of the PNP Crime Laboratory Service conducted an autopsy on the body of Noli which revealed that the cause of the victim's death was a gunshot at the trunk from a .38 caliber revolver. Dr. Misael Jonathan Ticman, attending physician of Noel, in turn declared that the gunshot wound on the left thigh of Noel was a minor injury that would heal in a week.[4] Noel was never admitted in the hospital as his doctor sent him home the same day.[5] On cross-examination, Dr. Ticman testified that if not medically treated the wound might get infected or lead to the victim's death.[6]

Witnesses for the defense narrated a different version. They pointed to Angel Soliva instead as the person to blame for Noli Madriaga's death while justifying Noel Madriaga's wound as a result of self-defense.

Henry Almazan testified that at about 4:00 o'clock in the afternoon of 28 September 1996 he went home accompanied by his friend Johnald Molina. Henry's wife informed him upon his return that his fighting cocks,

twelve (12) in number, had been stolen. He went out of the house to inquire from neighbors as to who could have taken his cocks. He was followed by Johnald. On their way they saw Vicente Madriaga and Allan playing chess surrounded by Noli, Noel, Angel and other persons. They were drinking liquor. As he (Almazan) and Johnald were passing by, Angel called Henry and asked if he was looking for his fighting cocks. The group then burst into laughter and pointed to their pulutan. Someone in the group advised Henry not to look anymore for his fighting cocks as he would only be courting trouble ("naghahanap ka lang ng sakit ng katawan"). To this advice Henry replied, "Bakit naman ganoon?" Suddenly, Angel pulled out his gun and shot Henry twice but the gun did not fire. Seizing the opportunity Henry grappled with Angel for the possession of his gun. During the scuffle Angel pulled the trigger which hit Noli. Henry finally succeeded in wresting the gun from Angel and aimed it at him. Suddenly, he received a blow from behind and he fell. As he raised his head from the ground, he saw Noel poised to attack him with a broken bottle, so that he had to train his gun at the lower part of Noel's body and fired. The bullet hit Noel on the thigh which sent him reeling down his knees ("napaluhod"). Shocked and afraid that he hit Noel, Henry ran home.

Johnald Molina corroborated Henry Almazan's statement in all material points. Johnald testified that the group mocked Henry when they told him not to look for his cocks anymore as they had already been cooked for pulutan, and to insist in his search would only cause him physical trouble. Henry could only reply, "Tila nga may nagnakaw ng mga manok ko . . . . Bakit naman ganoon?" As he made his remarks, someone from the group suddenly pulled out a gun and aimed at Henry. Henry grappled with the gun-wielder who pressed the trigger twice but the gun misfired each time. When the gun-wielder pulled the trigger for the third time it fired, hitting a person who was carrying a small child and standing within the vicinity. He was obviously referring to Noli. Johnald immediately ran towards Henry's house to report the incident to his wife and asked for help. Then he heard another shot, but in his haste to reach Henry's house he ignored it. Upon reaching Henry's house, Henry also arrived. To avoid being involved and out of fear, Johnald did not report the incident to the police. Later however, bothered by his conscience and being the friend of Henry, Johnald volunteered to testify on what he knew of the incident.

The court a quo found Henry Almazan's defense devoid of merit. Apart from being positively identified by the prosecution witnesses as the person responsible for the violence and the injuries inflicted, the trial court declared that the theft of Henry's fighting cocks constituted sufficient motive for the killing and that as a cockfight afficionado he must have found it imperative to exact vengeance on his suspected culprits.[7] The trial court held that the testimony of Johnald failed to create reasonable doubt on the guilt of Henry since as a friend he was expected to extend succor to a friend, especially one in need.[8] Thus, the trial court held Henry Almazan guilty of murder and frustrated murder as charged.

In imposing the penalty for each offense, the lower court appreciated the qualifying circumstance of treachery against accused-appellant on the ground that the victims were completely defenseless when attacked and did not commit the slightest provocation, but found no justification for evident premeditation as there was no proof as to the manner and time during which the plan to kill was hatched. On the contrary, the trial court found in favor of accused-appellant the mitigating circumstance of passion and obfuscation. Thus, in Crim. Case No. C-51276, accused-appellant was sentenced to the reduced penalty of reclusion perpetua instead of death, with all the accessory penalties according to law, and ordered to pay the heirs of the victim P50,000.00 as death indemnity, P8,000.00 as funeral expenses, and to pay the costs; while in Crim. Case No. C-51277, he was sentenced to an indeterminate prison term of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, with all the accessory penalties provided by law, and to pay P20,000.00 as civil indemnity, without subsidiary imprisonment in case of insolvency, and to pay the costs.[9]

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Accused-appellant now prays to be absolved of murder in Crim. Case No. C-51276 on the ground that the prosecution has failed to prove his guilt beyond reasonable doubt. He assails the testimony of Shirley Abordo, common-law wife of Nilo Madriaga, for being hearsay, as well as the testimony of Vicente Madriaga for its alleged inconsistencies in various vital points. Significantly, accused-appellant impugns the veracity of the prosecution's evidence for its failure to present Angel Soliva who was primarily involved in the incident and whom the defense points to as the real transgressor. Thus, accused-appellant contends that evidence sufficient to establish the absolute and moral certainty of his guilt being absent he should be acquitted.

As for Crim. Case No. C-51277, accused-appellant contends that the trial court erred in holding him guilty of frustrated murder as the wound sustained by Noel Madriaga was not fatal that could have caused his death if not for timely medical assistance. Moreover, accused-appellant claims that he shot Noel only to forestall any attack on him and not to kill Noel intentionally.

Appellate courts are doctrinally bound by the trial court's assessment of the credibility of witnesses given the clear advantage of a trial judge in the appreciation of testimonial evidence. The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first-hand and to note their demeanor, conduct and attitude under grueling examination - factors which are significant in the evaluation of the sincerity of witnesses and in unearthing the truth.[10] We see no reason to depart from this doctrine.

The witnesses for the prosecution were consistent in their narration of the manner by which the events transpired, and they remained steadfast in their identification of accused-appellant as the author of the violence. Despite attempts to confound them, Vicente Madriaga and Noel Madriaga were relentless in their declaration that it was accused-appellant, armed with a .38 caliber revolver, who pounced upon them without warning thereby killing Noli Madriaga and wounding Noel Madriaga in the process. They were one in their assertion that accused-appellant was inflamed by his suspicion that Angel Soliva and Noel Madriaga had stolen his fighting cocks and was intent on getting even with them, thus he fired at them. Efforts to pass the blame on the group by claiming that in their inebriated state they mocked accused-appellant and thus initiated the violence were actually set to naught as Vicente and Noel Madriaga unfailingly denied the same.

True, Shirley Abordo's testimony was spattered with inconsistencies bordering at times on incoherence. As she herself admitted, her narration was merely derived from the accounts of the other prosecution witnesses and not from her own perception of the events. This constitutes hearsay, which we then reject. Be that as it may, these alleged inconsistencies are immaterial and irrelevant as they do not alter the determination of the Court that murder was committed and accused-appellant was the assailant. For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction.[11]

In the same vein, the testimony of Angel Soliva or of Allan, with whom Vicente Madriaga was playing chess, is unnecessary as the facts on record are clear enough for judicial assessment and verdict.

The defense suggests that it could be Angel Soliva instead who shot Noli Madriaga. This is unacceptable in the face of the positive identification of the accused by the prosecution witnesses. The allegation that the shooting was the accidental consequence of the struggle between accused-appellant and Angel Soliva does not inspire belief as no substantial evidence was presented to prove it. It is highly improbable that a struggle even occurred as accused-appellant and Angel Soliva were surrounded by the latter's friends who would have easily ganged up on accused-appellant. Testimonial evidence to be credible should not only come from the mouth of a credible witness but should also be credible, reasonable and in accord with human experience,[12] failing in which, it should be

rejected.

Indeed, Johnald Molina corroborated the statement of accused-appellant pointing at Angel Soliva as the real culprit; however, we are inclined to agree with the observation of the court a quo that it was natural for an individual to exert effort in liberating his friend from confinement or execution, even to the extent of distorting the truth.

It is significant to note that accused-appellant went into hiding after the shooting incident and was only collared by the agents from the Western Police District eight (8) months later. Flight indeed is an indication of guilt, especially when accused-appellant failed to sufficiently explain why he left his residence and resurrected only several months after.

The trial court properly appreciated the presence of treachery as the attack was made upon the unarmed victims who had not committed the slightest provocation and who were totally unaware of the murderous designs of accused-appellant. Contrary to the finding of the court a quo, treachery in this case qualifies the offense to murder, hence, may not be considered a generic aggravating circumstance to increase the penalty from reclusion perpetua to death. In other words, while the imposable penalty for murder is reclusion perpetua to death, in the absence of any mitigating or aggravating circumstance, the lesser penalty of reclusion perpetua shall be imposed. The mitigating circumstance of passion and obfuscation cannot be appreciated in favor of accused-appellant as this was never proved during the trial.

As for Crim. Case No. C-51277, accused-appellant admits responsibility for the injuries inflicted on Noel but reasons out that he did so only to defend himself. Accused-appellant therefore pleads self-defense, a justifying circumstance that could acquit him of the charge but which we are not disposed to grant as the elements necessary to qualify his actions[13] were not present. In alleging that the killing arose from an impulse to defend oneself, the onus probandi rests upon accused-appellant to prove by clear and convincing evidence the elements thereof: (a) that there was unlawful aggression on the part of the victim; (b) that there was reasonable necessity for the means employed to prevent or repel it; and, (c) that there was lack of sufficient provocation on the part of the defendant.[14] This, it has failed to discharge.

Nevertheless, we find that the accused-appellant should be held liable for attempted murder, not frustrated murder. For the charge of frustrated murder to flourish, the victim should sustain a fatal wound that could have caused his death were it not for timely medical assistance. This is not the case before us. The court a quo anchored its ruling on the statement of Dr. Ticman on cross-examination that the wound of Noel could catch infection or lead to his death if not timely and properly treated. However, in his direct testimony, Dr. Ticman declared that the wound was a mere minor injury for which Noel, after undergoing treatment, was immediately advised to go home.[15] He even referred to the wound as a slight physical injury that would heal within a week[16] and for which the victim was in no danger of dying.[17] Clear as the statement is, coupled with the fact that Noel was indeed immediately advised to go home as he was not in any danger of death, we have no reason to doubt the meaning and implications of Dr. Ticman's statement. His statement that Noel could catch infection was based on pure speculation rather than on the actual nature of the wound which was a mere minor injury, hence, not fatal. According to jurisprudence, if the victim was wounded with an injury that was not fatal, and could not cause his death, the crime would only be attempted.[18] The observation that the conviction should be for slight physical injuries only is likewise improper as the accused-appellant was motivated by the same impetus and intent, i.e., to exact vengeance and even kill, if necessary, when he shot Noel Madriaga. The fact that the wound was merely a minor injury which could heal in a week becomes inconsequential.

In the final analysis, there being no mitigating nor aggravating circumstance and the more appropriate offense

being attempted murder, accused-appellant should be meted a penalty two (2) degrees lower than the prescribed penalty of reclusion perpetua, which is prision mayor the range of which is six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law in the case for attempted murder, the maximum shall be taken from the medium period of prision mayor, which is eight (8) years and one (1) day to ten (10) years, while the minimum shall be taken from the penalty next lower in degree, or prision correccional, in any of its periods, the range of which is six (6) months and one (1) day to six (6) years.

WHEREFORE, the Joint Decision of the trial court of 15 June 1999 finding accused-appellant HENRY ALMAZAN guilty of Murder in G.R. No. 138943 (Crim. Case No. C-51276) and sentencing him to reclusion perpetua with its accessory penalties, and to pay the heirs of Noli Madriaga P50,000.00 as death indemnity, P8,000.00 as funeral expenses, and to pay the costs, is AFFIRMED. However, his conviction for Frustrated Murder in G.R. No. 138944 (Crim. Case No. C-51277) is MODIFIED by lowering the crime to Attempted Murder and he is sentenced accordingly to an indeterminate prison term of two (2) years, four (4) months and ten (10) days of prision correccional medium as minimum, to eight (8) years two (2) months and twenty (20) days of prision mayor medium as maximum, and to pay the offended party Noel Madriaga the amount of P20,000.00 as civil indemnity, and to pay the costs.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., concur.

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[1] Joint Decision penned by Judge Bayani S. Rivera, RTC, Br. 129, Caloocan City.

[2] "Tabla-tabla na lang tayo!" according to the testimony of Noli Madriaga, TSN, 7 May 1998, p. 4.

[3] TSN, 29 April 1998, p. 7.

[4] TSN, 14 October, 1998, p. 6.

[5] Id., pp. 7-8.

[6] Id., p. 8.

[7] Rollo, p. 152.

[8] Id., p. 154.

[9] Rollo, pp. 155-156.

[10] People v. Benito, G.R. No. 128072, 19 February 1999; People v. Sabalones, et al., G.R. No. 123485, 31 August 1998; People v. Victor, G.R. No. 127903, 9 July 1998.

[11] People v. Antonio, et al., G.R. No. 128149, 24 July 2000, citing People v. Bato, G.R. No. 134939, 16 February 2000; People v. Sancha, G.R. Nos. 131818-19, 3 February 2000.

[12] People v. Atad, G.R. No. 114105, 16 January 1997, 266 SCRA 262.

[13] Art. 11, par. (1), RPC.

[14] People v. Molina, G.R. Nos. 115835-36, 22 July 1998, 292 SCRA 742.

[15] See Note 4.

[16] See Note 5.

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[17] TSN, 14 October 1998, p. 7.

[18] People v. Pilones, Nos. L-32754-44, 21 July 1978, 84 SCRA 167; People v. Tamani, Nos. L-22160-61, 21 January 1974, 55 SCRA 153.

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