

## NINETEENTH DIVISION

[ CA-G.R. CEB CR NO. 01941, February 13, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICARDO ARSENIO ALIAS "CARDO", ACCUSED-APPELLANT.**

### DECISION

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated December 29, 2011 of the Regional Trial Court, 8<sup>th</sup> Judicial Region, Branch 5, Oras, Eastern Samar in Criminal Case No. 06-09, finding accused-appellant Ricardo Arsenio alias "Cardo" guilty beyond reasonable doubt for the crime of Frustrated Murder.

#### *The Facts*

Accused-appellant Ricardo Arsenio alias "Cardo" [Arsenio] was charged in an Information<sup>[2]</sup> dated June 19, 2006 for Frustrated Murder, committed as follows:

"That on or about the 30<sup>th</sup> day of November, 2003 at about 10:00 O'clock in the evening at Brgy. Tawagan, Oras, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and hack one Jaime B. Basada with the use of a long bolo locally called (sundang) which the accused conveniently provided themselves (sic) for the purpose thereby inflicting upon said Jaime Basada a hack wound on the back portion of his neck and on the left portion of his neck; the accused thus performing all the acts of execution which would have produce(d) the crime of Murder as a consequence but nevertheless did not produce it by reason or cause independent of the will of the accused and that is the timely and able escape of said Jaime Basada and the timely and able medical attendance to the latter which prevented his death.

CONTRARY TO LAW."

Arsenio was allowed to post bail for his temporary liberty on August 23, 2006.<sup>[3]</sup> During his arraignment on September 19, 2006, he entered a plea of "not-guilty" to the crime charged.

On January 9, 2007, the RTC issued a Pre-Trial Order wherein the parties stipulated on the identity of the accused, the expertise of Dr. Edward de Dios, the authenticity and due execution of the Medical Certificate and the time and place of the commission of the crime.<sup>[4]</sup>

Thereafter, trial on the merits ensued.

#### VERSION OF THE PROSECUTION

The prosecution presented three [3] witnesses namely: the victim Jaime Basada, Imelda Basada and Dr. Edward V. de Dios, who testified, that:

On November 30, 2003 at around 7:00 o'clock in the evening, Jaime Basada [Basada] together with his friends, Denden Lucana, Efren Barros and Junior Calim met in Barangay Tawagan in order for them to all go together to the house of Nene Casillano to attend the birthday party of the latter's child. They were at the party for two hours more or less until they all decided to get a drink at the videoke house owned by Neneng Andaya. They arrived at the videoke place at around 9:30 in the evening and went on to order a beer grande.

At around 10:00 o'clock in the evening Basada went out of the videoke place to relieve himself. While he was urinating, Arsenio who was then bringing a long bladed weapon locally known as *sundang*, suddenly stabbed Basada twice hitting the left portion of the latter's nape and his left jaw. Startled, Basada turned to see who hacked him and since the place was well lit, he clearly saw Arsenio. After regaining the presence of mind, Basada ran for safety at the house of his relative, Nene Casillano<sup>[5]</sup> who thereafter, brought him to the hospital where he was attended by Dr. Edward V. de Dios. The attending physician's diagnosis, as reflected in the certification, reads:

"Diagnosis: Hacked wound posterior neck (approximately 10 cms.)

The condition will heal in 6 months barring any complications not apparent at the time of examination."<sup>[6]</sup>

Dr. de Dios testified that although the wound sustained by Basada would not cause his instantaneous death but if there was no timely medical intervention and the victim was left to bleed out, then this would likely cause the victim's death.<sup>[7]</sup> Basada was confined at Borongan Provincial Hospital for one [1] week.<sup>[8]</sup>

The testimony of Basada was corroborated by Imelda Basada who witnessed the hacking incident because she was at the videoke place on that fateful night.

After the presentation of prosecution's testimonial evidence, it presented its documentary Exhibits "A"- "C"<sup>[9]</sup> with all their sub-markings which were all duly admitted by the RTC.<sup>[10]</sup>

#### VERSION OF THE DEFENSE

Arsenio, on the other hand, presented three [3] witnesses namely: Conrado Tomenio, Anatalio Ballete and accused-appellant himself, who established the following facts:

On November 30, 2003, Arsenio recounted that at around 10:00 o'clock in the morning, he went to San Eduardo, Barangay Bolo together with a person named Pidong to deliver dried fish. Due to the numerous deliveries, they were only able to

go home at Barangay Tawagan, Oras at around 2:00 o'clock in the afternoon. Upon his arrival at Barangay Tawagan, Oras, Arsenio proceeded to wait for the arrival of his fishing boat carrying the catch for the day. When the boat arrived, he then weighed and sold the fish, which was done by 3:30 o'clock in the afternoon.

After he finished weighing and selling the catch, he immediately went home and did not go out anymore as he had to constantly place ice on the shrimps which he will be sending to Manila moreover, he was preoccupied in computing the sales of the catch.

Not being able to go out of his house from the time he came home at 3:30 in the afternoon, Arsenio had no knowledge whatsoever of what transpired on the night of November 30, 2003. It was only on the following morning that he was told that Basada was hacked. Fifteen days later, he heard rumors that he was the one implicated for the crime. The arrest of Arsenio was effected only in August 2006 at Dolores, Eastern Samar.<sup>[11]</sup>

Defense did not offer any documentary evidence.

Thereafter, the RTC in its Decision<sup>[12]</sup> dated December 29, 2011 found Arsenio guilty beyond reasonable doubt of the crime charged. The dispositive portion of its decision, reads:

“WHEREFORE, finding the guilt of accused Ricardo Arsenio established beyond reasonable doubt, this court finds accused guilty of Frustrated Murder, defined and penalized under Article 248 in relation to Article 250 of the Revised Penal Code, and hereby sentences him to suffer the penalty of imprisonment of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of Reclusion temporal as maximum.

Accused being a detainee, the period of his imprisonment shall be credited to him in full, provided he abides in writing with the terms and conditions for convicted prisoners, otherwise only four-fifths (4/5) thereof.

SO ORDERED.”

He applied for and was granted bail by the RTC in the amount of P200,000.00.<sup>[13]</sup>

Upon the denial<sup>[14]</sup> of Arsenio's motion for reconsideration,<sup>[15]</sup> he came to Us on appeal, with a lone assignment of error, thus:

“THAT THE COURT A QUO ERRED IN CONVICTING RICARDO ARSENIOS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”<sup>[16]</sup>

### ***Our Ruling***

Accused-appellant Arsenio in his appeal asserted that the prosecution failed to prove his guilt beyond reasonable doubt because it failed to prove that the wounds sustained by Basada were fatal. There was nothing in the evidence which would

show that the wound was fatal without medical intervention. Accused-appellant cites the case of *Serrano v. People*<sup>[17]</sup> stating that the location and severity of wound do not suggest a frustrated felony, hence:

“Under these standards, we agree with the CA’s conclusion. From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death. As correctly observed by the CA, the victim’s attending physician did not testify on the gravity of the wound inflicted on the victim. We consider, too, the CA’s observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound. There was also no proof that without timely medical intervention, the victim would have died. This paucity of proof must necessarily favor the petitioner.”

We do not agree.

Article 6 of the Revised Penal Code defines the three stages of a felony, namely the consummated, frustrated and attempted felonies. A felony is consummated when all the elements necessary for its execution and accomplishment are present. 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. Finally, it is attempted 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. The determination of whether a crime is frustrated or consummated necessitates an initial concession that all of the acts of execution have been performed by the offender. The critical distinction instead is whether the felony itself was actually produced by the acts of execution. The determination of whether the felony was “produced” after all the acts of execution had been performed hinges on the particular statutory definition of the felony. It is the statutory definition that generally furnishes the elements of each crime under the Revised Penal Code, while the elements in turn unravel the particular requisite acts of execution and accompanying criminal intent.<sup>[18]</sup>

In the instant case, Arsenio was charged with the crime of Frustrated Murder.

Under the Revised Penal Code particularly Article 248 thereto defined murder as the unlawful killing of any person which is not parricide or infanticide, provided that any of the following circumstances are present<sup>[19]</sup>, thus:

- “1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.”

In order to qualify the crime as murder, the following elements should be present: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.<sup>[20]</sup>

We find that the prosecution has established that all the acts of execution were performed, which acts would qualify as murder, but it did not produce the crime due to causes independent of the will of the perpetrator and in the instant case the timely medical intervention.

First, the identity of Arsenio is not placed in issue in fact it was one of the stipulated facts during the pre-trial.<sup>[21]</sup>

Second, the felonious act was attended by treachery qualifying it to murder. Paragraph 16 of Article 14 of the Revised Penal Code (RPC) defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.<sup>[22]</sup> The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.<sup>[23]</sup>

Basada's testimony proved the presence of treachery in the instant case, as follows:

“Q: Where were you in particular on November 30, 2003 at around 10:00 o'clock in the evening?

A: I was at the videoke house.

Q: While you were at the videoke house according to you, do you remember having an unusual incident that happened?

A: I did not observe any unusual incident.

Q: Mr. Witness, at around 10:00 o' clock in the evening on November 30, 2003, did you remember any unusual incident while you were at the videoke house according to you in Brgy. Tawagan, Oras, Eastern Samar?

A: Yes, there was.<sup>[24]</sup>