

SECOND DIVISION

[G.R. No. 241557, December 11, 2019]

FERNANDO N. FERNANDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, A., JR., J.:

Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Fernando N. Fernandez (Fernandez) are the Decision^[1] dated February 15, 2017 and the Resolution^[2] dated August 17, 2018 in CA-G.R. CR No. 38074, whereby the Court of Appeals (CA) affirmed his conviction for Frustrated Murder committed against private respondent Noel C. Garino (Garino) under the Decision^[3] rendered on April 27, 2015 by the Regional Trial Court (RTC) of Makati City, Branch 143, in Criminal Case No. 11-1667.

The Antecedent Facts

The facts as posited by Fernandez and Garino are summarized in the decision of the CA. In the prosecution's narration of events, on January 21, 2011 at around 1:00 a.m., Garino and an unknown companion were seated inside a jeepney which was parked in front of Fernandez's house, when Garino saw someone go out of the gate.^[4] When they heard a gunshot, they immediately alighted from the jeepney, and it was then that Garino saw that the person who fired the shot was Fernandez, though he did not know the latter's name at the time. As the two ran away, Fernandez fired his gun a second time, hitting Garino on his right gluteal area, or "buttocks" in layman's terms. Garino was then brought to the *Ospital ng* Makati and resultantly underwent immediate surgery. He was confined for some two weeks and spent almost P200,000.00 for his stay in the hospital.^[5]

Garino presented his doctor, Dr. Teresita Sanchez (Dr. Sanchez), as a witness, who testified that Garino was near death when he was taken to the hospital, and had to undergo a second operation because his large vessel, external iliac vein and intestines were injured.^[6]

When questioned if he knew who his assailant was, Garino testified that he previously saw him at the salon where he and a certain Me-Ann Barcnas (Barcnas) worked.^[7] He found out his assailant's name only when Barcnas visited him at the hospital a few days after his surgery. Of note, however, neither Barcnas nor Garino's companion during the night of the shooting was presented as witness for the prosecution, as only Garino, his brother Albert, who had the incident blotted at the police station, and Dr. Sanchez were presented to testify.^[8]

For its version of the facts, the defense presented Fernandez himself, as well as his

son Jayvee, to testify as witnesses. Fernandez, a retired police officer, vehemently denied the prosecution's version of the events and claimed that he was sleeping with his wife at the time of the incident and was unaware of any unusual incident outside his house at the time.^[9] According to Fernandez, he was not investigated by the police or by any barangay official on the alleged shooting, and only learned of the charge for Frustrated Murder upon receipt of a subpoena from the Office of the City Prosecutor of Makati City.^[10]

While Fernandez admitted owning the jeepney parked outside his house, he denied any knowledge of Garino and said that he first laid eyes on the latter only during the trial proper. He could likewise not think of any reason why Garino would file a case against him.^[11]

After trial, the RTC rendered a Decision^[12] on April 27, 2015 convicting Fernandez of the crime charged, the dispositive portion of which reads:

WHEREFORE, this court finds [FERNANDEZ], guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER defined and penalized under Art. 248 in relation to Art. 6 of the Revised Penal Code as amended and he is hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, EIGHT (8) YEARS AND ONE (1) DAY of Prision Mayor as the minimum period to SIXTEEN (16) YEARS AND ONE (1) DAY of Reclusion Temporal as the maximum period.

Accused is also ordered to pay the complainant the amount of P50,000.00 as temperate damages and the amount of P50,000.00 as moral damages. The accused is also ordered to pay the Costs of this Suit.

SO ORDERED.^[13]

Fernandez filed a Notice of Appeal on September 17, 2015 which was given due course by the CA in an Order dated October 20, 2015.^[14] The CA, however, denied Fernandez's appeal for lack of merit, and affirmed with modification Fernandez's conviction as meted out by the RTC, to wit:

WHEREFORE, premises considered, the Appeal is hereby **DENIED**. However, the Decision dated 27 April 2015 of the Regional Trial Court, Branch 143, Makati City is **AFFIRMED with MODIFICATION**, in that the dispositive portion of which shall read as follows:

x x x x

WHEREFORE, this court finds accused FERNANDO N. FERNANDEZ, guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER defined and penalized under Art. 248 in relation to Art. 6 of the Revised Penal Code as amended and he is hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, EIGHT (8) YEARS AND ONE (1) DAY of Prision Mayor as the minimum period to SIXTEEN (16) YEARS AND ONE (1) DAY of Reclusion Temporal as the maximum period.

Accused is also ordered to pay the complainant the amount of **P25,000.00** as temperate damages, the amount of **P40,000.00** as moral damages, **and the amount of P20,000.00 as exemplary damages.** The accused is also ordered to pay the costs of this suit.

The accused is likewise ORDERED to pay legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

X X X X

SO ORDERED.^[15] (Emphasis in the original)

Fernandez's Motion for Reconsideration was denied, prompting recourse to the Supreme Court. Hence, this Petition for Review on *Certiorari*.^[16]

The Issue of the Case and the Arguments of the Parties

The issue in the case is whether or not Fernandez is indeed guilty of the crime of Frustrated Murder, for shooting Garino and failing to kill the latter despite inflicting a deep wound on the victim.

In his Petition, Fernandez argues that the evidence presented by the prosecution was insufficient to establish that he was the perpetrator of the crime charged in the Information.^[17] First, Fernandez questions the veracity of his identification as the one who shot Garino, considering: a) Garino did not know Fernandez prior to the incident; b) Garino only learned of Fernandez when he was merely pointed to by Barcenas, who was not the companion of Garino at the time of the incident; c) Barcenas was not presented to the witness stand to confirm the identity of Fernandez as the person who shot Garino; and d) Garino could not have seen his perpetrator as he was allegedly running when shot on his right gluteal area.^[18]

The defense added that, as the incident took place during the wee hours of the morning, the condition of visibility at the time of the alleged shooting would not be favorable to ascertaining the perpetrator's identity, much less determining that Fernandez indeed was the culprit.^[19]

Fernandez further contends that Garino merely assumed that the perpetrator was Fernandez because the jeepney, where Garino stayed in with his unknown companion, was parked in front of Fernandez's house. Barcenas only confirmed that Fernandez was the owner of the house, but not that he was the one who shot Garino.^[20]

Alleging the defense of alibi, Fernandez states that the lower courts erred in dismissing this as an inherently weak defense. Fernandez cited the case of *People v. Caverte*,^[21] where it was held that "[w]hile alibi is a weak defense and the rule is that it must be proved to the satisfaction of the court, the said rule has never been intended to change the burden of proof in criminal cases. Otherwise, an absurd situation will arise wherein the accused is put in a more difficult position where the

prosecution evidence is vague and weak as in the present case."^[22]

Finally, Fernandez argues that even hypothetically admitting that he was the person seen by Garino, the evidence offered by the latter was insufficient if not altogether absent to show the commission of Frustrated Murder. Fernandez states that the prosecution failed to prove that there was intent to kill on his part, especially since Garino did not even testify that he actually saw Fernandez point a gun towards him and fire the same.^[23] Anent the injury itself, Fernandez points out that it was caused by a single gunshot wound in the gluteal area, which is clearly not a vital part of Garino's body and thus cannot be considered as a fatal wound.^[24] Fernandez alleges that the prosecution was unable to show intent, nor the presence of treachery in the commission of the offense - vital elements of the crime he is being accused of. Even conceding but definitely not admitting that Fernandez was the one who shot Garino, in the absence of clear proof of the existence of treachery, the crime is only physical injuries, or at the most, frustrated or attempted homicide, warranting a reduction of the penalty.^[25]

In its Comment^[26] to the Petition, respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that the prosecution was able to establish all the elements of the crime charged. The facts accordingly show that Fernandez, with intent to kill, inflicted an injury upon Garino that was sufficient to kill the latter, such act of inflicting injury being attended and qualified to become Murder by treachery, however Garino did not die due to the timely medical assistance given to him.^[27]

The OSG counters that, while it is true that Garino did not know Fernandez's name at the time of the attack, he was able to recognize him from the salon where he worked. The fact that he was only informed as to Fernandez's name through his co-worker does not negate his positive identification that Fernandez was the perpetrator of the crime.^[28] According to the transcript of records, during the trial, Garino repeatedly testified in open court that he saw and identified Fernandez when he alighted from the jeepney after the first shot.^[29] Said identification was not only clear from the direct testimony, but also from Garino's cross-examination, wherein he said on record that he knew who Fernandez was through his friend.^[30]

The OSG points out that the physical evidence shows proof of Fernandez's intent to kill, as Garino would have died from his wounds had he failed to timely undergo an operation at the hospital. According to the findings, Fernandez was armed with a gun when he came out of his house, and with this weapon, fired a shot. When the first shot missed, he then shot Garino, who was running from the scene and was only one and a half arm's length away from Fernandez. The act of firing another shot after the initial miss was an indication that Fernandez really intended to kill Garino.^[31]

Moreover, the OSG contends that this intent is manifest in how Fernandez deprived Garino of any chance to defend himself due to the suddenness of the attack and as seen in the entry point of the gunshot wound on Garino's right gluteal area.^[32]

Ruling of the Court

The Court acquits Fernandez on the ground of reasonable doubt. The lower courts committed grave abuse of discretion in hastily convicting Fernandez on the basis of questionable evidence.

It is a basic and immutable principle in criminal law that an accused individual cannot be convicted if there is reasonable doubt in his or her commission of a crime. Proof of guilt beyond reasonable doubt must be adduced by the prosecution otherwise the accused must be acquitted, even if, on face, he or she appears to be most suspicious or even if there is no other possible or identifiable perpetrator in the records despite there having been a crime committed.

As aptly stated in *People v. Claro*:^[33]

Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be [sic] do herein, for he is entitled to nothing less.

Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:

[I]n all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.^[34]
(Citations omitted)