

SECOND DIVISION

[G.R. No. 216671, October 03, 2016]

**JERWIN DORADO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the August 8, 2014 Decision^[1] and the January 29, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 33581, which affirmed the July 5, 2010 Decision^[3] of the Regional Trial Court, Taguig City, Branch 163 (RTC), in Criminal Case No. 127784, finding accused Jerwin Dorado (Dorado) guilty of the crime of Frustrated Murder.

The Antecedents

Dorado, Julius Ramos (*Ramos*), Jeffrey Confessor (*Confessor*) and Jayson Cabiasso (*Cabiasso*) were charged with the crime of frustrated murder, defined under Article 248 in relation to Article 6 of the Revised Penal Code (*RPC*) committed against Ronald Bonion (*Ronald*) before the RTC. They were also charged with violation of Section 10(a) of Republic Act (*R.A.*) No. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, committed against Raniel Parino (*Raniel*). These cases were docketed, as Criminal Case Nos. 127784-85. The respective Informations read as follows:

Criminal Case No. 127784

X X X X

That on or about the 15th day of March 2004, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and with Jerwin Dorado y Felipe @ Ewing who is a 16 year old minor, and with two (2) unidentified companions whose true identities and present whereabouts are still unknown, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, aggravated by the circumstances of nighttime and with the use of an improvised shotgun (*sumpak*), a deadly weapon and unlicensed firearm, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said deadly weapon, one Ronald Bonion y Bozar, thus performing all the acts of execution which would have produced 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 due to

the timely and able medical assistance rendered to said victim which prevented his death.

Contrary to law.^[4]

Criminal Case No. 127785

x x x x

That on or about the 15th day of March 2004, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another and with Jeffrey Confessor, Jayson Cabiasso, Jerwin Dorado y Felipe @ Ewing who is a 16 year old minor, and with two (2) unidentified companions whose true identities and present whereabouts are still unknown, did then and there wilfully, unlawfully and feloniously commit acts of cruelty upon the person of complainant Raniel Parino, a 15 year old minor by then and there hurling stones at the latter, which act is prejudicial to the normal growth and development of said child.

Contrary to law.^[5]

On November 9, 2004, Dorado and his co-accused were arraigned and they all pleaded "not guilty" to the charges. Thereafter, the trial ensued.

Evidence of the Prosecution

The prosecution presented the victims, Ronald, Ronald's brother, Robert Bonion (*Robert*), Raniel Parino (*Raniel*) and Dr. Ronaldo Artes (*Dr. Artes*), as its witnesses. Their combined testimonies tended to establish the following:

On April 15, 2004, at around 11:00 o'clock in the evening, Ronald was talking to his friends Raniel, Delon Busar, Annan Luna, Jerome Amergo and a certain Erwin (*Ronald's group*) along A. Reyes Street, Lower Bicutan, Taguig. At that very time, Dorado, carrying a *sumpak*, and his friends, Confessor and Cabiasso (*Dorado's group*), arrived and threw stones and bottles at Ronald's group.

Ronald's group scampered for shelter toward the *talipapa* and hid inside to avoid being hit by the stones and bottles. When Ronald thought that Dorado's group was no longer-in the vicinity, they came out of hiding. Dorado's group, however, was out there waiting for them. When they finally surfaced, Dorado's group resumed throwing stones at Ronald's group. During the commotion, Dorado fired his *sumpak* and hit Ronald between the eyes. Ronald fell unconscious for about ten (10) minutes while Dorado's group ran away. Thereafter, Ronald was brought to the Rizal Medical Center by Raniel and Delon Busan. He sustained the following injuries:

Xxx Ruptured Globe, OU; S/P Excision of prolapsed Uvea + Repair of Corneal & Scleral laceration, OD; S/P Enucleation & Evacuation of Foreign body's + Repair of Lower lid margin laceration, OS xxx.^[6]

Ronald was operated on his forehead and was confined for a month at the Rizal Medical Center. As a result of the shooting incident, Ronald lost his left eye while his right eye could only see some light. Dr. Artes, the operating surgeon, testified that without medical intervention, Ronald could have died.

Evidence of the Defense

The defense presented the accused Dorado and Ramos; Gloria Confessor and Jessie Confessor, the mother and brother of accused Confessor; Mark Matuguina; Jeffrey Quijano; Aurin Reyes, and Ofelia Ramos (*Ofelia*) as its witnesses, who collectively narrated the following:

On April 15, 2004, between 8:00 o'clock and 11:00 o'clock in the evening, Dorado was at home watching television with his siblings and his mother. Suddenly, the barangay *tanods* arrived and blamed him for the shooting of Ronald. Dorado denied any participation in the incident and did not go with the *tanods*. No *sumpak* was taken from his house. He also denied that he was a gang member and that he went into hiding.

The witnesses for Ramos, Confessor and Cabiasso testified that they were not present in the crime scene when Ronald was shot.

Ofelia, on the other hand, testified that on April 15, 2004, between 10:00 and 10:30 o'clock in the evening, she was on her way to see her friend when she noticed five persons running in the opposite direction. Four of them entered an alley, while one stayed and shot the face of another teenager. She added that she would be able to recognize the assailant, but it was not Dorado.

The RTC Ruling

On July 5, 2010, the RTC rendered its decision. In Criminal Case No. 127784, the trial court found Dorado guilty beyond reasonable doubt of the crime of frustrated murder; while in Criminal Case No. 127785, accused Dorado, Ramos, Confessor and Cabiasso were all acquitted as the crime was not proven beyond reasonable doubt. It noted that their participation in the crime was limited to the throwing of stones and bottles and there was no indication that they singled out Ronald as their target. The RTC also acquitted all the accused for the charge of violation of R.A. No. 7610 because the prosecution failed to establish Ronald's minority.

In finding Dorado guilty of frustrated murder, as defined under Article 248, in relation to Article 6, paragraph 2, of the RPC, the RTC gave credence to the testimonies of the prosecution witnesses that it was Dorado who shot Ronald with a *sumpak*. The trial court considered the qualifying circumstance of evident premeditation because of the following: Dorado's group had an ongoing feud with Ronald's group; when the assault began, Dorado was already holding a *sumpak*; after Ronald fled, Dorado waited intently for an opportunity to shoot him; and when Ronald came out, Dorado shot him on the face. The RTC, nevertheless, appreciated the privileged mitigating circumstance of minority in Dorado's favor as he was still a minor at the time of the incident. It, however, stated that Dorado was not entitled to a suspension of sentence because he was above twenty-one (21) years old at the

time of the pronouncement of guilt. Thus, it disposed the case in this wise:

WHEREFORE, taking all the foregoing into consideration, it is hereby adjudged that:

1. In Criminal Case No. 127784, CICL Jerwin Dorado y Felipe is hereby found GUILTY beyond reasonable doubt of the crime of Frustrated Murder, defined and penalized under Article 248, in relation to Article 6, 2nd paragraph, 2nd phrase of the Revised Penal Code and, taking into consideration the privileged mitigating circumstance of minority, is sentenced to suffer the penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum, with all the effects thereof as provided" by law. He is further ordered to pay the victim Php50,000.00 as civil indemnity; Php50,000.00 by way of moral damages; and to pay the costs, at the legal rate of interest from the time of the filing of the Information until fully paid. Accused Julius Ramos y Labanero, Jeffrey Confessor and Jayson Cabiaso are ACQUITTED on ground of reasonable doubt.
2. In Criminal Case No. 127785, CICL Jerwin Dorado y Felipe, accused Julius Ramos y Labanero, Jeffrey Confessor and Jayson Cabiaso are ACQUITTED on ground of reasonable doubt. No costs.

SO ORDERED.^[7]

Aggrieved, Dorado elevated an appeal before the CA.

The CA Ruling

In its assailed decision, dated August 8, 2014, the CA affirmed the RTC decision, finding that Dorado committed the crime of frustrated murder because he had the intent to kill Ronald when he fired his *sumpak* hitting the portion between the two eyes of the victim. It noted that Ronald would have died were it not for the timely medical attention. The appellate court also agreed with the RTC that Dorado's act of waiting for Ronald to come out of the *talipapa*, where the latter was hiding, indicated evident premeditation.

The CA did not give credence to Dorado's defense of alibi because his house was merely one block away from the *talipapa*. It opined that it was not physically impossible for him to be at the crime scene at the time in question.

Dorado moved for reconsideration but his motion was denied by the CA in its assailed resolution, dated January 29, 2015.

Hence, this petition.

SOLE ISSUE

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER FOR THE CRIME CHARGED.^[8]

Dorado argues that his defenses of alibi and denial should be fully appreciated by the Court as there was enough evidence to support them; that he was at his home at the time of the incident; that defense witness Ofelia testified that he was not the one who shot Ronald; and that the barangay officials did not find the *sumpak* in his possession.

In its Comment,^[9] the Office of the Solicitor General (OSG) countered that Dorado had the intent to kill when he fired the *sumpak* and hit Ronald between the eyes; that the felony would have caused the death of the victim, were it not for the timely medical intervention; and that Dorado's defenses of denial and alibi could not overcome the positive identification by the prosecution witnesses.

In his Reply,^[10] Dorado reiterated that his defense was supported by Ofelia's testimony and that the CA committed a misapprehension of facts when it did not consider his defenses.

The Court's Ruling

The Court finds merit in the petition.

Dorado was a minor at the time of the commission of the crime

A perusal of the records will readily show that Dorado was a sixteen (16) year old minor at the time of the commission of the crime on March 15, 2004. The Informations filed against him consistently stated his minority.^[11] For said reason, he must benefit from the provisions of R.A. No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended. Even though the said law was enacted on April 28, 2006, the same must still be retroactively applied for the benefit of Dorado pursuant to the well-entrenched principle in criminal law — *favorabilia sunt amplianda adiosa restringenda* (penal laws which are favorable to the accused are given retroactive effect).^[12]

Curiously, neither the RTC nor the CA paid much attention to Dorado's minority and how it affected his criminal responsibility. Thus, the Court deems it proper to lay down the salient provisions of R.A. No. 9344 regarding the prosecution of a Child In Conflict with the Law (CICL).^[13]

One of the significant features of R.A. No. 9344 is the increase of the minimum age of criminal responsibility, to wjt: