

SECOND DIVISION

[G.R. No. 197731, July 06, 2015]

**HERMIE OLARTE Y TARUG, AND RUBEN OLAVARIO Y MAUNAO,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

DEL CASTILLO, J.:

Petitioners Hermie Olarte y Tarug (Olarte) and Ruben Olavario y Maunao (Olavario), together with Salvador Pasquin y Marco (Pasquin), were charged with the crime of frustrated homicide in an Information that reads as follows:

That on or about September 15, 2002 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously stab one EUGENE VILLOSTAS y MARTINEZ, thus performing all the acts of execution which would constitute the crime of Homicide as a consequence but which nevertheless, did not produce it by reason or causes independent of the will of the herein accused, that is, due to the timely, able and efficient medical attendance rendered to the victim.

CONTRARY TO LAW.^[1]

All the three accused posted^[2] bail. But since Pasquin jumped bail, only petitioners were arraigned on June 25, 2003 where they pleaded not guilty to the crime charged.^[3] Trial thereafter ensued.

The prosecution averred that in the early morning of September 15, 2002, the victim Eugene M. Villostas (Villostas) was fetched by his half-brother, Charlie Penilla (Penilla), from a drinking session. On their way home, Villostas decided to buy cigarettes from a nearby videoke bar at Gen. T. de Leon, Valenzuela City. Inside the bar, however, three men who belonged to a group then singing and drinking suddenly stabbed him on different parts of his body. They only stopped when bystanders started throwing stones at them. This whole incident was witnessed by Penilla who was then only seven to eight arms length away from the crime scene.

Barangay tanods immediately responded and brought the malefactors to the *Barangay* Hall where they were later identified as petitioners and their co-accused Pasquin. Meanwhile, Villostas was rushed to the Valenzuela General Hospital where he was treated by Dr. Jolou A. Pascual (Dr. Pascual).

During trial, Dr. Pascual testified that Villostas sustained multiple stab wounds described as follows:

Multiple Stab Wound

5cm 4th ICS anterior axillary, left 3.5 cm 5th ICS

5 cm curvilinear subcostal mid axillary, right

2cm anterior shoulder, left

4cm anterior shoulder, left^[4]

According to him, all these wounds could have caused Villostas' death were it not for the timely medical attention given him.^[5]

The defense, on the other hand, alleged that at around 2:00 o' clock in the morning of September 15, 2002, while petitioners, Pasquin and some other companions were having a drinking spree inside a videoke bar on Gen. T. De Leon, Valenzuela City, several persons threw stones at them hitting Olate and another companion. Their group thus disbanded. While most of them headed straight home, Olate, together with a certain Joni, went to the *Barangay* Hall to have the stoning incident entered in its blotter. Upon arrival thereat, however, they were surprised that Olate, Olavario and Pasquin were being implicated in a stabbing incident. The three were then brought to the Valenzuela General Hospital where Villostas identified them as his assailants. Thereafter, they were arrested and detained at the city jail.

On April 27, 2009, the Regional Trial Court (RTC) of Valenzuela City, Branch 172, rendered its Decision^[6] finding petitioners guilty as charged, viz.:

WHEREFORE, judgment is hereby rendered finding Hermie Olate y Tarug and Ruben Olavario y Maunao guilty beyond reasonable doubt as PRINCIPALS [in] the crime of FRUSTRATED HOMICIDE and [are] hereby sentenced x x x to suffer an imprisonment of two (2) years, 4 (four) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor medium as maximum. They are also ordered to pay jointly and solidarity the victim Eugene Villostas y Martinez the amount of Php22,462.05 for medical expenses as actual damages, Php20,000.00 as moral damages and costs of suit.

Since x x x accused Salvador Pasquin Marco has not yet been arrested and arraigned despite the issuance of order of arrest on November 8, 2002, let an alias warrant of arrest be issued against said accused Salvador Pasquin y Marco. Meantime, let the case against him be archived to be retrieved as soon as he is arrested.

SO ORDERED.^[7]

Petitioners filed a Notice of Appeal^[8] which was granted by the RTC in its Order^[9] of May 13, 2009.

Before the Court of Appeals (CA),^[10] petitioners questioned the credibility of Villostas and Penilla as prosecution witnesses. They pointed out inconsistencies in their testimonies respecting the victim's degree of intoxication at the time of the incident, the kind or brand of liquor that he imbibed, and the length of time that he had been drinking immediately prior thereto. Petitioners argued that such inconsistencies rendered doubtful their identification as the culprits by said prosecution witnesses.

The CA, in its February 9, 2011 Decision,^[11] debunked petitioners' arguments as it found the inconsistencies pointed out by them as relating to mere minor details. On the other hand, it found no cogent reason to deviate from the findings of the trial court as regards petitioners' culpability, thus:

WHEREFORE, premises considered, the April 27, 2009 Decision of the Regional Trial Court of Valenzuela City, Branch 172, in Criminal Case No. 759-V-02, convicting the [petitioners] of the crime of Frustrated Homicide is AFFIRMED.

SO ORDERED.^[12]

Petitioners' Motion for Reconsideration^[13] was likewise denied in a Resolution^[14] dated July 13, 2011.

Hence, this Petition for Review on *Certiorari*^[15] under Rule 45 of the Rules of Court where petitioners raise the following errors:

THE TRIAL COURT ERRED IN NOT ACQUITTING PETITIONERS OF THE CRIME OF FRUSTRATED HOMICIDE.

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE EVIDENCE ON [RECORD] THAT NEITHER OF THE PETITIONERS WAS THE AUTHOR OF THE CRIME.^[16]

Petitioners insist that the testimonies of Villostas and Penilla are devoid of credibility as they contain several inconsistencies. These inconsistencies rendered doubtful the said witnesses' identification of petitioners as the assailants. Petitioners also point out that they themselves went to the authorities to report the incident. This, according to them, negates their involvement in the crime because had they been the real perpetrators, they would not dare report the matter to the authorities. Moreover, they contend that the lower courts failed to properly appreciate the testimony of one Rodel Roque who categorically stated on the witness stand that he saw Villostas being stabbed by only one person and that person was neither of the petitioners. In view of these, petitioners pray that the assailed CA Decision be reversed and set aside and that they be acquitted of the crime charged.

Our Ruling

The Petition must be denied.

Suffice it to state that the errors raised by the petitioners are all "appreciation of evidence" errors or factual errors which are not within the province of a petition for review on *certiorari* under Rule 45. The Court had already explained in *Batistis v. People*^[17] that:

Pursuant to Section 3, Rule 122, and Section 9, Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua*, or life imprisonment, is by petition for review on *certiorari*.