

FIRST DIVISION

[G.R. No. 178512, November 26, 2014]

**ALFREDO DE GUZMAN, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

BERSAMIN, J.:

Frustrated homicide requires intent to kill on the part of the offender. Without proof of such intent, the felony may only be serious physical injuries. Intent to kill may be established through the overt and external acts and conduct of the offender before, during and after the assault, or by the nature, location and number of the wounds inflicted on the victim.

The Case

Under review at the instance of the petitioner is the decision promulgated on September 27, 2006,^[1] whereby the Court of Appeals (CA) affirmed his conviction for frustrated homicide committed against Alexander Flojo under the judgment rendered on September 10, 2003 by the Regional Trial Court (RTC), Branch 213, in Mandaluyong City in Criminal Case No. 191-MD.^[2]

Antecedents

The CA summarized the versions of the parties as follows:

x x x [O]n December 24, 1997, at about ten o'clock in the evening, Alexander Flojo (hereafter "Alexander") was fetching water below his rented house at 443 Aglipay Street, Old Zaniga St., Mandaluyong City when suddenly Alfredo De Guzman (hereafter "Alfredo"), the brother of his land lady, Lucila Bautista (hereafter "Lucila"), hit him on the nape. Alexander informed Lucila about what Alfredo did to him. Lucila apologized to Alexander by saying, "*Pasensya ka na Mang Alex*" and told the latter to just go up. Alexander obliged and went upstairs. He took a rest for about two hours. Thereafter, at around 12:00 to 12:15 A.M., Alexander went down and continued to fetch water. While pouring water into a container, Alfredo suddenly appeared in front of Alexander and stabbed him on his left face and chest.

Cirilino Bantaya, a son-in-law of Alexander, saw the latter bleeding on the left portion of his body and begging for help. Alexander then told Cirilino that Alfredo stabbed him. Cirilino immediately loaded Alexander into his motorcycle (backride) and brought him to the Mandaluyong City Medical Center. Upon arrival at the hospital, the doctors immediately rendered medical assistance to Alexander. Alexander stayed in the emergency

room of said hospital for about 30 to 40 minutes. Then, he was brought to the second floor of the said hospital where he was confined for two days. Thereafter, Alexander was transferred to the Polymedic General Hospital where he was subjected for (sic) further medical examination.

Alexander sustained two stabbed (sic) wounds. (sic) One of which was on the zygoma, left side, and about one (1) cm. long. The other is on his upper left chest which penetrated the fourth intercostal space at the proximal clavicular line measuring about two (2) cm. The second stabbed (sic) wound penetrated the thoracic wall and left lung of the victim which resulted to blood air (sic) in the thoracic cavity thus necessitating the insertion of a thoracostomy tube to remove the blood. According to Dr. Francisco Obmerga, the physician who treated the victim at the Mandaluyong City Medical Center, the second wound was fatal and could have caused Alexander's death without timely medical intervention. (*Tsn, July 8, 1998, p.8*).

On the other hand, Alfredo denied having stabbed Alexander. According to him, on December 25, 1997 at around midnight, he passed by Alexander who was, then, fixing a motorcycle. At that point, he accidentally hit Alexander's back, causing the latter to throw invective words against him. He felt insulted, thus, a fistfight ensued between them. They even rolled on the ground. Alfredo hit Alexander on the cheek causing blood to ooze from the latter's face.^[3]

The RTC convicted the petitioner, decreeing thusly:

PRESCINDING (sic) FROM THE FOREGOING CONSIDERATIONS, the court finds accused Alfredo De Guzman y Agkis a.k.a., "JUNIOR," guilty beyond reasonable doubt for (sic) the crime of FRUSTRATED HOMICIDE defined and penalized in Article 250 of the *Revised Penal Code* and in the absence of any modifying circumstance, he is hereby sentenced to suffer the indeterminate penalty of Six (6) Months and One (1) day of PRISION CORR[R]ECCIONAL as MINIMUM to Six (6) Years and One (1) day of PRISION MAYOR as MAXIMUM.

The accused is further ordered to pay the private complainant compensatory damages in the amount of P14,170.35 representing the actual pecuniary loss suffered by him as he has duly proven.

SO ORDERED.^[4]

On appeal, the petitioner contended that his guilt had not been proved beyond reasonable doubt; that intent to kill, the critical element of the crime charged, was not established; that the injuries sustained by Alexander were mere scuffmarks inflicted in the heat of anger during the fistfight between them; that he did not inflict the stab wounds, insisting that another person could have inflicted such wounds; and that he had caused only slight physical injuries on Alexander, for which he should be accordingly found guilty.

Nonetheless, the CA affirmed the petitioner's conviction, viz:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The September 10, 2003 Decision of the Regional Trial Court of Mandaluyong City, Branch 213, is hereby **AFFIRMED** *in toto*.

SO ORDERED.^[5]

The CA denied the petitioner's motion for reconsideration on May 2, 2007.^[6]

Issue

Was the petitioner properly found guilty beyond reasonable doubt of frustrated homicide?

Ruling

The appeal lacks merit.

The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the *Revised Penal Code*, as amended, is present.^[7] Inasmuch as the trial and appellate courts found none of the qualifying circumstances in murder under Article 248 to be present, we immediately proceed to ascertain the presence of the two other elements.

The petitioner adamantly denies that intent to kill was present during the fistfight between him and Alexander. He claims that the heightened emotions during the fistfight naturally emboldened both of them, but he maintains that he only inflicted minor abrasions on Alexander, not the stab wounds that he appeared to have sustained. Hence, he should be held liable only for serious physical injuries because the intent to kill, the necessary element to characterize the crime as homicide, was not sufficiently established. He avers that such intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide; and that the crime is homicide only if the intent to kill is competently shown.

The essential element in frustrated or attempted homicide is the intent of the offender to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*.^[8] Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, i.e., the acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,^[9] we considered the following factors to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We have also considered as determinative factors the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim.

Here, both the trial and the appellate court agreed that intent to kill was present. We concur with them. Contrary to the petitioner's submission, the wounds sustained by Alexander were not mere scuffmarks inflicted in the heat of anger or as the result of a fistfight between them. The petitioner wielded and used a knife in his assault on Alexander. The medical records indicate, indeed, that Alexander sustained two stab wounds, specifically, one on his upper left chest and the other on the left side of his face. The petitioner's attack was unprovoked with the knife used therein causing such wounds, thereby belying his submission, and firmly proving the presence of intent to kill. There is also to be no doubt about the wound on Alexander's chest being sufficient to result into his death were it not for the timely medical intervention.

With the State having thereby shown that the petitioner already performed all the acts of execution that should produce the felony of homicide as a consequence, but did not produce it by reason of causes independent of his will, *i.e.*, the timely medical attention accorded to Alexander, he was properly found guilty of frustrated homicide.

We have no cogent reason to deviate from or to disregard the findings of the trial and appellate courts on the credibility of Alexander's testimony. It is not disputed that the testimony of a single but credible and trustworthy witness sufficed to support the conviction of the petitioner. This guideline finds more compelling application when the lone witness is the victim himself whose direct and positive identification of his assailant is almost always regarded with indubitable credibility, owing to the natural tendency of the victim to seek justice for himself, and thus strive to remember the face of his assailant and to recall the manner in which the latter committed the crime.^[11] Moreover, it is significant that the petitioner's mere denial of the deadly manner of his attack was contradicted by the credible physical evidence corroborating Alexander's statements. Under the circumstances, we can only affirm the petitioner's conviction for frustrated homicide.

The affirmance of the conviction notwithstanding, we find the indeterminate penalty of "Six (6) Months and One (1) day of PRISION CORR[R]ECCIONAL as MINIMUM to Six (6) Years and One (1) day of PRISION MAYOR as MAXIMUM"^[12] fixed by the RTC erroneous despite the CA concurring with the trial court thereon. Under Section 1 of the *Indeterminate Sentence Law*, an indeterminate sentence is imposed on the offender consisting of a maximum term and a minimum term.^[13] The maximum term is the penalty properly imposed under the *Revised Penal Code* after considering any attending modifying circumstances; while the minimum term is within the range of the penalty next lower than that prescribed by the *Revised Penal Code* for the offense committed. Conformably with Article 50 of the *Revised Penal Code*,^[14] frustrated homicide is punished by *prision mayor*, which is next lower to *reclusion temporal*, the penalty for homicide under Article 249 of the *Revised Penal Code*. There being no aggravating or mitigating circumstances present, however, *prision mayor* in its medium period – from eight years and one day to 10 years – is proper. As can be seen, the maximum of six years and one day of *prision mayor* as fixed by the RTC and affirmed by the CA was not within the medium period of *prision mayor*. Accordingly, the correct indeterminate sentence is four years of *prision correccional*, as the minimum, to eight years and one day of *prision mayor*,