

FIRST DIVISION

[G.R. NO. 166326, January 25, 2006]

**ESMERALDO RIVERA, ISMAEL RIVERA, EDGARDO RIVERA,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 27215 affirming, with modification, the Decision^[2] of the Regional Trial Court (RTC) of Cavite, Branch 90, in Criminal Case No. 6962-99, entitled *People of the Philippines. v. Esmeraldo Rivera, et al.*

On April 12, 1999, an Information was filed in the RTC of Imus, Cavite, charging Esmeraldo, Ismael and Edgardo, all surnamed Rivera, of attempted murder. The accusatory portion of the Information reads:

That on or about the 3rd day of May 1998, in the Municipality of Dasmariñas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully, and feloniously attack, assault and hit with a piece of hollow block, one RUBEN RODIL who thereby sustained a non-mortal injury on his head and on the different parts of his body, the accused thus commenced the commission of the felony directly by overt acts, but failed to perform all the acts of execution which would produce the crime of Murder by reason of some causes other than their own spontaneous desistance, that is, the said Ruben Rodil was able to ran (sic) away and the timely response of the policemen, to his damage and prejudice.

CONTRARY TO LAW.^[3]

Ruben Rodil testified that he used to work as a taxi driver. He stopped driving in April 1998 after a would-be rapist threatened his life. He was even given a citation as a *Bayaning Pilipino* by the television network ABS-CBN for saving the would-be victim. His wife eked out a living as a manicurist. They and their three children resided in Barangay San Isidro Labrador II, Dasmariñas, Cavite, near the house of Esmeraldo Rivera and his brothers Ismael and Edgardo.

At noon of May 2, 1998, Ruben went to a nearby store to buy food. Edgardo mocked him for being jobless and dependent on his wife for support. Ruben resented the rebuke and hurled invectives at Edgardo. A heated exchange of words ensued.

At about 7:30 p.m. the next day, a Sunday, Ruben went to the store to buy food and

to look for his wife. His three-year-old daughter was with him. Momentarily, Esmeraldo and his two brothers, Ismael and Edgardo, emerged from their house and ganged up on Ruben. Esmeraldo and Ismael mauled Ruben with fist blows and he fell to the ground. In that helpless position, Edgardo hit Ruben three times with a hollow block on the parietal area. Esmeraldo and Ismael continued mauling Ruben. People who saw the incident shouted: "*Awatin sila! Awatin sila!*" Ruben felt dizzy but managed to stand up. Ismael threw a stone at him, hitting him at the back. When policemen on board a mobile car arrived, Esmeraldo, Ismael and Edgardo fled to their house.

Ruben was brought to the hospital. His attending physician, Dr. Lamberto Cagingin, Jr., signed a medical certificate in which he declared that Ruben sustained lacerated wounds on the parietal area, cerebral concussion or contusion, hematoma on the left upper buttocks, multiple abrasions on the left shoulder and hematoma periorbital left.^[4] The doctor declared that the lacerated wound in the parietal area was slight and superficial and would heal from one to seven days.^[5] The doctor prescribed medicine for Ruben's back pain, which he had to take for one month.^[6]

Esmeraldo testified that at around 1:00 p.m. on May 3, 1998, Ruben arrived at his house and banged the gate. Ruben challenged him and his brothers to come out and fight. When he went out of the house and talked to Ruben, the latter punched him. They wrestled with each other. He fell to the ground. Edgardo arrived and pushed Ruben aside. His wife arrived, and he was pulled away and brought to their house.

For his part, Ismael testified that he tried to pacify Ruben and his brother Esmeraldo, but Ruben grabbed him by the hair. He managed to free himself from Ruben and the latter fled. He went home afterwards. He did not see his brother Edgardo at the scene.

Edgardo declared that at about 1:00 p.m. on May 3, 1998, he was throwing garbage in front of their house. Ruben arrived and he went inside the house to avoid a confrontation. Ruben banged the gate and ordered him to get out of their house and even threatened to shoot him. His brother Esmeraldo went out of their house and asked Ruben what the problem was.

A fist fight ensued. Edgardo rushed out of the house and pushed Ruben aside. Ruben fell to the ground. When he stood up, he pulled at Edgardo's shirt and hair, and, in the process, Ruben's head hit the lamp post.^[7]

On August 30, 2002, the trial court rendered judgment finding all the accused guilty beyond reasonable doubt of frustrated murder. The dispositive portion of the decision reads:

WHEREFORE, premises considered, all the accused are found GUILTY beyond reasonable doubt and are sentenced to an imprisonment of six (6) years and one (1) day to eight (8) years of *prision mayor* as the prosecution has proved beyond reasonable doubt the culpability of the accused. Likewise, the accused are to pay, jointly and severally, civil indemnity to the private complainant in the amount of P30,000.00.

SO ORDERED.^[8]

The trial court gave no credence to the collective testimonies of the accused and their witnesses. The accused appealed to the CA, which rendered judgment on June 8, 2004 affirming, with modification, the appealed decision. The dispositive portion of the CA decision reads:

WHEREFORE, the Decision of the Regional Trial Court of Imus, Cavite, Branch 90, is MODIFIED in that the appellants are convicted of ATTEMPTED MURDER and sentenced to an indeterminate penalty of 2 years of *prision correccional* as minimum to 6 years and 1 day of *prision mayor* as maximum. In all other respects, the decision appealed from is AFFIRMED.

SO ORDERED.^[9]

The accused, now petitioners, filed the instant petition for review on *certiorari*, alleging that the CA erred in affirming the RTC decision. They insist that the prosecution failed to prove that they had the intention to kill Ruben when they mauled and hit him with a hollow block. Petitioners aver that, based on the testimony of Dr. Cagingin, Ruben sustained only a superficial wound in the parietal area; hence, they should be held criminally liable for physical injuries only. Even if petitioners had the intent to kill Ruben, the prosecution failed to prove treachery; hence, they should be held guilty only of attempted homicide.

On the other hand, the CA held that the prosecution was able to prove petitioners' intent to kill Ruben:

On the first assigned error, intent to kill may be deduced from the nature of the wound inflicted and the kind of weapon used. Intent to kill was established by victim Ruben Rodil in his testimony as follows:

Q: And while you were being boxed by Esmeraldo and Bong, what happened next?

A: When I was already lying [down] xxx, Dagol Rivera showed up with a piece of hollow block xxx and hit me thrice on the head, Sir.

Q: And what about the two (2), what were they doing when you were hit with a hollow block by Dagol?

A: I was already lying on the ground and they kept on boxing me while Dagol was hitting, Sir.

As earlier stated by Dr. Cagingin, appellants could have killed the victim had the hollow block directly hit his head, and had the police not promptly intervened so that the brothers scampered away. When a wound is not sufficient to cause death, but intent to kill is evident, the crime is attempted. Intent to kill was shown by the fact that the (3) brothers helped each other maul the defenseless victim, and even after he had already fallen to the ground; that one of them even picked up a cement hollow block and proceeded to hit the victim on the head with it three times; and that it was only the arrival of the policemen that made the appellants desist from their concerted act of trying to kill Ruben Rodil.^[10]

The Office of the Solicitor General (OSG), for its part, asserts that the decision of the CA is correct, thus:

The evidence and testimonies of the prosecution witnesses defeat the presumption of innocence raised by petitioners. The crime has been clearly established with petitioners as the perpetrators. Their intent to kill is very evident and was established beyond reasonable doubt.

Eyewitnesses to the crime, Alicia Vera Cruz and Lucita Villejo clearly and categorically declared that the victim Ruben Rodil was walking along St. Peter Avenue when he was suddenly boxed by Esmeraldo "Baby" Rivera. They further narrated that, soon thereafter, his two brothers Ismael and Edgardo "Dagul" Rivera, coming from St. Peter II, ganged up on the victim. Both Alicia Vera Cruz and Lucita Villejo recounted that they saw Edgardo "Dagul" Rivera pick up a hollow block and hit Ruben Rodil with it three (3) times. A careful review of their testimonies revealed the suddenness and unexpectedness of the attack of petitioners. In this case, the victim did not even have the slightest warning of the danger that lay ahead as he was carrying his three-year old daughter. He was caught off-guard by the assault of Esmeraldo "Baby" Rivera and the simultaneous attack of the two other petitioners. It was also established that the victim was hit by Edgardo "Dagul" Rivera, while he was lying on the ground and being mauled by the other petitioners. Petitioners could have killed the victim had he not managed to escape and had the police not promptly intervened.

Petitioners also draw attention to the fact that the injury sustained by the victim was superficial and, thus, not life threatening. The nature of the injury does not negate the intent to kill. The Court of Appeals held:

As earlier stated by Dr. Cagingin, appellants could have killed the victim had the hollow block directly hit his head, and had the police not promptly intervened so that the brothers scampered away. When a wound is not sufficient to cause death, but intent to kill is evident, the crime is attempted. Intent to kill was shown by the fact that the three (3) brothers helped each other maul the defenseless victim, and even after he had already fallen to the ground; that one of them picked up a cement hollow block and proceeded to hit the victim on the head with it three times; and that it was only the arrival of the policemen that made the appellants desist from their concerted act of trying to kill Ruben Rodil.^[11]

The petition is denied for lack of merit.

An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by *dolo*.