

TWENTIETH DIVISION

[CA-G.R. CR NO. 00109, June 09, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO MONTEMAYOR, ACCUSED-APPELLANT.

DECISION

QUIJANO-PADILLA, J.:

The Case

This is an Appeal^[1] from the Decision^[2] dated July 9, 2004 of the Regional Trial Court, Sixth (6th) Judicial Region, Branch 61, of Kabankalan City, Negros Occidental in Criminal Case No. 2003-3231 for Frustrated Homicide.

The Facts

In an information^[3] dated April 9, 2003, accused-appellant Pablo Montemayor was charged with the crime of Frustrated Homicide allegedly committed as follows:

“That on or about the 13th day of February, 2003, in the Municipality of Ilog, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is still at large, with the use of a revolver of unknown caliber and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot one MAGDALINO GUDACA y ADOLFO, thereby inflicting injuries upon the body of the latter which would have caused his death; thus, the accused had performed all the acts of execution which would have produced the crime of homicide as a consequence but, nevertheless, did not produce it by reason of some causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said Magdalino Gudaca y Adolfo which prevented his death.

CONTRARY TO LAW.”

During accused-appellant’s arraignment^[4] on September 2, 2003, he pleaded not guilty of the crime charged. Thereafter, trial on the merits followed.

The Version of the Prosecution^[5]

On February 13, 2003 at around 8:00 o’clock in the evening, the private complainant Magdalino Gudaca y Adolfo and his wife Dolores Gudaca were in their house at Purok Rosal, Brgy. Vista Alegre, Ilog, Negros Occidental, when their in-law by the name of Josephine Libo-on informed them that there were six (6) persons taking railroad trunks on the farm which the private complainant was tenanting. The said farm was owned by Dr. Galo Gentugaya, where the trunk line of Central

Sonedco passes.

Together with his wife, the private complainant proceeded to the farm. Upon arrival, they saw Pablo Montemayor alias "Pabby", Nelson Lacson, Edwin Sucgang, Joevel Taclubos, a certain "Estoy" Montemayor and a certain "Ambing" Montemayor taking railroad trunks from the existing railroad in the farm. Private complainant told them not to take all the railroad trunks because the same were already entrusted to him by the owner Central Sonedco. However, the group never heeded him and even answered back that they have to take all the railroad trunks because they needed them. At this juncture, private complainant replied that he will see them before the barangay captain. Upon hearing this, accused-appellant Pablo Montemayor stood up, drew his .38 caliber revolver and shot the private complainant twice, hitting him first on the chest and then at the right-back portion.

Private complainant's wife Dolores Gudaca rushed to the private complainant's side and brought him to their house for treatment and thereafter to Kabankalan District Hospital where he was given first aid treatment. After which, he was brought to Bacolod City specifically at the Doctor's Hospital where he had a surgical operation.

The evidence for the prosecution consist of the testimonies of Dolores Gudaca, Magdalino Gudaca and the following exhibits: Exhibit "A"^[6] – Affidavit of Dolores Gudaca and its sub-marking, Exhibit "B"^[7] – Affidavit of Magdalino Gudaca and its sub-marking, Exhibit "C"^[8] – Medical Certificate issued by Dr. Humberto Javellana of the Doctor's Hospital, Bacolod City, Exhibit "D"^[9] – List of Medicine Expenses and Doctor's Fee and its sub-markings and Exhibit "E"^[10] – Official Receipts and its sub-markings.

The Version of the Accused-Appellant^[11]

In his defense, accused-appellant Pablo Montemayor denied the accusation against him. He claims that in the evening of February 13, 2003, a certain Nelson Lacson contracted him to load railroad trunks for a fee of P250.00 per railroad trunk.^[12]

Upon arrival at the farm where the railroad trunk was located, accused-appellant saw Nelson Lacson already having an altercation with the private complainant.^[13] There were also other persons present who were also taking railroad trunks from the farm.

The private complainant told Nelson Lacson to stop taking the railroad trunks but the latter demanded papers from the victim. Seemingly irked by such reply, the private complainant took out his bolo and hacked Nelson Lacson.^[14] Thereafter, Nelson Lacson shot the private complainant using a .357 revolver, hitting him at the left side.

After witnessing such scenario, the accused-appellant ran towards his house and brought his carabao with him. He did not inform anyone about what happened as he was threatened by Nelson Lacson.^[15]

The evidence for the defense consist of the testimonies of Pablo Montemayor and his wife Gloria Montemayor.

Moreover, the accused-appellant Pablo Montemayor put up a property bond for his temporary liberty during the trial at the lower court and during the pendency of this appeal.

The Ruling of the Regional Trial Court

In a Decision^[16] dated July 9, 2004, the Regional Trial Court, Sixth (6th) Judicial Region, Branch 61, of Kabankalan City, Negros Occidental found the accused-appellant guilty beyond reasonable doubt of the crime charged which is frustrated homicide. The decretal portion of the decision was stated in this wise:

“WHEREFORE, the Court finds accused Pablo Montemayor guilty beyond reasonable [sic] of the crime of frustrated homicide as charged and there being no mitigating and aggravating circumstance to consider and applying the Indeterminate Sentence Law hereby sentences him to a penalty of imprisonment of four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, to pay the victim Magdalino Gudaca actual damages in the amount of P95,667.79, loss of income in the amount of P4,000.00, moral damages in the amount of P20,000.00 and to pay the cost.

It is ordered that the accused be immediately remitted to the National Penitentiary.

SO ORDERED.”^[17]

Aggrieved with the decision, the accused-appellant Pablo Montemayor interposed this appeal raising the sole issue, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT RATHER ON THE WEAKNESS OF THE DEFENSE' EVIDENCE.

The Ruling of this Court

The conviction of the accused-appellant is sustained, but for the lesser offense of attempted homicide.

Accused-appellant Pablo Montemayor's argument is mainly anchored upon his postulation that the prosecution's evidence failed to establish his guilt beyond reasonable doubt.

Such argument is unconvincing.

At the onset (i)t is a fundamental rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings.^[18] The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and

manner of testifying during the trial.^[19]

In the case at bench, accused-appellant was charged with the crime of frustrated homicide. However, to arrive at a just and equitable finding, We deemed it best to discuss homicide in relation to frustrated homicide and attempted homicide.

Accordingly, (t)o successfully prosecute the crime of homicide, the following elements must be proved beyond reasonable doubt: (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. Moreover, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.^[20]

On the other hand, (t)he 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/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.^[21]

In cases of frustrated homicide, the main element is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.^[22]

In the present case, We agree with the trial court that there was intent to kill on the part of the accused-appellant. This was indubitably manifested through the deadly weapon used by him to assault the victim. In retrospect, accused-appellant used a gun and shot the private complainant twice which hit the latter, once at the chest area and another at his right-back area.

Likewise, We also find the third element in attendance. Clearly, there was no qualifying circumstance that would elevate the crime to murder as provided for by Article 248 of the Revised Penal Code. However, with regard to the second element, Our view differs.

Although, the private complainant was able to submit a Medical Certificate^[23] issued by Dr. Humberto Javallana, the private complainant's attending physician, We find such certificate inadequate to meet the required quantum of evidence as contemplated by law and jurisprudence.

It bears stressing that the Medical Certificate alone would not suffice considering that it only enumerated the physician's diagnosis and the operations conducted upon the victim. It did not aptly state or show the gravity of such wounds and whether they were mortal enough to cause the private complainant's death if no timely medical intervention was undertaken.

In addition, the prosecution also failed to present the attending physician in court. His testimony could have been vital as he would be the best person to explain and

expound on the findings stated in the Medical Certificate which could have supported or strengthened the charge for frustrated homicide.

In totality, there was evident paucity of evidence to sufficiently establish the nature or degree of the wounds sustained by the victim. Hence, We cannot sustain the charge of frustrated homicide against the accused-appellant. This Court's ratiocination finds support in the case of *Serrano v. People*.^[24] Portions pertinent to this discussion, to wit:

On the other hand, the CA ruled that the crime committed only reached the attempted stage as there was lack of evidence that the stab wound inflicted was fatal to cause the victim's death.^[25] **The CA observed that the attending physician did not testify in court.**^[26] The CA also considered that the Medical Certificate and the Discharge Summary issued by the East Avenue Medical Center fell short of "specifying the nature or gravity of the wound."^[27]

Article 6 of the Revised Penal Code, as amended defines the stages of a felony in the following manner:

ART. 6. *Consummated, **frustrated**, and **attempted** felonies.*
– Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is **frustrated** when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an **attempt** when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. [Emphasis and italics supplied.]

In *Palaganas v. People*,^[28] we made the following distinctions between frustrated and attempted felony as follows:

1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.

2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.^[29]