

SPECIAL FOURTH DIVISION

[CA-G.R. CR No. 35846, November 26, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MELCHOR V. RAGUINDIN, ACCUSED-APPELLANT.**

D E C I S I O N

GONZALES-SISON, M., J.:*

This is an appeal^[1] from the decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 21 dated 17 May 2013 in Criminal Case No. L-7611 which found herein accused-appellant Melchor Raguindin guilty beyond reasonable doubt of frustrated homicide for the wounding of Archimedes Pacariem.

Briefly, the facts of the case, are as follows:

In an Information dated 10 April 2005, the Office of the Provincial Prosecutor of Pangasinan charged accused-appellant Melchor Raguindin (appellant Melchor) with the felony of frustrated homicide, the accusatory portion of which reads:

“That on or about May 23, 2005 in the evening in Andangin, Mangatarem, Pangasinan of this Honorable Court, the above-named accused with intent to kill, did, then, and there, willfully, unlawfully, and feloniously shoot with a firearm ARCHIMEDES R. PACARIEM, offended party, that caused such offended party to suffer:

“GUNSHOT wound, POE – 1 cm
2nd ICSML; POX – 1.5 cm
Posterior Axillary Fold (L);
Thru and thru perforation
of left upper Lobe Lung”

thus, the said accused performed all the acts of execution which would produce HOMICIDE as a consequence but which, nevertheless, do not produce it by reason of causes independent of his will specifically due to the immediate and competent medical attendance rendered that prevented the death of the said offended party, to the damage and prejudice of the said offended party.”

Contrary to Article 249 in relation to Articles 250 and 6, 2nd par. 2nd phrase all of the Revised Penal Code.”^[2]

When arraigned, the appellant assisted by counsel pleaded not guilty to the charge.
[3]

Thereafter, trial on the merits ensued, which revealed the following:

It is undisputed that in the evening of 23 May 2005 in Barangay Andangin, Mangatarem, Pangasinan, Joey Ayenza (Joey), Archimedes Pacariem (Archimedes) and Ceferino Pacariem (Ceferino) were having a drinking bout in the latter's house located within the Pacariem Compound. A few meters away, in an establishment identified as Bebing's Store, appellant Melchor, then the Barangay Captain of Barangay Andangin was also having a drinking session with his Kagawads – Elpidio Bautista, Ernesto Arellano and Lito Lucero.

What transpired next is contested upon by the prosecution and the defense.

On the part of the prosecution, Archimedes claimed that suddenly, appellant Melchor entered the Pacariem Compound by kicking the gate of the yard which is made of bamboo. Appellant Melchor then pointed a gun at Joey then at Ceferino and finally at Archimedes while uttering in their vernacular, "who are you toughest here, who are you bragging here and vulva of your mother, I will kill you."

Archimedes then stood a little bit and raised his right palm and told appellant Melchor that no one is tough here. Archimedes' explanation, however, was met with a gunfire from appellant Melchor, hitting Archimedes' chest. After placing his hand on his chest and feeling something warm, Archimedes lost consciousness.^[4]

Subsequently, appellant Melchor aimed his gun at Joey and Ceferino who were able to evade the gunfires by hiding behind a mango tree and a coconut tree respectively.^[5] Ceferino then jumped towards appellant Melchor to try to wrest the gun from the latter. After succeeding in seizing the gun, Ceferino used its butt to strike appellant Melchor several times. Appellant Melchor then ran away in retreat while Ceferino held on the gun and kept it in the house of his father before turning it over to the National Bureau of Investigation.^[6]

Meanwhile, Archimedes was brought to the Villaflor Hospital where he was operated on and attended to by Dr. Alexander Salceda Quilaton (Dr. Quilaton). Dr. Quilaton identified the medical certificate he issued^[7] and testified that a single bullet penetrated the lung of Archimedes and that he could have died if not promptly attended to.^[8]

The defense, however, gave a different account of the events.

According to appellant Melchor while he and his Kagawads were drinking beer at Bebing's Store, Ceferino arrived and bought cigarettes. Kagawad Elpidio Bautista then greeted Ceferino who, however, snubbed the former and immediately left. A few moments later, a bottle was hurled towards the party of appellant Melchor. Appellant Melchor then tried to investigate where the bottle came from and went towards the Pacariem Compound.

Outside the gate of the Pacariem Compound, appellant Melchor was met by Ceferino who appeared to be holding a piece of wood while behind the latter was Archimedes also holding a piece of wood. Appellant Melchor then asked Ceferino if he was the one who threw the bottle, but the latter denied doing it. Ceferino then became infuriated and started shouting at appellant Melchor who was insisting that the bottle came from the Pacariem Compound. Without warning, Ceferino kicked appellant Melchor in his abdomen which caused the latter to fall down on the road.

Seeing that Ceferino was rushing towards him, appellant Melchor fired a warning shot upwards using his service pistol. Nonetheless, Ceferino still went after appellant Melchor and tried to grab the pistol from his hands. Both of them then fell down while grappling for the gun, Ceferino on top of appellant Melchor. While Ceferino and appellant Melchor were fighting for the possession of the gun, Archimedes was busy striking appellant Melchor with a wooden club. All of sudden, the gun went off two (2) times right before appellant Melchor lost consciousness after getting weak from the clubbing he sustained. He later regained his consciousness in the hospital.^[9]

After the parties submitted their respective memorandum, the case was deemed submitted for resolution.^[10]

Finding then the pieces of evidence of the prosecution worthy of credence and weight as against those offered by the defense, the Regional Trial Court of Lingayen, Pangasinan, Branch 21 (trial court) convicted appellant Melchor for the felony charged. The *fallo* of the trial court's decision reads:

"Wherefore, premises considered, accused MELCHOR V. RAGUINDIN is found GUILTY of frustrated homicide, and hereby sentenced to the indeterminate imprisonment of 4 years and 2 months of *prision correccional* as minimum to 8 years, 8 months and 1 day of *prision mayor* as maximum.

He is ordered to pay the complaining witness, Archimedes Pacariem, the sum of P209,022.16 as compensatory damages for the(sic) his injuries, moral damages of P50,000.00 and attorney's fees of P30,000.00. No pronouncement as to costs.

SO ORDERED."^[11]

Dissatisfied with the said decision, appellant Melchor now comes to this Court *via* this instant appeal and in support thereof assigns the following errors on the part of the trial court:

I.

THE COURT A QUO COMMITTED GRAVE AND SERIOUS REVERSIBLE ERROR IN NOT CONSIDERING THAT THE EVIDENCE ADDUCED BY THE PROSECUTION DOES NOT PROVE BEYOND REASONABLE DOUBT APPELLANT'S CRIMINAL LIABILITY FOR THE

CRIME CHARGED

II.

THE COURT A *QUO* COMMITTED REVERSIBLE ERROR IN GIVING CREDENCE TO THE TESTIMONY OF THE POLICE CHIEF INSPECTOR DAVID DULNUAN THAT HE WAS ABLE TO RECOVER INSIDE THE PACARIEM COMPOUND AN EMPTY SHELL NEAR THE TABLE (AND ALSO NOTICE BLOOD STAINS UNDER THE TABLE) AND ANOTHER EMPTY SHELL MARKED AS "EP" AND "DD", RESPECTIVELY IMMEDIATELY AFTER THEY RECEIVED A REPORT

III.

THE COURT A *QUO* ALSO GRAVELY ERRED IN CONCLUDING THAT APPELLANT WAS MOTIVATED BY ANGER WHEN THE PRIVATE COMPLAINANT AND HIS COMPANIONS THREW A BOTTLE OF BEER AT THE PLACE WHERE HE AND HIS KAGAWADS WERE DRINKING

IV.

THE COURT A *QUO* COMMITTED GRAVE REVERSIBLE ERROR IN FINDING THE APPELLANT CIVILLY LIABLE FOR THE INJURIES SUSTAINED BY THE PRIVATE COMPLAINANT

V.

THE COURT A *QUO* COMMITTED SERIOUS REVERSIBLE ERROR IN RELYING ON THE WEAKNESS OF THE DEFENSE AND NOT ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE.

VI.

THE COURT A *QUO* ALSO GRAVELY AND SERIOUSLY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT AT LEAST ON REASONABLE DOUBT.

In essence, appellant Melchor argues that the trial court seriously erred when it convicted him based on the discrepant testimonies of the defense in violation of the principle that the accused must be presumed innocent until the contrary is proved. Appellant Melchor then stressed that the trial court should have instead scrutinized the inconsistent, unreliable and fabricated evidence of the prosecution which would result in his exoneration. More specifically, appellant Melchor argues the following:

First, it is illogical that Archimedes would be shot on the chest considering that according to the prosecution when appellant Melchor aimed his gun at Archimedes who was then sitting in a swing appellant Melchor did it with an extended arm. It is more logical, according to appellant Melchor that Archimedes would be shot on the head which is in the same level as the tip of the gun.

Second, appellant Melchor asserts that even if he aimed at the body of Archimedes, the trajectory of the bullet must have been the middle of the chest downward his back, and not upward and sideway to his left armpit.

Third, appellant Melchor underscored the inconsistent statements of Joey and Ceferino as to the sequence of the alleged pointing of the gun, the position of Archimedes when he was shot and whether Joey was indeed shot.

Fourth, appellant Melchor claims that it is improbable that Ceferino waited to be shot at before jumping at appellant Melchor and that the latter waited for Ceferino to pass him by and hide behind a coconut tree before firing at him. Also, appellant Melchor asserts that the testimony of Ceferino that he hit the former on his head with a butt of the gun is highly unlikely considering that appellant Melchor only suffered *hematoma confluent bicep* or "gasgas" on his head.

Fifth, appellant Melchor highlighted the testimony of SPO1 Ernesto Pagdilao, Jr. (Jr.) stating that the police team did not find any spent shells or blood stains at the scene of the incident during their first investigation on 23 May 2005. The policemen allegedly came up with the spent shells only in the following morning after the incident. Also, appellant Melchor pointed to the absence of drips of blood from the Pacariem Compound towards the cemented road as proof that the incident did not happen inside the compound. On the other hand, appellant Melchor claimed that his shirt at the time of the incident was smudged with Archimedes' blood proving that the latter was shot during the scuffle with Ceferino. As to the spent shells that were later found inside the compound, appellant Melchor insinuated that the same were fired from the same gun only after the incident in order pin him down for the felony charged. It is also impossible that he scampered away as testified to by Ceferino because Dr. Garcia, the one who attended to appellant Melchor, testified that based on the medico-legal report, appellant Melchor probably could not run.

After sifting through the facts of case, as guided by the applicable laws and jurisprudence, this Court finds the instant appeal bereft of merit.

At the outset, it bears pointing out that 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/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.^[12]

The first element was proven by Archimedes, Joey and Ceferino who were consistent, cohesive and certain in identifying appellant Melchor as the culprit in the shooting of Archimedes.

The relevant testimony of Archimedes reads:

ATTY. TOLETE

Q While you were drinking inside the compound of your brother Ceferino Pacariem and Barangay Captain were also having a drinking spree at Bebing's Store, do you know what happened?