

## FIRST DIVISION

[ CA-G.R.-CR NO. 27331, August 16, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2  
EDUARDO O. UNTALAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**ROXAS, J.:**

***Legal Principles in this Case:***

Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and evidentiary weight. Accordingly, the categorical statements of the prosecution witnesses must, perforce, prevail over the bare denials by the accused. Where there is positive identification of the accused as the perpetrators of the crime, their denial cannot be sustained.

Denial is intrinsically a weak defense. To merit credibility, it must be supported by strong evidence of non-culpability. To be sure, it is a negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters.

### The Case

While accompanying his friends from a party, the victim was suddenly accosted by two (2) policemen on board a tricycle. Noticing that the two policemen were drunk, the victim tried to ignore them but when one of them approached him and poked a gun at him he stopped on his tracks. The drunk policeman, with poor aim, fired his gun and hit the victim on the thigh. The victim's companion immediately went to his aid and confronted the policeman. This gave the victim a chance to escape but when the policeman's attention was freed from the distraction caused by the victim's companion, the policeman looked for the victim and upon seeing him, the policeman fired another shot at the victim, this time hitting the victim on the shoulder. Fortunately, the victim was able to run away and was rescued by other policemen riding a patrol car who rushed the victim to the hospital for treatment.

Thereafter, on complaint of the victim, the City Prosecutor filed an Information for frustrated homicide against the policeman who shot the victim. The accused policeman denied that it was he who shot the victim and argued that it was his companion policeman who was the one who shot the victim. The Regional Trial Court convicted the accused policeman. The accused policeman appealed.

### The Facts

This is an appeal<sup>[1]</sup> under Rule 122 of Revised Rules of Court filed by accused-

appellant SPO2 Eduardo O. Untalan (SPO2 UNTALAN) assailing the March 25, 2003 Decision of the Regional Trial Court (RTC) of Quezon City, Branch 216, in Criminal Case No. Q-98-79500, that found him guilty beyond reasonable doubt of the crime of Frustrated Homicide.

On October 4, 1998, about 9 p.m., the complainant Teodoro Amor Jr. (AMOR) was at the house of his sister in MMTC Compound, Regalado Avenue, Fairview, Quezon City,. Among the visitors attending a gathering were Nerio Royales (ROYALES) and Marcial Pelicia (PELICIA).

At around 10 p.m., ROYALES and PELICIA decided to go home and the complainant AMOR accompanied them outside. On the way out, complainant AMOR stopped to urinate. After relieving himself, Complainant AMOR saw ROYALES talking with tricycle driver Manuel TORRES, whose vehicle had two (2) passengers, namely accused-appellant SPO2 UNTALAN and SPO3 Emmanuel De Los Reyes (SPO3 DE LOS REYES). Complainant AMOR went towards Feliciano Marcial (MARCIAL) who was then standing at the sidewalk. While approaching MARCIAL, complainant AMOR, who appeared to be drunk shouted at him "umuwi ka na baka samain ka". Since he was not doing anything wrong, complainant AMOR ignored what accused-appellant SPO2 UNTALAN said and continued walking towards MARCIAL. Complainant AMOR noticed however, that ROYALES and accused-appellant SPO2 UNTALAN were heading towards his direction. He further noticed that SPO3 DE LOS REYES had alighted from the tricycle.

Accused-appellant UNTALAN then went near complainant AMOR, tapped the latter's shoulder, and asked him, "don't you know me?". Thereafter, accused-appellant SPO2 UNTALAN drew his gun and alternatively poked at complainant AMOR and ROYALES. SPO3 DE LOS REYES likewise drew his gun and poked it at complainant AMOR. With his gun pointed at complainant AMOR, accused-appellant SPO2 UNTALAN pulled the trigger but the gun did not fire. Complainant AMOR tried to bluff the accused-appellant SPO2 UNTALAN by saying that he too was a policeman. The accused-appellant SPO2 UNTALAN nevertheless pulled the trigger once more, hitting the complainant AMOR on the upper left thigh. ROYALES then got hold of a lead pipe which he used in pressing against the chest of the accused-appellant SPO2 UNTALAN in order to restrain him. Seizing the opportunity, complainant AMOR ran away. Accused-appellant SPO2 UNTALAN however, was able to free himself and he fired anew at complainant AMOR, hitting AMOR on the right arm.

Complainant AMOR shouted for help and moments later, a police patrol car arrived and brought him to the Fairview Hospital and then to the East Avenue Medical Center. He was later transferred to St. Luke's Medical Center where he was given emergency medical treatment by Dr. Bu C. Castro (DR. CASTRO). To prevent further bleeding, DR. CASTRO immediately caused the closure of the two (2) gunshot wounds sustained by the complainant AMOR. He likewise administered medicine to the complainant AMOR to prevent infection which could lead to tetanus. Complainant AMOR was confined for five (5) days.

On October 5, 1998, DR. CASTRO issued a Medico-Legal Certificate<sup>[2]</sup> which showed the following injuries sustained by the complainant AMOR, as follows:

1. Gunshot wound, point of entry, 0.8 cm. Left thigh, antero-medical, proximal third, with point of exit, the same level, antero-medial;

2. Grazed wound, right upper arm, proximal third, lateral, 2 cm.

This further certifies that above injuries sustained required at least twenty-five (25) days medical attention, and that further findings may be revealed pending completion of confinement and medical work-up.

Consequently, on November 10, 1998, on the strength of the complaint of complainant AMOR and the testimony of his witnesses, an Information<sup>[3]</sup> for Frustrated Homicide was filed against accused-appellant SPO2 UNTALAN, which reads as follows:

That on or about the 4th day of October, 1998 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously attack, assault and employ personal violence upon the person of TEODORO AMOR JR. Y CATAMORA by then and there shooting him with the sue of a .38 caliber Smith & Wesson, hitting him on the shoulder and left thigh, thereby inflicting upon him serious and grave wounds, the offender thus performing all the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless did not produce it by reason or causes independent of the will of the perpetrators, that is, the timely and able medical assistance rendered to said Teodoro Amor Jr. y Catamora, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

On February 16, 1999, the accused-appellant SPO2 UNTALAN was arraigned<sup>[4]</sup> and pleaded "not guilty" to the offense charged. Thereafter, trial on the merits ensued.

### **Assailed Decision of the RTC**

On March 25, 2003, the Regional Trial Court of Quezon City, Branch 216, rendered a Decision<sup>[5]</sup> in Criminal Case No. Q-98-79500, finding accused guilty beyond reasonable doubt of the crime of Frustrated Homicide, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the court finds accused SPO2 Eduardo O. Untalan guilty beyond reasonable doubt of the crime of Frustrated Homicide defined and penalized under Article 249 in relation to Article 50 of the Revised Penal Code and there being no aggravating nor mitigating circumstance, accused is sentenced to an indeterminate prison term of two (2) years four (4) months and one (1) day of prison correccional minimum, as minimum, to six (6) years four (4) months and ten (10) days of prison mayor minimum, as maximum.

Costs against the accused.

SO ORDERED.

The accused-appellant SPO2 UNTALAN filed his Notice of Appeal<sup>[6]</sup> on March 31, 2003.

### **Assignment of Errors**

In assailing the Decision of the RTC, accused-appellant SPO2 UNTALAN assigned the following errors:

- I. THE LOWER COURT ERRED IN NOT DECLARING THAT THE MALEFACTOR IS ONE SPO3 EMMANUEL DELOS REYES WHO IS NOW IN THE USA AND WAS NOT INCLUDED AS AN ACCUSED IN THE INFORMATION AT THE FIRST INSTANCE; AND
- II. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT, AS HE IS ENTITLED TO AN ACQUITTAL ON THE GROUND OF REASONABLE DOUBT.

### **The Ruling of this Court**

#### **Decision must be modified.**

The crime committed in this case is only ***attempted homicide*** and not what the trial court found as frustrated homicide. The prosecution proved that what the accused SPO2 UNTALAN inflicted on the victim AMOR were merely wounds in the left thigh and upper right arm, which an ordinary man who is not even schooled in medicine can discern to be wounds on non-vital parts of the body. The wounds were not mortal wounds. Even if there was testimony by the doctor who treated the victim that if the victim was left unattended he could have bled to death, that does not change the criminal law concept of what a mortal wound is because the loss of blood is merely an after-effect or consequence of the wound suffered. In distinguishing between attempted and frustrated homicide, legal jurisprudence dictates that what is crucial is whether the blow intended was delivered on a mortal part of the body in order to cause death to the victim.

Clearly, where the wound inflicted on the victim is not severe as to cause death of the victim, the offender in this case had not performed all the acts of execution so that the crime perpetrated is only in its *attempted* stage.

The assumption that infection of the wound in the absence of timely medical attendance could have caused death is too speculative and very remote to be even considered as the probable result of the criminal act proved.

As shown above, the actual nature of the wound on the left thigh of private complainant AMOR indicated that it was not fatal nor was the wound infected with tetanus at the time it was inflicted. If in the realm of possibility tetanus could at all infect complainant AMOR's wound and make it mortal or fatal, the disease would only constitute an efficient intervening cause and therefore, distinct and foreign to the crime. Hence, we cannot conclude that all the acts of execution had been performed by accused-appellant to kill the complainant, for to classify the crime in the frustrated stage, the rule is that the probable death of the victim must be the ***direct, natural and logical consequence of the wounds*** inflicted upon him by the accused and, since we are dealing with a criminal conviction, proof must be beyond reasonable doubt<sup>[7]</sup>.

On accused-appellant's defense of denial, ***We find*** that denial is intrinsically a weak