



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RAMON JOSUE y GONZALES,
Petitioner,

G.R. No. 199579

Present:

- versus -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

DEC 10 2012

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RESOLUTION

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed by petitioner Ramon Josue y Gonzales (Josue) to assail the Decision¹ dated June 30, 2011 and Resolution² dated December 1, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 33180.

The petitioner was charged with the crime of frustrated homicide

¹ Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan, concurring; *rollo*, pp. 24-43.

² Id. at 50.

before the Regional Trial Court (RTC) of Manila, *via* an information that reads:

That on or about May 1, 2004, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and use personal violence upon the person of ARMANDO MACARIO y PINEDA a.k.a. BOYET ORA, by then and there shooting the said Armando Macario y Pineda a.k.a. Boyet Ora several times with a cal. 45 pistol hitting him on the different parts of his body, thus performing all the acts of execution which should have produced the crime of Homicide, as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical attendance rendered to the said ARMANDO MACARIO y PINEDA a.k.a. BOYET ORA which prevented his death thereafter.

Contrary to law.³

The case was docketed as Crim. Case No. 05-236299 and raffled to Branch 40 of the RTC. Upon arraignment, the petitioner entered a plea of “not guilty”. After pre-trial, trial on the merits ensued.

The witnesses for the prosecution were: (1) victim Armando Macario y Pineda (Macario); (2) Dr. Casimiro Tiongson, Jr. (Dr. Tiongson), Chief Surgical Resident of Chinese General Hospital; (3) Dr. Edith Calalang (Dr. Calalang), a radiologist; (4) Ariel Villanueva, an eyewitness to the crime; and (5) Josielyn Macario, wife of the victim. The prosecution presented the following account:

On May 1, 2004, at around 11:15 in the evening, Macario, a *barangay tanod*, was buying medicine from a store near the petitioner’s residence in Barrio Obrero, Tondo, Manila when he saw the petitioner going towards him, while shouting to ask him why he had painted the petitioner’s vehicle. Macario denied the petitioner’s accusation, but petitioner still pointed and shot his gun at Macario. The gunshots fired by the petitioner hit Macario’s elbow and fingers. As the unarmed Macario tried to flee from his assailant, the petitioner still fired his gun at him, causing him to sustain a gunshot

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Id. at 63.

wound at his back. Macario was then rushed to the Chinese General Hospital for medical treatment.

Dr. Tiongson confirmed that Macario sustained three (3) gunshot wounds: (1) one on his right hand, (2) one on his left elbow, and (3) one indicating a bullet's entry point at the posterior of the chest, exiting at the anterior line. Dr. Calalang took note of the tiny metallic foreign bodies found in Macario's x-ray results, which confirmed that the wounds were caused by gunshots. Further, she said that the victim's injuries were fatal, if not medically attended to. Macario incurred medical expenses for his treatments.

For his defense, the petitioner declared to have merely acted in self-defense. He claimed that on the evening of May 1, 2004, he, together with his son Rafael, was watching a television program when they heard a sound indicating that the hood of his jeepney was being opened. He then went to the place where his jeepney was parked, armed with a .45 caliber pistol tucked to his waist. There he saw Macario, together with Eduardo Matias and Richard Akong, in the act of removing the locks of his vehicle's battery. When the petitioner sought the attention of Macario's group, Macario pointed his .38 caliber gun at the petitioner and pulled its trigger, but the gun jammed and failed to fire. The petitioner then got his gun and used it to fire at Macario, who was hit in the upper arm. Macario again tried to use his gun, but it still jammed then fell on the ground. As Macario reached down for the gun, the petitioner fired at him once more, hitting him at the back. When Macario still tried to fire his gun, the petitioner fired at him for the third time, hitting his hand and causing Macario to drop his gun. The petitioner got Macario's gun and kept it in his residence.

The petitioner's son, Rafael Josue, testified in court to corroborate his father's testimony.

SPO4 Axelito Palmero (SPO4 Palmero) also testified for the defense, declaring that on May 26, 2004, he received from Josue a .38 caliber revolver that allegedly belonged to Macario.

On October 22, 2009, the RTC rendered its Decision⁴ finding the petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It gave full credit to the testimony of the prosecution witnesses, further noting that the defense had failed to prove that the .38 caliber revolver that was turned over to SPO4 Palmero actually belonged to Macario. The dispositive portion of the RTC Decision reads:

WHEREFORE, accused **RAMON JOSUE y GONZALES** is found guilty beyond reasonable doubt of Frustrated Homicide without any aggravating or mitigating circumstances to vary the penalty imposable. Applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum.

Accused Ramon Josue y Gonzales is hereby ordered to indemnify the victim, Armando Macario y Pineda, the sum of [P]32,214.25 for hospitalization and medicine expenses as actual damages.

The accused's bail is deemed cancelled. Bondsman is ordered to surrender the accused to this Court for execution of the final judgment.

SO ORDERED.⁵

Unsatisfied, the petitioner appealed from the RTC's decision to the CA, which affirmed the rulings of the RTC and thus, dismissed the appeal.

Hence, the present petition. The petitioner assails the CA's dismissal of the appeal, arguing that the prosecution had failed to overthrow the constitutional presumption of innocence in his favor.

We deny the petition.

⁴ Id. at 63-70.

⁵ Id. at 69-70.

At the outset, we emphasize that since the petitioner seeks this Court's review of his case through a petition for review under Rule 45 of the Rules of Court, only questions of law shall be addressed by the Court, barring any question that pertains to factual issues on the crime's commission. The general rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions as when the trial court's judgment is not supported by sufficient evidence or is premised on a misapprehension of facts.⁶

Upon review, the Court has determined that the present case does not fall under any of the exceptions. In resolving the present petition, we then defer to the factual findings made by the trial court, as affirmed by the CA when the case was brought before it on appeal. The Court has, after all, consistently ruled that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. Factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.⁷

As against the foregoing parameters, the Court finds, and so holds, that both the trial and appellate courts have correctly ruled on the petitioner's culpability for the crime of frustrated homicide, which has the following for its elements:

- (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

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See *Gotis v. People*, G.R. No. 157201, September 14, 2007, 533 SCRA 441, 447; citation omitted.

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People v. Del Rosario, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 633; citation omitted.

(3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present.

These elements were duly established during the trial.

The trial court's factual findings, when taken collectively, clearly prove the existence of the crime's first and second elements, pertaining to the petitioner's intent to kill and his infliction of fatal wound upon the victim. Evidence to prove intent to kill in crimes against persons may consist, among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim.⁸ Significantly, among the witnesses presented by the prosecution was Villanueva, who, while being a friend of the petitioner, had testified against the petitioner as an eyewitness and specifically identified the petitioner as the assailant that caused the wounds sustained by the victim Macario. Even the petitioner cites in the petition he filed with this Court the prosecution's claim that at the time he fired the first gunshot, he was shouting, "*Papatayin kita! (I will kill you!)*"⁹ The doctors who attended to the victim's injuries also affirmed before the trial court that Macario had sustained gunshot wounds, and that the injuries caused thereby were fatal if not given medical attention. The trial court then held:

Weighing the evidence thus proffered, this Court believes the prosecution's version.

x x x x

The Court gives credence to the testimonies of the witnesses presented by the prosecution as it did not find any fact or circumstance in the shooting incident to show that said witnesses had falsely testified or that they were actuated by ill-motive.

x x x x

x x x (A)s a result of being shot three (3) times with a .45 caliber gun, complainant sustained mortal wounds which without medical assistance,

⁸ *People v. Lanuza*, G.R. No. 188562, August 24, 2011, 656 SCRA 293, 300.

⁹ *Rollo*, p. 11.

complainant could have died therefrom. Dr. Casimiro Tiongson, Jr., the chief surgical resident who attended the complainant and prescribed his medicines, testified that the victim, Armando Macario, sustained three (3) gunshot wounds located in the left elbow, right hand and another bullet entering his posterior chest exiting in front of complainant's chest.

These findings were also contained in the x-ray consultation reports testified to by Dr. Edith Calalang as corroborating witness.¹⁰ (Citations omitted)

What is also noteworthy is that the petitioner invoked self-defense, after he had admitted that he caused the victim's wounds when he shot the latter several times using a deadly weapon, i.e., the .45 caliber pistol that he carried with him to the *situs* of the crime. In *People v. Mondigo*,¹¹ we explained:

By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes. Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.¹² (Citations omitted and emphasis ours)

In order to be exonerated from the charge, the petitioner then assumed the burden of proving, beyond reasonable doubt, that he merely acted in self-defense. Upon review, we agree with the RTC and the CA that the petitioner failed in this regard.

While the three elements quoted above must concur, self-defense relies, first and foremost, on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, then no self-defense may be successfully pleaded.¹³ "Unlawful aggression" here presupposes an actual,

¹⁰ Id. at 67-68.

¹¹ G.R. No. 167954, January 31, 2008, 543 SCRA 384.

¹² Id. at 389-390.

¹³ *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 310-311; citations omitted.

sudden, and unexpected attack, or imminent danger of the attack, from the victim.¹⁴

In the present case, particularly significant to this element of “unlawful aggression” is the trial court’s finding that Macario was unarmed at the time of the shooting, while the petitioner then carried with him a .45 caliber pistol. According to prosecution witness Villanueva, it was even the petitioner who confronted the victim, who was then only buying medicine from a *sari-sari* store. Granting that the victim tried to steal the petitioner’s car battery, such did not equate to a danger in his life or personal safety. At one point during the fight, Macario even tried to run away from his assailant, yet the petitioner continued to chase the victim and, using his .45 caliber pistol, fired at him and caused the mortal wound on his chest. Contrary to the petitioner’s defense, there then appeared to be no “real danger to his life or personal safety,”¹⁵ for no unlawful aggression, which would have otherwise justified him in inflicting the gunshot wounds for his defense, emanated from Macario’s end.

The weapon used and the number of gunshots fired by the petitioner, in relation to the nature and location of the victim’s wounds, further negate the claim of self-defense. For a claim of self-defense to prosper, the means employed by the person claiming the defense must be commensurate to the nature and extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.¹⁶ Considering the petitioner’s use of a deadly weapon when his victim was unarmed, and his clear intention to cause a fatal wound by still firing his gun at the victim who had attempted to flee after already sustaining two gunshot wounds, it is evident that the petitioner did not act merely in self-defense, but was an aggressor who actually intended to kill his victim.

¹⁴ Supra note 6, at 449.

¹⁵ See *Nacnac v. People*, G.R. No. 191913, March 21, 2012, 668 SCRA 846, 856.

¹⁶ *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 301; citation omitted.

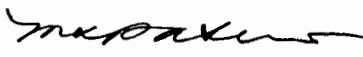
Given the foregoing, and in the absence of any circumstance that would have qualified the crime to murder, we hold that the trial court committed no error in declaring the petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. Applying the rules provided by the Indeterminate Sentence Law, the trial court correctly imposed for such offense an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. The award of actual damages is also sustained. However, we hold that in line with prevailing jurisprudence,¹⁷ the victim is entitled to an award of moral damages in the amount of ₱10,000.00.


WHEREFORE, the petition is **DENIED**. The Decision dated June 30, 2011 and Resolution dated December 1, 2011 of the Court of Appeals in CA-G.R. CR No. 33180 are **AFFIRMED** with **MODIFICATION** in that the petitioner Ramon Josue y Gonzales is also ordered to pay the offended party the amount of ₱10,000.00 as moral damages.

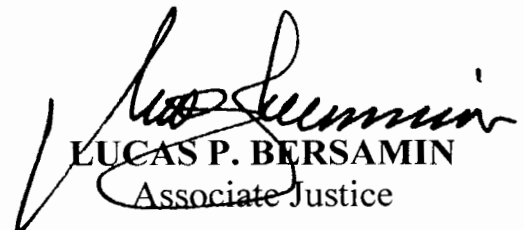
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


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Serrano v. People, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 341.


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice