



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

MIGUEL CIRERA y USTELO,  
Petitioner,

G.R. No. 181843

Present:

BRION, \*  
VILLARAMA, JR. \*\*  
MENDOZA, *Acting Chairperson* \*\*\*  
PERLAS-BERNABE, and \*\*\*\*  
LEONEN, JJ.

-versus-

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

July 14, 2014

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DECISION

LEONEN, J.:

Treachery as a qualifying circumstance must be deliberately sought to ensure the safety of the accused from the defensive acts of the victim. Unexpectedness of the attack does not always equate to treachery.

We are asked to decide on a petition for review on certiorari<sup>1</sup> of the Court of Appeals' decision<sup>2</sup> dated November 20, 2007 and the Court of

\* Designated as Additional Member per Special Order No. 1718 dated July 10, 2014.

\*\* Designated as Acting Member in view of the vacancy in the Third Division per Special Order No. 1691 dated May 22, 2014.

\*\*\* Designated as Acting Chairperson per Special Order No. 1721 dated July 10, 2014, in view of the official trip of Associate Justice Diosdado M. Peralta to New York, USA on July 14 to 18, 2014.

\*\*\*\* Designated as Acting Member per Special Order 1726 dated July 10, 2014, in view of the official trip of Associate Justice Diosdado M. Peralta to New York, USA on July 14 to 18, 2014.

<sup>1</sup> Rollo, pp. 10-26.

<sup>2</sup> Id. at 77-91.

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Appeals' resolution<sup>3</sup> dated February 18, 2008. The Court of Appeals affirmed the Regional Trial Court's decision<sup>4</sup> dated July 2, 2004 that found petitioner guilty of two (2) counts of frustrated murder and sentenced him to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to 17 years and four (4) months of *reclusion temporal* as maximum for each count.<sup>5</sup>

This case arose out of two (2) informations for frustrated murder filed against petitioner:

**Criminal Case No. Q-00-91821**

That on or about the 20<sup>th</sup> day of April 2000, in Quezon City, Philippines, the said accused, with intent to kill, with evident premeditation and by means of treachery, did, then and there, wilfully, unlawfully and feloniously attack and assault and employ personal violence upon the person of one GERARDO NAVAL by then and there stabbing the latter with a sharp bladed weapon hitting him at the left back portion of his body, thereby inflicting upon said offended party physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is, by the timely and able medical attendance rendered to said GERARDO NAVAL which save his life, to the damage and prejudice of the said offended party.<sup>6</sup>

**Criminal Case No. Q-00-91842**

That on or about the 20<sup>th</sup> day of April 2000, in Quezon City, Philippines, the said accused, with intent to kill, with evident premeditation and by means of treachery, did, then and there, wilfully, unlawfully and feloniously attack and assault and employ personal violence upon the person of one ROMEO AUSTRIA by then and there stabbing the latter with a sharp bladed weapon hitting him at the left back portion of his body, thereby inflicting upon said offended party physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the perpetrator, that is, by the timely and able medical attendance rendered to said ROMEO AUSTRIA which save his life, to the damage and prejudice of the said offended party.<sup>7</sup>

Upon arraignment, petitioner pleaded not guilty to the offenses charged against him.<sup>8</sup>

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<sup>3</sup> Id. at 104.

<sup>4</sup> Id. at 45–54.

<sup>5</sup> Id. at 53–54.

<sup>6</sup> Id. at 45.

<sup>7</sup> Id. at 46.

<sup>8</sup> Id.

The prosecution presented private complainants Gerardo Naval and Romeo Austria as witnesses.<sup>9</sup> It also presented Dr. Raisa D. Francisco, Carlos Angeles, and Arnold Angeles as witnesses.<sup>10</sup> Petitioner testified for the defense.<sup>11</sup>

### **Facts according to the prosecution**

Romeo Austria testified that at around 8:30 a.m. on April 20, 2000, he was playing a lucky nine game at a wake on Araneta Avenue, Quezon City.<sup>12</sup> Miguel arrived, asking money from Austria so he could buy liquor.<sup>13</sup> In response, Austria asked Miguel “to keep quiet.”<sup>14</sup> Gerardo Naval “arrived and asked [Austria] to go home.”<sup>15</sup> There was an exchange of words between Naval and Miguel.<sup>16</sup> Austria “stood up [and] felt that he was stabbed.”<sup>17</sup> As he ran home, he noticed Miguel “armed with a knife,”<sup>18</sup> this time chasing Naval.<sup>19</sup> Austria was “hospitalized . . . and was . . . confined for more than a month.”<sup>20</sup> He spent around ₱110,000.00 for his hospitalization.<sup>21</sup> On cross-examination, Austria testified that he saw Miguel attempt to stab him again.<sup>22</sup>

Gerardo Naval testified that Miguel was irked when he asked Austria to go home.<sup>23</sup> After he and Miguel had an exchange of words, he “felt a hard blow on his back.”<sup>24</sup> Naval retaliated.<sup>25</sup> However, he ran away when he saw Miguel holding a knife.<sup>26</sup> Miguel chased Naval who fell on the ground.<sup>27</sup> When Naval saw that Miguel was “about to stab him again, he hit [Miguel] with a bench”<sup>28</sup> and left him lying on the ground, unable to stand.<sup>29</sup> According to Naval, “he did not see the [knife] land on his back.”<sup>30</sup> Naval was also confined at the hospital but only for six (6) days.<sup>31</sup>

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 47.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. at 48.

<sup>31</sup> Id. at 47.

Dr. Carlos Angeles testified that “he treated [Austria] for [the] stab wound at [his] back.”<sup>32</sup> He declared that Austria could have died without an emergency operation.<sup>33</sup> According to him, “a long and sharp instrument, probably a knife,”<sup>34</sup> could have been used to stab the victim.<sup>35</sup>

Dr. Arnold Angeles, Naval’s doctor, testified that “continuous blood loss”<sup>36</sup> could have caused Naval’s death.<sup>37</sup>

**Facts according to the defense**

Miguel testified that he saw private complainants at a wake.<sup>38</sup> Naval tapped his back and asked, “Anong problema mo?” to which he answered, “Wala naman.”<sup>39</sup> Thereafter, Naval punched Miguel.<sup>40</sup> As he was about to stand up, he was hit by a hard object on his head, causing him to lose consciousness.<sup>41</sup> He was brought to UERM Memorial Hospital where Naval identified him.<sup>42</sup> He was then brought to Station 11 in Galas, Quezon City.<sup>43</sup> Miguel also testified that only Naval identified him at the hospital.<sup>44</sup>

The parties stipulated that Dr. Renan Acosta, supposedly the second defense witness, conducted Miguel’s examination.<sup>45</sup> He issued a temporary medical certificate and a separate permanent medical certificate.<sup>46</sup>

**Regional Trial Court**

In its decision, the Regional Trial Court found petitioner guilty beyond reasonable doubt of two (2) counts of frustrated murder.<sup>47</sup> He was sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to 17 years and four (4) months of *reclusion temporal* as maximum for each count.<sup>48</sup> Petitioner was ordered to indemnify Austria ₱25,000.00 as moral damages and ₱100,000.00 as actual damages; and Naval ₱25,000.00 as moral damages

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<sup>32</sup> Id. at 48.  
<sup>33</sup> Id.  
<sup>34</sup> Id.  
<sup>35</sup> Id.  
<sup>36</sup> Id. at 49.  
<sup>37</sup> Id.  
<sup>38</sup> Id.  
<sup>39</sup> Id.  
<sup>40</sup> Id.  
<sup>41</sup> Id.  
<sup>42</sup> Id.  
<sup>43</sup> Id.  
<sup>44</sup> Id.  
<sup>45</sup> Id.  
<sup>46</sup> Id.  
<sup>47</sup> Id. at 53–54.  
<sup>48</sup> Id.

and ₱10,000.00 as temperate or moderate damages.<sup>49</sup> Petitioner was also ordered to pay the costs of suit.<sup>50</sup> The dispositive portion of the Regional Trial Court decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Re: Criminal Case No. 00-91841-finding accused MIGUEL CIRERA y USTELO guilty beyond reasonable doubt of the crime of Frustrated Murder hereby sentencing him to suffer the indeterminate penalty of imprisonment of **Six (6) years and one (1) day of Prision Mayor as MINIMUM to Seventeen (17) Years and Four (4) months of Reclusion Temporal as MAXIMUM** and to indemnify private complainant Gerardo Naval in the amount of Twenty Five Thousand (P25,000.00) Pesos as and by way of morals [sic] damages and in the absence of evidence, the amount of Ten Thousand (P10,000.00) Pesos as and by way [of] Temperate or moderate damages;

2. Re: Criminal Case NO. 00-91841-finding accused MIGUEL CIRERA y USTELO guilty beyond reasonable doubt of the crime of Frustrated Murder, hereby sentencing him to suffer the indeterminate penalty [of] **Six (6) years and one (1) day of Prision Mayor as MINIMUM to Seventeen (17) years and four (4) months of Reclusion Temporal as MAXIMUM** and to indemnify private complainant Romeo Austria in the amount of Twenty Five Thousand (P25,000.00) Pesos as and by way of moral damages and the amount of One Hundred Thousand (P100,000.00) Pesos as actual damages.

3. To pay the cost of suit.<sup>51</sup> (Emphasis in the original)

The Regional Trial Court found that petitioner caused the stab wounds of private complainants.<sup>52</sup> Naval and Austria were able to positively identify him and describe how they obtained their injuries.<sup>53</sup>

Petitioner's acts were not attended by evident premeditation as ruled by the trial court.<sup>54</sup> However, there was treachery on petitioner's end, considering the length of time it took private complainants to realize that they were stabbed.<sup>55</sup> This, according to the Regional Trial Court, was a method or form that tended to insure the execution of an act without risk from the offended party's defense.<sup>56</sup>

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<sup>49</sup> Id.

<sup>50</sup> Id. at 54.

<sup>51</sup> Id. at 53–54.

<sup>52</sup> Id. at 50.

<sup>53</sup> Id.

<sup>54</sup> Id. at 51.

<sup>55</sup> Id. at 51–52.

<sup>56</sup> Id. at 52.

Petitioner appealed<sup>57</sup> the Regional Trial Court's July 2, 2004 decision to the Court of Appeals, raising as issue the credibility of the prosecution's witnesses and, hence, the correctness of his conviction.<sup>58</sup>

### **Court of Appeals**

In a decision<sup>59</sup> promulgated on November 20, 2007, the Court of Appeals affirmed the decision of the trial court.

The Court of Appeals was not persuaded by petitioner's arguments pointing to alleged inconsistencies in the prosecution witnesses' narratives. It found that the inconsistency between Naval's testimony and his sworn affidavit on the number of times petitioner was hit might be attributed to the fact that "the statement was taken . . . while he was [still at] the hospital [unable] to fully understand its contents".<sup>60</sup> The Court of Appeals was not persuaded either by petitioner's argument that Austria and Naval failed to testify that they saw him stab them.<sup>61</sup> The Court of Appeals held that "no other person could have committed the crime"<sup>62</sup> as "all the circumstances point to [petitioner] as the author of the crime."<sup>63</sup>

The Court of Appeals affirmed the finding of the trial court that there was treachery in this case because "the attack was so sudden and unexpected"<sup>64</sup> that "self-defense was not possible."<sup>65</sup>

Petitioner's motion for reconsideration was denied in the Court of Appeals' resolution<sup>66</sup> promulgated on February 18, 2008.

Petitioner, in this case, raises the following issue:

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL WHICH IN EFFECT, AFFIRMS THE JUDGMENT OF CONVICTION RENDERED BY THE TRIAL COURT, DESPITE THE PATENT LACK OF EVIDENCE AGAINST THE PETITIONER AND FOR THE FAILURE OF THE PROSECUTION TO

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<sup>57</sup> Id. at 32–44.

<sup>58</sup> Id. at 39–41.

<sup>59</sup> Id. at 77–91, Eighth Division, penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal concurring.

<sup>60</sup> *Rollo*, pp. 83–84.

<sup>61</sup> Id. at 86–88.

<sup>62</sup> Id. at 88.

<sup>63</sup> Id. at 89.

<sup>64</sup> Id. at 90, citing *People v. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562, 578 [Per J. Callejo, Sr., Second Division].

<sup>65</sup> *Rollo*, p. 90.

<sup>66</sup> Id. at 104.

PROVE THE PETITIONER'S GUILT BEYOND REASONABLE DOUBT.<sup>67</sup>

Petitioner argues that the Court of Appeals failed to consider the inconsistencies in Austria's and Naval's statements.<sup>68</sup> Austria's statement that only Naval and petitioner were standing behind him was inconsistent with Austria's other statement that "petitioner was on his left side, while [Naval] was on his right side."<sup>69</sup>

Petitioner also stresses that Austria's claim that Naval and petitioner "were still having an altercation when he suddenly felt a stab blow at his back"<sup>70</sup> was inconsistent with Naval's alleged failure to mention "that he had an altercation with the petitioner before the stabbing incident."<sup>71</sup> Petitioner claims that it was not possible for him to have stabbed Austria without Naval noticing since he was having a heated exchange of words with Naval.<sup>72</sup>

Petitioner insists that the claim that "petitioner was armed with a knife"<sup>73</sup> was not proven since "the knife was not recovered."<sup>74</sup> Petitioner was left immobile, yet "nobody bothered to retrieve the knife"<sup>75</sup> he supposedly used in committing the crimes charged against him.<sup>76</sup> Petitioner also points out that other players in the lucky nine game might have gotten mad at private complainants when Naval allegedly asked Austria to go home for a drinking spree.<sup>77</sup>

Petitioner also argues that there was no treachery.<sup>78</sup> Even assuming that an assault was sudden and unexpected, there must be "evidence that [the] mode of assault was consciously and deliberately adopted to [e]nsure the execution of the crime without risk to the [petitioner.]"<sup>79</sup> Given "private complainants' superiority in number"<sup>80</sup> and considering that petitioner "was left behind unconscious,"<sup>81</sup> private complainants were not left without "opportunity to retaliate."<sup>82</sup>

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<sup>67</sup> Id. at 19.

<sup>68</sup> Id. at 19–20.

<sup>69</sup> Id. at 19.

<sup>70</sup> Id. at 20.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Id. at 21.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id. at 23.

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Id.

Respondent counters that the “trial court’s observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which . . . would alter the result of the case.”<sup>83</sup>

Private complainants point out that the circumstances of the case show treachery since they were attacked from behind.<sup>84</sup> Further, they claim that there was no warning that they were in danger when they were stabbed.<sup>85</sup>

The petition should be partly granted. Treachery did not exist and, hence, petitioner may only be convicted of two counts of frustrated homicide.

## I

Nonetheless, we affirm the finding that the prosecution’s witnesses were credible.

Petitioner points to alleged inconsistencies that pertain only to collateral and inconsequential matters. He directs this court’s attention to inconsistent statements regarding the positions of private complainants at the time of the incident.<sup>86</sup> He also points to the alleged impossibility of him committing the offense without being noticed by Naval<sup>87</sup> and to the alleged failure to recover the knife used in stabbing private complainants.<sup>88</sup>

These alleged inconsistencies do not affect the credibility of the testimonies of the prosecution witnesses, specially with respect to the “principal occurrence and positive identification”<sup>89</sup> of petitioner. Slight inconsistencies in the testimony even strengthen credibility as they show that the “testimony [was] not rehearsed.”<sup>90</sup> What is important is that there is consistency as to the occurrence and identity of the perpetrator.<sup>91</sup>

Further, the alleged failure to retrieve the knife supposed to have been used in perpetrating the offense does not destroy the credibility of the

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<sup>83</sup> Id. at 128.

<sup>84</sup> Id. at 134, citing *People v. Rellon*, 249 Phil. 73, 76 (1988) [Per J. Paras, Second Division].

<sup>85</sup> Id. at 136.

<sup>86</sup> Id. at 19.

<sup>87</sup> Id. at 20.

<sup>88</sup> Id. at 21.

<sup>89</sup> *People v. Cleopas*, 384 Phil. 286, 298 (2000) [Per J. Quisumbing, Second Division]; *See also People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 194 [Per J. Del Castillo, First Division].

<sup>90</sup> Id.

<sup>91</sup> *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 194–195 [Per J. Del Castillo, First Division].



testimonies.<sup>92</sup> The crime is proved not by presenting the object but by establishing the existence of the elements of the crime as written in law.<sup>93</sup>

## II

Petitioner was charged and convicted by the trial court and the Court of Appeals with two counts of frustrated murder.

Article 248 of the Revised Penal Code provides that murder is committed by a person who kills, under certain circumstances, another person that is not his or her father, mother, child, ascendant, descendant, or spouse. It provides:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusión temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

If these qualifying circumstances are not present or cannot be proven beyond reasonable doubt, the accused may only be convicted with homicide, defined in Article 249 of the Revised Penal Code:

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<sup>92</sup> See also *People v. Dii*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 246 [Per J. Leonardo-De Castro, First Division].

<sup>93</sup> *Id.*

Art. 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusión temporal*.

In murder or homicide, the offender must have the intent to kill. If there is no intent to kill on the part of the offender, he or she is liable only for physical injuries.<sup>94</sup>

“[I]ntent to kill . . . must be proved by clear and convincing evidence.”<sup>95</sup> “[It] should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt.”<sup>96</sup>

In *Escamilla v. People*,<sup>97</sup> we said that “[t]he evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.”<sup>98</sup>

The act of killing becomes frustrated when an offender “perform[s] all the acts of execution which [c]ould produce the [crime]”<sup>99</sup> but did not produce it for reasons independent of his or her will.

In convicting petitioner of frustrated murder, the trial court and the Court of Appeals found that petitioner intentionally tried to kill private complainants. He was the author of the stab wounds obtained by private complainants. However, for reasons independent of his will, he was unable to fully execute the crime.

This court held that “findings of facts and assessment of credibility of witnesses are matters best left to the trial court,”<sup>100</sup> which is in the best position to observe the witnesses’ demeanor while being examined in court.<sup>101</sup> This court gives more weight to such findings if affirmed by the

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<sup>94</sup> *Palaganas v. People*, 533 Phil. 169, 193 (2006) [Per J. Chico-Nazario, First Division]; *See also People v. Pagador*, 409 Phil. 338, 351–352 (2001) [Per J. Bellosillo, En Banc].

<sup>95</sup> *Mondragon v. People*, 123 Phil. 1328, 1333 (1966) [Per J. Zaldivar, En Banc].

<sup>96</sup> *Id.* at 1333–1334, *citing People v. Villanueva*, 51 Phil. 488, 491 (1928) [Per J. Street, En Banc].

<sup>97</sup> *Escamilla v. People*, G.R. No. 188551, February 27, 2013, 692 SCRA 203 [Per C.J. Sereno, First Division].

<sup>98</sup> *Id.* at 212, *citing Mahawan v. People*, 595 Phil. 397, 418 (2008) [Per J. Chico-Nazario, Third Division].

<sup>99</sup> *Palaganas v. People*, 533 Phil. 169, 192 (2006) [Per J. Chico-Nazario, First Division]; *See also People v. Pagador*, 409 Phil. 338, 350 (2001) [Per J. Bellosillo, En Banc].

<sup>100</sup> *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 186 [Per J. Del Castillo, First Division].

<sup>101</sup> *People v. Diu*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 242–243 [Per J. Leonardo-De Castro, First Division], *citing People v. Maxion*, 413 Phil. 740, 747–748 (2001) [Per J. Pardo, First Division]; *People v. Ayupan*, 427 Phil. 200, 214 (2002) [Per J. Panganiban, Third Division], *citing People v. Milliam*, 381 Phil. 163, 175 (2000) [Per J. Bellosillo, Second Division].

Court of Appeals.<sup>102</sup> The exception to the rule is when the trial court misconstrued facts which if properly appreciated could alter the outcome of the case.<sup>103</sup>

We find that there is nothing in the circumstances of this case that warrants the application of the exception, with respect to the findings that: 1) there was intent to kill; 2) petitioner was the willful author of the stab wounds, which almost killed private complainants; and that 3) petitioner's failure to kill private complainants was a result of circumstances independent of his will.

Circumstantial evidence was used to identify the perpetrator in this case.<sup>104</sup>

Rule 133, Section 4 of the Rules of Court provides that a person may be convicted based on circumstantial evidence if the requisites are present. It provides:

**Section 4.** *Circumstantial evidence, when sufficient.*—  
Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven;  
and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

This court iterated this rule in *Trinidad v. People*:<sup>105</sup>

The settled rule is that a judgment of conviction based purely on circumstantial evidence can be upheld only if the following requisites concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt.<sup>106</sup>

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<sup>102</sup> See also *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 199 [Per J. Del Castillo, First Division], citing *Chua v. People*, 519 Phil. 151, 156–157 (2006) [Per J. Corona, Second Division]; *People v. Diu*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 243 [Per J. Leonardo-De Castro, First Division], citing *People v. Algarme*, 598 Phil. 423, 438–439 (2009) [Per J. Brion, Second Division].

<sup>103</sup> *People v. Diu*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 243 [Per J. Leonardo-De Castro, First Division], citing *People v. Maxion*, 413 Phil. 740, 747–748 (2001) [Per J. Pardo, First Division].

<sup>104</sup> *Rollo*, pp. 50, 52, 88, and 89.

<sup>105</sup> *Trinidad v. People*, G.R. No. 192241, June 13, 2012, 672 SCRA 486 [Per J. Peralta, Third Division].

<sup>106</sup> Id. at 492, citing RULES OF COURT, Rule 133, sec. 4; *People v. Ragundiaz*, 389 Phil. 532, 540–541 (2000) [Per J. Gonzaga-Reyes, Third Division], citing *People v. De Guzman*, 320 Phil. 158, 165–166 (1995) [Per J. Puno, Second Division]; *People v. Llaguno*, 349 Phil. 39, 58 (1998) [Per J. Panganiban, Third Division]; *People v. Bato*, 348 Phil. 246, 256 (1998) [Per J. Panganiban, Third Division]; *People*

In this case, the following facts were considered:

- 1) Petitioner was identified by private complainants to be at the scene of the crime;<sup>107</sup>
- 2) Private complainants were able to describe how they obtained their injuries;<sup>108</sup>
- 3) Petitioner was seen holding the knife at the scene of the crime;<sup>109</sup>
- 4) Only three persons were involved in the incident — private complainants and petitioner;<sup>110</sup>
- 5) Petitioner “was standing very close to the private complainants”;<sup>111</sup>
- 6) Petitioner was the only one who had an altercation with private complainants,<sup>112</sup> and petitioner was seen chasing and about to stab at least one of the private complainants;<sup>113</sup>
- 7) Private complainants sustained stab wounds;<sup>114</sup>
- 8) The stab wounds sustained by private complainants would have been fatal had it not been given appropriate medical attention.<sup>115</sup>

The combination of these circumstances “constitute[s] an unbroken chain which leads to one fair and reasonable conclusion pointing to the [petitioner], to the exclusion of all others, as the guilty person.”<sup>116</sup>

The version offered by petitioner that it was he who was punched and hit with a hard object<sup>117</sup> is not inconsistent with the facts as stated by private complainants. It may even be true. However, it does not remove such reasonable conclusion that he was the author of the acts complained about in this case.

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*v. Ferras*, 351 Phil. 1020, 1031–1032 (1998) [Per J. Kapunan, Third Division]; *People v. Rivera*, 356 Phil. 409, 421 (1998) [Per J. Mendoza, Second Division].

<sup>107</sup> *Rollo*, p. 50.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 89.

<sup>110</sup> *Id.* at 87 and 89.

<sup>111</sup> *Id.* at 89.

<sup>112</sup> *Id.* *Rollo*, p. 89.

<sup>113</sup> *Id.* at 87–88.

<sup>114</sup> *Id.* at 52–53.

<sup>115</sup> *Id.*

<sup>116</sup> *Trinidad v. People*, G.R. No. 192241, June 13, 2012, 672 SCRA 486, 493 [Per J. Peralta, Third Division].

<sup>117</sup> *Rollo*, p. 15.

Petitioner's intent to kill is evident from his attempt to stab private complainants more than once.<sup>118</sup> Petitioner chased private complainants after they had tried to flee from him.<sup>119</sup> The wounds inflicted by petitioner were also shown to have been fatal if no medical attention had been given to private complainants immediately after the incident.<sup>120</sup>

Petitioner's acts did not result in private complainants' deaths despite petitioner having already performed all acts of execution of the crime. However, this was not due to his desistance but due to the timely medical attention given to private complainants.<sup>121</sup>

Meanwhile, Dr. Carlos Angeles' and Dr. Arnold Angeles' testimonies that private complainants would have died had no immediate medical attention been given to them,<sup>122</sup> showed that petitioner's failure to kill private complainants was due to acts independent of his will.

Based on the foregoing, we do not find reason to disturb the trial court's and the Court of Appeals' findings.

### III

However, treachery, as a qualifying circumstance to sustain a conviction of frustrated murder rather than frustrated homicide, was not proven by the prosecution.

Article 14(16) of the Revised Penal Code defines treachery:

ARTICLE 14. Aggravating Circumstances. — The following are aggravating circumstances:

. . . .

16. That the act be committed with treachery (*alevosia*).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>123</sup>

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<sup>118</sup> Id. at 47.

<sup>119</sup> Id.

<sup>120</sup> Id. at 48–49.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> REVISED PENAL CODE, art. 14(16).

The requisites of treachery are:

- (1) [T]he employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate;<sup>124</sup> and
- (2) [D]eliberate or conscious adoption of such means, method, or manner of execution.<sup>125</sup>

A finding of the existence of treachery should be based on “clear and convincing evidence.”<sup>126</sup> Such evidence must be as conclusive as the fact of killing itself.<sup>127</sup> Its existence “cannot be presumed.”<sup>128</sup> As with the finding of guilt of the accused, “[a]ny doubt as to [its] existence . . . [should] be resolved in favor of the accused.”<sup>129</sup>

The unexpectedness of an attack cannot be the sole basis of a finding of treachery<sup>130</sup> even if the attack was intended to kill another as long as the victim’s position was merely accidental.<sup>131</sup> The means adopted must have been a result of a determination to ensure success in committing the crime.

In this case, no evidence was presented to show that petitioner consciously adopted or reflected on the means, method, or form of attack to secure his unfair advantage.

The attack might “have been done on impulse [or] as a reaction to an actual or imagined provocation offered by the victim.”<sup>132</sup> In this case, petitioner was not only dismissed by Austria when he approached him for money. There was also an altercation between him and Naval. The provocation might have been enough to entice petitioner to action and attack private complainants.

<sup>124</sup> *People v. Cleopas*, 384 Phil. 286, 301 (2000) [Per J. Quisumbing, Second Division], citing *People v. Gatchalian*, 360 Phil. 178, 196 (1998) [Per J. Mendoza, Second Division].

<sup>125</sup> *People v. Cleopas*, 384 Phil. 286, 301 (2000) [Per J. Quisumbing, Second Division], citing *People v. Gatchalian*, 360 Phil. 178, 196–197 (1998) [Per J. Mendoza, Second Division].

<sup>126</sup> *People v. Felix*, 357 Phil. 684, 700 (1998) [Per J. Davide Jr., En Banc]; *People v. Ayupan*, 427 Phil. 200, 218 (2002) [Per J. Panganiban, Third Division], citing *People v. Orio*, 386 Phil. 786, 799 (2000) [Per J. Ynares-Santiago, First Division]; *People v. Lubreo*, G.R. No. 74146, August 2, 1991, 200 SCRA 11, 28 [Per J. Davide Jr., Third Division].

<sup>127</sup> *Id.*

<sup>128</sup> *People v. Felix*, 357 Phil. 684, 700 (1998) [Per J. Davide Jr., En Banc]; *People v. Lubreo*, G.R. No. 74146, August 2, 1991, 200 SCRA 11, 28 [Per J. Davide Jr., Third Division].

<sup>129</sup> *People v. Ayupan*, 427 Phil. 200, 218 (2002) [Per J. Panganiban, Third Division], citing *People v. Santos*, 388 Phil. 183, 192 (2000) [Per J. Pardo, First Division].

<sup>130</sup> *See also People v. Sabanal*, 254 Phil. 433, 436 (1989) [Per J. Cruz, First Division].

<sup>131</sup> *See also People v. Ayupan*, 427 Phil. 200, 219 (2002) [Per J. Panganiban, Third Division], citing *People v. Templo*, 400 Phil. 471, 493 (2000) [Per J. De Leon, Jr., Second Division].

<sup>132</sup> *People v. Sabanal*, 254 Phil. 433, 436–437 (1989) [Per J. Cruz, First Division].

Therefore, the manner of attack might not have been motivated by a determination to ensure success in committing the crime. What was more likely the case, based on private complainants' testimonies, was that petitioner's action was an impulsive reaction to being dismissed by Austria, his altercation with Naval, and Naval's attempt to summon Austria home.

Generally, this type of provocation negates the existence of treachery.<sup>133</sup> This is the type of provocation that does not lend itself to premeditation. The provocation in this case is of the kind which triggers impulsive reactions left unchecked by the accused and caused him to commit the crime. There was no evidence of a modicum of premeditation indicating the possibility of choice and planning fundamental to achieve the elements of treachery.

The ability of the offended parties to retaliate and protect themselves may not by itself negate the existence of treachery. The efforts of the accused to employ means and method to ensure his safety and freedom from retaliation may not have succeeded. However, in this case, the ability of the offended parties to have avoided greater harm by running away or by being able to subdue the accused is a strong indicator that no treachery exists.

It is, therefore, an error for both the trial and appellate courts not to have considered the evidence that the offended parties were able to flee and retaliate. Upon proof of evasion and retaliation, courts must evaluate the evidence further to ensure whether there can be reasonable doubt for this qualifying circumstance to exist. This is only in keeping with the presumption of innocence of the accused.

Thus, in the absence of clear proof of the existence of treachery, the crime proven beyond reasonable doubt is only frustrated homicide and, correspondingly, the penalty should be reduced.<sup>134</sup>

#### IV

Article 250 of the Revised Penal Code provides that a penalty lower by one degree than that which should be imposed for homicide may be imposed upon a person guilty of frustrated homicide.

The imposable penalty for homicide is *reclusion temporal*. Article 50 of the Revised Penal Code provides that the penalty to be imposed upon

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<sup>133</sup> Id. at 437, citing *People v. Manlapaz*, 154 Phil. 556, 560–563 (1974) [Per J. Fernando, Second Division].

<sup>134</sup> REVISED PENAL CODE, art. 249. *Homicide*. – Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated crimes. The penalty next lower in degree is *prision mayor*.

Applying the Indeterminate Sentence Law, the penalty to be imposed must have a maximum term which can be properly imposed under the rules considering the attending circumstances.<sup>135</sup> Since there is no attending circumstance in this case, the penalty of *prision mayor* in its medium term or eight (8) years and one (1) day as maximum should be imposed. The minimum sentence should be within the range of the penalty next lower to that prescribed by the Revised Penal Code.<sup>136</sup> A penalty of one (1) year and one (1) day as minimum, *prision correccional* should, therefore, be proper.

Furthermore, petitioner's civil liability must be modified. The award of actual damages to Romeo Austria should be ₱88,028.77 since this is the only amount supported by receipts on record. This is in line with Article 2199<sup>137</sup> of the Civil Code, which limits the entitlement for pecuniary loss to such amount duly proved.

We see no reason to modify the trial court's award of moral damages, being in line with Article 2219<sup>138</sup> and jurisprudence.<sup>139</sup> The trial court's award of temperate damages to Naval is also justified in recognition of the injuries he sustained, which from their very nature imply damages and do not need to be proved in accordance with Article 2216<sup>140</sup> of the Civil Code.

**WHEREFORE**, the Court of Appeals' decision is **SET ASIDE**. Petitioner is found guilty of two (2) counts of frustrated homicide. He is sentenced to a prison term of one (1) year and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* medium as maximum, for every count. Furthermore, he is ordered to indemnify a) Romeo Austria ₱25,000.00 as moral damages and ₱88,028.77 as actual damages and b) Gerardo Naval ₱25,000.00 as moral damages and ₱10,000.00 as temperate or moderate damages.

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<sup>135</sup> Indeterminate Sentence Law, sec. 1.

<sup>136</sup> Indeterminate Sentence Law, sec. 1.

<sup>137</sup> CIVIL CODE, art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

<sup>138</sup> CIVIL CODE, art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

....

<sup>139</sup> *E.g. People v. Lanuza*, G.R. No. 188562, August 24, 2011, 656 SCRA 293, 306 [Per J. Leonardo-De Castro, First Division], citing *People v. Domingo*, 599 Phil. 589, 609 (2009) [Per J. Chico-Nazario, Third Division] and *Rugas v. People*, 464 Phil. 493, 507 (2004) [Per J. Callejo, Sr., Second Division].

<sup>140</sup> CIVIL CODE, art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.



Petitioner is also ordered to pay the costs of suit.


**SO ORDERED.**


  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

WE CONCUR:

  
**ARTURO D. BRION**  
Associate Justice


  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice  
Acting Chairperson

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice


**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**JOSE CATRAL MENDOZA**  
Associate Justice  
Acting Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision 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