



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

ROGELIO ROQUE,
Petitioner,

G.R. No. 193169

Present:

- versus -

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
APR 06 2015

X ----- X

RESOLUTION

DEL CASTILLO, *J.:*

Petitioner Rogelio Roque (petitioner) was charged with the crime of frustrated homicide in an Information that reads as follows:

That on or about the 22nd day of November, 2001, in the municipality of Pandi, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously, with intent to kill[,] attack, assault and shoot with a gun complain[an]t Reynaldo Marquez, hitting the latter on his right ear and nape, and kick[ing] him on the face and back, causing serious physical injuries which ordinarily would have caused the death of the said Reynaldo Marquez, 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 said Reynaldo Marquez which prevented his death.

CONTRARY TO LAW.¹

¹ Rollo, p. 13.

When arraigned on March 23, 2003, petitioner pleaded “not guilty.” During the pre-trial conference, the defense admitted the identity of petitioner; that he is a *Kagawad* of *Barangay* Masagana, Pandi, Bulacan; and that the day of the incident, November 22, 2001 was the Thanksgiving Day of the said *barangay*. Trial thereafter ensued where the parties presented their respective versions of the incident.

The prosecution averred that on November 22, 2001, while brothers Reynaldo Marquez (Reynaldo) and Rodolfo Marquez (Rodolfo) were in the house of Bella Salvador-Santos (Bella) in Pandi, Bulacan, Rodolfo spotted Rogelio dela Cruz (dela Cruz) and shouted to him to join them. At that instant, petitioner and his wife were passing-by on board a tricycle. Believing that Rodolfo’s shout was directed at him, petitioner stopped the vehicle and cursed the former. Reynaldo apologized for the misunderstanding but petitioner was unyielding. Before leaving, he warned the Marquez brothers that something bad would happen to them if they continue to perturb him.

Bothered, Rodolfo went to the house of *Barangay* Chairman Pablo Tayao (Tayao) to ask for assistance in settling the misunderstanding. Because of this, Reynaldo, who had already gone home, was fetched by dela Cruz and brought to the house of Tayao. But since Tayao was then no longer around, Reynaldo just proceeded to petitioner’s house to follow Tayao and Rodolfo who had already gone ahead. Upon arriving at petitioner’s residence, Reynaldo again apologized to petitioner but the latter did not reply. Instead, petitioner entered the house and when he came out, he was already holding a gun which he suddenly fired at Reynaldo who was hit in his right ear. Petitioner then shot Reynaldo who fell to the ground after being hit in the nape. Unsatisfied, petitioner kicked Reynaldo on the face and back. Reynaldo pleaded Tayao for help but to no avail since petitioner warned those around not to get involved. Fortunately, Reynaldo’s parents arrived and took him to a local hospital for emergency medical treatment. He was later transferred to Jose Reyes Memorial Hospital in Manila where he was operated on and confined for three weeks. Dr. Renato Raymundo attended to him and issued a medical certificate stating that a bullet entered the base of Reynaldo’s skull and exited at the back of his right ear.

Presenting a totally different version, the defense claimed that on November 22, 2001, petitioner went to the house of Bella on board a tricycle to fetch his child. While driving, he was cursed by brothers Reynaldo and Rodolfo who were visibly intoxicated. Petitioner ignored the two and just went home. Later, however, the brothers appeared in front of his house still shouting invectives against him. Petitioner’s brother tried to pacify Rodolfo and Reynaldo who agreed to leave but not without threatening that they would return to kill him. Petitioner thus asked someone to call Tayao. Not long after, the brothers came back, entered petitioner’s yard, and challenged him to a gun duel. Petitioner requested Tayao to

stop and pacify them but Reynaldo refused to calm down and instead fired his gun. Hence, as an act of self-defense, petitioner fired back twice.

On March 12, 2007, the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 84, rendered its Decision² finding petitioner guilty as charged, *viz*:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime charged in the information, he is hereby sentenced to suffer the penalty of imprisonment of six (6) years [of] *prision correccional*, as minimum[;] to ten (10) years of *prision mayor* in its medium [period], as maximum.

SO ORDERED.³

Petitioner filed a motion for reconsideration which was denied in an Order⁴ dated August 16, 2007.

Undaunted, petitioner appealed to the Court of Appeals (CA). In its Decision⁵ dated February 27, 2009, the CA affirmed in full the RTC's Decision, thus:

WHEREFORE, in the light of the foregoing premises, the decision appealed from is hereby AFFIRMED in its entirety.

SO ORDERED.⁶

Petitioner's Motion for Reconsideration⁷ thereto was likewise denied in a Resolution⁸ dated July 30, 2010.

Hence, this Petition for Review on *Certiorari*⁹ under Rule 45 of the Rules of Court where petitioner imputes upon the CA the following errors:

I. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT THE ELEMENT OF UNLAWFUL AGGRESSION WAS NOT SATISFACTORILY PROVEN SINCE THE ACCUSED-APPELLANT HAS NOT SATISFACTORILY SHOWN THAT THE

² Id. at 72-80; penned by Presiding Judge Wilfredo T. Nieves.

³ Id. at 80.

⁴ Id. at 81.

⁵ Id. at 56-67; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

⁶ Id. at 65

⁷ Id. at 124-160.

⁸ Id. at 68-71.

⁹ Id. at 10-54.

VICTIM/PRIVATE COMPLAINANT WAS INDEED ARMED WITH A GUN.

- II. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT GRANTING FOR THE BENEFIT OF ARGUMENT THAT THERE WAS INDEED UNLAWFUL AGGRESSION, PETITIONER WAS NO LONGER JUSTIFIED IN FIRING AT THE VICTIM/PRIVATE COMPLAINANT FOR THE SECOND TIME.
- III. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT INTENT TO KILL ON THE PART OF PETITIONER WAS PRESENT CONSIDERING: (A) THE PRIVATE COMPLAINANT ALLEGEDLY RECEIVED TWO GUNSHOT WOUNDS, AND (B) THE PETITIONER PREVENTED BARANGAY OFFICIALS FROM INTERVENING AND HELPING OUT THE WOUNDED PRIVATE COMPLAINANT.¹⁰

Our Ruling

The Petition must be denied.

The errors petitioner imputes upon the CA all pertain to “appreciation of evidence” or factual errors which are not within the province of a petition for review on *certiorari* under Rule 45. The Court had already explained in *Batistis v. People*¹¹ that:

Pursuant to Section 3, Rule 122, and Section 9, Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua*, or life imprisonment, is by petition for review on *certiorari*.

A petition for review on *certiorari* raises only questions of law. Sec. 1, Rule 45, *Rules of Court*, explicitly so provides, *viz*:

Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

¹⁰ Id. at 20-21.

¹¹ 623 Phil. 246, 254 (2009); citations omitted, emphasis and italics in the original.

Petitioner's assigned errors, requiring as they do a re-appreciation and re-examination of the evidence, are evidentiary and factual in nature.¹² The Petition must therefore be denied on this basis because “*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin,”¹³ which was not shown to be the case here.

Besides, findings of facts of the RTC, its calibration of the testimonial evidence, its assessment of the probative weight thereof, as well as its conclusions anchored on the said findings, are accorded high respect if not conclusive effect when affirmed by the CA,¹⁴ as in this case. After all, the RTC “had the opportunity to observe the witnesses on the stand and detect if they were telling the truth.”¹⁵ “To [thus] accord with the established doctrine of finality and bindingness of the trial court's findings of fact, [the Court shall] not disturb [the] findings of fact of the RTC, particularly after their affirmance by the CA”¹⁶ as petitioner was not able to sufficiently establish any extraordinary circumstance which merits a departure from the said doctrine.¹⁷

In any event, the Court observes that the CA correctly affirmed the RTC's ruling that petitioner is guilty of frustrated homicide and not merely of less serious physical injuries as the latter insists. As aptly stated by the CA:

In attempted or frustrated homicide, the offender must have the intent to kill the victim. If there is no intent to kill on the part of the offender, he is liable for physical injuries only. Vice-versa, regardless of whether the victim only suffered injuries that would have healed in nine to thirty days, if intent to kill is sufficiently borne out, the crime committed is frustrated homicide (*Arts. 263-266*).

Usually, the intent to kill is shown by the kind of weapon used by the offender and the parts of the victim's body at which the weapon was aimed, as shown by the wounds inflicted. Hence, when a deadly weapon, like a bolo, is used to stab the victim in the latter's abdomen, the intent to kill can be presumed (*Reyes, The Revised Penal Code, 13TH ED., P. 431*).

It is worth highlighting that the victim received two gunshot wounds in the head. Indeed the location of the wounds plus the nature of the weapon used are ready indications that the accused-appellant's objective is not merely to warn or incapacitate a supposed aggressor. Verily, had the accused-appellant been slightly better with his aim, any of the two bullets surely would have killed him

¹² Id. at 255.

¹³ Id.

¹⁴ *Rugas v. People*, 464 Phil. 493, 504 (2004).

¹⁵ *People v. Ruales*, 457 Phil. 160, 169 (2003).

¹⁶ *People v. Batistis*, supra note 10 at 256.

¹⁷ Id.

outright. Also, the intent to kill is further exhibited by the fact that the accused-appellant even prevented barangay officials from intervening and helping x x x the bleeding victim. Indeed, the fact that Reynaldo Marquez was miraculously able to live through the ordeal and sustain only modicum injuries does not mean that the crime ought to be downgraded from frustrated homicide to less serious physical injuries. After all, as was mentioned above, what should be determinative of the crime is not the gravity of the resulting injury but the criminal intent that animated the hand that pulled the trigger.¹⁸

The Court, however, notes that while the penalty imposed upon appellant is also proper, there is a need to modify the assailed CA Decision in that awards of damages must be made in favor of the victim Reynaldo.

The RTC and the CA correctly held that actual damages cannot be awarded to Reynaldo due to the absence of receipts to prove the medical expenses he incurred from the incident. “Nonetheless, absent competent proof on the actual damages suffered, a party still has the option of claiming temperate damages, which may be allowed in cases where, from the nature of the case, definite proof of pecuniary loss cannot be adduced although the court is convinced that the aggrieved party suffered some pecuniary loss.”¹⁹ Since it was undisputed that Reynaldo was hospitalized due to the gunshot wounds inflicted by petitioner, albeit as observed by the RTC there was no evidence offered as to the expenses he incurred by reason thereof, Reynaldo is entitled to temperate damages in the amount of ₱25,000.00. Aside from this, he is also entitled to moral damages of ₱25,000.00. These awards of damages are in accordance with settled jurisprudence.²⁰ An interest at the legal rate of 6% *per annum* must also be imposed on the awarded damages to commence from the date of finality of this Resolution until fully paid.²¹

WHEREFORE, the Petition is **DENIED**. The Decision dated February 27, 2009 of the Court of Appeals in CA-G.R. CR No. 31084 affirming in its entirety the March 12, 2007 Decision of the Regional Trial Court of Malolos, Bulacan, Branch 84 in Criminal Case No. 3486-M-2002 convicting petitioner Rogelio Roque of the crime of frustrated homicide, is **AFFIRMED with the MODIFICATION** that the petitioner is ordered to pay the victim Reynaldo Marquez moral damages and temperate damages in the amount of ₱25,000,00 each, with interest at the legal rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

¹⁸ *Rollo*, p. 65.

¹⁹ *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 454-455 (2011).

²⁰ *Abella v. People*, G.R. No. 198400, October 7, 2013, 706 SCRA 781, 796-797.

²¹ *Id.* at 797.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

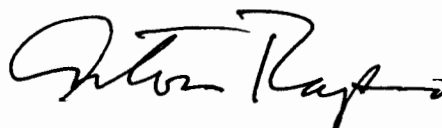

ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO
Associate Justice
Chairperson

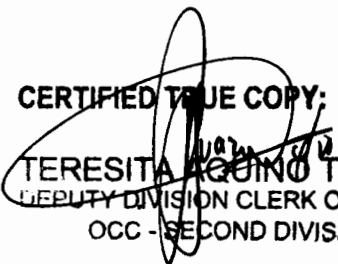
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

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DEPUTY DIVISION CLERK OF COURT
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