



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**ISIDRO COSME and FERNAN
 COSME,**

Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

G.R. No. 212848

Present:

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

Promulgated:
17 AUG 2016

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RESOLUTION

CARPIO, J.:

The Case

This petition for review¹ assails the 29 November 2013 Decision² and the 5 June 2014 Resolution³ of the Court of Appeals in CA-G.R. CR No. 33692. The Court of Appeals affirmed the 28 July 2010 Decision⁴ of the Regional Trial Court of Tanauan City, Batangas, Branch 6, finding Isidro Cosme (Isidro), Fernan Cosme (Fernan), and Fred Cosme (Fred) guilty of homicide in Criminal Case No. 02-10-493, and finding Fernan guilty of attempted homicide in Criminal Case No. 02-10-494.

* On leave.

¹ Under Rule 45 of the Revised Rules of Court.

² *Rollo*, pp. 108-124. Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta concurring.

³ *Id.* at 130-131. Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Ricardo R. Rosario concurring.

⁴ *Id.* at 77-106. Penned by Judge Arcadio I. Manigbas.

The Facts

Isidro, Fernan, and Fred were charged for the crimes of Homicide and Frustrated Homicide in two separate Informations, to wit:

Criminal Case No. 02-10-493

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro Cosme, Fernan Cosme and Fred Cosme of the crime of Homicide, defined and penalized under Article 249 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Antonio Balinado y Almendras, thereby inflicting upon the latter gunshot wounds on the different parts of his body, which directly caused his death.

Contrary to law.⁵

Criminal Case No. 02-10-494

The undersigned Fourth Assistant Provincial Prosecutor accuses Isidro Cosme, Fernan Cosme and Fred Cosme of the crime of Frustrated Homicide, defined and penalized under Article 249, in relation to Article 50 of the Revised Penal Code, committed as follows:

That on or about the 17th day of June 2002, at about 7:30 o'clock in the evening, at Barangay Sampaloc, Municipality of Talisay, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed long and short firearms, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill and without any justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Pablito Punzalan y Cuerva, thereby inflicting upon the latter lacerated wound, left, occipital area, 3 cm., which required medical attendance and incapacitated him from performing his customary work for a period of fourteen to twenty one (14-21) days, the said accused having performed all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrators, that is, because of the timely and able medical attendance rendered to the said Pablito C. Punzalan, which prevented his death.

Contrary to law.⁶

⁵ Id. at 71-72.

⁶ Id. at 74-75.

Upon arraignment, Isidro, Fernan, and Fred pleaded not guilty in both cases. Joint trial ensued thereafter.

During trial, it was found that the true name of the deceased Antonio Balinado is Florentino Balinado. The trial court, in its Order dated 28 October 2004,⁷ granted the prosecution's Motion for Leave of Court to Amend the Information to state the real name of the victim, and the Amended Information inserted the true name of the victim as "Florentino Balinado y Almendras" alias "Antonio Balinado y Almendras alias Tony" (Antonio).

The Version of the Prosecution

The prosecution presented six witnesses: Pablito Punzalan, Lope Punzalan, SPO2 Esmeraldo S. Manimtim, Dr. Teodoro Cabiscuelas, Pantaleon Balinado, and Anastacia Balinado.

Pablito Punzalan testified that on 17 June 2002, at around 4:00 p.m., he was at the house of Jose Tenorio, who was celebrating his birthday. He saw Antonio and Fernan arguing about politics and he heard Fernan warning Antonio: "*Tinoy, hindi ka na uumagahin.*" Fernan left at around 5:00 p.m. while Pablito and Antonio left at around 6:00 p.m.

While walking along the national highway, Pablito heard a shot. He met a child who told him to help Antonio. At the front yard of the Cosmes, he saw Isidro, Fred, Fernan, and Pantaleon Cosme boxing, kicking, and beating Antonio with their guns. Pablito shouted "*tama na!*" and introduced himself as a *barangay tanod*. When Antonio, who was already bloodied, embraced him, he told Antonio to run away because he might be killed. When Antonio ran away, Fernan shot Pablito, who was later brought to the Daniel O. Mercado Medical Center for the treatment of a lacerated wound located at the left occipital area.

Lope Punzalan testified that on 17 June 2002, he was also at the house of Jose Tenorio. He remembered a shirtless Fernan, who appeared drunk when he arrived at the party. Later, during a heated debate on the elections, Fernan stood up and said "*Pumirmi kayo dyan.*" Fernan then pointed at Antonio and said "*Hindi ka na uumagahin pa.*" After the party, Lope instructed Antonio to go home. Later, while Lope was walking along the highway on his way home, he heard gunshots. When he looked towards the direction of the gunshots, he saw two persons running toward him and who told him that his cousin Antonio was shot. Lope proceeded to help and saw

⁷ Records (Criminal Case No. 02-10-493), pp. 265-266.

Antonio with a gunshot wound on his back. He told Antonio to run away and they went separate ways. Later, he saw Pablito running while holding the back of his head which was bloodied. He then saw Antonio lying on the ground, and he instructed the people nearby to carry Antonio inside a jeep. While inside the jeep, Antonio told Lope that he was shot by the Cosmes. He did not ask further questions from Antonio since he was more concerned on bringing Antonio to the hospital.

According to Lope, he executed a sworn statement dated 18 June 2002 before PO3 Ernesto Serrano Cabrera, Jr. regarding the shooting incident but PO3 Cabrera lost the said statement.

SPO2 Esmeraldo S. Manimtim was ordered by their Chief of Police to conduct an investigation on the case. SPO2 Manimtim testified that at 10:00 p.m. on 17 June 2002, he asked Antonio why he was at the Daniel O. Mercado Medical Center. Antonio replied that he had gunshot wounds because he was shot by the father and son, Pame and Edong Cosme. SPO2 Manimtim learned from PO3 Cabrera that Pame Cosme is Pantaleon Cosme, while Edong Cosme is Isidro Cosme. When SPO2 Manimtim asked Antonio if his gunshot wound was fatal, Antonio merely replied that he was not feeling well. SPO2 Manimtim testified that at the time he took his statement, Antonio was already having a hard time speaking because of the gunshot wounds. SPO2 Manimtim further testified that he also received information that Antonio shot Pantaleon and Sonora Cosme who both sustained gunshot wounds.

Dr. Teodoro Cabiscuelas, a general surgeon at the Daniel O. Mercado Medical Center, testified that on 17 June 2002, Antonio was brought to the emergency room of the Daniel O. Mercado Medical Center. Antonio's vital signs of blood pressure of 60/80 palpatory indicated that he was losing a lot of blood. Antonio sustained gunshot wounds at the right thorax and lumbar area which were fatal, and at the right arm which was non-fatal. Antonio underwent extensive operation and his physical condition was declared unstable.

Dr. Cabiscuelas also treated Pablito Punzalan who sustained a non-fatal lacerated wound which would heal within 14 days or 2 to 3 weeks, provided no complication occurs. Dr. Cabiscuelas stated that the wound could have been caused by a bullet, but he could not really tell the real cause of Pablito's wound.

Pantaleon Balinado testified that on 17 June 2002 at around 7:00 to 7:30 p.m., his brother-in-law informed him that his father, Antonio, was shot. He immediately proceeded to the place of incident, where he was informed that his father was already brought to the hospital. When he saw

his father at the hospital, he asked him who shot him. His father answered that it was Fernan, Fred, Isidro, and Pantaleon (Cosme). Pantaleon testified that at that time, his father was in a bad condition and he could hardly talk.

Pantaleon Balinado further testified that they spent ₱124,603.37 for the hospital and doctor's fees and ₱143,662.89 for the medicines and burial expenses. At the time of his death, his father Antonio was earning around ₱20,000 tending a nursery. He hired a lawyer for the case and the agreed acceptance fee was ₱25,000, and ₱3,000 appearance fee for every hearing.

Anastacia Balinado, wife of Antonio, testified that on 17 June 2002, she was informed that Antonio was shot and she immediately ran to the place of incident. She saw Antonio already inside a jeep and about to be rushed to the hospital. She met her son Pantaleon and they went to the hospital, where she overheard Antonio telling Pantaleon that the ones who shot him were "*apat na mag-aamang Cosme.*" Anastacia further testified that Antonio was confined at the hospital for three days, and died on 20 June 2002.

The Version of the Defense

The defense presented seven witnesses: Pantaleon Cosme, Sonora Cosme, Isidro, Fernan, Dr. Raul Desipeda, PO3 Cabrera, and Police Inspector Donna Villa Huelgas.

Pantaleon Cosme, the son of Isidro and Socorro Cosme, testified that on 17 June 2002, at around 7:30 p.m., he and his siblings, Sonora and Fernan, were in front of their parents' house. They were talking about the altercation between Antonio and Fernan which happened at a birthday party when Antonio and Pablito Punzalan approached them. When Pantaleon Cosme asked them what was the problem, Antonio replied "*Patay kayo sa akin.*" and then drew his gun and shot Pantaleon Cosme. Pantaleon Cosme fell to the ground and regained consciousness three days later at the hospital, where he learned that he sustained seven gunshot wounds. He was hospitalized for almost two weeks. Pantaleon Cosme further testified that Antonio also shot Sonora, who was hit at her side. At the time of the incident, his father Isidro was inside the house watching television.

Sonora Cosme testified that at around 7:30 p.m. on 17 June 2002, she was in front of their house with her brothers Pantaleon, Fred, and Fernan. Antonio and Pablito approached them and she saw Antonio shoot Pantaleon several times, causing him to fall to the ground. Sonora rushed to Pantaleon and while she was about to embrace him, Antonio shot her. She sustained a wound on her right buttock where the bullet entered and another on her left

buttock which was the exit wound. She passed out and regained consciousness at the hospital. At the time of the attack, her father Isidro was inside the house. She stayed at the hospital for four days where she was interrogated by PO3 Cabrera.

Isidro testified that at around 7:30 p.m. on 17 June 2002, he was inside his house watching television when he heard six gunshots. Being used to gunshots in their neighborhood, he just ignored the incident. Five seconds later, someone knocked on the door, and when he opened it, Fernan went inside carrying an unconscious Sonora with blood oozing from her side. Isidro also saw his other son Pantaleon, lying bloodied on the ground less than 10 meters away. With the help of some relatives, they brought Pantaleon and Sonora to the hospital. Isidro denied firing any firearm during the incident. In fact, when Fred, Fernan, and he were subjected to paraffin tests, the results were negative.

Fernan testified that on 17 June 2002, he was attending a birthday party at the house of his neighbors Maximo and Jose Tenorio. While they were drinking, an altercation ensued regarding Fernan's non-affiliation with Antonio's political party in the election. Fernan denied that he told Antonio: "*Hindi ka na uumagahin.*" When he got home, Fernan told his siblings, Pantaleon and Sonora, about the altercation during their conversation at the terrace. While they were still discussing the incident, Antonio arrived. Pantaleon approached Antonio, who immediately shot Pantaleon. Pantaleon fell to the ground, and Sonora rushed to embrace him but Antonio also fired at her. Fernan hurriedly left to inform Isidro about the incident and they later helped carry the unconscious Pantaleon and Sonora inside Fred's jeep. At that time, Antonio was no longer in the vicinity.

On 20 June 2002, Fernan learned that Antonio had been shot and that he died from a gunshot wound. Fernan claimed that it was Antonio who was angry with him.

Dr. Raul Desipeda testified that at around 8:55 p.m. on 17 June 2002, Pantaleon Cosme was brought to the emergency room of the C.P. Reyes Hospital. He attended to Pantaleon who was then in a state of shock due to significant blood loss as a result of the five gunshot wounds he sustained. He also treated Sonora, who sustained a "gunshot wound over the right buttock, thru-and-thru with exit wound over the left buttock."

PO3 Cabrera denied taking the statement of Lope Punzalan. According to PO3 Cabrera, he only took the statements of Pablito Punzalan and Sonora Cosme, as ordered by their Chief of Police.

Police Inspector Donna Villa Huelgas, the forensic chemist assigned at the Regional Crime Laboratory Office in Camp Vicente Lim, Calamba City, testified that on 19 June 2002, she conducted paraffin tests on the three accused, Isidro, Fernan, and Fred, and a certain Andres Cosme. The results on the paraffin tests were all negative for the presence of gunpowder nitrates. Police Inspector Huelgas stated that the absence of gunpowder means that the person probably did not fire a gun.

During trial and prior to the promulgation of the trial court's decision, Fred died.⁸

The Ruling of the Trial Court

On 28 July 2010, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, accused Isidro Cosme, Fernan Cosme, and Fred Cosme, in Criminal Case No. 02-10-493, are hereby found GUILTY beyond reasonable doubt for the crime of Homicide and they are hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum [and] to indemnify the heirs of Antonio Balinado a.k.a. Florentino Balinado the following:

- (1) Fifty Thousand Pesos (₱50,000.00) by way of civil indemnity;
- (2) Fifty Thousand Pesos (₱50,000.00) by way of moral damages;
- (3) Two Hundred Sixty-Four Thousand Eight Hundred Sixteen Pesos [and] Twenty-Six Centavos (₱264,816.26) by way of compensatory damages.

On the other hand, in Criminal Case No. 02-10-494, accused Isidro Cosme and Fred Cosme are hereby ACQUITTED for the crime charged. Accused Fernan Cosme is, however, found GUILTY for the crime of attempted homicide committed against Pablito C. Punzalan of which he is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to two (2) years, four (4) months and one (1) day of *prision correccional* as maximum.

SO ORDERED.⁹

Based on the evidence of the defense, the trial court stated that Antonio seemed to be the aggressor by firing several shots at Pantaleon. The Cosmes retaliated by shooting Antonio and beating and kicking him. The trial court found that Isidro, Fernan, and Fred all participated in beating and

⁸ An Order dated 28 July 2010 of the trial court stated that its decision was promulgated in the presence of the accused Isidro and Fernan Cosme, but not Fred Cosme who was already dead.

⁹ *Rollo*, pp. 105-106.

mauling Antonio with the use of firearms even after he sustained gunshot wounds. The trial court concluded that it can be inferred from their combined acts that Isidro, Fernan, and Fred had the same criminal intent and were bent to commit the felony. Thus, it is immaterial who among the accused shot Antonio because in their collective participation, the act of one is the act of all.

As regards the charge for attempted homicide on Pablito, the trial court only held Fernan liable considering that there was no evidence showing that Isidro and Fred also shot Pablito. Nor was it shown that Isidro and Fred had the same criminal intent as Fernan who was positively identified by Pablito as the person who shot him.

The Ruling of the Court of Appeals

The Court of Appeals agreed with the trial court and considered the statement of Antonio to SPO2 Manimtim as an *ante-mortem* statement or a dying declaration which is entitled to highest credence. Based on the circumstances surrounding the declaration, the Court of Appeals concluded that it was clear that Antonio was conscious of his imminent death when he made his statement to SPO2 Manimtim.

The Court of Appeals likewise considered as part of *res gestae* the declaration of Antonio to Lope, Pantaleon Balinado, and Anastacia. Thus, although Antonio failed to name all the accused to SPO2 Manimtim, the Court of Appeals noted that Antonio did divulge to Lope, Anastacia, and Pantaleon Balinado that the perpetrators of the crime were the Cosmes, referring to Isidro, Fred, Fernan, and Pantaleon Cosme. Furthermore, the Court of Appeals emphasized that prosecution witness Pablito testified that he saw the accused mauling and beating Antonio, although he did not witness the actual shooting of Antonio. Nevertheless, the Court of Appeals held that since there was conspiracy, it does not matter whether only one or two of the accused had actually fired the fatal shots.

As regards the paraffin test, the Court of Appeals held that negative findings for gunpowder nitrates do not conclusively show that a person did not fire a gun.

The Issue

The issue is whether petitioners are guilty of the crimes charged.

The Court's Ruling

We find the petition without merit. The Court of Appeals did not err in affirming the ruling of the trial court that the petitioners' guilt for the crimes charged was clearly established by the witnesses and the evidence of the prosecution.

Petitioners question the credibility of the prosecution witnesses and the factual findings of the trial court. Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.¹⁰ Factual findings of the trial court, when affirmed by the Court of Appeals, are generally binding and conclusive unless certain facts of substance and value were overlooked, which if considered would materially affect the result of the case.¹¹ We find no such misapprehension of facts in this case.

The statement of the victim Antonio after he was fatally wounded that his assailants were the Cosmes was corroborated by the eyewitness Pablito who testified that he saw Isidro, Fred, Fernan, and Pantaleon Cosme mauling and beating the already bloodied Antonio with a gun. Pablito, who tried to stop the mauling, was also shot by Fernan, but fortunately sustained only a non-fatal lacerated wound. Pablito's testimony was further corroborated by another prosecution witness, Lope, who testified that he heard gunshots and upon being informed that Antonio was shot, he proceeded to the crime scene and saw Antonio, who was bleeding from a gunshot wound at his back. While bringing Antonio to the hospital on board a jeep, Antonio told Lope that he was shot by the Cosmes. Clearly, the identification of the accused as the persons responsible for the crimes charged was established by the prosecution.

Petitioners claim that Antonio shot the siblings Pantaleon and Sonora Cosme but denied any knowledge of the shooting and mauling of Antonio. Petitioner Fernan, who was one of the defense witnesses, testified that when they were about to bring Pantaleon and Sonora to the hospital, Antonio was no longer in the vicinity. Petitioners' denial is belied by the positive testimony of the other victim, Pablito, that petitioners mauled and beat the already bloodied Antonio with their firearms. Petitioners' defense of denial cannot prevail over the positive testimonies of the prosecution witnesses

¹⁰ *People v. Espejon*, G.R. No. 199445, 4 February 2015, 749 SCRA 639; *People v. Pareja*, 724 Phil. 759 (2014); *People v. Bonaagua*, 665 Phil. 750 (2011); *People v. Oliquino*, 546 Phil. 410 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163 (2007); *Navarrete v. People*, 542 Phil. 496 (2007).

¹¹ *Roque v. People*, G.R. No. 193169, 6 April 2015, 755 SCRA 20; *People v. Matibag*, G.R. No. 206381, 25 March 2015, 754 SCRA 529; *People v. Dela Peña*, G.R. No. 207635, 18 February 2015, 751 SCRA 178.

who have no motive to testify falsely against them.¹²

On the charge for homicide, we agree with the Court of Appeals that the accused conspired to kill Antonio as shown by their collective act of mauling and beating Antonio with their firearms despite the fact that Antonio was already bleeding from gunshot wounds. The manner by which the accused attacked the victim clearly and convincingly shows that the accused were motivated by a common intent to kill Antonio. The actions of accused show that they were impelled by the same motive to retaliate against Antonio for shooting Pantaleon and Sonora. Since conspiracy is established in this case, evidence as to who among the conspirators actually fired the fatal shots is no longer indispensable. In conspiracy, the act of one is the act of all and each of the offender is equally guilty of the criminal act.¹³

We likewise affirm the ruling of the Court of Appeals and the trial court, convicting Fernan of the crime of attempted homicide. The victim, Pablito, clearly identified Fernan as the one who shot him when he tried to stop Fernan's group from mauling and beating Antonio.

It should be noted that of the three accused originally charged with homicide and frustrated homicide, only Fernan is still alive. Fred died prior to the promulgation of the trial court's decision, while Isidro died after the Court of Appeals' decision was promulgated. In a manifestation dated 11 January 2015, the counsel for petitioners informed the Court that Isidro died on 10 November 2014, and a copy of Isidro's death certificate was attached to the manifestation. Thus, in a Resolution dated 20 April 2015, the Court considered the case closed and terminated insofar as petitioner Isidro Cosme is concerned.

Thus, the Court finds no reversible error in the assailed decision and resolution. However, the award of civil indemnity, moral damages, and compensatory damages should earn interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.¹⁴

WHEREFORE, the 29 November 2013 Decision and the 5 June 2014 Resolution of the Court of Appeals in CA-G.R. CR No. 33692, finding Isidro Cosme, Fernan Cosme, and Fred Cosme guilty of homicide in Criminal Case No. 02-10-493, and finding Fernan Cosme guilty of attempted homicide in Criminal Case No. 02-10-494, are **AFFIRMED** with the **MODIFICATION** that interest at the rate of 6% *per annum* is imposed on all the monetary awards for damages from the date of finality of this Resolution until fully paid. However, the case is considered **CLOSED** and **TERMINATED** insofar as Fred Cosme and Isidro Cosme are concerned

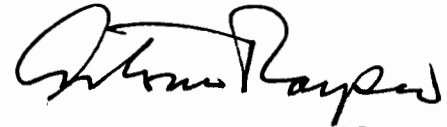
¹² *People v. Balute*, G.R. No. 212932, 21 January 2015, 748 SCRA 172.

¹³ *People v. Alvarez*, G.R. No. 191060, 2 February 2015, 748 SCRA 674.

¹⁴ *People v. Matibag*, G.R. No. 206381, 25 March 2015, 754 SCRA 529.

due to their death prior to the promulgation of this Resolution.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

(on leave)
ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
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