Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROLEN PEÑARANDA, Petitioner,	**G.R. No. 214426**
	Present:
-versus-	GESMUNDO, *C.J., Chairperson*, CAGUIOA, LAZARO-JAVIER, M. LOPEZ, and J. LOPEZ, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: DEC 02 2021

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DECISION

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated September 26, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 35279, which affirmed with modification the Decision[3] dated May 14, 2012 of Branch 21, Regional Trial Court of Malolos, Bulacan (RTC) in Criminal Case No. 723-M-2006, finding petitioner Rolen Peñaranda (petitioner) guilty beyond reasonable doubt of the crime of attempted murder.

The Facts

In an Information dated March 9, 2006, petitioner and four other accused were charged with frustrated murder for the attack on private complainant Reynaldo Gutierrez y Suacoco (Gutierrez), the accusatory portion of which reads:

> That on or about the 5th day of June 2005, in the municipality of Meycauayan, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court the above-named accused, armed with samurai and lead pipe and with intent to kill one Reynaldo Gutierrez y Suacoco,

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[1] *Rollo*, pp. 3-11.
[2] Id. at 13-30. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Florito S. Macalino and Pedro B. Corales concurring.
[3] Id. at 31-40A. Penned by Presiding Judge Efren B. Tienzo.

> conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously, with treachery, abuse of superior strength and evident premeditation, attack, assault, hack with a samurai and hit with a lead pipe the said Reynaldo Gutierrez y Suacoco hitting the latter on the different parts of his body, thereby inflicting upon him physical injuries, which ordinarily would have caused the death of the said Reynaldo Gutierrez y Suacoco, thus performing all acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not [produce] x x x it by reason of causes independent of his will, that is by the timely and able medical assistance rendered to the said Reynaldo Gutierrez y Suacoco which prevented his death.
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> Contrary to law.[4]

Upon arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued.[5]

The prosecution presented Gutierrez as its lone witness. On the other hand, the defense presented petitioner as its witness.

The CA summarized the respective versions of the prosecution and the defense as follows:

Version of the Prosecution

> [Gutierrez] worked as a tricycle driver at Libtong, Meycauayan City, Bulacan. Before June 5, 2005, he filed a complaint before the Sangguniang Barangay against [petitioner], also a tricycle driver, for charging excessive fare. On June 5, 2005, between 7:30 to 8:00 o'clock in the evening, he was at the tricycle terminal when Ivan Villaranda (or "Ivan") summoned his companions Rannie Cecilia (or "Rannie"), Raul Cecilia (or "Raul"), [petitioner] and another one whose identity was not yet known to him at that time. As these persons approached Gutierrez, [petitioner] threw a stone hitting him on his left arm. Although Gutierrez was armed with a steel pipe, he lowered his defense when Raul intervened and told him, "Hayaan mo na Boyet, ako na ang bahala." Immediately thereafter, a tricycle arrived. Edwin Celedonia (or "Edwin"), the occupant of the tricycle, alighted and hacked Gutierrez using a "samurai". Gutierrez was hit on his upper right biceps. Afterwards, Ivan, Rannie and Raul hit Gutierrez with steel pipes while [petitioner] hit him with a stone. Then, all the aggressors ran away leaving him wounded. While running away, Rannie threw a steel pipe, which Gutierrez earlier held, hitting the latter on his stomach.
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> Gutierrez immediately went to the barangay hall to seek help. Thereafter, he was brought to Sta. Maria Hospital and was later transferred to Reyes Memorial Hospital where his wounds were treated. Medico Legal Certificate and Clinical Abstract were issued, and photographs of his injuries were taken.[6]

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4 Id. at 13-14.
5 Id. at 14.
6 Id. at 15; citations omitted.

Version of the Defense

> Prior to June 5, 2005, Gutierrez filed a complaint against [petitioner] before the barangay for over-pricing of tricycle fare. He denied the imputation. Then, Gutierrez cursed him, threw a stone at him and chased him with a "panaksak." However, a barangay official intervened and prevented Gutierrez from chasing [petitioner]. From that time on, [petitioner], while aware that he was being followed by Gutierrez, never had the occasion to actually confront or meet the latter.
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> Gutierrez merely wanted to get money from him. In fact, he was told that instead of posting bail for his provisional liberty, [petitioner] should have given the money spent therefor to Gutierrez. He also denied throwing stones at Gutierrez on June 5, 2005, as he was not "Raul Kalbo" referred to by Gutierrez as his assailant.[7]

Ruling of the RTC

On May 14, 2012, the RTC rendered its Decision, the dispositive portion of which stated:

> WHEREFORE, judgment is rendered by this Court finding the accused ROLEN PEÑARANDA y CABALOS, GUILTY beyond reasonable doubt of the crime of Attempted Murder.
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> Accordingly, he is sentenced to suffer the indeterminate penalty of imprisonment of four (4) years and two (2) months of prison (*sic*) correctional (*sic*) as minimum to ten (10) years of prision mayor, as maximum.
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> Accused shall pay the offended party Reynaldo Gutierrez temperate damages of Ten Thousand Pesos (P10,000.00); exemplary damages of Ten Thousand Pesos (P10,000.00), and moral damages of Ten Thousand Pesos (P10,000.00).
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> SO ORDERED.[8]

In holding that there was an intent to kill, the RTC explained that the samurai and the steel pipe used by the perpetrators showed an intent to kill on their part, coupled with petitioner's earlier threats to kill Gutierrez after the latter reported their issue to the barangay.[9]

Regarding the stage of execution of the crime, the RTC held that the crime committed is attempted, not frustrated murder, since there is nothing in the evidence that shows that the wound would have been fatal without medical intervention.[10]

Further, the RTC ruled out the attendance of evident premeditation.[11] However, the attempted killing was treacherous and attended with abuse of

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7 Id. at 16; citations omitted.
8 Id. at 40; citation omitted.
9 Id. at 36.
10 Id. at 37.
11 Id. at 38-39.

superior strength. For treachery, although Gutierrez was initially armed with a steel pipe, Raul intervened, causing Gutierrez to lower his guard, at which point he was hacked with a samurai.[12] For abuse of superior strength, after laying down his weapon, Gutierrez was assaulted by five persons armed with a samurai, a steel pipe, and a stone.[13]

Ruling of the CA

On appeal, the CA affirmed, with modification, petitioner's conviction in its Decision dated September 26, 2014. The dispositive part of the Decision reads:

> **WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Decision dated May 14, 2012 of the Regional Trial Court of Malolos, Bulacan, Branch 21 finding accused-appellant Rolen Penaranda guilty beyond reasonable doubt of the crime of Attempted Murder, is hereby **AFFIRMED** with **MODIFICATION. ACCORDINGLY**, appellant Rolen Penaranda is hereby sentenced to imprisonment of two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum. Further, appellant is hereby ordered to indemnify complainant Reynaldo Gutierrez the following damages which shall bear interest at the rate of six [percent] (6%) per annum until fully paid, namely:
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> 1. Ten Thousand Pesos (P10,000.00) as Temperate Damages;
> 2. Ten Thousand Pesos (P10,000.00) as Exemplary Damages; and
> 3. Twenty Thousand Pesos (P20,000.00) as Moral Damages.
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> **SO ORDERED**.[14]

In affirming the RTC, the CA stated that Gutierrez's testimony showed his spontaneity as he recounted his harrowing experience at the hands of his malefactors.[15]

Against the defense of denial, petitioner admitted that he could easily travel from his house to the tricycle terminal where the incident occurred in a short period of time.[16]

On the attendant circumstances, the CA affirmed that there was abuse of superior strength. The CA, however, ruled that treachery did not attend the commission of the crime because Gutierrez was already armed with a steel pipe at the time of the commission of the crime.[17]

As to the existence of conspiracy, the CA agreed with the Office of the Solicitor General (OSG) that the act of Raul in purportedly mediating was simply a decoy to disarm the victim and allow the other accused to

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12 Id. at 37-38.
13 Id. at 38.
14 Id. at 29.
15 Id. at 23.
16 Id. at 23-25.
17 Id. at 25-26.

simultaneously attack Gutierrez as soon as he let his guard down. The concerted effort of petitioner and his companions in inflicting fatal injuries on Gutierrez's person demonstrated their intent to kill him.[18]

Hence, this Petition.

Issue

Whether petitioner is guilty of the crime of attempted murder.

The Court's Ruling

At the outset, the Court clarifies that questions of fact, as a rule, cannot be entertained in a Rule 45 petition, where the Court's jurisdiction is limited to reviewing and revising errors of law that might have been committed by the lower courts.[19] Nevertheless, when it appears that the assailed judgment is based on a misapprehension of facts,[20] as in this case, the Court may address and resolve questions of fact in a Rule 45 proceeding.

The crime committed is serious physical injuries only, not attempted murder

In *Palaganas v. People*,[21] the Court discussed the distinctions between a frustrated and an attempted homicide or murder, as well as physical injury:

> [W]hen the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound/s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury.[22]

Thus, in order to determine whether the crime committed is attempted or frustrated homicide or murder, or only physical injuries, the crucial points to consider are: a) whether the injury sustained by the victim was fatal; and b) whether there was intent to kill on the part of the accused.[23]

Guided by the foregoing, the Court holds that the crime committed by petitioner is only serious physical injuries and not attempted murder.

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18 Id. at 28.
19 *Etino v. People*, G.R. No. 206632, February 14, 2018, 855 SCRA 355, 364.
20 *Pelonia v. People*, G.R. No. 168997, April 13, 2007, 521 SCRA 207, 219.
21 G.R. No. 165483, September 12, 2006, 501 SCRA 533.
22 Id. at 555-556; citations omitted.
23 *Etino v. People*, supra note 19, at 366.

a) Whether the injury sustained by the victim was fatal

It is settled that "[w]hen nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner."[24]

In the case under review, the prosecution failed to present evidence that the wound inflicted on Gutierrez was fatal and would have caused his death had medical help not been provided. Thus, the crime committed is attempted, not frustrated murder, so long as there was intent to kill. However, as hereunder discussed, the crime cannot be attempted murder.

b) Whether there was intent to kill on the part of petitioner

Going now to the issue of whether there was intent to kill, the Court holds that there was none. Intent to kill is the principal element of homicide or murder, in whatever stage of commission. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.[25]

Moreover, intent to kill is a state of mind which courts can discern only through external manifestations, *i.e.*, acts and conduct of the accused at the time of the assault and immediately thereafter. The factors to determine intent to kill are: 1) the means used by the malefactors; 2) the nature, location, and number of wounds sustained by the victim; 3) the conduct of the malefactors before, during or immediately after the killing; and 4) the circumstances under which the crime was committed and the motives of the accused.[26]

Here, it must be emphasized that petitioner and his fellow malefactors were armed with a samurai, steel pipes, and a stone, whereas Gutierrez was rendered defenseless when he was asked to put down the steel pipe he was initially holding. Clearly, petitioner and his companions possessed all the necessary weapons to kill Gutierrez but chose not to do so. Rather, the facts indicate that after ganging up on Gutierrez, and after seeing that he was down, petitioner and his companions fled. They did not continue to beat Gutierrez nor did they leave him for dead. If the aggressors intended to kill Gutierrez, they could have easily done so, given that each of the five aggressors had weapons in comparison to the lone defenseless victim. They did not, however, kill him.

Worthy of mention, too, is that immediately after petitioner and his companions left Gutierrez, the latter was able to pick himself up and then immediately go to the barangay hall on his own. That Gutierrez was able to go to the barangay hall and request an ambulance without being pursued by

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24 *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 339.
25 *Mupas v. People*, G.R. No. 172834, February 6, 2008, 544 SCRA 85, 95.
26 *Belleza v. People*, G.R. No. 246358, July 10, 2019 (Unsigned Resolution).

his aggressors further establishes the lack of any intention on the part of petitioner and his companions to kill him.

Nonetheless, petitioner is not without any criminal liability. When the intent to kill is lacking, but wounds are shown to have been inflicted upon the victim, as in this case, the crime is not frustrated or attempted murder but physical injuries.[27] Based on the medical certificate, Gutierrez sustained several hack wounds on the different parts of his body, which required more than thirty (30) days to heal.[28] Hence, the crime committed is serious physical injuries under Article 263, paragraph 4 of the Revised Penal Code (RPC).

Although the Information charged petitioner with frustrated murder, a finding of guilt for the lesser offense of serious physical injuries may be made considering that the latter offense is necessarily included in the former.[29]

The essential ingredients of physical injuries constitute and form part of those constituting the felony of murder. Simply put, an accused may be convicted of slight, less serious, or serious physical injuries in a prosecution for homicide or murder, inasmuch as the infliction of physical injuries could lead to any of the latter offenses when carried to its utmost degree despite the fact that an essential requisite of the crime of homicide or murder — intent to kill — is not required in a prosecution for physical injuries.[30]

The elements of attempted murder were not met

Even assuming that there was intent to kill, the crime would still not be attempted murder, as found by the RTC and CA, because the elements of attempted felony were not met.

The third paragraph, Article 6 of the RPC provides that:

> There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

The essential elements of an attempted felony are as follows:

1. The offender commences the commission of the felony directly by overt acts;

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27 *Etino v. People*, supra note 19, at 370.

28 *Rollo*, p. 27.

29 *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 459, citing Rule 120, Sec. 4 of the Revised Rules of Criminal Procedure, which states:

> Sec. 4. *Judgment in Case of Variance Between Allegation and Proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

30 Id. at 460.

2. He does not perform all the acts of execution which should produce the felony;

3. The offender's act be not stopped by his own spontaneous desistance; [and]

4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[31]

Of particular significance to the instant case is the third requisite, that is, the offender's act be not stopped by his own spontaneous desistance. In the leading case of *U.S. v. Eduave*,[32] the Court discussed the very essence of attempted felony, thus:

> The crime cannot be attempted murder. This is clear from the fact that the defendant performed *all* of the acts which should have resulted in the consummated crime and *voluntarily* desisted from further acts. A crime cannot be held to be attempted unless the offender, after *beginning* the commission of the crime by overt acts, is prevented, against his will, by some outside cause from performing *all* of the acts which should produce the crime. In other words, to be an attempted crime the purpose of the offender must be thwarted by a foreign force or agency which intervenes and compels him to stop prior to the moment when he has performed all of the acts which should produce the crime as a consequence, which acts it is his intention to perform. If he has performed *all* of the acts which should result in the consummation of the crime and voluntarily desists from proceeding further, it cannot be an attempt. x x x[33]

If the malefactors do not perform all the acts of execution by reason of their spontaneous desistance, they are not guilty of an attempted felony. The law does not punish them for their attempt to commit a felony.[34] The rationale of the law is explained as follows:

> As aptly elaborated on by Wharton:
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> "First, the character of an attempt is lost when its execution is voluntarily abandoned. There is no conceivable overt act to which the abandoned purpose could be attached. Secondly, the policy of the law requires that the offender, so long as he is capable of arresting an evil plan, should be encouraged to do so, by saving him harmless in case of such retreat before it is possible for any evil consequences to ensue. Neither society, nor any private person, has been injured by his act. There is no damage, therefore, to redress. To punish him after retreat and abandonment would be to destroy the motive for retreat and abandonment."[35]

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31 *People v. Mahusay*, G.R. No. 229085, November 29, 2017 (Unsigned Resolution).
32 36 Phil. 209 (1917).
33 Id. at 211-212; italics in the original.
34 *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 96.
35 Id. at 96-97; citations omitted.

Furthermore, in another case,[36] the Court held that there is no attempted felony when the accused desists from continuing the commission of the felony out of fear or remorse:

> x x x "[W]hen the action of the felony starts and the accused, because of fear or remorse desists from its continuance, there is no attempt. x x x If the author of the attempt, after having commenced to execute the felony by external acts, he stops by a free and spontaneous feeling, on the brink of the abyss, he is saved. It is a call to repentance, to the conscience, a grace, a pardon which the law grants to voluntary repentance." x x x[37]

Verily, the desistance may be through fear or remorse. It is not necessary that it be actuated by a good motive. The RPC requires only that the discontinuance of the crime comes from the persons who have begun it, and that they stop of their own free will.[38]

To recall, Gutierrez was hit by a samurai and then ganged up on by the rest of his aggressors, including petitioner. Although petitioner and his fellow malefactors were able to hit Gutierrez on the different parts of his body, they suddenly stopped and fled. Gutierrez testified:

> Q: Now, after being hit by this Edwin, what happened next?
> A: **Ivan, Rannie, Raul, and Rolen all hit me and then afterwards, they ran** and while they were on their way, they threw to me the lead pipe that I was holding and I was hit here, ma'am. (witness pointing to the left portion of his stomach)
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> x x x x
>
> Q: After that, what happened next?
> A: **After they left me, I went to the barangay and I asked for an ambulance, ma'am.**[39]

As the Court sees it, the crime committed by petitioner cannot be attempted murder, for he and his fellow malefactors spontaneously desisted from performing further acts that would result in Gutierrez's death. It must be noted that there were no other persons who came to the defense of Gutierrez, which would have prompted them to stop inflicting injuries on him. Nothing stood in the way of petitioner and his companions from continuing to kill Gutierrez. The testimony of Gutierrez shows that after the attack, all the aggressors ran away, leaving him wounded. In short, petitioner and his fellow malefactors immediately ran away after ganging up on him.

Thus, the Court holds that the elements of attempted felony were not present in this case because petitioner and his fellow malefactors voluntarily and spontaneously stopped or desisted — an element that removed the crime from the contemplation of attempted felony. Nevertheless, as discussed

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36 *People v. Pelagio*, No. L-16177, May 24, 1967, 20 SCRA 153.
37 Id. at 161; citation omitted.
38 Reyes, REVISED PENAL CODE, 19th Ed., Book I, p. 103.
39 *Rollo*, p. 21; emphasis supplied.

above, petitioner remains liable for serious physical injuries. The spontaneous desistance of malefactors exempts them from criminal liability for the intended crime, but it does not exempt them from the crime committed by them before their desistance.[40]

Petitioner and his fellow malefactors acted in conspiracy with one another and with abuse of superior strength

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[41] It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.[42]

In the present case, the following circumstances established the existence of conspiracy. *First*, Ivan summoned petitioner and the others to attack Gutierrez.[43] *Second*, petitioner threw a stone at Gutierrez, hitting the latter in the left arm.[44] *Third*, when Gutierrez was about to retaliate, Raul intervened and asked Gutierrez to put down the steel pipe he was holding. Thereafter, Edwin alighted from the tricycle and hacked Gutierrez with a samurai.[45] *Fourth*, petitioner and his companions successively ganged up on Gutierrez, hitting him on the different parts of his body. Petitioner, in particular, used a stone while his three companions used steel pipes.[46] *Fifth*, they all fled the crime scene immediately after the incident.[47] *Finally*, while fleeing, Rannie threw the steel pipe that Gutierrez had earlier held, striking Gutierrez in the stomach.[48]

Clearly, the acts of petitioner and his companions indicate a unity of action for the common purpose or design to commit the crime. When it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy could be inferred although no actual meeting among them is proved.[49]

The positive testimony of Gutierrez established beyond reasonable doubt that petitioner and his companions were driven by a common objective

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40 *People v. Lizada*, supra note 34, at 97, citing Reyes, REVISED PENAL CODE, 1981, Vol. I, p. 105.
41 REVISED PENAL CODE, Art. 8.
42 *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 433.
43 *Rollo*, p. 22.
44 Id. at 19.
45 Id. at 19-20.
46 Id. at 21.
47 Id.
48 Id.
49 Id.

of inflicting injuries on him. Indeed, the fact that petitioner conspired with his fellow malefactors in inflicting injuries on Gutierrez renders him equally liable for the crime committed.

Anent the alleged aggravating circumstance of treachery, the Court agrees with the CA that the crime was not attended with treachery.

The essence of treachery, which is the sudden, unexpected, and unforeseen attack on the person of the victim, without the slightest provocation on the part of the latter,[50] is lacking in the case at bar. The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[51]

Gutierrez had the opportunity to defend himself as he had a steel pipe before he was attacked. He admitted that he had a steel pipe at the time because he and Ivan had a fight before the incident.[52] Clearly, he was obviously forewarned of the danger to his life. He was aware that Ivan would summon persons to gang him up,[53] which is why he brought his own weapon. The existence of an opportunity for Gutierrez to defend himself negated treachery. That Raul intervened and asked Gutierrez to put down his steel pipe does not mean that treachery attended the commission of the crime. Thus, in one case, the Court held, "[t]here is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former."[54]

On the other hand, abuse of superior strength is present. This circumstance is appreciated whenever there is a notorious inequality of forces between the victim and his aggressors, and the latter took advantage of such inequality to facilitate the commission of the crime.[55]

To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. Unlike in treachery, where the victim was not given the opportunity to defend himself or repel the aggression, taking advantage of superior strength does not mean that the victim was completely defenseless. It is determined by the excess of the aggressor's natural strength over that of the victim, considering the momentary position of both and the employment of means weakening the defense, although not annulling it.[56]

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50 *People v. Se*, G.R. No. 152966, March 17, 2004, 425 SCRA 725, 732.
51 *People v. Peralta*, G.R. No. 128116, January 24, 2001, 350 SCRA 198, 210.
52 *Rollo*, p. 22.
53 Id.
54 *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 480, citing *People v. Reyes*, G.R. Nos. 137494-95, October 25, 2001, 368 SCRA 287.
55 *People v. Batulan*, G.R. No. 216936, July 29, 2019, 911 SCRA 1, 20, citing *People v. Evasco*, G.R. No. 213415, September 26, 2018, 881 SCRA 79.
56 Id., citing *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389.

Here, petitioner and his fellow malefactors took advantage of their number and weapons to put Gutierrez at a notorious disadvantage. That Gutierrez had a steel pipe did not preclude the presence of abuse of superior strength. It must be remembered that Gutierrez lowered his defense when Raul asked him to put down the steel pipe he was holding. In contrast, petitioner and his companions were armed with a samurai, steel pipes, and a stone. Obviously, the force they used far exceeded the means of defense available to Gutierrez.[57]

Finally, petitioner's alibi and denial have not been proven by positive, clear and satisfactory evidence. It bears stressing that alibi is the weakest of all defenses because it is facile to fabricate and difficult to disprove, and is generally rejected. For alibi to prosper, it is not enough to prove that the defendant was somewhere else when the crime was committed, but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.[58]

In this case, petitioner failed to prove such physical impossibility. In fact, petitioner admitted that it is possible for him to travel from his house to the tricycle terminal where the incident occurred, as the distance is only about one and a half (1 ½) kilometers.[59]

Proper penalty and damages

Under paragraph 4, Article 263 of the RPC, any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty (30) days, and shall suffer the penalty of *prision correccional* in its minimum and medium periods if the offense shall have been committed with attendance of any of the circumstances mentioned in Article 248 of the RPC.

Applying the Indeterminate Sentence Law and considering the attendance of abuse of superior strength under Article 248 of the RPC, the maximum term of the indeterminate sentence shall be taken within the maximum period of the penalty prescribed, which is two (2) years, eleven (11) months, and eleven (11) days to four (4) years and two (2) months. The minimum term shall be taken within the range of *arresto mayor* in its medium and maximum periods or from two (2) months and one (1) day to six (6) months. The period of petitioner's detention,[60] if any, shall be credited in full for the purpose of service of his sentence.

Anent the civil liabilities, since petitioner was found guilty of an offense resulting in physical injuries, moral damages should be awarded. Under paragraph 1, Article 2219 of the Civil Code, moral damages may be

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57 *See* id. at 21.

58 *People v. Malejana*, G.R. No. 145002, January 24, 2006, 479 SCRA 610, 624.

59 *Rollo*, pp. 24-25.

60 Note: It is not clear from the *rollo* when petitioner was actually detained.

recovered in a criminal offense resulting in physical injuries. Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. An award requires no proof of pecuniary loss.[61] Pursuant to jurisprudence,[62] an award of Php25,000.00 as moral damages is appropriate.

The victim is likewise entitled to temperate damages, as it is clear that the victim received medical treatment at the hospital, although no documentary evidence was presented to prove the cost thereof.[63] In accordance with prevailing jurisprudence,[64] the Court likewise awards exemplary damages in the amount of Php50,000.00.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 26, 2014 of the Court of Appeals in CA-G.R. CR No. 35279, is **AFFIRMED** with **MODIFICATION** in that, petitioner Rolen Peñaranda is found **GUILTY** beyond reasonable doubt of the crime of **SERIOUS PHYSICAL INJURIES** and is sentenced to suffer the indeterminate penalty of imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. The period of detention of petitioner Rolen Peñaranda, if any, shall be credited in full for the purpose of service of his sentence.

He is further **ORDERED** to pay the victim Reynaldo Gutierrez y Suacoco the amounts of Php25,000.00 as moral damages, Php10,000.00 as temperate damages, and Php50,000.00 as exemplary damages.

An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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61 *Yap v. People*, G.R. No. 234217, November 14, 2018, 885 SCRA 599, 621.

62 *Velasco v. People*, G.R. No. 255490, June 30, 2021 (Unsigned Resolution), citing *Etino v. People*, supra note 19.

63 Id.

64 *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.

ALEXANDER G. GESMUNDO
Chief Justice