



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2020** which reads as follows:*

“G.R. No. 250126 – Rodulfo Caberte* y Ombrosa v. People of the Philippines

On appeal is the Decision¹ dated March 27, 2019 of the Court of Appeals-Cebu City (CA) in CA-G.R. CR No. 02938, which found petitioner Rodulfo Caberte y Ombrosa (petitioner) guilty of attempted murder as follows:

WHEREFORE, premises considered, the present appeal is DISMISSED, and the *Decision* dated 7 January 2015 of the Regional Trial Court of Carmen, Bohol, 7th Judicial Region, Branch 51, in Criminal Case No. 1217 is AFFIRMED with MODIFICATIONS.

As modified, accused-appellant Rodulfo Caberte y Ombrosa @ Dodop is sentenced to suffer the penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and ordered to pay Marlou B. Abanda the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as exemplary damages. Interest is imposed on all damages awarded at the rate of 6% *per annum* from the date of finality of this *Decision*, until fully paid.

SO ORDERED.²

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* Also known as “Caverte”.

¹ Penned by Associate Justice Dorothy P. Montejo-Gonzaga, with Associate Justices Edgardo L. Delos Santos (now a Member of the Court) and Marilyn B. Lagura-Yap, concurring, *rollo*, pp. 76-90.

² Id. at 89.

After perusal of the records of the case and the issues submitted by the parties, the Court resolves to deny the petition. The Decision dated March 27, 2019 of the CA in CA-G.R. CR No. 02938 is hereby affirmed with modification as to the award of civil indemnity, moral and temperate damages imposed against herein petitioner.

Petitioner argues that his identity was not duly established by the prosecution as the perpetrator of the crime committed against the victims on the ground that Marlou B. Abanda (Abanda) was not presented as a witness and merely relied on the testimony of Mark Angelou Gonzales (Gonzales), who did not see the actual shooting of Abanda.

The Court subscribes to the findings of the Regional Trial Court (RTC) and the CA that compared to the positive identification and categorical statements made by the prosecution's witnesses, the defense of alibi and denial made by the accused-appellant is pale in comparison thereto.

Furthermore, the defense failed to establish any ill motive on the part of Gonzales that will defile his narration and eradicate his credibility. It is settled that where there is no evidence and there is nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that the witness was not so actuated, and his testimony is entitled to full faith and credit.³

Both the trial court and the appellate court agreed that the shooting of Abanda was attended with treachery. However, the Information noticeably failed to allege "treachery" despite having averred the factual circumstances or particular acts that qualified the said criminal act with intent to kill.

While neither of the parties raised the issue of the absence of the term "treachery" in the Information, this Court is mandated, as an appellate court, to sift through the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court and, even the appellate court, has committed in finding guilt against the accused.⁴ In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on the grounds other than those that the parties raised

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³ *People v. Guillera*, 601 Phil. 155, 165 (2009).

⁴ *People v. Feliciano*, 419 Phil. 324 (2001).

as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁵

The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirement of plain justice.⁶

In this case, the prosecution had failed to allege the existence of “treachery” in the Information. Even if the prosecution had eventually proven the same during the trial, which was appreciated by both the RTC and the CA against petitioner herein, the constitutional right guaranteed to petitioner should not be defeated.

A practical consequence of the non-allegation of a detail that aggravates his liability to is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis.⁷ To this end, prosecutors are instructed to state with sufficient particularity not just the acts complained of or the acts constituting the offense, but also the aggravating circumstances, whether qualifying or generic, as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused should a verdict of conviction be reached.⁸

However, the special aggravating circumstance of abuse of superior strength was properly alleged and proven during the trial by the prosecution, thus it can be validly be appreciated against petitioner and qualifies the attempt to kill the victim to attempted murder.

In appreciating the special aggravating circumstance of abuse of superior strength, it must be proven that the use of superior strength had been abused purposely. It is present when the offenders assess a

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⁵ *Ramos v. People*, 803 Phil. 775, 783 (2017).

⁶ *People v. PO2 Valdez*, 679 Phil. 279, 294 (2012).

⁷ *Id.* at 295.

⁸ *People v. Solar*, G.R. No. 225595, August 6, 2019.

superiority of strength that they select and take advantage of in the commission of the crime.⁹

It was established that petitioner had used a firearm to shoot Abanda and Gonzales, who were both minor and unarmed at the time of the incident. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.¹⁰ It is clear that petitioner had taken advantage of the fact that the victims were just minor children, who were defenseless, and had no weapon or method to defend themselves from his attack. Moreover, he positioned himself and shot Abanda from behind in order to ensure the success of his attack. Verily, the circumstance of abuse of superior strength is present in this case.

On the matter of the use of unlicensed firearm as an aggravating circumstance to the crime charged against petitioner, the prosecution had not proven the same during the trial and merely alleging its existence in the Information is not sufficient to appreciate it as an aggravating circumstance or even be treated as a separate and distinct crime altogether against petitioner. While it is true that the existence of the firearm can be established by mere testimony, the fact that an accused was not a licensed firearm holder must still be established.¹¹

On the issue that intent to kill was not proven in the instant case, this Court finds that the same is shown by the location of injury sustained by Abanda and the circumstances revolving the subsequent shooting of Gonzales by petitioner. It is undeniable that Abanda was shot at his lateral left portion of his back, near where his lungs would be. As testified by Dr. Amy Balunes, if the bullet had pierced Abanda's lungs or a blood vessel in that area, it would have been fatal without any medical intervention. Furthermore, after petitioner saw that Abanda had survived his initial attack, he shot at him again three times, which missed the latter but hit Gonzales on his left foot, to ensure success of his attack. These circumstances undeniably show petitioner had intended to kill Abanda, and not merely to injure or incapacitate him.

As to the penalty imposed against petitioner, the CA is correct in imposing the indeterminate sentence of six years of *prision*

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⁹ *Disini v. The Secretary of Justice*, 733 Phil. 717, 754-755 (2014), citing Luis B. Reyes, *The Revised Penal Code – Criminal Law*, Book One, p. 419.

¹⁰ *People v. Beduya*, 641 Phil. 399, 410-411 (2010).

¹¹ *People v. De Leon*, 608 Phil. 701, 725 (2009).

correccional as minimum to eight years and one day of *prision mayor* as maximum of imprisonment thereto. For the crime of attempted murder, the penalty shall be *prision mayor*, since Article 51 of the Revised Penal Code states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight years and one day to 10 years; and that the minimum should be within the range of *prision correccional*, which has a duration of six months and one day to six years.¹²

However, we find the award of damages to the victim is incorrect. In *People v. Jugueta*,¹³ this Court had held that in case where the crime is attempted murder, Abanda is entitled to ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

WHEREFORE, the petition is **DENIED**. The Decision dated March 27, 2019 of the Court of Appeals, Cebu City in CA-G.R. CR No. 02938 is hereby **AFFIRMED** with **MODIFICATION**, declaring petitioner Rodulfo Caberte y Ombrosa guilty beyond reasonable doubt for the crime of Attempted Murder in Criminal Case No. 1217. He is hereby meted the Indeterminate Sentence of six (6) years of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, with all its accessory penalties. He is ordered to pay Marlou B. Abanda, the sum of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages, with interest on the said damages awarded at the rate of 6% per annum from the date finality of this Resolution until fully paid and the costs of the suit.


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¹² *People v. Verallo*, G.R. No. 238755, November 28, 2018.

¹³ 783 Phil. 852 (2016).

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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