

FIRST DIVISION

[G.R. NO. 164715, September 20, 2006]

**ARNEL C. ALCARAZ, PETITIONER, VS. RAMON C. GONZALEZ,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75589, granting the petition for review of the Resolution of the Secretary of Justice in I.S. No. H-03484 for attempted homicide, as well as the Resolution denying the motion for reconsideration thereof.

The Antecedents

At around 10:05 a.m. of August 11, 2000, 61-year-old Ramon C. Gonzalez was driving his Nissan Cefiro car with plate no. UPW-298 along the right outermost lane of the South-Luzon Expressway. He was on his way to Makati City and had just passed the Sucat toll gate.^[2]

Atty. Arnel C. Alcaraz, a Customs Collector of the Bureau of Customs, Batangas Port, was driving his Nissan Infiniti car with plate no. CNH-338. He was in the middle lane of the South-Luzon Expressway, between the Sucat and Bicutan Interchange, on his way to Manila from Batangas City. He was armed with a .38 caliber pistol and had with him Mission Order No. 699-2000, to expire on August 21, 2000. Since Alcaraz intended to use the Skyway, he signaled, and proceeded to the right-most lane which was reserved for vehicles taking the Skyway.

Gonzalez, who was on the right-most lane, was forced to swerve his car to the right to avoid colliding with Alcaraz's vehicle and nearly hit the concrete island. Nonplussed, Gonzalez chased after Alcaraz, opened his windows and shouted at Alcaraz, demanding to know why the latter suddenly cut into his lane. Alcaraz retorted that he had signaled that he was swerving to the right. Gonzalez reproved Alcaraz and drove on.

Alcaraz drove his car to Gonzalez's right. Upon nearing an island, Alcaraz raised his pistol towards Gonzalez and fired twice: the first bullet hit the right front window of the vehicle and exited at the left rear door; the second bullet hit the left rear window of Gonzalez's car.^[3] Alcaraz hurriedly drove away from the scene, but was intercepted by the PNCC guards at the Skyway toll gate. The guards confiscated from Alcaraz the .38 pistol with 7 live bullets and 3 empty shells.^[4]

Gonzalez reported the matter to the Parañaque City Police Station where he gave a statement to the police investigator, and filed a criminal complaint for attempted

homicide against Alcaraz.^[5]

The PNP Crime Laboratory examined Gonzalez's car to determine the trajectory of the bullets. Report No. PI-46-2000 was prepared in connection with the investigation, with the following findings:

Macro-physical examination conducted on the above-stated car "A" revealed the following results:

1. Entrance bullet hole ENT-1 found on the right front door, fired from right front with approximate diameter of 1.25 cms.;
2. Entrance bullet hole ENT-2 found at the rear left door, fired from right front measuring 0.5 cm by 1.0 cm.;
3. Exit bullet hole Ext-1 with an approximate diameter of 1.1 cm, found on the rear left door fired from right front. xxx

CONCLUSION:

The entrance bullet holes and the exit bullet hole were caused by bullets fired from right, front side of the vehicle. xxx^[6]

On August 11, 2000, Alfredo Tan Buraga, Officer-in-Charge of the Parañaque Police Station, filed a criminal complaint for attempted homicide against Alcaraz in the Office of the City Prosecutor of Parañaque City.^[7]

After the Office of the City Prosecutor conducted an inquest, an Information for attempted homicide against Alcaraz was filed with the Metropolitan Trial Court (MeTC) of Parañaque City. The inculpatory portion reads:

That on or about the 11th day of August 2000 in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill and without justifiable cause, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Ramon Gonzalez, thus commencing the commission of the crime of Homicide directly by overt acts but nevertheless did not perform all the acts of execution which should have produced the crime of Homicide by reason of cause or causes other than his own spontaneous desistance, that is due to the timely evasion made by the complainant.

CONTRARY TO LAW.^[8]

On motion of Alcaraz, the MeTC ordered the City Prosecutor to conduct a preliminary investigation.^[9]

In his counter-affidavit, Alcaraz admitted having fired his gun towards the car of Gonzalez. However, he alleged that Gonzalez opened his car window, uttered invectives and waived a dirty finger at him. Gonzalez then proceeded to throw coins at him, hitting him on the chest, and again uttered invectives. He saw Gonzalez reach for a short firearm and aim it at him. This prompted him to take his firearm which was on the passenger seat, and fire it downwards twice onto the right passenger door of Gonzalez's vehicle. Alcaraz claimed that he did not aim his gun at

Gonzalez; he had no intention of hitting Gonzalez, and only wanted to scare him.^[10] At the police station, Gonzalez identified himself as the brother of Congressman Jose Mari Gonzalez.^[11]

In his reply-affidavit,^[12] Gonzalez insisted that Alcaraz attempted to kill him. He denied having thrown coins at Alcaraz and that he had a gun at the time. Gonzalez pointed out that Alcaraz's allegation that he was defending himself when he fired his gun was in effect an admission of intent to kill.

The Investigating Prosecutor resolved to maintain his finding of probable cause of attempted homicide against Alcaraz and to retain the Information. Alcaraz filed a motion for reconsideration, and when it was denied, filed a petition for review with the City Prosecutor's Office, Department of Justice. He alleged the following:

- (a) The Honorable Investigating Prosecutor erred in giving serious considerations on complainant's theory on the trajectory of the bullet, as illustrated in his Reply-Affidavit dated 17 January 2001;
- (b) The Honorable Investigating Prosecutor erred in holding that respondent-appellant had the intent to kill the complainant; and
- (c) The Honorable Investigating Prosecutor erred in giving weight and credence on the allegations of complainant relative to the material points of the incident subject of the preliminary investigation.^[13]

On November 26, 2001, then Secretary of Justice Hernando Perez issued a Resolution^[14] granting the petition and ordering the City Prosecutor to withdraw the Information. The dispositive portion reads:

WHEREFORE, the appeal is hereby GRANTED. The City Prosecutor of Parañaque City is hereby directed to move for the withdrawal of the information for attempted homicide filed against respondent and to report to this Office the action taken within ten (10) days from receipt thereof.

SO ORDERED.

According to the Justice Secretary, Gonzalez failed to prove beyond reasonable that Alcaraz had intended to kill him, thus:

Evidence shows that respondent was provoked by complainant's acts of repeatedly hurling, not only invectives like "putang ina mo" with a dirty finger sign, but also the throwing of coins that hit respondent's face and his lady passenger. The natural consequence was for respondent to retaliate as what had transpired in the instant case. There is no dispute that respondent fired his gun. But as to whether or not he had the intention to kill complainant is a different issue. Respondent's argument that he had no intention of hitting complainant and that his objective was only to scare him finds merit.

As borne by the records, complainant himself was not hit. The gunfire was rather aimed at the passenger side of his car. Neither is there an

indication that respondent continued firing his gun. These circumstances tend to negate the presumption that respondent had the intention to kill complainant. It has been held that intent to kill, being an essential element of the offense of frustrated or attempted homicide, must be proved by clear and convincing evidence and with the same degree of certainty as is required of the other elements of the crime. The element of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt (*Mondragon v. People*, 17 SCRA 476). Further, acts susceptible of double interpretation, that is, in favor as well as against the culprit, and which show an innocent as well as a punishable act, must not and cannot furnish grounds by themselves for attempted or frustrated crimes (*Aquino*, Revised Penal Code, 1997 ed., p. 103).

Viewed from the foregoing pronouncements, the circumstance of trajectory of the bullet, from whence inference was made in the assailed resolution, is not well taken.

The element of intent to kill not having been satisfactorily established, and considering that complainant was unscathed, a finding of probable cause against respondent for attempted homicide is difficult to sustain.

[15]

Gonzalez filed a motion for reconsideration, which the Undersecretary of Justice denied on January 29, 2003.

Gonzalez then filed a petition for review under Rule 43 of the 1997 Rules of Civil Procedure before the CA, seeking the reversal of the Justice Secretary's Resolution. He claimed that the Secretary acted beyond his authority in finding no probable cause to charge Alcaraz with attempted homicide and for ordering the City Prosecutor to withdraw the Information. He insisted that by invoking self-defense, Alcaraz thereby admitted his intention to kill him (*Gonzalez*). He claimed that Alcaraz's claim of self-defense should be ventilated during trial on the merits.

In his comment on the petition, Alcaraz averred that the CA had no appellate jurisdiction over the petition, and that Gonzalez had no legal standing to file the petition. He insisted that the remedy from an adverse resolution of the Justice Secretary is to file a petition for certiorari under Rule 65 of the Rules of Court, as amended, grounded on grave abuse of discretion amounting to excess of jurisdiction, not one under Rule 43 of said Rule. He averred that the Justice Secretary is not a quasi-judicial officer under Rule 43 whose resolutions may thus be reviewed by the CA. Alcaraz likewise pointed out that the CA was without power to substitute its own judgment for that of the Justice Secretary regarding the existence or non-existence of probable cause to charge him with attempted homicide.

On March 22, 2004, the CA rendered judgment granting the petition and reversing the assailed resolutions of the Secretary of Justice. The *falla* of the decision reads:

WHEREFORE, premises considered, the Resolutions promulgated on November 26, 2001 and January 29, 2003 by the Department of Justice, in I.S. No. H-03484, Criminal Case No. 105593, are hereby REVERSED and SET ASIDE. No pronouncement as to costs.