

[G.R. No. 140344, August 18, 2000]

**SOLOMON RABOR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

KAPUNAN, J.:

Through this petition for review on *certiorari*, Solomon Rabor (petitioner) seeks to reverse and set aside the Decision, dated 11 March 1997, of the Court of Appeals in CA-G.R. CR No. 11542 which affirmed the judgment of the Regional Trial Court, Branch 13 of Davao City finding petitioner guilty beyond reasonable doubt of the crime of Frustrated Murder. Likewise sought to be reversed and set aside is the Resolution, dated 7 September 1999, of the appellate court denying petitioner's motion for reconsideration.

The Information filed against petitioner reads as follows:

That on or about August 17, 1981, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a bolo, with treachery and evident premeditation and with intent to kill, wilfully, unlawfully and feloniously attacked, assaulted and hacked with said weapon one Hikaru Miyake, thereby inflicting injuries upon the latter, the following injuries, to wit:

INCISED WOUND, POSTERIOR TEMPORAL AREA (L) 1.5 CM. LONG, 2-3 MM. DEEP.

INCISED WOUND SUPRASCAPULAR AREA (L) 12 CM. LONG, 5-6 CM. DEEP.

INCISED WOUND, BACK OF THE NECK 10-11 CM. LONG, 4-5 MM. DEEP.

INCISED WOUND (L) LUMBAR REGION 6 CM. LONG, 4-5 MM. DEEP.

INCISED WOUND (R) LUMBAR AREA 8 CM. LONG, 3 MM. DEEP.

INCISED WOUND, POSTEROLATERAL ASPECT (L) ELBOW, 6 CM. LONG, 3-4 CM. DEEP WITH CHIP FRACTURE OF LATERAL EPICONDYLE OF THE HUMEROS (L).

thus performing all the acts of execution which should have produced the crime of murder as a consequence but nevertheless, did not produce it by reason of cause independent of his will of said accused, that is because of the timely and able medical assistance immediately rendered to the said Hikaru Miyake.

Contrary to law.^[1]

At his arraignment, petitioner pleaded not guilty. Trial ensued. The prosecution's case, based chiefly on the testimony of the victim, Hikaru Miyake,^[2] is as follows:

On 17 August 1981, at around 9 o'clock in the evening, Hikaru Miyake, a Japanese national, residing with his Filipina wife and children in Gem Village, Ma-a, Davao City was taking his usual "Japanese-style" bath in a drum behind his house. As he soaked his body inside the drum filled with warm water, he heard a sound which made him turn to the direction where it came from. Miyake sensed that there was something wrong, so he hurriedly got out of the drum. He then saw petitioner about one and a half meters away rushing towards him with a bolo. Petitioner attacked Miyake who fought and grappled with the former for the possession of the bolo. The struggle lasted for about two (2) minutes.

Petitioner fled when he lost possession of the bolo. As a result of the attack, Miyake sustained injuries on the different parts of his body. Miyake's security guard arrived to give assistance to his employer. The security guard saw petitioner flee towards the direction of his house. Miyake was immediately brought to the Brokenshire Hospital where he was confined for ten (10) days.

Miyake further testified that petitioner and his wife used to perform services to his (Miyake's) family. Petitioner was hired to bring the Miyake children to their school while petitioner's wife gave them piano lessons. This cordial relationship between Miyake and petitioner, however, abruptly ended when their respective wives quarreled with each other over a sum of money which Mrs. Miyake loaned to petitioner's wife. Since then, petitioner became hostile towards the Miyakes.

On one occasion, petitioner threw stones at the house of Miyake. In the afternoon of that same day, Miyake went to his (petitioner's) house, which was just about fifty (50) meters away, to try to patch things up with him. Nonetheless, on account of the strained relations between them, Miyake terminated the services of petitioner and his wife. Thereafter, petitioner, while riding on his motorcycle, would stop in front of the Miyake residence and shout, "I want to fight and I will kill you." Miyake ignored these threats to avoid any trouble. Then came that fateful day of 17 August 1981.

In his defense, petitioner interposed alibi. He claimed that on 17 August 1981, at about 5 o'clock in the afternoon, he met Vicente Panes while he (petitioner) was buying a newspaper at the corner of Bolton and San Pedro Streets in Davao City. Panes asked petitioner to accompany him to Sigaboy, Governor Generoso, Davao Oriental to get coconut seedlings. Petitioner readily agreed and after obtaining permission from his wife, he went to Sigaboy with Panes. They arrived in Sigaboy at around 9 o'clock in the evening. From there, they traveled another thirty (30) kilometers on motorcycle to reach the place of Fernando Perez in Luzon, Governor Generoso, Davao Oriental where they were supposed to get the seedlings. When they arrived in Luzon, however, Perez was not around. They decided to stay there and wait for Perez. They waited for a few days as Perez arrived in Luzon only on 30 August 1981. Petitioner and Panes returned to Davao City on that same day at around 3 or 4 o'clock in the afternoon.^[3]

Vicente Panes testified for the defense. He substantially corroborated petitioner's alibi, i.e., he (petitioner) was in Sigaboy, Governor Generoso, Davao Oriental from 17 August 1981 up to 30 August 1981. The two of them were there together to get coconut seedlings from Panes' brother-in-law.^[4] Emma Rabor, wife of petitioner, also

claimed that petitioner was in Sigaboy, Governor Generoso, Davao Oriental at the time.^[5]

After trial, the court *a quo* rendered judgment convicting petitioner of the crime of frustrated murder. The dispositive portion of the judgment reads as follows:

WHEREFORE, the accused Solomon Rabor is found guilty beyond reasonable doubt as principal of the crime of Frustrated Murder and he is hereby sentenced to suffer an indeterminate sentence for four years, two months and one day of prision correccional, as its minimum, to ten years and one day of *prision mayor*, as its maximum, and to pay the victim Hikaru Miyake the total sum of P12,000.00 for actual, moral and exemplary damages, plus costs.

SO ORDERED.^[6]

Petitioner appealed his conviction to the Court of Appeals. The appellate court, upon review of the records, affirmed the judgment of the trial court. The dispositive portion of the CA decision reads as follows:

WHEREFORE, the decision of the court *a quo*, finding the accused guilty of the offense of frustrated murder is AFFIRMED.^[7]

Petitioner filed a motion for reconsideration thereof but the same was denied for lack of merit.^[8]

In this petition for review on certiorari, petitioner raises the following issues:

A. WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS FINDING THE PETITIONER GUILTY OF FRUSTRATED MURDER IS CONTRARY TO LAW;

B. WHETHER OR NOT THE MEDICAL CERTIFICATE PRESENTED BY THE PROSECUTION IS HEARSAY.

C. WHETHER OR NOT THE CONCLUSION OF THE COURT OF APPEALS IN THE APPLICATION OF EVIDENT PREMEDITATION IN THE INSTANT CASE IS A FINDING GROUNDED ON SPECULATION, SURMISES, CONJECTURES, AND IS MANIFESTLY MISTAKEN.

D. WHETHER OR NOT THE COURT OF APPEALS IN DISREGARDING THE ALIBI OF THE PETITIONER HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISION OF THE HONORABLE COURT.

E. WHETHER OR NOT THE PROSECUTION IS GUILTY OF SUPPRESSION OF EVIDENCE.^[9]

The petition is partly meritorious.

The first three issues shall be discussed jointly as they are interrelated. They all pertain to petitioner's contention that he was wrongly convicted of the crime of frustrated murder. Petitioner maintains that the wounds sustained by the victim were not fatal; hence, the crime committed was merely attempted not frustrated. Further, the qualifying circumstance of evident premeditation was not allegedly