

FIRST DIVISION

[G.R. No. 202151, February 10, 2021]

**BEETHOVEN QUIJANO,* PETITIONER, V. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

GAERLAN, J.:

The Constitution mandates that an accused enjoys the right to be presumed innocent until his/her guilt is proven beyond reasonable doubt. When a person's life and liberty are at stake, the courts must exercise utmost circumspection and ensure that each and every element of the crime is established. Notably, *to support a conviction for frustrated murder, the prosecution must establish beyond reasonable doubt that the victim's wound would have been fatal without timely medical intervention. Without this crucial fact, the accused may only be convicted of attempted murder.*

This treats of the Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court filed by petitioner Beethoven Quijano (Quijano) praying for the reversal of the August 27, 2010 Decision^[2] and May 10, 2012 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 00494. The CA affirmed the April 26, 2005 Decision^[4] of the Regional Trial Court (RTC) of Cebu City, Branch 23, which convicted Quijano of frustrated murder.

Antecedents

In an Information dated September 2, 1997, Quijano was charged with frustrated murder committed as follows:

That on or about the 21st day of June 1997, at about 3:30 o'clock dawn in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a handgun, with deliberate intent, with treachery and evident premeditation, with intent to kill, did then and there suddenly and unexpectedly attack, assault and use personal violence upon the person of one Atilano Andong by shooting him with said handgun hitting him at the right portion of his shoulder, thereby causing physical injuries which injuries would ordinarily caused the death of said Atilano Andong, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of causes independent of the will of the herein accused, that is, by the timely medical assistance given to said Atilano Andong which prevented his death.

CONTRARY TO LAW.^[5]

On September 6, 1999, Quijano pleaded not guilty to the charge.^[6]

The antecedent facts reveal that at 3:30 o'clock in the morning of June 21, 1997, Atilano Andong (Andong) was sleeping at home with his commonlaw wife Marilou Gamboa (Gamboa) and their child. Suddenly, Quijano started banging on their door and shouting Andong's name. When Andong rose from the bed, he was surprised to see Quijano standing 60 centimeters away from him, beaming a flashlight at him. Then, Quijano suddenly shot Andong on his right shoulder. Gamboa pleaded for Quijano to stop.^[7]

Meanwhile, Andong's neighbors Chona Baguio (Baguio) and Rosemarie Barrellano (Barrellano) heard a gunshot. They went outside of their house and saw Quijano holding a hand gun.^[8] Frightened, they rushed back inside and hid. Thereafter, they saw Andong blood-stained and with a wound on his right shoulder.^[9]

Subsequently, Andong was rushed to the Vicente Sotto Memorial Hospital where he underwent an operation. He was treated by Dr. Prudencio Manubag (Dr. Manubag) and was confined for more than two weeks.^[10]

During the trial, Dr. Arnold Richime submitted Andong's medical records and testified that Dr. Manubag is no longer connected with the Vicente Sotto Memorial Hospital.^[11] Later on, the prosecution presented an expert witness, Dr. Roque Anthony Paradela (Dr. Paradela) who testified that Andong's injury could have been fatal if not for timely medical intervention, including the application of a close tube or CPT.

On the other hand, Quijano vehemently denied the charge leveled against him. He claimed that in the evening prior to the incident, he was at home drinking with his co-workers. He did not leave his house. He further related that he slept at past 1 o'clock in the morning of June 21, 1997 and woke up at around 10 o'clock.

Ruling of the RTC

On April 26, 2005, the RTC rendered a Decision^[12] convicting Quijano of frustrated murder. The RTC held that the prosecution proved Quijano's guilt beyond reasonable doubt. Quijano shot Andong in a sudden and unexpected manner, thereby depriving the latter of any chance to defend himself.

Likewise, the RTC rejected Quijano's defenses of denial and alibi. It explained that it was not physically impossible for him to have been at the scene of the crime, considering that his house is just walking distance to Andong's residence.^[13]

The RTC disposed of the case as follows:

WHEREFORE, premises considered, the court finds the accused BEETHOVEN QUIJANO, guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER, for which he is hereby sentenced to suffer an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY as MINIMUM to TWELVE (12) YEARS, FIVE (5) MONTHS, and ELEVEN (11) DAYS as MAXIMUM.

SO ORDERED.^[14]

Aggrieved, Quijano filed a notice of appeal.^[15]

Ruling of the CA

On August 27, 2010, the CA^[16] affirmed the RTC's judgment. The CA held that the prosecution proved Quijano's guilt beyond reasonable doubt. The CA gave credence to the testimonies of the prosecution witnesses. According to the CA, their positive identification of Quijano as the assailant prevails over the latter's defenses of denial and alibi.^[17]

Moreover, the CA declared that the testimony of Dr. Paradela may be admitted as the opinion of an expert witness, which thereby serves as an exception to the hearsay rule.

The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Branch 23, Cebu City in Criminal Case No. CBU-45614, finding appellant Beethoven Quijano guilty beyond reasonable doubt of the crime of frustrated murder is *AFFIRMED in toto*.

Costs against the appellant.

SO ORDERED.^[18]

Dissatisfied with the ruling, Quijano filed a Motion for Reconsideration, which was denied by the CA in its May 10, 2012 Resolution.^[19]

Undeterred, Quijano filed the instant Petition for Review on *Certiorari*.^[20]

Issues

Seeking exoneration from the charge, Quijano claims that the prosecution failed to prove his guilt for frustrated murder beyond reasonable doubt.

First, he asserts that the testimonies of the prosecution witnesses are incredible and riddled with irreconcilable inconsistencies.^[21] Particularly, he points out that Gamboa and Andong varied on whether he had companions and if he uttered menacing words before shooting Andong. Likewise, Quijano alleges that it was impossible for Baguio and Barellano to have seen him shoot Andong considering that their houses are located at the back of Andong's house.^[22] Quijano further claims that Baguio and Barellano changed their story during the trial by saying that they saw Quijano because they went outside of their house after they heard gunfire.^[23] Quijano contends that Baguio and Barellano have an axe to grind against him because they have an ongoing dispute with his family.^[24]

Second, Quijano avers that Dr. Paradela did not treat Andong. Thus, his testimony is

hearsay evidence.^[25]

Third, Quijano claims that the prosecution failed to prove evident premeditation and treachery.^[26] There was no proof that he deliberately chose to attack Andong at 3 o'clock in the morning under the cover of darkness to prevent detection and ensure the success of his criminal enterprise.^[27] Moreover, his attack could not have been sudden and unexpected if it was preceded by banging on the door and calling Andong's name. Added to this, no less than Andong related that they quarreled the day prior to the shooting incident. By all means, Andong was forewarned of the impending attack against his life.^[28]

Finally, Quijano alternatively pleads that should he be found guilty of shooting Andong, he may only be held liable for attempted homicide or frustrated homicide in view of the prosecution's failure to establish the qualifying circumstances of treachery and evident premeditation.^[29]

On the other hand, the People, through the Office of the Solicitor General (OSG) points out that the instant petition must be dismissed outright as it raises mixed questions of fact and law. The issues pertaining to the credibility of the witnesses, as well as the circumstances surrounding the crime, are matters that involve a review of the evidence.

Moreover, the OSG avers that the only question of law raised was whether or not the testimony of Dr. Paradela should be barred as hearsay evidence. The OSG explains that Dr. Paradela was introduced as an expert witness, whose testimony constitutes an exception to the hearsay rule. The OSG further points out that Quijano is barred from belatedly questioning Dr. Paradela's testimony, considering that he stipulated on the doctor's expertise and even cross-examined him.^[30]

Ruling of the Court

Upon a scrutiny of the records of the case, the Court finds that Quijano is guilty of attempted murder.

Parameters of judicial review under Rule 45 and the exceptions thereto

It must be noted at the outset that issues pertaining to the credibility of the witnesses and the re-evaluation of the evidence involve factual questions. As a general rule, factual matters are not the proper subject of an appeal by *certiorari*,^[31] as it is not the Court's function to analyze or weigh the evidence which has been considered in the proceedings below.^[32] Nevertheless, a review of the factual findings is justified under the following circumstances:

- (i) when the findings are grounded entirely on speculations, surmises or conjectures; (ii) when the inference made is manifestly mistaken, absurd or impossible; (iii) when there is grave abuse of discretion; **(iv) when**

the judgment is based on a misapprehension of facts; (v) when the findings of fact are conflicting; (vi) when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (vii) when the findings are contrary to that of the trial court; (viii) when the findings are conclusions without citation of specific evidence on which they are based; (ix) when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; (x) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or] (xi) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[33]

The fourth exception obtains in the instant case. The trial court and the CA misapprehended certain facts, which upon re-evaluation, warrant a different conclusion.

Quijano's
attack against
Andong reeks
of treachery

Quijano was indicted for frustrated murder qualified by treachery and evident premeditation. Essentially, Article 248 of the Revised Penal Code (RPC) defines the crime of murder as follows:

Article 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x

5. With evident premeditation.

x x x x

Significantly, there is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.^[34] For treachery to be appreciated, the following requisites must be proven: (i) the employment of means, method, or manner of execution which would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (ii) the means, method, or manner of execution was deliberately or consciously adopted by the offender.^[35]