

# FIRST DIVISION

[ G.R. No. 241518, March 04, 2020 ]

**ROLANDO GEMENEZ Y PARAME, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

## DECISION

**CAGUIOA, J:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the petitioner Rolando Gemenez y Parame (Gemenez) assailing the Decision<sup>[2]</sup> dated March 28, 2018 and Resolution<sup>[3]</sup> dated August 15, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40018, which affirmed the Judgment<sup>[4]</sup> dated March 22, 2017 of Branch 31, Regional Trial Court of San Pedro, Laguna (RTC) in Criminal Case No. 12-8587-SPL, finding Gemenez guilty beyond reasonable doubt of the crime of Frustrated Homicide.

### The Facts

An Information was filed against Gemenez for the attack on Jerry Bechachino (Jerry), the accusatory portion of which reads:

That on or about December 29, 2011, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of treachery and abuse of superior strength and with deliberate intent to take life, did then and there willfully, unlawfully and feloniously shoot twice one JERRY BECHACHINO y REYES using a shotgun while he was just walking along the street of Sout[h]ville 3A Subdivision, Barangay San Antonio, San Pedro, Laguna, not knowing of the impending danger against his life and while he was unarmed, as a consequence, he suffered gunshot wounds on his left chest, left arm and right thumb, accused, having performed all the acts of execution which would have produced the crime of MURDER but nevertheless did not produce it by reason of causes independent of his will, that is, the able and timely medical assistance given to the said Jerry Bechachino y Reyes.

CONTRARY TO LAW.<sup>[5]</sup>

Upon arraignment, Gemenez pleaded not guilty to the crime charged. Pre-trial and trial on the merits then ensued.<sup>[6]</sup>

The facts established during the trial, as summarized by the RTC, are as follows:

Jerry Bechachino y Reyes testified that he is a resident of Lot 12, Block 29, Southville 3A, Barangay San Antonio, San Pedro, Laguna. He knew the accused because at the time of the incident complained of, he was a volunteer barangay tanod of Barangay San Antonio. They were also previous neighbors in Barangay Nueva, San Pedro, Laguna. At about 1:30 in the early morning of December 29, 2011, he was on his way home from work as a welder when he met his friend Axiel inside Southville 3A. Axiel also resided in Southville. They were walking along Block 29, Lot 15 of the same Southville 3A when they noticed that accused and his companion were following them. He clearly saw their faces because the main road where they were walking was well-lighted with street lights. After a while, accused and his companion blocked their path. While standing in front of him at a distance of two meters, accused pointed his shotgun at him. Afraid that the gun might fire off, he tried to parry the gun but accused fired it twice hitting his right thumb, left chest and left arm. Accused'[s] companion also took out a gun but he did not fire it. He was dragged towards a tricycle while Axiel scurried away out of fear. He tried to run but lost consciousness. He was in comatose condition for a week and regained consciousness at the intensive care unit of the Philippine General Hospital. He identified photographs of himself in a hospital bed with several tubes attached to his naked body. As a consequence of his injuries, he incurred hospital expenses of P100,000.00 and as proof, presented receipts.

On cross-examination, he testified that he was walking home when he accidentally met along his way Axiel and Reneson as they were also living in the same subdivision. However, Reneson had to go on a different way so it was only him and Axiel who were left together when they were accosted by accused Rolando Gemenez and his companion. This time he averred that accused was with two (2) companions whose identities he did not know. He narrated that when he was shot by the accused, the latter's two (2) companions dragged them and tried to board them on a tricycle. He asked them "Sir, ano po ang kasalanan [namin], bakit niyo po kami ginaganito?" But they did not reply. He called the men "Sir" as they were wearing the uniform of Barangay San Antonio. He recalled that after his discharge from the hospital, he stayed in their house in Manila to recuperate and filed this case only after more than a month. He was familiar with the accused because he was a barangay tanod and he saw him roam the subdivision. Accused also used to be a neighbor in Barangay Nueva for years. To his recollection, he and the accused have no quarrel in the past. He was not doing anything wrong when accused shot him but he noticed that accused was drunk when he accosted them. He did not know if accused left Southville after the incident. Accused did not try to talk to him during his recovery. He was threatened by the other members of the barangay and out of fear, Axiel, his companion that night did not want to testify and had gone into hiding.

Dr. Angelo Leaño an orthopedic surgeon at the Philippine General Hospital was next presented. He testified that the complainant Jerry Bechachino

was referred to him for his injury on the thumb. When he saw the patient, he was already in the operating suite for operation of his gunshot wounds at the left side of the chest and back and at the right thumb and was hooked up to a respirator. He confirmed that the patient sustained several injuries but his participation was only for the treatment of the thumb. The rest of the injuries were treated by the trauma service of the general surgery with Dr. Vienna Encila as one of the attending surgeons as shown by the Medico Legal Certificate, a Clinical Abstract, an Anatomical Diagram and an Operating and Anaesthesia Record which he presented and identified.

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Last presented to the witness stand was Reneson Madridano y Ison. Before his presentation, he repeatedly refused to appear in court to testify warranting a show cause order from the court for unduly delaying the trial. Since he also failed to submit his explanation to the show cause order of the court, upon motion of the public prosecutor, the court cited him in contempt of court for defying the lawful order of this court and ordered his arrest. Upon his arrest, he testified that he and Jerry Bechachino are friends and he knew that accused Rolando Gemenez y Parame is a barangay tanod in their place in Barangay San Antonio. He denied the contents of the affidavit he executed which pointed to the accused as the one who shot Jerry Bechachino. While he admitted that he had executed an oath before Fiscal Frisco Marfil as to its truthfulness and veracity, he insisted that he was merely coached in its execution.<sup>[7]</sup>

On the other hand, the evidence for the defense, as summarized by the RTC, is as follows:

Accused Rolando Gemenez y Parame denied the allegations against him. He testified that on December 29, 2011, he was on duty as barangay tanod of Barangay San Antonio, San Pedro, Laguna from 9:00 in the evening until 12:00 midnight. While on duty, the barangay authorities did not receive any report of trouble/commotion. The following morning, while he was at a tricycle terminal to take a ride to Julie's Bakeshop where he was a chief baker, the driver of the tricycle he boarded told him that a person was shot early that morning. He did not bother to find out the name of the victim nor the place of the incident. Later on, his fellow tanods also told him of the shooting incident. He also did not bother himself with the details. He knew one Reneson Madridano, the witness presented by the prosecution, because he was the friend of the brother of the complainant Jerry Bechachino. He did not know why he was implicated by the complainant. When he first heard that Jerry Bechachino pointed to him as the assailant, he went to the barangay hall and entered it on the blotter but he cannot really recall what was entered on the blotter. He did not have a copy of the excerpt of the blotter but committed to secure a copy from the barangay which he never did. He further denied knowing Jerry Bechachino and averred that he met him for

the first time during the preliminary investigation at the fiscal's office.

On the clarificatory questionings by the court on his whereabouts at the time of the incident complained of, he stated that he was at his residence sleeping.

Xerence Roche testified that she knew the parties to this case. Accused Rolando Gemenez and her husband were barangay volunteers while she and the mother of complainant Jerry Bechachino were the leaders of the block where they lived. She heard that Jerry was shot but denied that it was the accused who shot him. She pointed to a man 6 feet in height, wearing a bonnet and carrying a shotgun as the person who actually shot Jerry. She narrated that at around 1:30 in the early morning of December 29, 2011, she was fetching her husband at the corner street near their house. Her husband was at that time drinking liquor and playing a card game (tong-its) with his friends Mario Anaya and Rolando Legaspi. While she was with them, they heard a sound coming from a far distance. Thinking that it was just a tire exploding, they did not do anything. After a while, they heard another sound but this time she was sure it was gunfire because it came just around five meters away from them. They also heard shouts "Dalhin sa hospital." They were about to stand up when a man 6 feet in height, wearing a bonnet and holding a shotgun coming from the direction of the gunfire appeared and poked his shotgun at them. He also uttered words, "Hmmp, hmmp". After Mario Anaya told the man: "Wala kaming alam diyan, naglalaro lang kami", the man proceeded on his way. She testified that it could have been impossible for accused to shoot Jerry because he was not at the place of the incident when it happened. But she admitted that she did not know where he was at that precise time. She further testified that while she did not witness the armed masked man shoot Jerry, she was sure it was him who did it because he came from the direction of the gunfire. Finally, she testified that she did not know why the armed man pointed his shotgun at them but despite this, they did not report the incident to the authorities. Neither was the incident involving the masked man entered into the barangay blotter.

Leonardo Pullarca, a regular barangay tanod testified that he was a barangay tanod of Barangay San Antonio from 1995-2013. In 2009, accused joined them as volunteer tanod but accused stopped reporting for duty after the incident. Because of the long period of time that accused was a volunteer tanod they became friends. On December 28, 2011, he was on duty in the barangay outpost of Southville 3A from 6:00 in the evening until 6:00 in the morning of the following day or on December 29, 2011. Accused, on the other hand, was on duty from 9:00 o'clock in the evening until midnight of December 29, 2011. At about 1:00 o'clock in the early morning of December 29, 2011, a teenager came running to the outpost where he and his driver whose name he cannot remember were posted. The teenager was shouting: "May binaril, may binaril". For safety reasons, he and his driver, ordered the teenager to enter the outpost and they closed its door. Afterwards, a big masked man who was carrying a shotgun passed by their outpost and exited the gate of Southville 3A. When the armed man was already out of the

subdivision, several teenagers arrived asking to borrow a service vehicle to bring the person who was shot to the hospital. Two weeks after, the accused was charged with this offense. He denied that it was the accused who shot Jerry x x x because accused was already in his residence when the shooting incident happened. He insisted that it was the big man carrying a gun x x x who shot Jerry. He, however, admitted that he was only guessing that the accused was already at home at the time of the incident but he did not really see him in his house. He also admitted that he did not bother to get the names of the teenagers who reported that somebody was shot and who borrowed a service vehicle x x x. He narrated that in accordance with his duties and responsibilities, he entered the incident involving the armed men in the barangay blotter but failed to present proof of such entry.<sup>[8]</sup>

After the defense rested its case, the case was then submitted for decision.

### **Ruling of the RTC**

After trial on the merits, in its Judgment<sup>[9]</sup> dated March 22, 2017 the RTC convicted Gemenez of the crime of Frustrated Homicide. The dispositive portion of the said Judgment reads:

WHEREFORE, accused Rolando Parame Gemenez is hereby found GUILTY beyond reasonable doubt of Frustrated Homicide and he is hereby 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. He is further ordered to pay the complainant Jerry Bechachino the amount of P25,000.00 as temperate damages and P25,000.00 as moral damages with interest of 6% per annum computed from the finality of this judgment until fully paid.

SO ORDERED.<sup>[10]</sup>

The RTC ruled that the fact that Jerry was shot and sustained injuries was sufficiently proved by the evidence. Specifically, it held that "the pictures of the complainant on the hospital bed attached to numerous tubes further suppm1s the theory that the injury could have been fatal if not for timely medical intervention."<sup>[11]</sup>

As to the identity of Jerry's assailant, the RTC held that it was also established beyond reasonable doubt that it was Gemenez. According to the RTC, Gemenez's mere denial and alibi could not be given more credence over the positive identification of the victim himself. Apart from the testimonies of the other witnesses — who even had motive to help Gemenez as they had close relations with him — the defense presented no other evidence to establish his alibi and denial. Notably, the defense undertook to present evidence, such as records of *barangay* blotters, to