

SECOND DIVISION

[G.R. No. 246419, September 16, 2020]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO UKAY Y MONTON A.K.A. "TATA," TEODULO* UKAY Y
MONTON A.K.A. "JUN-JUN," GUILLERMO DIANON A.K.A.
"MOMONG," AND OCA UKAY Y MONTON, ACCUSED, EDUARDO
UKAY Y MONTON A.K.A. "TATA," TEODULO UKAY Y MONTON
A.K.A. "JUN-JUN," AND GUILLERMO DIANON A.K.A. "MOMONG,"
ACCUSED-APPELLANTS.**

D E C I S I O N

DELOS SANTOS, J.:

This is a Notice of Appeal in accordance with Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court filed by accused appellants Eduardo Ukay y Monton @ "Tata" (Eduardo), Teodulo Ukay y Monton @ "Jun-jun" (Teodulo), and Guillermo Dianon @ "Momong" (Guillermo; collectively, accused-appellants) assailing the Decision^[1] of the Court of Appeals (CA), Cagayan de Oro City in CA-G.R. CR-HC No. 01203-MIN rendered on November 23, 2018, which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Davao City, Branch 11 dated March 11, 2013 finding Eduardo in Crim. Case No. 61,566-07 guilty beyond reasonable doubt of the crime of Frustrated Murder and likewise finding Eduardo, Teodulo, and Guillermo in Crim. Case No. 61,568-07 guilty beyond reasonable doubt of the crime of Murder.

The Facts

In Crim. Case No. 61,566-07, Eduardo and Oca Ukay (Oca) were charged in an Information with Frustrated Murder under the first paragraph of Article 248, in relation to Article 6 of the Revised Penal Code (RPC) and allegedly committed as follows:

That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus performing all the acts of execution which would have produced the felony of murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.

CONTRARY TO LAW.^[3]

Moreover, in Crim. Case No. 61,568-07, Eduardo, Teodulo, Guillermo, and Oca were charged with Murder under the first paragraph of Article 248 of the RPC and allegedly committed as follows:

That on or about June 12, 2007, in the City of Davao, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking advantage of superior strength, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Anthony Aloba, thereby inflicting upon the latter fatal injuries which cause his death.

CONTRARY TO LAW.^[4]

On arraignment, Eduardo, Teodulo, and Guillermo separately and individually pleaded not guilty to the charges.^[5] Accused Oca, on the other hand, was separately charged in Crim. Case No. 61,567-09.^[6]

Version of the Prosecution

On June 9, 2007, Jessie Gerolaga (Jessie) was at his Aunt's house in Emily Homes, Cabantian, Davao City. Thereat, at around 10:00 in the evening of that day, Jessie was having a drinking spree with his cousin Anthony Aloba (Anthony). After a while, both men decided to head on to a convenience store just outside the house of their Aunt. When they arrived, they saw the group of accused-appellants namely, Eduardo, Teodulo, and Guillermo, together with Oca.

At the store, Anthony saw Guillermo arguing with the latter's wife, both were shouting at each other. To this, Anthony told Guillermo to be quiet. However, Guillermo punched Anthony and Eduardo, Teodulo, and Oca joined in trying to help Anthony when Warren Gerolaga (Warren), the brother of Jessie, arrived and tried to pacify and break the fight. Thereafter, Warren was able to grab Jessie and convinced the latter to just go home. Jessie obliged and together with Warren, they turned their backs from the group of accused-appellants and Oca on their way home. Unknown to Jessie and Warren, Oca and Eduardo were carrying knives with them. Thus, when Jessie and Warren had their backs turned, Oca suddenly stabbed Warren and he was hit on the shoulder. Jessie saw this and turned around to face Oca. Jessie tried to hit Oca, but the latter was able to slash Jessie's abdomen where the latter's intestines came out. Jessie tried to run, but Eduardo was able to catch him and stabbed him in the armpit. Jessie ran towards the opposite direction when he realized that his intestines were protruding from his stomach. He sat down on the ground from a distance and looked back at where the assailants were.

There, Jessie saw Oca and Eduardo stabbing Anthony while Teodulo and Guillermo were hitting Anthony with a stone. Anthony then fell to the ground. Thereafter, Warren came to Jessie to help and both were immediately brought to the Davao Medical Center. Anthony was left behind, but was later brought to the same hospital, but was declared dead on arrival.

Jessie and Warren survived the stabbing incidents. With regard to Jessie, the stabbed wound he sustained would have killed him had he not been given the proper medical attention.

Version of the Defense

In the evening of June 9, 2007, Eduardo, Teodulo, Guillermo, Oca, Cristituto Enanopria and their companions had a drinking spree at a store near Oca's house.

Guillermo's wife arrived and bellowed at him for spending his salary on drinking. Anthony, Jessie and one alias "Payat" passed by them. Anthony asked Guillermo what the problem was. Guillermo's wife said that it was about Guillermo's salary. Anthony unexpectedly held Guillermo by the collar. Jessie threw a stone at Guillermo while "Payat" held him. Guillermo fell into the canal.

While Guillermo was being mauled, Boyet Arroyo (Arroyo) suddenly arrived and hit him with a piece of wood. Guillermo was able to run away and hide behind a banana plant. Arroyo also boxed Eduardo. The latter was luckily able to run away to his boarding house.

Meanwhile, Teodulo called police assistance. When the police mobile arrived, he accompanied them to the place of the incident. With permission from the police, he went home.

The next day, Eduardo, upon the advice of the *purok* leader, reported the incident to the police station. He was, however, arrested and detained, as he was allegedly involved in the incident.

Teodulo, for his part, was invited to go to the police station. But upon arrival, he was also arrested and detained.

The RTC's Ruling

In a Decision^[7] dated March 11, 2013, the RTC ruled that Eduardo, Teodulo, and Guillermo stand charged with Murder for the death of Anthony. Jessie positively testified that the group of Eduardo ganged up on Anthony. He testified that Eduardo and Oca took turns in stabbing Anthony. He also narrated that Guillermo hit Anthony with a stone, while Teodulo mauled and kicked Anthony. The concerted efforts on the part of Eduardo, Teodulo, Oca, and Guillermo, killed Anthony.

Hence, the RTC found, in Crim. Case No. 61,566-07, Eduardo guilty beyond reasonable doubt of the crime of Frustrated Murder and was sentenced with an indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum.

In Crim. Case No. 61,568-07, the RTC found Eduardo, Teodulo, and Guillermo guilty beyond reasonable doubt of the crime of Murder and were sentenced to suffer the penalty of *reclusion perpetua*.

They were likewise sentenced to pay the heirs of Anthony the sum of P50,000.00 as reasonable actual damages and the further sum of P50,000.00 as civil indemnity for the death of Anthony.

The CA's Ruling

In a Decision^[8] dated November 23, 2018, the CA denied the appeal and affirmed with modification as to the amount of damages awarded in the Decision in Crim. Case Nos. 61,566-07 and 61,568-07 dated March 11, 2013 of the RTC of Davao City, Branch 11.

The CA did not find any compelling reason to reverse or modify the factual findings of the trial court. The testimonies of Jessie and Warren were given a high degree of respect and were not disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.

Moreover, the CA ruled that the trial court did not err in finding that the injury sustained by Jessie and the killing of Anthony was attended with treachery. It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim, the crime is qualified to Murder, in the case of *Crim. Case No. 61,566-07, Frustrated Murder*. The testimonies of Warren and Jessie show that the attack to them came without warning and was deliberate and unexpected, affording the hapless, unarmed, and unsuspecting victims no chance to resist or to escape. The CA is convinced of the treacherous nature of the assault.

Furthermore, the CA also held that the two (2) cases were attended by conspiracy. In *Crim. Case No. 61,566-07*, the CA found that the concerted acts of Eduardo and Oca to kill Jessie were plainly evident. On the other hand, in *Crim. Case No. 61,568-07*, the CA held that the acts of Eduardo, Teodulo, and Guillermo were knitted seamlessly together in a web of a single criminal design to hurt and kill Anthony. The Court, in *Balauitan v. People*,^[9] has ruled that where the acts of the accused, collectively and individually, clearly demonstrate the existence of a common design toward the accomplishment of the same unlawful purpose, conspiracy is evident.

The CA also upheld the finding of the trial court on the presence of the circumstance of taking advantage of superior strength. Eduardo and Oca were armed with knives together with the other two accused-appellants — Guillermo, who armed himself with a stone, and Teodulo. The CA is convinced that the four assailants used excessive force in mauling and stabbing Anthony who was then unarmed.

In compliance with the current jurisprudence, the CA modified the award of damages. The accused-appellants were adjudged to pay the heirs of Anthony P75,000.00 as civil indemnity, P75,000.00 as moral damages, and an additional P75,000.00 as exemplary damages for the crime of Murder. The actual damages incurred as proven by official receipts presented and offered by the prosecution is P48,466.31.

In *Crim. Case No. 61,566-07*, Eduardo was also adjudged to pay Jessie P50,000.00 as civil indemnity, P50,000.00 as moral damages, and an additional P50,000.00 as exemplary damages for the crime of Frustrated Murder. No actual damages has been offered, thus, the award of temperate damages in the amount of P25,000.00 is proper.

Accused-appellants filed a Notice of Appeal^[10] dated December 28, 2018.

On October 14, 2019, the accused-appellants filed a Supplemental Brief with a prayer of acquittal, insisting that the attendant circumstance of treachery cannot be considered against them, as the same was not averred in the Information.

The Court's Ruling

The appeal lacks merit, but the Court holds that the conviction of the accused-appellants for Murder and Frustrated Murder cannot be upheld. They are properly liable only for Homicide and Frustrated Homicide.

It is a hornbook rule that an appeal of a criminal case throws the entire case up for review. It, therefore, becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not.

[11]

Accused-appellants were charged with Frustrated Murder and Murder qualified with treachery. To successfully prosecute the crime of Murder, Article 248 of the RPC states:

ART. 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.

Jurisprudence dictates that the following elements must be established: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.[12]

Information alleging treachery, when sufficient

An Information, to be sufficient, must contain all the elements required by the Rules on Criminal Procedure. In the crime of Murder, the qualifying circumstance raising the killing to the category of murder must be specifically alleged in the Information.

[13]

Accused-appellants, in their Supplemental Brief, argue that treachery could not be considered in this case because the averments of treachery in the Informations were grossly inadequate. The Informations read as follows:

In Criminal Case No. 61,566-07

[T]he above-mentioned accused x x x, armed with knives, with intent to kill, with treachery, willfully, unlawfully and feloniously conspired and confederated together in attacking, assaulting and stabbing one Jessie C. Gerolaga, thereby inflicting upon the latter the injuries, the nature and extent of which would have caused the death of said victim, thus performing all the acts of execution which would have produced the felony of murder as a consequence, but which nevertheless did not produce it by reason of causes independent of the said perpetrator's will, that is, by the timely and able medical assistance rendered to the victim which prevented his death.[14]

In Criminal Case No. 61,568-07

[T]he above-mentioned accused x x x, conspiring and confederating together, armed with knives, with intent to kill, with treachery and taking