

## THIRD DIVISION

[ G.R. No. 197645, April 18, 2018 ]

**CARLOS JAY ADLAWAN, PETITIONER, V. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

#### **MARTIRES, J.:**

This petition for review on certiorari seeks to reverse and set aside the 15 September 2010 Decision<sup>[1]</sup> and 15 June 2011 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 00555. The 15 September 2010 Decision affirmed with modification the 17 August 2006 Joint Judgment<sup>[3]</sup> of the Regional Trial Court of Cebu City, Branch 5, in Criminal Case Nos. CBU-68828 and CBU-68829, which found herein petitioner Carlos Jay Adlawan (*petitioner*) guilty beyond reasonable doubt of the crime of Frustrated Homicide; while the 15 June 2011 Resolution denied petitioner's Motion for Reconsideration<sup>[4]</sup> of the 15 September 2010 Decision, and the Joint Motion to Dismiss and to Admit Private Complainant's Affidavit of Recantation and Desistance.<sup>[5]</sup>

#### **THE FACTS**

On 5 March 2004, herein petitioner was charged with the crimes of Frustrated Murder and Attempted Robbery under two Informations.<sup>[6]</sup>

On 25 March 2004, petitioner, with the assistance of counsel, was arraigned and pleaded not guilty to the charges against him.<sup>[7]</sup> Trial on the merits thereafter ensued.

#### ***Evidence for the Prosecution***

During trial, evidence for the prosecution showed that petitioner was one of the five (5) children of the late Alfonso V. Adlawan (*Alfonso*) from his first marriage, while private complainant Georgia R. Adlawan (*Georgia*) was the second wife of Alfonso and the stepmother of the petitioner.<sup>[8]</sup> Alfonso and Georgia, their adopted daughter, and the former's five (5) children all lived together in their residence at Brgy. Lipata, Minglanilla, Cebu.<sup>[9]</sup> Georgia was engaged in the construction business;<sup>[10]</sup> on the other hand, petitioner was jobless. His legs had been operated on and were braced with stainless steel.<sup>[11]</sup>

On 18 February 2004, at around 5:30 P.M., Georgia arrived home. She was taking her dinner when she heard the petitioner talking with Cornelio Selin<sup>[12]</sup> (*Cornelio*), the Adlawans' houseboy, in the backyard. The petitioner asked Cornelio in a loud voice "*unsa na?*" ("what now?"). After eating, Georgia proceeded to the backyard to ask Cornelio what the conversation was about. On her way to the yard, she met the petitioner who proceeded to his room on the second floor.<sup>[13]</sup>

While Georgia was talking to Cornelio, the petitioner came back and angrily asked Georgia "*asa ang kwarta?*" ("where is the money?"). She replied saying, "*unsa, wa mo kahibalo nga na ospital inyong amahan?*" ("why, don't you know that your father is in the hospital?"). [14] Apparently, earlier that day, Georgia instructed her secretary Maria Reina Lastimosa (*Maria Reina*) to withdraw P100,000.00 from the Development Bank of the Philippines in Cebu City to pay for the hospital bills of Alfonso. [15]

Thereafter, the petitioner furiously told her "*mura kag kinsa!*" ("*as if you are somebody!*"), and started hacking her using a *katana*, [16] hitting her on the left portion of the neck and on the stomach. Georgia parried the blows using her hands. [17] Georgia ran towards the garage in front of the house, but petitioner pursued her and continued his attack, hitting her shoulders and her back until she fell down. [18] Sensing that petitioner would finish her off, she summoned all her strength, kicked his leg, and then grabbed and squeezed his sex organ. [19]

After petitioner fell down, Georgia walked towards Baking Medical Hospital located a few meters away where she was given immediate medical attention. Thereafter, she was transferred to Perpetual Succour Hospital in Cebu City. [20]

The medical certificate [21] prepared by Dr. Rogelio Kangleon (*Dr. Kangleon*) of the Perpetual Succour Hospital revealed that Georgia sustained the following injuries: (1) laceration occipital on the scalp, 3 cm long (sutured); (2) penetrating laceration on left lateral neck, 15 cm long (sutured), with surrounding contusion/hematoma; (3) laceration on left scalpular area, 8 cm long (sutured), with surrounding contusion/hematoma; (4) laceration on left ankle, 6 cm long (sutured); (5) multiple contusion/hematomas: right shoulder, right hand, left arm, left ear, left wrist, and hand, left breast, both knees; (6) superficial laceration with surrounding contusion/hematoma, 30 cm long on the anterior abdomen; and (7) superficial laceration, 12 cm long left upper back.

Georgia's version of the incident was corroborated by prosecution witness Fred John Dahay (*Fred*), [22] the Adlawans' multicab driver who testified having witnessed Georgia being chased and hacked by petitioner. The prosecution also presented Maria Reina, Georgia's secretary, who confirmed that she was instructed to withdraw P100,000.00 for Alfonso's hospital bills. [23]

The prosecution also presented as witnesses the police officers who investigated the crime, namely: Police Senior Inspector Germano Mallari (*PSI Mallari*), [24] Police Officer 3 Renato Masangkay, [25] Police Inspector Carlos C. Reyes, Jr., [26] and Senior Police Officer 4 Ernesto Navales. [27] However, in the course of his cross-examination, PSI Mallari admitted that they searched petitioner's room and seized the weapons they found therein without a search warrant and without petitioner's consent. [28]

Aside from the medical certificate, the nature of the injuries sustained by Georgia was shown in the photographs [29] taken by a certain Charlita Gloria who was also presented as witness and who identified the photographs. [30] Further, Dr. Kangleon, during his testimony, also suggested that, based on their appearance, the injuries were indeed hack wounds. [31] He also testified that Georgia's wounds, particularly

the hack wound on the left neck, would have been fatal if not for the timely medical intervention.<sup>[32]</sup>

### ***Version of the Defense***

Petitioner did not take the witness stand. Instead, the defense presented Cornelio as its sole witness.

Cornelio testified that he had been the cook of the Adlawans since 1993.<sup>[33]</sup> On 18 February 2004, at around five o'clock in the afternoon, Georgia instructed him to collect the office garbage.<sup>[34]</sup> The office was one of the rooms in front of the house.<sup>[35]</sup> On his way there, Cornelio met the petitioner who was holding a cup of coffee. The petitioner asked him where he was going, to which he replied that he was instructed to clean the office. While cleaning, he noticed Georgia running towards the multicab and shouting for help, while petitioner was about two meters away, following her.<sup>[36]</sup> Georgia was about to board the multicab when she slipped and fell, causing her injuries.<sup>[37]</sup> He was about to help Georgia, but when he saw her kick petitioner on the leg and private part, he desisted and, pulled petitioner away and told him to go inside the house.<sup>[38]</sup> Cornelio denied seeing petitioner hack Georgia.<sup>[39]</sup> He also refuted the claim that petitioner was carrying a weapon at that time.<sup>[40]</sup>

### ***The RTC Ruling***

In its joint judgment, the RTC acquitted petitioner of attempted robbery in Criminal Case No. CBU-68829, but convicted him of the crime of frustrated homicide in Criminal Case No. CBU-68828.

On the acquittal, the trial court ratiocinated that the evidence offered by the prosecution was insufficient to prove the attempted robbery. It pointed out that the petitioner merely asked where the money was, but such inquiry was not accompanied by any overt act which would constitute the crime of attempted robbery.

As regards the conviction for frustrated homicide, the trial court was convinced that petitioner repeatedly hacked and mortally wounded Georgia. It stressed that Fred, the eyewitness, and Georgia, the victim, herself positively identified petitioner as the perpetrator of the crime. The trial court further ruled that, based on the findings and testimony of Dr. Kangleon, petitioner performed all the acts of execution necessary for the commission of homicide. Fortunately, due to timely medical intervention, Georgia's life was saved and, thus, the crime committed by petitioner was only in its frustrated stage. The trial court also appreciated the presence of the aggravating circumstances of abuse of superior strength and disregard of the respect due to the offended party on account of her age, sex, and her being the petitioner's stepmother.

The dispositive portion of the joint judgment reads:

WHEREFORE, in view of the foregoing, the court finds the accused guilty beyond reasonable doubt of the crime of Frustrated Homicide with the generic aggravating circumstances of using superior strength and with insult or in disregard of the respect due to the offended party on account of her being a stepmother, age and sex, and hereby sentences him, after

applying the Indeterminate Sentence Law, to suffer imprisonment from six (6) years of prision correccional, as minimum, to twelve (12) years of prision mayor, as maximum. The court also orders him to indemnify the victim Georgia Adlawan P30,000.00 as moral damages and all her medical expenses, without subsidiary imprisonment in case of insolvency.

[41] x x x

Aggrieved, the petitioner filed a notice of appeal to elevate the case to the CA.<sup>[42]</sup>

### ***The CA Ruling***

In its assailed decision, the CA affirmed with modification the joint judgment of the RTC. The appellate court concurred with the trial court's observation that the prosecution was able to establish by proof beyond reasonable doubt that petitioner, with intent to kill, hacked and inflicted mortal wounds upon Georgia. The appellate court, thus, opined that the trial court correctly convicted the petitioner of frustrated homicide.

The appellate court, however, observed that the trial court erred when it appreciated the ordinary aggravating circumstances of abuse of superior strength and insult or disregard of the respect due to the offended party, as these circumstances were not alleged in the information against the petitioner. Consequently, it modified the penalty imposed by the trial court upon petitioner. The dispositive portion of the assailed decision provides:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court of Cebu City, Branch 5, is MODIFIED in that appellant Carlos Jay Adlawan is hereby sentenced to suffer a prison term of six (6) years of prision correccional as minimum, to ten (10) years of prision mayor as maximum. In all other respects, the appealed Decision is AFFIRMED.<sup>[43]</sup>

On 7 October 2010, the petitioner filed a motion for reconsideration before the CA wherein he reiterated the arguments raised in his appeal.

On 28 December 2010, the petitioner, with Georgia's conformity, filed a Joint Motion to Dismiss and to Admit Private Complainant's Affidavit of Recantation and Desistance. Apparently, on 10 December 2010, Georgia executed an Affidavit of Recantation and Desistance,<sup>[44]</sup> wherein she admitted fabricating the accusations against the petitioner. She claimed that she sustained injuries on 18 February 2004 when she accidentally smashed herself against the clear glass door of their dining room and after she slipped when she was about to board their multicab.

In its Resolution of 15 June 2011, the appellate court denied the petitioner's motion for reconsideration and the joint motion to dismiss and to admit private complainant's affidavit of recantation and desistance. The appellate court reasoned that the motion for reconsideration merely reiterated the arguments which had already been passed upon in the assailed decision; and that as a rule, an affidavit of desistance, by itself, cannot be a ground for the dismissal of the present case.

Unsatisfied, the petitioner filed the present petition for review on certiorari; wherein the petitioner raised the following:

### **ISSUES**

I.

WHETHER THERE WAS GRAVE FAILURE OF APPELLATE REVIEW BY THE COURT OF APPEALS, RENDERING ITS DECISION VOID.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE PRIVATE COMPLAINANT'S AFFIDAVIT OF RECATATION AND DESISTANCE AND DECLARED THAT IT IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION ONCE IT HAS BEEN INSTITUTED IN COURT.<sup>[45]</sup>

The petitioner argues that the CA did not make a real and honest review of his case because it did not thoroughly pass upon the issues it raised in his appeal brief. In particular, the petitioner insists that the CA erred when it failed to consider that the prosecution witnesses failed to establish intent to kill, that the weapon allegedly used in the hacking was not legally presented in court, that the injuries sustained by the private complainant were not serious enough as to cause death, and that the inconsistencies in the testimony of the private complainant clearly shows that she merely fabricated the alleged assault.

The petitioner further argues that the CA erred when it did not consider the private complainant's affidavit of recantation and desistance. He asserts that the affidavit merely confirmed what the records of the case already revealed – that Georgia had fabricated her allegations against him. Thus, the affidavit of desistance would not be the sole basis for the dismissal of the case.

### THE COURT'S RULING

The petition utterly lacks merit.

***The first assignment of error involves issues not reviewable by this Court under Rule 45 of the Rules of Court.***

At the onset, the Court holds that the petition fails as the issues it raised involves questions of fact which are not reviewable in a petition for review on certiorari under Rule 45 of the Rules of Court.

It is a fundamental rule that a petition for review on certiorari filed with this Court under Rule 45 of the Rules of Court shall raise only questions of law.<sup>[46]</sup> There is a question of law when a doubt or a difference arises as to what the law is on a certain state of facts, and the question does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts,<sup>[47]</sup> as when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and probabilities of the situation.<sup>[48]</sup> Simply put, when there is no dispute as to the facts, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.<sup>[49]</sup>