

THIRD DIVISION

[G.R. No. 190912, January 12, 2015]

**GARY FANTASTICO AND ROLANDO VILLANUEVA, PETITIONERS,
VS. ELPIDIO MALICSE, SR. AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

PERALTA, J.:

For this Court's consideration is the Petition for Review on *Certiorari*^[1] under Rule 45 of the 1997 Rules of Civil Procedure, dated January 20, 2010 , of petitioners Gary Fantastico and Rolando Villanueva assailing the Decision^[2] dated August 31, 2007 and Resolution^[3] dated January 7, 2010 of the Court of Appeals (CA) in CA-G. R. CR. No. 31719, affirming the Decision^[4] dated March 31, 2008 of the Regional Trial Court, Branch 11, Manila, in Criminal Case No. 93-127049, finding petitioners guilty of attempted murder.

The following are the antecedents:

On the afternoon of June 27, 1993, Elpidio Malicse, Sr. (*Elpidio*) was outside the house of his sister Isabelita Iguiron (*Isabelita*) in Pandacan, Manila when all of a sudden, he heard Isabelita's son, Winston, throwing invectives at him. Thus, Elpidio confronted Isabelita but she also cursed him, which prompted the former to slap the latter. On that occasion, Elpidio was under the influence of alcohol.

The *Barangay* Chairman heard what transpired and went to the place where the commotion was taking place in order to pacify those who were involved. Elpidio was eventually persuaded to go home where he drank some coffee. Thereafter, Elpidio went back to the house of Isabelita to offer reconciliation. On his way there, he passed by the house of *Kagawad* Andy Antonio and requested the latter to accompany him, but was instead told to go back home, leaving Elpidio to proceed alone.

Upon reaching Isabelita's house, Elpidio saw the former's son, Titus Iguiron (*Titus*) and her son-in-law Gary Fantastico (*Gary*) and asked the two where he can find their parents. Titus and Gary responded, "*putang ina mo, and kulit mo, lumayas ka, punyeta ka.*"

In his anger with the response of Titus and Gary, Elpidio kicked the door open and saw Isabelita's elder son, Salvador Iguiron (*Salvador*) behind the door holding a rattan stick or *arnis*. Salvador hit Elpidio on the right side of his head that forced the latter to bow his head but Salvador delivered a second blow that hit Elpidio on the right eyebrow. Salvador attempted to hit Elpidio for the third time but the latter got hold of the rattan stick and the two wrestled on the floor and grappled for the possession of the same rattan stick. Then Titus ran towards the two and sprayed

something on Elpidio's face. Not being able to free himself from the clutches of Salvador and to extricate himself, Elpidio bit Salvador's head.

Gary hit Elpidio on the right side of his head with a tomahawk axe when the latter was about to go out of the house. Elpidio tried to defend himself but was unable to take the tomahawk axe from Gary. Elpidio walked away from Titus but Gary, still armed with the tomahawk axe and Salvador, with his *arnis*, including Titus, chased him.

Roland (*Rolly*) Villanueva, without any warning, hit Elpidio on the back of his head with a lead pipe which caused the latter to fall on the ground. Elpidio begged his assailants to stop, but to no avail. Salvador hit him countless times on his thighs, legs and knees using the rattan stick. While he was simultaneously being beaten up by Salvador, Titus, Gary, Rolly, Nestor, Eugene and Tommy, he tried to cover his face with his arm. Gary hit him with the tomahawk axe on his right leg, between the knees and the ankle of his leg, which caused the fracture on his legs and knees. Rolly hit Elpidio's head with a lead pipe, while Tommy hit him with a piece of wood on the back of his shoulder.

Thereafter, a certain "Mang Gil" tried to break them off but Titus and Gary shouted at him: "*Huwag makialam, away ng mag-anak ito*" and the two continued to maul Elpidio. The people who witnessed the incident shouted "*maawa na kayo*" but they only stopped battering him when a bystander fainted because of the incident. Elpidio then pretended to be dead. It was then that concerned neighbors approached him and rushed him to the emergency room of the Philippine General Hospital (*PGH*).

Thus, a case for Attempted Murder under Article 248, in relation to Article 6 of the Revised Penal Code, was filed against Salvador Iguiron, Titus Malicse Iguiron, Saligan Malicse Iguiron, Tommy Ballesteros, Nestor Ballesteros, Eugene Surigao and petitioners Gary Fantastico and Rolando Villanueva. The Information reads:

That on or about June 27, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and taking advantage of superior strength, commence the commission of the crime of murder directly by overt acts, to wit: by then and there hitting the head of Elpidio Malicse, Sr. y de Leon with a piece of rattan, axe, pipe and a piece of wood and mauling him, but the said accused did not perform all the acts of execution which should have produced the crime of murder, as a consequence, by reason of causes other than their own spontaneous desistance, that is, the injuries inflicted upon Elpidio Malicse, Sr. y de Leon are not necessarily mortal.

They all pleaded "not guilty." The defense, during trial, presented the following version of the events that transpired:

Around 4:30 p.m. of June 27, 1993, Salvador was at the second floor of their house when he heard his tenth son Winston crying while the latter was being castigated by Elpidio. He went down and told Elpidio to come back the next day to settle. His wife Isabelita called the *Barangay* Chairman two blocks away. *Barangay* Chairman Joseph Ramos and Elpidio's wife and daughter went to the house and Elpidio was given

warm water, but he showered his daughter and Winston with it. Elpidio was brought to his house and the former told the *Barangay* Chairman that it was a family problem. Elpidio went back to the house of Salvador where Titus was sitting on the sofa. Elpidio asked Titus to open the door until the former kicked the door open. Titus escaped through the open door and Salvador went out of the house because another child was on the roof, afraid that the said child might fall. Thereafter, Elpidio went to the street.

According to petitioner Gary Fantastico, he was inside their house with his wife and Titus when the incident occurred. He and his wife ran upstairs, while Titus went out when Elpidio hit the door. Elpidio had a reputation for hurting people when drunk and Gary learned that Elpidio was brought to the hospital because he was mauled by the people.

During trial, one of the accused, Salvador Iguiron died. Eventually, the trial court, in a Decision dated March 31, 2008, acquitted Titus Iguiron, Saligan Iguiron and Tommy Ballesteros but found Gary Fantastico and Rolando Villanueva guilty beyond reasonable doubt for Attempted Murder. The dispositive portion of the said decision reads:

WHEREFORE, the foregoing premises considered, the Court finds Gary Fantastico and Rolando Villanueva GUILTY of the crime of attempted murder and sentences them to an indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum, to ten (10) years as maximum. They are also ordered to pay the actual damages of P17,300.00 and moral damages of P10,000.00.

Accused Titus Iguiron, Saligan Iguiron and Tommy Ballesteros
ACQUITTED.

SO ORDERED.

After their motion for reconsideration was denied, petitioners appealed the case to the CA, but the latter court affirmed the decision of the RTC and disposed the case as follows:

WHEREFORE, finding no reversible error in the decision appealed from, we hereby AFFIRM the same and DISMISS the instant appeal.

SO ORDERED.

A motion for reconsideration was filed, but it was denied by the same court.

Hence, the present petition.

Petitioners stated the following arguments:

THE CONCLUSIONS DRAWN BY THE COURT OF APPEALS AND THE TRIAL COURT FROM THE FACTS OF THE CASE ARE INCORRECT.

THE INFORMATION ITSELF IN THIS CASE DOES NOT ALLEGE ALL THE ELEMENTS AND THE NECESSARY INGREDIENTS OF THE SPECIFIC CRIME OF ATTEMPTED MURDER.

NOT ALL OF THE ELEMENTS OF ATTEMPTED MURDER ARE PRESENT IN THIS CASE.

THERE IS NO TREACHERY OR ANY OTHER QUALIFYING CIRCUMSTANCE TO SPEAK OF IN THIS CASE.

THE LOWER COURT AND THE COURT OF APPEALS FAILED TO CONSIDER THE PRESENCE OF MITIGATING CIRCUMSTANCES.

THERE ARE MANIFEST MISTAKES IN THE FINDINGS OF FACTS BY THE COURT OF APPEALS AND THE TRIAL COURT.

THE CONVICTION OF THE PETITIONERS WAS BASED ON THE WEAKNESS OF THE DEFENSE EVIDENCE, NOT ON THE STRENGTH OF THE PROSECUTION EVIDENCE.

THE TESTIMONY OF THE RESPONDENT THAT IT WAS THE PETITIONERS WHO ATTACKED HIM IS INDEED UNCORROBORATED AND THUS SELF-SERVING.

CLEARLY, THERE ARE SO MUCH REVERSIBLE ERRORS IN THE DECISION OF THE COURT OF APPEALS AND THE LOWER COURT THAT INJURIOUSLY AFFECTED THE SUBSTANTIAL RIGHTS OF THE PETITIONERS AND THESE SHOULD BE CORRECTED BY THIS HONORABLE COURT.

At the outset, it bears stressing that under the Rules of Court, an appeal by *certiorari* to this Court should only raise questions of law distinctly set forth in the petition.^[5]

In the present case, the issues and arguments presented by the petitioners involve questions of facts. Therefore, the present petition is at once dismissible for its failure to comply with the requirement of Rule 45 of the Rules of Court, that the petition should only raise questions of law.

The distinction between a "question of law" and a "question of fact" is settled. There is a "question of law" when the doubt or difference arises as to what the law is on a certain state of facts, and which 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. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.^[6]

At any rate, the arguments of herein petitioners deserve scant consideration.

It is the contention of the petitioners that the Information filed against them was defective because it did not state all the elements of the crime charged. However, a close reading of the Information would show the contrary. The Information partly reads:

x x x but the said accused did not perform all the acts of the execution which should have produced the crime of murder, as a consequence, by

reason of causes other than their own spontaneous desistance, that is, the injuries inflicted upon Elpidio Malicse, Sr. y de Leon are not necessarily mortal.

From the above-quoted portion of the Information, it is clear that all the elements of the crime of attempted murder has been included.

The last paragraph of Article 6 of the Revised Penal Code defines an attempt to commit a felony, thus:

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.^[7]

The essential elements of an attempted felony are as follows:

The offender commences the commission of the felony directly by overt acts;

He does not perform all the acts of execution which should produce the felony;

The offender's act be not stopped by his own spontaneous desistance;

The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.^[8]

The first requisite of an attempted felony consists of two (2) elements, namely:

(1) That there be external acts;

(2) Such external acts have direct connection with the crime intended to be committed.^[9]

The Court in *People v. Lizada*^[10] elaborated on the concept of an overt or external act, thus:

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should