

SECOND DIVISION

[G.R. No. 193169, April 06, 2015]

**ROGELIO ROQUE, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

DEL CASTILLO, J.:

Petitioner Rogelio Roque (petitioner) was charged with the crime of frustrated homicide in an Information that reads as follows:

That on or about the 22nd day of November, 2001, in the municipality of Pandi, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously, with intent to kill[,] attack, assault and shoot with a gun complain[an]t Reynaldo Marquez, hitting the latter on his right ear and nape, and kick[ing] him on the face and back, causing serious physical injuries which ordinarily would have caused the death of the said Reynaldo Marquez, thus, performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is[,] by the timely and able medical attendance rendered to said Reynaldo Marquez which prevented his death.

CONTRARY TO LAW. ^[1]

When arraigned on March 23, 2003, petitioner pleaded “not guilty.” During the pre-trial conference, the defense admitted the identity of petitioner; that he is a *Kagawad* of *Barangay* Masagana, Pandi, Bulacan; and that the day of the incident, November 22, 2001 was the Thanksgiving Day of the said *barangay*. Trial thereafter ensued where the parties presented their respective versions of the incident.

The prosecution averred that on November 22, 2001, while brothers Reynaldo Marquez (Reynaldo) and Rodolfo Marquez (Rodolfo) were in the house of Bella Salvador-Santos (Bella) in Pandi, Bulacan, Rodolfo spotted Rogelio dela Cruz (dela Cruz) and shouted to him to join them. At that instant, petitioner and his wife were passing-by on board a tricycle. Believing that Rodolfo’s shout was directed at him, petitioner stopped the vehicle and cursed the former. Reynaldo apologized for the misunderstanding but petitioner was unyielding. Before leaving, he warned the Marquez brothers that something bad would happen to them if they continue to perturb him.

Bothered, Rodolfo went to the house of *Barangay* Chairman Pablo Tayao (Tayao) to

ask for assistance in settling the misunderstanding. Because of this, Reynaldo, who had already gone home, was fetched by dela Cruz and brought to the house of Tayao. But since Tayao was then no longer around, Reynaldo just proceeded to petitioner's house to follow Tayao and Rodolfo who had already gone ahead. Upon arriving at petitioner's residence, Reynaldo again apologized to petitioner but the latter did not reply. Instead, petitioner entered the house and when he came out, he was already holding a gun which he suddenly fired at Reynaldo who was hit in his right ear. Petitioner then shot Reynaldo who fell to the ground after being hit in the nape. Unsatisfied, petitioner kicked Reynaldo on the face and back. Reynaldo pleaded Tayao for help but to no avail since petitioner warned those around not to get involved. Fortunately, Reynaldo's parents arrived and took him to a local hospital for emergency medical treatment. He was later transferred to Jose Reyes Memorial Hospital in Manila where he was operated on and confined for three weeks. Dr. Renato Raymundo attended to him and issued a medical certificate stating that a bullet entered the base of Reynaldo's skull and exited at the back of his right ear.

Presenting a totally different version, the defense claimed that on November 22, 2001, petitioner went to the house of Bella on board a tricycle to fetch his child. While driving, he was cursed by brothers Reynaldo and Rodolfo who were visibly intoxicated. Petitioner ignored the two and just went home. Later, however, the brothers appeared in front of his house still shouting invectives against him. Petitioner's brother tried to pacify Rodolfo and Reynaldo who agreed to leave but not without threatening that they would return to kill him. Petitioner thus asked someone to call Tayao. Not long after, the brothers came back, entered petitioner's yard, and challenged him to a gun duel. Petitioner requested Tayao to stop and pacify them but Reynaldo refused to calm down and instead fired his gun. Hence, as an act of self-defense, petitioner fired back twice.

On March 12, 2007, the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 84, rendered its Decision^[2] finding petitioner guilty as charged, viz:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime charged in the information, he is hereby sentenced to suffer the penalty of imprisonment of six (6) years [of] *prision correccional*, as minimum[;] to ten (10) years of *prision mayor* in its medium [period], as maximum.

SO ORDERED.^[3]

Petitioner filed a motion for reconsideration which was denied in an Order^[4] dated August 16, 2007.

Undaunted, petitioner appealed to the Court of Appeals (CA). In its Decision^[5] dated February 27, 2009, the CA affirmed in full the RTC's Decision, thus:

WHEREFORE, in the light of the foregoing premises, the decision appealed from is hereby AFFIRMED in its entirety.

SO ORDERED.^[6]

Petitioner's Motion for Reconsideration^[7] thereto was likewise denied in a Resolution^[8] dated July 30, 2010.

Hence, this Petition for Review on *Certiorari*^[9] under Rule 45 of the Rules of Court where petitioner imputes upon the CA the following errors:

- I. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT THE ELEMENT OF UNLAWFUL AGGRESSION WAS NOT SATISFACTORILY PROVEN SINCE THE ACCUSED-APPELLANT HAS NOT SATISFACTORILY SHOWN THAT THE VICTIM/PRIVATE COMPLAINANT WAS INDEED ARMED WITH A GUN.
- II. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT GRANTING FOR THE BENEFIT OF ARGUMENT THAT THERE WAS INDEED UNLAWFUL AGGRESSION, PETITIONER WAS NO LONGER JUSTIFIED IN FIRING AT THE VICTIM/PRIVATE COMPLAINANT FOR THE SECOND TIME.
- III. THE HONORABLE COURT OF APPEALS ERRONEOUSLY APPRECIATED THE FACTS AND EVIDENCE ON RECORD WHEN IT RULED THAT INTENT TO KILL ON THE PART OF PETITIONER WAS PRESENT CONSIDERING: (A) THE PRIVATE COMPLAINANT ALLEGEDLY RECEIVED TWO GUNSHOT WOUNDS, AND (B) THE PETITIONER PREVENTED BARANGAY OFFICIALS FROM INTERVENING AND HELPING OUT THE WOUNDED PRIVATE COMPLAINANT.^[10]

Our Ruling

The Petition must be denied.

The errors petitioner imputes upon the CA all pertain to "appreciation of evidence" or factual errors which are not within the province of a petition for review on *certiorari* under Rule 45. The Court had already explained in *Batistis v. People*^[11] that:

Pursuant to Section 3, Rule 122, and Section 9, Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua*, or life imprisonment, is by petition for review on *certiorari*.

A petition for review on *certiorari* raises only questions of law. Sec. 1, Rule 45, *Rules of Court*, explicitly so provides, *viz*:

Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the