

FIRST DIVISION

[G.R. No. 198400, October 07, 2013]

**FE ABELLA Y PERPETUA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] from the Decision^[2] and Resolution^[3] dated October 26, 2010 and August 11, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. CR No. 00336-MIN affirming with modifications the conviction^[4] by the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 39 of Fe Abella y Perpetua (petitioner) for the crime of frustrated homicide committed against his younger brother, Benigno Abella (Benigno). The RTC sentenced the petitioner to suffer an indeterminate penalty of six (6) years and one (1) day to eight (8) years of *prision mayor* as minimum, to ten (10) years and one (1) day to twelve (12) years of *prision mayor* as maximum, and to pay Benigno P100,000.00 as consequential damages, P10,000.00 for the medical expenses he incurred, plus the costs of suit.^[5] The CA concurred with the RTC's factual findings. However, the CA modified the penalty imposed to six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period as maximum. The CA also deleted the RTC's award in favor of Benigno of (a) P10,000.00 as actual damages corresponding to the medical expenses allegedly incurred; and (b) P100,000.00 as consequential damages. In lieu of the preceding, the CA ordered the petitioner to pay Benigno P30,000.00 as moral damages and P10,000.00 as temperate damages.^[6]

Antecedent Facts

On October 7, 1998, the petitioner, who at times worked as a farmer, baker and triscad driver, was charged with frustrated homicide in an Information^[7] which reads:

That on or about September 6, 1998, at 11:00 o'clock in the evening, more or less, at Sitio Puli, Canitoan, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, did then and there wilfully, unlawfully and feloniously and with intent to kill, attack, assault, harm and hack one, BENIGNO ABELLA y PERPETUA, with the use of a scythe, hitting the latter's neck, thereby inflicting the injury described below, to wit:

- hacking wound left lateral aspect neck; and
- incised wound left hand dorsal aspect

thus performing all the acts of execution which would produce the crime of homicide as a consequence, but nevertheless, did not produce it by reason of some cause or causes independent of the will of the accused, that is the timely and able intervention of the medical attendance rendered to the said victim.

Contrary to Article 249 in relation to 250 of the RPC.^[8]

After the Information was filed, the petitioner remained at large and was only arrested by agents of the National Bureau of Investigation on October 7, 2002.^[9]

During the arraignment, the petitioner pleaded not guilty to the crime charged. Pre-trial and trial thus proceeded.

The Prosecution offered the testimonies of: (a) Benigno;^[10] (b) Amelita Abella^[11] (Amelita), Benigno's wife; (c) Alejandro Tayrus^[12] (Alejandro), with whom the petitioner had a quarrel; and (d) Dr. Roberto Ardiente^[13] (Dr. Ardiente), a surgeon from J.R. Borja Memorial Hospital, Cagayan de Oro City, who rendered medical assistance to Benigno after the latter was hacked by the petitioner.

The Prosecution evidence established that on September 6, 1998, at around 11:00 p.m., Benigno was watching television in his house. A certain Roger Laranjo arrived and asked Benigno to pacify the petitioner, who was stirring trouble in a nearby store. Benigno and Amelita found the petitioner fighting with Alejandro and a certain Dionisio Ybañes (Dionisio). Benigno was able to convince the petitioner to go home. Benigno and Amelita followed suit and along the way, they dropped by the houses of Alejandro and Dionisio to apologize for the petitioner's conduct.

Benigno and Amelita were in Alejandro's house when the petitioner arrived bringing with him two scythes, one in each of his hands. Benigno instructed Alejandro and Dionisio to run away and the latter two complied. The petitioner wanted to enter Alejandro's house, but Benigno blocked his way and asked him not to proceed. The petitioner then pointed the scythe, which he held in his left hand, in the direction of Benigno's stomach, while the scythe in the right hand was used to hack the latter's neck once.^[14] Benigno fell to the ground and was immediately taken to the hospital^[15] while the petitioner ran to chase Alejandro.^[16] Benigno incurred an expense of more than P10,000.00 for hospitalization, but lost the receipts of his bills.^[17] He further claimed that after the hacking incident, he could no longer move his left hand and was thus deprived of his capacity to earn a living as a carpenter.^[18]

Dr. Ardiente testified that Benigno sustained: (a) a "hacking wound left lateral aspect neck 11 cm"; and (b) an "incised wound left hand dorsal aspect 4 cm".^[19] Benigno was initially confined in the hospital on September 6, 1998 and was discharged on September 23, 1998.^[20] From Dr. Ardiente's recollection, since the scythe used in the hacking was not sterile, complications and infections could have developed from the big and open wounds sustained by Benigno, but fortunately did not.^[21]

The defense offered the testimonies of: (a) the petitioner;^[22] (b) Fernando Fernandez^[23] (Fernando), a friend of the petitioner; and (c) Urbano Cabag^[24] (Urbano).

The petitioner relied on denial and *alibi* as defenses. He claimed that from September 2, 1998 to October 2002, he and his family resided in Buenavista, Agusan del Norte. *Sitio* Puli, Canitoan, Cagayan de Oro City, where the hacking incident occurred, is about four (4) hours drive away.

Fernando testified that on September 6, 1998, he saw the petitioner gathering woods to make a hut.^[25] Later in the evening, at around 5:00 p.m., Urbano spotted the petitioner drinking *tuba* in the store of Clarita Perpetua.^[26]

The RTC Ruling

On July 13, 2006, the RTC convicted the petitioner of the crime charged. The *fallo* of the Judgment^[27] reads:

WHEREFORE, in view of the foregoing and finding the evidence presented by the prosecution sufficient to prove the guilt of the [petitioner] beyond reasonable doubt, judgment is rendered finding [petitioner] Fe Abella **GUILTY** beyond reasonable doubt of the crime of Frustrated Homicide as defined and penalized by Article 249 in relation to Article 50 and Art. 6 of the Revised Penal Code. Accordingly, [petitioner] Fe Abella is hereby sentenced to suffer an indeterminate penalty of Six (6) years and One (1) day to Eight (8) years of prision mayor as minimum to Ten (10) years and One (1) day to Twelve (12) years of prision mayor as maximum; to indemnify offended-party complainant Benigno Abella the sum of Ten Thousand ([P]10,000.00) Pesos for the medical expenses incurred; to pay the sum of ONE HUNDRED THOUSAND ([P]100,000.00) PESOS as consequential damages and to pay the costs.

SO ORDERED.^[28]

The RTC found the petitioner's defenses of *alibi* and denial as weak. No disinterested witnesses were presented to corroborate the petitioner's claim that he was nowhere at the scene of the hacking incident on September 6, 1998. Fernando and Urbano's testimonies were riddled with inconsistencies. The RTC accorded more credence to the averments of the prosecution witnesses, who, without any ill motives to testify against the petitioner, positively, categorically and consistently pointed at the latter as the perpetrator of the crime. Besides, medical records show that Benigno sustained a wound in his neck and his scar was visible when he testified during the trial.

The RTC awarded P10,000.00 as actual damages to Benigno for the medical expenses he incurred despite the prosecution's failure to offer receipts as evidence. The petitioner was likewise ordered to pay P100,000.00 as consequential damages, but the RTC did not explicitly lay down the basis for the award.

The petitioner then filed an appeal^[29] before the CA primarily anchored on the claim that the prosecution failed to prove by clear and convincing evidence the existence of intent to kill which accompanied the single hacking blow made on Benigno's neck. The petitioner argued that the hacking was merely accidental especially since he had no motive whatsoever which could have impelled him to hurt Benigno, and that the infliction of merely one wound negates intent to kill.

The CA Ruling

On October 26, 2010, the CA rendered the herein assailed Decision^[30] affirming the petitioner's conviction for the crime of frustrated homicide ratiocinating that:

Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; **(c) the nature and number of wounds inflicted on the victim**; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.

Here, the intent to kill was sufficiently proven by the Prosecution. The [petitioner] attacked [Benigno] with deadly weapons, two scythes. [The petitioner's] blow was directed to the neck of Benigno. The attack on the unarmed and unsuspecting Benigno was swift and sudden. The latter had no means, and no time, to defend himself.

Dr. Roberto Ardiente, Jr., who attended and issued the Medical Certificate, testified that Benigno suffered from a hack wound on the left neck, and an incised wound on the left hand palm. He said that the wounds might have been caused by a sharp, pointed and sharp-edged instrument, and may have resulted to death without proper medical attendance. Benigno was hospitalized for about a month because of the injuries. The location of the wound (on the neck) shows the nature and seriousness of the wound suffered by Benigno. It would have caused his death, had it not been for the timely intervention of medical science.^[31] (Citations omitted and emphasis supplied)

However, the CA modified the sentence to "imprisonment of six (6) months and one (1) day to six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum."^[32] The CA explained that:

Article 249 of the *Revised Penal Code* provides that the penalty for the crime of consummated homicide is *reclusion temporal*, or twelve (12) years and one (1) day to twenty (20) years. Under Article 50 of the same Code, the penalty for a frustrated crime is one degree lower than that prescribed by law. Thus, frustrated homicide is punishable by *prision mayor*, or six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, absent any mitigating or aggravating circumstances, the maximum of the indeterminate penalty should be taken from the medium period of *prision mayor*. To determine the

minimum of the indeterminate penalty, *prision mayor* should be reduced by one degree, which is *prision correccional*, with a range of six (6) months and one (1) day to six (6) years. The minimum of the indeterminate penalty may be taken from the full range of *prision correccional*.^[33] (Citation omitted)

The CA also deleted the RTC's order for the payment of actual and consequential damages as there were no competent proofs to justify the awards. The CA instead ruled that Benigno is entitled to P30,000.00 as moral damages and P10,000.00 as temperate damages,^[34] the latter being awarded when some pecuniary loss has been incurred, but the amount cannot be proven with certainty.^[35]

Issue

Hence, the instant Petition for Review on *Certiorari*^[36] anchored on the issue of whether or not the RTC and the CA erred in rendering judgments which are not in accordance with law and applicable jurisprudence and which if not corrected, will cause grave injustice and irreparable damage to the petitioner.^[37]

In support thereof, the petitioner avers that the courts *a quo* failed to appreciate relevant facts, which if considered, would justify either his acquittal or the downgrading of his conviction to less serious physical injuries. The petitioner points out that after the single hacking blow was delivered, he ran after Alejandro and Dionisio leaving Benigno behind. Had there been an intent to kill on his part, the petitioner could have inflicted more wounds since at that time, he had two scythes in his hands. Further, the CA erred in finding that the hacking blow was sudden and unexpected, providing Benigno with no opportunity to defend himself. Benigno saw the petitioner arriving with weapons on hand. Benigno could not have been unaware of the danger facing him, but he knew that the petitioner had no intent to hurt him. Benigno thus approached the petitioner, but in the process, the former was accidentally hit with the latter's scythe.

The petitioner also cites *Pentecostes, Jr. v. People*^[38] where this Court found the downgrading of a conviction from attempted murder to physical injuries as proper considering that homicidal intent was absent when the accused shot the victim once and did not hit a vital part of the latter's body.^[39]

Further, as per Dr. Ardiente's testimony, no complications resulted from Benigno's hacking wound in the neck and incised wound in the hand. Such being the case, death could not have resulted. The neck wound was not "so extensive because it [did] not involve [a] big blood vessel on its vital structure" while the incised wound in the hand, which only required cleansing and suturing, merely left a slight scarring.^[40] Besides, Benigno was only confined for seventeen (17) days at the hospital and the injuries he sustained were in the nature of less serious ones.

In its Comment,^[41] the Office of the Solicitor General (OSG) seeks the dismissal of the instant petition. The OSG stresses that the petitioner raises factual issues, which call for a re-calibration of evidence, hence, outside the ambit of a petition filed under Rule 45 of the Rules of Court.