

FIRST DIVISION

[G.R. No. 199579, December 10, 2012]

**RAMON JOSUE Y GONZALES, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

REYES, J.:

Before the Court is a Petition for Review on *Certiorari* filed by petitioner Ramon Josue y Gonzales (Josue) to assail the Decision^[1] dated June 30, 2011 and Resolution^[2] dated December 1, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 33180.

The petitioner was charged with the crime of frustrated homicide before the Regional Trial Court (RTC) of Manila, via an information that reads:

That on or about May 1, 2004, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and use personal violence upon the person of ARMANDO MACARIO y PINEDA a.k.a. BOYET ORA, by then and there shooting the said Armando Macario y Pineda a.k.a. Boyet Ora several times with a cal. 45 pistol hitting him on the different parts of his body, 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 the said ARMANDO MACARIO y PINEDA a.k.a. BOYET ORA which prevented his death thereafter.

Contrary to law.^[3]

The case was docketed as Crim. Case No. 05-236299 and raffled to Branch 40 of the RTC. Upon arraignment, the petitioner entered a plea of "not guilty". After pre-trial, trial on the merits ensued.

The witnesses for the prosecution were: (1) victim Armando Macario y Pineda (Macario); (2) Dr. Casimiro Tiongson, Jr. (Dr. Tiongson), Chief Surgical Resident of Chinese General Hospital; (3) Dr. Edith Calalang (Dr. Calalang), a radiologist; (4) Ariel Villanueva, an eyewitness to the crime; and (5) Josielyn Macario, wife of the victim. The prosecution presented the following account:

On May 1, 2004, at around 11:15 in the evening, Macario, a *barangay tanod*, was buying medicine from a store near the petitioner's residence in Barrio Obrero, Tondo, Manila when he saw the petitioner going towards him, while shouting to ask

him why he had painted the petitioner's vehicle. Macario denied the petitioner's accusation, but petitioner still pointed and shot his gun at Macario. The gunshots fired by the petitioner hit Macario's elbow and fingers. As the unarmed Macario tried to flee from his assailant, the petitioner still fired his gun at him, causing him to sustain a gunshot wound at his back. Macario was then rushed to the Chinese General Hospital for medical treatment.

Dr. Tiongson confirmed that Macario sustained three (3) gunshot wounds: (1) one on his right hand, (2) one on his left elbow, and (3) one indicating a bullet's entry point at the posterior of the chest, exiting at the anterior line. Dr. Calalang took note of the tiny metallic foreign bodies found in Macario's x-ray results, which confirmed that the wounds were caused by gunshots. Further, she said that the victim's injuries were fatal, if not medically attended to. Macario incurred medical expenses for his treatments.

For his defense, the petitioner declared to have merely acted in self-defense. He claimed that on the evening of May 1, 2004, he, together with his son Rafael, was watching a television program when they heard a sound indicating that the hood of his jeepney was being opened. He then went to the place where his jeepney was parked, armed with a .45 caliber pistol tucked to his waist. There he saw Macario, together with Eduardo Matias and Richard Akong, in the act of removing the locks of his vehicle's battery. When the petitioner sought the attention of Macario's group, Macario pointed his .38 caliber gun at the petitioner and pulled its trigger, but the gun jammed and failed to fire. The petitioner then got his gun and used it to fire at Macario, who was hit in the upper arm. Macario again tried to use his gun, but it still jammed then fell on the ground. As Macario reached down for the gun, the petitioner fired at him once more, hitting him at the back. When Macario still tried to fire his gun, the petitioner fired at him for the third time, hitting his hand and causing Macario to drop his gun. The petitioner got Macario's gun and kept it in his residence.

The petitioner's son, Rafael Josue, testified in court to corroborate his father's testimony.

SPO4 Axelito Palmero (SPO4 Palmero) also testified for the defense, declaring that on May 26, 2004, he received from Josue a .38 caliber revolver that allegedly belonged to Macario.

On October 22, 2009, the RTC rendered its Decision^[4] finding the petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It gave full credit to the testimony of the prosecution witnesses, further noting that the defense had failed to prove that the .38 caliber revolver that was turned over to SPO4 Palmero actually belonged to Macario. The dispositive portion of the RTC Decision reads:

WHEREFORE, accused **RAMON JOSUE y GONZALES** is found guilty beyond reasonable doubt of Frustrated Homicide without any aggravating or mitigating circumstances to vary the penalty imposable. Applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum.

Accused Ramon Josue y Gonzales is hereby ordered to indemnify the victim, Armando Macario y Pineda, the sum of [P]32,214.25 for hospitalization and medicine expenses as actual damages.

The accused's bail is deemed cancelled. Bondsman is ordered to surrender the accused to this Court for execution of the final judgment.

SO ORDERED.^[5]

Unsatisfied, the petitioner appealed from the RTC's decision to the CA, which affirmed the rulings of the RTC and thus, dismissed the appeal.

Hence, the present petition. The petitioner assails the CA's dismissal of the appeal, arguing that the prosecution had failed to overthrow the constitutional presumption of innocence in his favor.

We deny the petition.

At the outset, we emphasize that since the petitioner seeks this Court's review of his case through a petition for review under Rule 45 of the Rules of Court, only questions of law shall be addressed by the Court, barring any question that pertains to factual issues on the crime's commission. The general rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions as when the trial court's judgment is not supported by sufficient evidence or is premised on a misapprehension of facts.^[6]

Upon review, the Court has determined that the present case does not fall under any of the exceptions. In resolving the present petition, we then defer to the factual findings made by the trial court, as affirmed by the CA when the case was brought before it on appeal. The Court has, after all, consistently ruled that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. Factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.^[7]

As against the foregoing parameters, the Court finds, and so holds, that both the trial and appellate courts have correctly ruled on the petitioner's culpability for the crime of frustrated homicide, which has the following for its elements:

- (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault;
- (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and
- (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present.