

FIRST DIVISION

[G.R. No. 188562, August 17, 2011]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL LANUZA Y BAGAOISAN, ACCUSED-APPELLANT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On appeal is the Decision^[1] dated April 27, 2009 of the Court of Appeals in CA-G.R. CR. No. 31406, which affirmed the Judgment^[2] dated January 30, 2008 of Branch 14 of the Regional Trial Court (RTC) of Laoag City in Criminal Case No. 13388-14, finding accused-appellant Rodel Bagaoisan Lanuza guilty beyond reasonable doubt of the crime of frustrated homicide. The RTC, taking into consideration the mitigating circumstance of voluntary surrender and applying the indeterminate sentence law, sentenced accused-appellant to imprisonment from four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum.

The criminal information, charging accused-appellant with the crime of frustrated homicide, as defined and penalized under Article 249 in relation to Article 6 of the Revised Penal Code, reads:

That on or about the 1st day of April 2007 in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot by the use of a 12 gauge shotgun, Joel G. Butay, performing all the acts of execution which would produce the crime of homicide as a consequence, but which nevertheless did not produce it by reason of causes independent of the will of the accused and that is the timely medical attention extended to said Joel G. Butay.^[3]

On July 11, 2007, accused-appellant was arraigned and he pleaded not guilty to the criminal charge.^[4]

During the preliminary conference, the parties admitted, among other facts, that accused-appellant shot private complainant Joel G. Butay; that as a result of the shooting, private complainant sustained a gunshot wound which caused his confinement at the provincial hospital for 12 days; that accused-appellant voluntarily surrendered to the Philippine National Police (PNP), Laoag City, surrendering a shotgun, five live bullets, and one empty shell; and that private complainant suffered actual damages amounting to P70,000.00. Accused-appellant, however, asserted that the shooting was accidental, as contemplated under Article 12(4) of the Revised Penal Code, which exempts from criminal liability "any person who, while performing a lawful act with due care, causes injury by mere accident

without fault or intention of causing it." Private complainant, however, insisted that accused-appellant pulled the trigger of the gun with the intention of killing him.

In view of accused-appellant's assertion of an exempting circumstance in his favor, the RTC, in its Pre-Trial Order^[5] dated July 26, 2007, ordered a reverse trial of the case.

Thereafter, trial ensued.

Accused-appellant testified on November 21, 2007,^[6] while private complainant testified on November 29, 2007.^[7] The RTC summarized the evidence presented by the parties as follows:

From the defense evidence, it appears that the incident subject of this case took place at the basement of the BIR office in Laoag City in the morning of April 1, 2007, while the private complainant as outgoing security guard was handing his shotgun to the accused, the incoming security guard. Because the accused did not report for duty on the scheduled time, the private complainant reprimanded him. After the accused had affixed his signature on the pertinent portion of the logbook enumerating the items turned-over to him by the outgoing security guard, the private complainant handed to him their service firearm, a shotgun. Allegedly, the private complainant held it with both hands, with the muzzle pointed at him and the butt towards the accused. At that moment, the accused gripped the firearm with one hand, with his pointer finger inside the trigger guard and on top of the trigger itself. In his affidavit which was adopted as part of his direct testimony, the accused stated that "I immediately held opposite the muzzle of the gun where the trigger is, I almost slip with it while in the act of gripping and then immediately the gun went off; the incident happened so fast that I was stunned then realized that I accidentally shot my fellow guard." The private complainant was hit on the left side of his waist. With the private complainant bleeding and unconscious, the accused went to the telephone upstairs to call for an ambulance. There, however, the accused heard the sound of a motorcycle leaving the BIR premises. He went down and discovered that the private complainant was no longer at the place where he had left him. The accused, thereafter, proceeded to the Laoag City police station and surrendered.

The prosecution presented a different scenario. According to the private complainant, he did not actually hand the shotgun to the accused. Instead, he merely placed it, together with one bullet, on top of the security guard's table. Although he was turning over six bullets to the accused, the private complainant asserted that the five others were inside a drawer on the security guard's table at their office upstairs. While the private complainant who was about to go home was asking why the accused did not report on his scheduled shift, the latter got the shotgun, placed the ammunition inside it, and shot him. The private complainant fell down on his buttocks. The accused went near the private complainant and pulled the trigger a second time, but the

shotgun did not fire and the private complainant heard only a click. The accused ran upstairs, and the private complainant crawled to his motorcycle and drove it himself to the provincial hospital. The medical certificate issued by his attending physician, Dr. Frankie Pete Albano, shows that the private complainant sustained the following:

"- Gunshot wound 3cm. in diameter left lumbar area thru and thru left paravertebral area

- Fractured spleen / Hemoperitoneum 100 cc thru and thru left kidney (2 points)."

The medical certificate also indicated that exploratory laparotomy was conducted on the private complainant, his spleen was repaired, and a drain was placed on his left perirenal area.^[8]

At the end of the trial, the RTC promulgated its Judgment dated January 30, 2008, finding accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the said Judgment reads:

WHEREFORE, the accused RODEL LANUZA y BAGAOISAN is hereby found GUILTY beyond reasonable doubt of frustrated homicide under Article 249 in relation to Article 6 of the Revised Penal Code and, with the mitigating circumstance of voluntary surrender, is hereby sentenced to an indeterminate penalty ranging from four years of prision correccional as minimum to seven years of prision mayor as maximum. He is further ordered to pay the private complainant P70,000.00 as actual damages and P25,000.00 as moral damages. Costs against the accused.^[9]

Accused-appellant filed his Appellant's Brief^[10] before the Court of Appeals on July 23, 2008 to assail the foregoing judgment of conviction rendered against him by the RTC.

In his Brief, accused-appellant maintained that he shot private complainant by mere accident. In the event the Court of Appeals is not convinced that accused-appellant acted with due care, one of the elements for the exempting circumstance of accident under Article 12(4) of the Revised Penal Code, accused-appellant urged the appellate court to impose upon him a sentence in accord with Article 67 of the same Code, which specifically provided for the "[p]enalty to be imposed when not all the requisites of exemption of the fourth circumstance of Article 12 are present."

In the alternative, accused-appellant contended in his Brief that, at the most, he could only be held accountable for the crime of physical injuries in the absence of proof of his intent to kill private complainant.

Accused-appellant argued that if he really had the intent to kill, he could have shot private complainant with precision. Accused-appellant claimed that private complainant's version of events immediately after the latter was shot was incredible. By private complainant's own admission, accused-appellant did not say

anything to him, did not hit him with the gun, and did not kick him while he sat on the floor after being shot. Private complainant even pleaded for help from accused-appellant after sustaining the gunshot wound.

Accused-appellant further raised doubts as to the credibility of private complainant given the inconsistencies in the latter's testimony. The private complainant allegedly testified that he placed the shotgun and one bullet on top of the security guard's table for turn-over to accused-appellant. The five other bullets for the shotgun were in a drawer in another security guard's table on the upper floor. Private complaint claimed to have seen accused-appellant load one bullet in the shotgun. However, during cross-examination, private complainant said that all six bullets for the shotgun could not be seen during the turn-over. Thus, private complainant could not have seen accused-appellant load any bullet into the shotgun. Private complainant also initially narrated that he was about to board his motorcycle when he was shot by accused-appellant; yet, when cross-examined, private complainant stated that he had already boarded his motorcycle at the time he was shot.

In its Brief^[11] filed on November 27, 2008, plaintiff-appellee People of the Philippines countered with the following arguments:

I.

ACCUSED-APPELLANT FAILED TO PROVE THAT HE IS ENTITLED TO THE EXEMPTING CIRCUMSTANCE OF ACCIDENT.

II.

THE PROSECUTION PROVED BEYOND REASONABLE DOUBT THAT THE OFFENSE COMMITTED WAS A RESULT OF A DELIBERATE AND INEXCUSABLE ACT.

III.

ACCUSED-APPELLANT WAS CORRECTLY FOUND BY THE TRIAL COURT GUILTY OF THE CRIME OF FRUSTRATED HOMICIDE.^[12]

Upon review of the evidence presented, the Court of Appeals rendered its assailed Decision on April 27, 2009, dismissing accused-appellant's appeal and affirming his conviction for the crime of frustrated homicide, as well as the prison sentence handed down against him by the RTC. The dispositive portion of said Decision reads:

WHEREFORE, the appeal is hereby DISMISSED and the January 30, 2008 Judgment of the Regional Trial Court of Laoag City, Branch 14, in Criminal Case No. 13388-14 finding Rodel Lanuza y Bagaoisan guilty beyond reasonable doubt of the crime of frustrated homicide is AFFIRMED.^[13]

Instead of seeking reconsideration of the aforementioned Court of Appeals decision, accused-appellant filed a Notice of Appeal.^[14] The Court then issued a Resolution^[15] dated August 19, 2009 requiring the parties to submit their respective supplemental briefs, if they so desire. In response to said Resolution, plaintiff-appellee filed a Manifestation^[16] stating that it was adopting its Brief before the Court of Appeals since there was no new issue raised in accused-appellant's appeal before this Court; while accused-appellant did not file any pleading at all.

The Court sustains the verdict of guilt against accused-appellant.

The elements of frustrated homicide are: (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, as amended, is present.^[17] Evidence to prove intent to kill in crimes against persons may consist, *inter alia*, of the means used by the malefactors; the nature, location and number of wounds sustained by the victim; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; the circumstances under which the crime was committed; and the motive of the accused.^[18] These elements are extant in the case at bar.

The prosecution has satisfactorily proven that accused-appellant intended to kill private complainant based on the method of attack, the weapon used, and the location of the gunshot wound. Accused-appellant shot private complainant with a shotgun at close range hitting the latter's abdomen. Resultantly, private complainant sustained a wound that could have caused his death if not for the timely medical attention given to him. As aptly elaborated by the RTC:

[T]he medical certificate shows that the gunshot hit the body of the private complainant, causing injuries to his spleen and left kidney. In fact, the 'hemopentoneum' referred to therein means that there was bleeding inside his abdomen and that 100 cc of blood was taken from it. As a result, the attending physician had to operate on him, repair his spleen and place a drain in the vicinity of the kidney. Moreover, the private complainant had to be confined at the provincial hospital for twelve days, a fact underscoring the gravity of his condition. Clearly, one does not have to be a physician to realize that a person would die if the said injuries would remain untreated. Accordingly, the accused must be deemed to have performed the last act necessary to kill the private complainant.^[19]

As both the RTC and the Court of Appeals observed, the version of events as recounted by the private complainant was highly credible, while that narrated by accused-appellant strains human credulity.

The RTC did not give probative weight to accused-appellant's testimony that his shooting of private complainant was completely accidental, for the following