

EN BANC

[G.R. No. 182748, December 13, 2011]

ARNEL COLINARES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

ABAD, J.:

This case is about a) the need, when invoking self-defense, to prove all that it takes; b) what distinguishes frustrated homicide from attempted homicide; and c) when an accused who appeals may still apply for probation on remand of the case to the trial court.

The Facts and the Case

The public prosecutor of Camarines Sur charged the accused Arnel Colinares (Arnel) with frustrated homicide before the Regional Trial Court (RTC) of San Jose, Camarines Sur, in Criminal Case T-2213.^[1]

Complainant Rufino P. Buena (Rufino) testified that at around 7:00 in the evening on June 25, 2000, he and Jesus Paulite (Jesus) went out to buy cigarettes at a nearby store. On their way, Jesus took a leak by the roadside with Rufino waiting nearby. From nowhere, Arnel sneaked behind and struck Rufino twice on the head with a huge stone, about 15 ½ inches in diameter. Rufino fell unconscious as Jesus fled.

Ananias Jallores (Ananias) testified that he was walking home when he saw Rufino lying by the roadside. Ananias tried to help but someone struck him with something hard on the right temple, knocking him out. He later learned that Arnel had hit him.

Paciano Alano (Paciano) testified that he saw the whole incident since he happened to be smoking outside his house. He sought the help of a *barangay tanod* and they brought Rufino to the hospital.

Dr. Albert Belleza issued a Medico-Legal Certificate^[2] showing that Rufino suffered two lacerated wounds on the forehead, along the hairline area. The doctor testified that these injuries were serious and potentially fatal but Rufino chose to go home after initial treatment.

The defense presented Arnel and Diomedes Paulite (Diomedes). Arnel claimed self-defense. He testified that he was on his way home that evening when he met Rufino, Jesus, and Ananias who were all quite drunk. Arnel asked Rufino where he supposed the Mayor of Tigaon was but, rather than reply, Rufino pushed him, causing his fall. Jesus and Ananias then boxed Arnel several times on the back. Rufino tried to stab Arnel but missed. The latter picked up a stone and, defending himself, struck Rufino on the head with it. When Ananias saw this, he charged

towards Arnel and tried to stab him with a gaff. Arnel was able to avoid the attack and hit Ananias with the same stone. Arnel then fled and hid in his sister's house. On September 4, 2000, he voluntarily surrendered at the Tigaon Municipal Police Station.

Diomedes testified that he, Rufino, Jesus, and Ananias attended a pre-wedding party on the night of the incident. His three companions were all drunk. On his way home, Diomedes saw the three engaged in heated argument with Arnel.

On July 1, 2005 the RTC rendered judgment, finding Arnel guilty beyond reasonable doubt of frustrated homicide and sentenced him to suffer imprisonment from two years and four months of *prision correccional*, as minimum, to six years and one day of *prision mayor*, as maximum. Since the maximum probationable imprisonment under the law was only up to six years, Arnel did not qualify for probation.

Arnel appealed to the Court of Appeals (CA), invoking self-defense and, alternatively, seeking conviction for the lesser crime of attempted homicide with the consequent reduction of the penalty imposed on him. The CA entirely affirmed the RTC decision but deleted the award for lost income in the absence of evidence to support it.^[3] Not satisfied, Arnel comes to this Court on petition for review.

In the course of its deliberation on the case, the Court required Arnel and the Solicitor General to submit their respective positions on whether or not, assuming Arnel committed only the lesser crime of attempted homicide with its imposable penalty of imprisonment of four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum, he could still apply for probation upon remand of the case to the trial court.

Both complied with Arnel taking the position that he should be entitled to apply for probation in case the Court metes out a new penalty on him that makes his offense probationable. The language and spirit of the probation law warrants such a stand. The Solicitor General, on the other hand, argues that under the Probation Law no application for probation can be entertained once the accused has perfected his appeal from the judgment of conviction.

The Issues Presented

The case essentially presents three issues:

1. Whether or not Arnel acted in self-defense when he struck Rufino on the head with a stone;
2. Assuming he did not act in self-defense, whether or not Arnel is guilty of frustrated homicide; and
3. Given a finding that Arnel is entitled to conviction for a lower offense and a reduced probationable penalty, whether or not he may still apply for probation on remand of the case to the trial court.

The Court's Rulings

One. Arnel claims that Rufino, Jesus, and Ananias attacked him first and that he merely acted in self-defense when he hit Rufino back with a stone.

When the accused invokes self-defense, he bears the burden of showing that he was legally justified in killing the victim or inflicting injury to him. The accused must establish the elements of self-defense by clear and convincing evidence. When successful, the otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused.^[4]

In homicide, whether consummated, frustrated, or attempted, self-defense requires (1) that the person whom the offender killed or injured committed unlawful aggression; (2) that the offender employed means that is reasonably necessary to prevent or repel the unlawful aggression; and (3) that the person defending himself did not act with sufficient provocation.^[5]

If the victim did not commit unlawful aggression against the accused, the latter has nothing to prevent or repel and the other two requisites of self-defense would have no basis for being appreciated. Unlawful aggression contemplates an actual, sudden, and unexpected attack or an imminent danger of such attack. A mere threatening or intimidating attitude is not enough. The victim must attack the accused with actual physical force or with a weapon.^[6]

Here, the lower courts found that Arnel failed to prove the element of unlawful aggression. He alone testified that Jesus and Ananias rained fist blows on him and that Rufino and Ananias tried to stab him. No one corroborated Arnel's testimony that it was Rufino who started it. Arnel's only other witness, Diomedes, merely testified that he saw those involved having a heated argument in the middle of the street. Arnel did not submit any medical certificate to prove his point that he suffered injuries in the hands of Rufino and his companions.^[7]

In contrast, the three witnesses--Jesus, Paciano, and Ananias--testified that Arnel was the aggressor. Although their versions were mottled with inconsistencies, these do not detract from their core story. The witnesses were one in what Arnel did and when and how he did it. Compared to Arnel's testimony, the prosecution's version is more believable and consistent with reality, hence deserving credence.^[8]

Two. But given that Arnel, the accused, was indeed the aggressor, would he be liable for frustrated homicide when the wounds he inflicted on Rufino, his victim, were not fatal and could not have resulted in death as in fact it did not?

The main element of attempted or frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent.^[9] And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim.^[10]

Here, Arnel struck Rufino on the head with a huge stone. The blow was so forceful that it knocked Rufino out. Considering the great size of his weapon, the impact it produced, and the location of the wounds that Arnel inflicted on his victim, the Court is convinced that he intended to kill him.

The Court is inclined, however, to hold Arnel guilty only of attempted, not frustrated, homicide. In *Palaganas v. People*,^[11] we ruled that when the accused intended to

kill his victim, as shown by his use of a deadly weapon and the wounds he inflicted, but the victim did not die because of timely medical assistance, the crime is frustrated murder or frustrated homicide. If the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide.

Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds. While Dr. Belleza testified that "head injuries are always very serious,"^[12] he could not categorically say that Rufino's wounds in this case were "fatal." Thus:

Q: Doctor, all the injuries in the head are fatal?

A: No, all traumatic injuries are potentially treated.

Q: But in the case of the victim when you treated him the wounds actually are not fatal on that very day?

A: I could not say, with the treatment we did, prevent from becoming fatal. But on that case the patient preferred to go home at that time.

Q: The findings also indicated in the medical certificate only refers to the length of the wound not the depth of the wound?

A: When you say lacerated wound, the entire length of the layer of scalp.

Q: So you could not find out any abrasion?

A: It is different laceration and abrasion so once the skin is broken up the label of the frontal lobe, we always call it lacerated wound, but in that kind of wound, we did not measure the depth.^[13]

Indeed, Rufino had two lacerations on his forehead but there was no indication that his skull incurred fracture or that he bled internally as a result of the pounding of his head. The wounds were not so deep, they merely required suturing, and were estimated to heal in seven or eight days. Dr. Belleza further testified:

Q: So, in the medical certificate the wounds will not require surgery?

A: Yes, Madam.

Q: The injuries are slight?

A: 7 to 8 days long, what we are looking is not much, we give antibiotics and antitetanus - the problem the contusion that occurred in the brain.

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Q: What medical intervention that you undertake?

A: We give antibiotics, Your Honor, antitetanus and suturing the wounds.

Q: For how many days did he stay in the hospital?

A: Head injury at least be observed within 24 hours, but some of them would rather go home and then come back.

Q: So the patient did not stay 24 hours in the hospital?

A: No, Your Honor.

Q: Did he come back to you after 24 hours?

A: I am not sure when he came back for follow-up.^[14]

Taken in its entirety, there is a dearth of medical evidence on record to support the prosecution's claim that Rufino would have died without timely medical intervention. Thus, the Court finds Arnel liable only for attempted homicide and entitled to the mitigating circumstance of voluntary surrender.

Three. Ordinarily, Arnel would no longer be entitled to apply for probation, he having appealed from the judgment of the RTC convicting him for frustrated homicide.

But, the Court finds Arnel guilty only of the lesser crime of attempted homicide and holds that the maximum of the penalty imposed on him should be lowered to imprisonment of four months of *arresto mayor*, as minimum, to two years and four months of *prision correccional*, as maximum. With this new penalty, it would be but fair to allow him the right to apply for probation upon remand of the case to the RTC.

Some in the Court disagrees. They contend that probation is a mere privilege granted by the state only to qualified convicted offenders. Section 4 of the probation law (PD 968) provides: "That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction."^[15] Since Arnel appealed his conviction for frustrated homicide, he should be deemed permanently disqualified from applying for probation.

But, firstly, while it is true that probation is a mere privilege, the point is not that Arnel has the right to such privilege; he certainly does not have. What he has is the right to apply for that privilege. The Court finds that his maximum jail term should only be 2 years and 4 months. If the Court allows him to apply for probation because of the lowered penalty, it is still up to the trial judge to decide whether or not to grant him the privilege of probation, taking into account the full circumstances of his case.

Secondly, it is true that under the probation law the accused who appeals "from the judgment of conviction" is disqualified from availing himself of the benefits of probation. But, as it happens, two judgments of conviction have been meted out to Arnel: one, a conviction for frustrated homicide by the regional trial court, now set aside; and, two, a conviction for attempted homicide by the Supreme Court.

If the Court chooses to go by the dissenting opinion's hard position, it will apply the probation law on Arnel based on the trial court's annulled judgment against him. He will not be entitled to probation because of the severe penalty that such judgment