

THIRD DIVISION

[G.R. No. 188602, February 04, 2010]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FORD GUTIERREZ
Y DIMAANO, APPELLANT.**

DECISION

NACHURA, J.:

On appeal is the March 12, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 02680, which affirmed with modifications the August 7, 2006 decision^[2] of the Regional Trial Court (RTC) of Makati City, Branch 62, in Criminal Case Nos. 03-3639, 03-3640, and 03-3641-43, finding appellant Ford Gutierrez y Dimaano (appellant) guilty beyond reasonable doubt of murder, frustrated murder and three (3) counts of attempted murder.

On August 15, 2003, five (5) separate Informations for murder, frustrated murder and three (3) counts of attempted murder were filed against appellant. The accusatory portions of the Informations read:

Criminal Case No. 03-3639

For: Murder

That on or about the 17th day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with [a] gun, by means of treachery and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards the person of LEO SALVADOR REGIS, thereby hitting him and inflicting mortal wounds which caused his death.^[3]

Criminal Case No. 03-3640

For: Frustrated Murder

That on or about the 17th day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with [a] gun, by means of treachery and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot one ALEXIS DALIT y BALOSBALOS hitting him on the arm, thus performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of a cause independent of the will of the accused, that is due to the timely and able medical attendance rendered to the said ALEXIS DALIT y BALOSBALOS

which prevented his death.^[4]

Criminal Case No. 03-3641

For: Attempted Murder

That on or about the 17th day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Jaypee S. Boneo, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Jaypee S. Boneo.^[5]

Criminal Case No. 03-3642

For: Attempted Murder

That on or about the 17th day of May, 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Randy S. Marcelo, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Randy S. Marcelo.^[6]

Criminal Case No. 03-3643

For: Attempted Murder

That on or about the 17th day of May 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery, with intent to kill, did then and there willfully, unlawfully and feloniously fired his gun towards one Jefferson S. Gallemnit, thus commencing the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should produce the crime of Murder by reason of cause or causes other than his own spontaneous desistance, that is due to the fact that he was not able to hit the said Jefferson S. Gallemnit.^[7]

When arraigned, appellant, with the assistance of counsel *de officio*, entered a plea of not guilty to the charges. Trial on the merits then ensued.

The Office of the Solicitor General (OSG) summed up the prosecution's version as follows:

On May 17, 2003 at nine o'clock in the evening, the deceased Leo Salvador Regis, private complainants Randy Marcelo, Jefferson Gallemnit,

Jaypee Boneo and Alexis Dalit were talking to each other in front of the house of the deceased at 477 Narra St., Cembo, Makati City. They noticed the presence of appellant along the street and thought that appellant would just pass by. However, when appellant was two (2) arms length away in front of them, appellant suddenly raised his arm and shot the deceased Regis with a .45 caliber pistol. After he was hit on the chest, Regis said "Aray!," embraced Randy Marcelo who was seated on his left, and fell off his chair to the ground (TSN, June 2, 2004, pp. 8-11, 17-26).

Jefferson Gallemmit, Jaypee Boneo and Alexis Dalit stood from their seats. Appellant fired several shots thereafter, one of which hit Dalit's arm. Boneo and Gallemmit ran up the street while Dalit ran in the opposite direction and hid behind a car. In the meantime, the deceased Leo Salvador Regis and Randy Marcelo were still huddled together at the spot where the deceased fell. Appellant stayed at the same spot where he fired the first shot even after the three ran away. (Ibid., pp. 26-31).

Appellant then pursued Dalit down the street but did not catch him, prompting appellant to say: "Pagnaabutan ko kayo, pagpapatayin ko kayo!" Dalit then sought refuge at BLISS Makati and contacted the police from there (Ibid., pp. 31-34).

The police arrived at the scene after twenty (20) minutes. Dalit was brought to the Ospital ng Makati where his wound was dressed. He was operated on at the Philippine Orthopedic Hospital (Ibid., pp. 34-41). Regis was brought to the Ospital ng Makati by Randy Marcelo where he died that night (TSN, June 22, 2005, p. 14). ^[8]

Appellant for his part asserted self-defense. He testified that:

At around 8 o'clock p.m. of May 17, 2003, he went to an ihaw-ihaw restaurant with live band in Guadalupe in order to relax. After taking two (2) bottles of beer, he decided to go home, took a jeepney ride and alighted in front of a bakery owned by Barangay Captain Leo Magbantay, one hundred twenty (120) meters away from his house. While passing by, he noticed a group of five youngsters who were at the right side of the street. Among them, he only knew Loloy (Jaypee) Boneo, whom he used to babysit when the latter was still young.

While walking, one in the group cursed him and shouted "tang ina mo!" Since he was the only passerby, he stopped and looked at them, but two (2) from the group approached him. He was suddenly boxed by Regis Ado, while Dalit was just beside Ado. When he fell on the ground, Ado continuously beat him, then suddenly, a gun fell from Leo Regis. He immediately got hold of it, and when Leo Regis was supposed to attack him again, he kicked Leo which made him [to fall] down. When he stood up and saw Regis standing up, he fired a shot at him. He continuously fired the gun, which was directed towards the ground so as to warn the others.

Thereafter, he fled the scene, and threw the gun on a vacant lot. Since he did not know what to do, and confused, he took a jeepney going to Pateros, but since, he had no money, he alighted somewhere, and rested. When he finally regained his senses, he went to Cubao and borrowed money from one of their retailers. [9]

Not finding credence in appellant's claim of self-defense, the RTC convicted him of murder, frustrated murder and attempted murder on three (3) counts:

WHEREFORE, in view of the foregoing, finding the accused guilty beyond reasonable doubt of the murder of Leo Salvador Regis, the frustrated murder committed against Alexis B. Dalit, and the three counts of attempted murder committed against Jaypee S. Boneo, Randy S. Marcelo & Jefferson S. Gallemmit, the court hereby imposes the following penalties:

1. in criminal case no. 03-3639 for murder of Leo Salvador E. Regis, the court hereby sentences him to suffer the penalty of imprisonment ***reclusion perpetua***, to pay the heirs of the victim the sum of P50,000.00 as civil indemnity and the amount of Php 102,337.25 as actual damages;
2. in criminal case no. 03-3640 for the frustrated murder committed against Alexis B. Dalit, the [c]ourt hereby sentences him to suffer the penalty of imprisonment of 8 years and 20 days as minimum to 14 years, 10 months and 20 days as maximum and to indemnify the sum of ***Php 22,596.50***, representing the victim's expenses for medical services and medicine;
3. in criminal case no. 03-3641 for the attempted murder committed against Jaypee S. Boneo, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum;
4. in criminal case no. 03-3642 for the attempted murder committed against Randy S. Marcelo, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum;
5. in criminal case no. 03-3643 for the attempted murder committed against Jefferson S. Gallemmit, the court hereby sentences the accused to suffer the penalty of imprisonment of from Two (2) years, Four (4) months and One (1) day of prision correccional, as minimum, to Eight (8) years and One (1) day of prision mayor, as maximum.

SO ORDERED. [10]

Appellant filed an appeal before the CA, assigning in his brief this lone error allegedly committed by the trial court:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED, WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT, BY GIVING WEIGHT AND CREDENCE TO THE CONTRADICTORY TESTIMONIES OF THE PROSECUTION EYEWITNESSES.^[11]

The OSG, on behalf of the People, also filed its brief^[12] with a recommendation for the modifications of the felony and of the award for damages. It asserted that the trial court correctly gave credence to the testimonies of the prosecution witnesses and rejected appellant's claim of self-defense. The OSG insisted that appellant's guilt for murder in Criminal Case No. 03-3639 and attempted murder on three (3) counts in Criminal Case Nos. 03-3641-43 was proven beyond reasonable doubt. However, in Criminal Case No. 03-3640, appellant should be held liable only for attempted murder and not for frustrated murder, since the wound inflicted on Alexis B. Dalit was not life-threatening. The OSG, therefore, prayed that appellant's conviction for frustrated murder be reduced to attempted murder with the corresponding reduction of penalty. Finally, it prayed for modification of the actual damages awarded, and for the grant of moral and exemplary damages to the heirs of Leo Salvador E. Regis.

On March 12, 2009, the CA rendered the assailed Decision, affirming, but with modifications, the RTC decision, viz.:

WHEREFORE, premises considered, the 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case No. 03-3639 for murder is **AFFIRMED** with **MODIFICATION** as to the award of damages. ***The award of actual damages in favor of the heirs of Leo Salvador E. Regis is reduced to P42,337.25. Moral damages of P50,000.00, temperate damages of P10,000.00, and exemplary damages of P10,000.00 are additionally awarded to the heirs of Leo Salvador E. Regis.***

The 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case No. 03-3640 for frustrated murder is **MODIFIED**. ***Accused-appellant Ford D. Gutierrez is found GUILTY of committing the crime of ATTEMPTED MURDER and sentenced to suffer the indeterminate imprisonment of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.*** The award of actual damages in favor of the victim Alexis B. Dalit is **AFFIRMED**.

The 7 August 2006 decision of the Regional Trial Court of Makati City (Branch 62) in Criminal Case Nos. 03-3641, 03-3642 and 03-3643 for attempted murder is **AFFIRMED**.