

THIRD DIVISION

[G.R. No. 167766, April 07, 2010]

ENGR. CARLITO PENTECOSTES, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Assailed before Us is the Decision^[1] of the Court of Appeals (CA), dated February 18, 2005, in CA-G.R. CR. No. 27458, which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 6, in Criminal Case No. VI-984, finding petitioner Engr. Carlito Pentecostes, Jr. guilty of the crime of less serious physical injuries instead of attempted murder, and the Resolution^[3] dated April 19, 2005, denying the motion for reconsideration.

The antecedents are as follows:

On September 2, 1998, Rudy Baclig was drinking with his brother-in-law. After consuming ½ bottle of gin, he left and went to the house of a certain Siababa to buy coffee and sugar. He was accompanied by his four-year-old son. On their way there, a gray automobile coming from the opposite direction passed by them. After a while, he noticed that the vehicle was moving backward towards them. When the car was about two arms' length from where they were, it stopped and he heard the driver of the vehicle call him by his nickname *Parrod*. Rudy came closer, but after taking one step, the driver, which he identified as the petitioner, opened the door and while still in the car drew a gun and shot him once, hitting him just below the left armpit. Rudy immediately ran at the back of the car, while petitioner sped away. After petitioner left, Rudy and his son headed to the seashore. Rudy later went back to the place where he was shot and shouted for help.^[4]

The people who assisted him initially brought him to the Municipal Hall of Gonzaga, Cagayan, where he was interrogated by a policeman who asked him to identify his assailant. He informed the policeman that petitioner was the one who shot him. After he was interrogated, he was later brought to the Don Alfonso Ponce Memorial Hospital at Gonzaga, Cagayan. The following day, he was discharged from the hospital.^[5]

On June 1, 1999, an Information^[6] was filed by the Provincial Prosecutor of Aparri, Cagayan, charging the petitioner of frustrated murder, the pertinent portion of which reads:

That on or about September 2, 1998, in the [M]unicipality of Gonzaga, [P]rovince of Cagayan, and within the jurisdiction of this Honorable

Court, the above-named accused, armed with a gun, with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously assault, attack and shoot one Rudy Baclig, inflicting upon the latter gunshot injuries.

That the accused had performed all the acts of execution which would have produce[d] the crime of Murder as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his own will.

That the same was aggravated by the use of an unlicensed firearm.

CONTRARY TO LAW.

Duly arraigned, petitioner pleaded *Not Guilty* to the crime as charged.^[7]

During the trial, it was established that at the time the incident occurred, petitioner was employed by the National Irrigation Administration (NIA) as Irrigation Superintendent assigned at the Baua River Irrigation System (BRIS). Petitioner vehemently denied any involvement in the incident, alleging that he was in Quezon City at the time the crime was being committed. He contended that he was following-up the funding for one of the projects of NIA in Gonzaga, Cagayan. He insisted that he reported at the NIA Central Office on September 1, 1998 and stayed in Manila until the afternoon of September 4, 1998. To buttress his allegations, the petitioner presented a Certificate of Appearance^[8] issued by Engr. Orlando C. Hondrade, then NIA Deputy Administrator, who testified thru a deposition that he indeed signed the document. Engr. Hondrade testified that he specifically remembered that petitioner personally appeared before him on the 1st and 4th days of September for a duration of 10 to 15 minutes. Petitioner also submitted his daily time record to prove that he was not at their office in Cagayan from the afternoon of August 31, 1998, claiming that he traveled to Quezon City pursuant to a travel authority issued by his superior.^[9]

On February 27, 2003, after presentation of the parties' respective evidence, the RTC rendered a Decision^[10] finding petitioner guilty of the crime of attempted murder. The decretal portion of the Decision reads:

WHEREFORE, the Court finds accused Engr. Carlito Pentecostes, Jr. guilty beyond reasonable doubt as principal of the crime of Attempted Murder and sentences him the penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. Further, the accused is ordered to pay private complainant Rudy Baclig the amount of Two Thousand Pesos (P2,000.00).

SO ORDERED.^[11]

The RTC concluded that Rudy positively identified the petitioner as the one who shot

him – there was sufficient lighting for Rudy to identify the perpetrator and he knew petitioner ever since he attained the age of reason. As to petitioner's defense of alibi, the RTC ratiocinated that when petitioner personally appeared before Engr. Hondrade on September 1, 1998, it would not be impossible for him to immediately return to Gonzaga, Cagayan that afternoon and commit the crime in the evening of September 2, 1998.^[12]

Petitioner then sought recourse before the CA, arguing that the RTC committed serious errors in finding that he was guilty of attempted murder and that the RTC failed to consider the testimonies of his witnesses and the documentary evidence presented in his favor.^[13]

On February 18, 2005, the CA rendered a Decision affirming with modification the decision of the RTC, the dispositive portion of which reads:

WHEREFORE, the Decision of the Regional Trial Court dated 27 February 2003 is **AFFIRMED** with **MODIFICATION** that accused-appellant Pentecostes is only found **GUILTY OF LESS SERIOUS PHYSICAL INJURIES** and is hereby sentenced to suffer imprisonment of six (6) months of *arresto mayor*, there being one aggravating and no mitigating circumstance to offset it.

SO ORDERED.^[14]

In convicting the petitioner to a lesser offence, the CA opined that it was not established that petitioner intended to kill Rudy when he shot him. Petitioner's act of shooting Rudy once was not followed by any other assault or any act which would ensure his death. Considering that petitioner was driving a car, he could have chased Rudy if he really intended to kill the latter, or run him over since Rudy went to the rear of the car. Petitioner's desistance displayed his nonchalance to cause the death of Rudy. Moreover, Rudy only sustained a gunshot wound on the arm, which required only 10 days of medical attendance.^[15]

Not satisfied, petitioner filed a Motion for Reconsideration,^[16] but was denied in a Resolution dated April 9, 2005.

Hence, this petition which raises the following issues:

THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT GIVES CREDENCE TO THE STATEMENT OF THE PRIVATE COMPLAINANT PRESUMING THAT THE PETITIONER-APPELLANT IS THE ASSAILANT ALLEGEDLY DUE TO HIS VOICE AND HIS ALLEGED OWNERSHIP OF THE VEHICLE, AND CONSIDERING THAT THE PRIVATE COMPLAINANT WAS THEN INTOXICATED, AND THE CRIME WAS COMMITTED AT NIGHTTIME, SUCH CONCLUSION IS ENTIRELY GROUNDED ON SPECULATIONS, SURMISES AND CONJECTURES.

THE HONORABLE FOURTEENTH DIVISION COMMITTED GRAVE ABUSE OF

DISCRETION WHEN IT FAILED TO GIVE WEIGHT, DISCUSS AND CONSIDER THE ARGUMENTS AND DEFENSES MADE THE PETITIONER-APPELLANT IN OUR BRIEF, VIS-À-VIS THE MANIFESTATION AND MOTION OF THE SOLICITOR GENERAL.

THE HONORABLE FOURTEENTH DIVISION COMMITTED AN ERROR WHEN IT RELIED HEAVILY ON AN UNFOUNDED, BASELESS AND ALLEGED MOTIVE OF PETITIONER, BEING A CRUSADER OF ILLEGAL DRUGS IN THEIR OWN TOWN, TO BE THE BASIS THAT HE IS THE ASSAILANT.^[17]

Petitioner questions the conclusion of the CA when it found him guilty of the crime of less serious physical injuries. He argues that Rudy failed to positively identify him as the assailant, since Rudy never admitted that he was able to identify the petitioner through his physical appearance, but only through his voice, despite the fact that it was the first time Rudy heard petitioner's voice when he allegedly shot him. Petitioner also insists that when the incident occurred, Rudy's vision was impaired as he just drank half a bottle of gin and the place was not properly lit. Rudy also failed to identify the type of gun used during the shooting. Moreover, the prosecution failed to establish that the car used by the perpetrator was owned by the petitioner.

Further, petitioner maintains that it was impossible for him to have shot the victim on the night of September 2, 1998, since he was not in the Province of Cagayan Valley from September 1, 1998 to September 4, 1998.

The petition is bereft merit.

In sum, petitioner submits before this Court two issues for resolution. *First*, whether or not the prosecution established beyond reasonable doubt that petitioner was the one who shot the victim; *Second*, whether or not petitioner's defense of alibi would prosper.

As regards the first issue, this Court finds that the prosecution established beyond reasonable doubt that petitioner was the one who shot Rudy that fateful night of September 2, 1998. Both the RTC and the CA found that petitioner indeed shot Rudy. In arriving at this conclusion, the RTC ratiocinated in this wise:

Private complainant Rudy Baclig averred that he personally knew the accused since he was of the age of reason. Rudy knew accused Engr. Carlito Pentecostes Jr. to be working with the NIA at Sta. Cruz, Gonzaga, Cagayan. Both private complainant Rudy Baclig and accused Engr. Carlito Pentecostes Jr. were residents of Gonzaga, Cagayan, although they reside in different barangays. Rudy was residing at Brgy. Batangan, while the accused was living two-and-a-half kilometers away at Brgy. Flourishing. Rudy Baclig categorically stated that when the car of the accused passed by him, it slowly stopped then moved backward and when the car was at a distance of about two arms' length, which was about three (3) meters, the accused called Rudy's nickname Parrod. Hearing his nickname, Rudy went towards the car, but he was only able to take one step, accused Engr. Carlito Pentecostes Jr. opened the door of the car and shot Rudy once and afterwards the accused hurriedly sped away. Asked how he was

able to identify Engr. Carlito Pentecostes Jr. to be the person who shot him when it was night time, Rudy said that he was able to identify the accused through the lights of the car and on cross-examination he said that aside from the lights of the car, there were also lights coming from a store nearby the place of the incident. The Court believes that with these kinds of lights, Rudy Baclig was able to identify the accused, considering the distance between the assailant and the victim was only three (3) meters.

x x x x.

Rudy Baclig was not telling a lie when he declared that he was shot at about two arms' length only because the doctor who treated him, Dr. Mila M. Marantan, declared that Rudy Baclig suffered a gunshot wound, the entry was with powder burns which is an evidence that Rudy Baclig was shot at a close range.

The defense harped on the fact that the private complainant smelled liquor. The complainant at first denied having taken liquor, but he admitted he took one-half bottle of gin before he went to buy coffee and sugar. On cross-examination, the complainant admitted also that every afternoon, he drank liquor. He admitted that he could still walk naturally a distance of about one kilometer. He also said that his vision might be affected. This testimony of Rudy Baclig cannot be considered as evidence that he was not able to identify the accused. He was categorical in stating that he was able to identify the accused. The doctor who treated Rudy of his injury declared the patient smelled liquor, but she could not tell how much liquor the patient took, however, the patient could answer all her questions.

x x x x.

There are other evidences that tend to show that Rudy Baclig was able to identify the assailant. Immediately after he was shot, Rudy told a police investigator, a certain Torres and Dr. Mila Marantan that it was Engr. Carlito Pentecostes, Jr. who shot him.^[18]

This conclusion was concurred into by the CA, which categorically stated in its decision that "[t]he prosecution was able to present a witness, in the person of Baclig, who categorically identified petitioner as his assailant and whose testimony was characterized by frankness."^[19] Contrary to petitioner's contention, Rudy saw him and positively identified him as his shooter, viz:

Q: When you heard the driver of the car calling you by your nickname Parrod, what was your reaction?

A: I went near because I thought he was telling me something.

Q: And what made you decide to go near the driver of the vehicle?

A: Because he called me by my name, Sir.