

THIRD DIVISION

[G.R. No. 177276, August 20, 2008]

GRACIANO SANTOS OLALIA, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which assails the Decision^[1] of the Court of Appeals in CA-G.R. CR No. 23725 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 56, finding petitioner Graciano Santos Olalia, Jr. and his co-accused Jeffrey Poquiz and Pedro Poquiz, guilty beyond reasonable doubt of the crime of Frustrated Murder.

On 25 March 1998, an Information for Frustrated Murder was filed before the RTC against petitioner Graciano Santos Olalia, Jr. (Graciano), Jeffrey Poquiz (Jeffrey) and Pedro Poquiz (Pedro), which was docketed as Criminal Case No. SCC-2818. The accusatory portion of the Information reads:

That on or about February 21, 1998 in the evening in the Poblacion, Municipality of Bayambang, Province of Pangasinan, xxx and within the jurisdiction of this [Honorable] Court, the above-named accused with intent to kill, with treachery and superior strength, conspiring, confederating and mutually helping one another, unlawfully and feloniously attack, assault and stab Rommel Camacho with a knife inflicting upon him the following injuries:

- Non-penetrating stab wound 3 cm. 5th intercostal space mid axillary line (L)
- Non-penetrating stab wound 1.5 cm. scapular area (L)
- 2 cm. stab wound supra orbital area (L)

the accused having thus performed all the acts of execution which should have produced the crime of Murder as a consequence but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and that is due to the timely medical assistance afforded to said Rommel Camacho which prevented his death and to his damage and prejudice.^[3]

During the arraignment on 3 July 1998, petitioner and his co-accused, with the assistance of counsel *de parte*, entered their respective pleas of not guilty.^[4] Thereafter, trial on the merits ensued.

At the trial, the prosecution presented the following witnesses: (1) The 24-year old victim himself, Rommel Camacho (Rommel), who testified on matters that occurred prior, during and after the alleged stabbing incident; (2) Analyn Fernandez, a 15-year old eyewitness and one of Rommel's companions during the incident in question, whose testimony corroborated that of the victim; (3) Roderick Poquiz, a by-stander who witnessed the mauling and the stabbing incident; (4) Dr. Mario Ferdinand Garcia, the physician who attended to the injuries of Rommel; and (5) Dionisio Camacho, the victim's father who testified on the actual expenses incurred as a result of the injury.

As documentary evidence, the prosecution offered the following: Exhibit "A" - the Affidavit of a certain Maricel Soriano declaring that she witnessed the stabbing incident of Rommel; Exhibit "B" - the sworn statement of the Rommel; Exhibit "C" - the Medical Certificate of Rommel; Exhibit "D" - the receipts for the medical expenses in the treatment of the injuries suffered by the victim; and Exhibit "E" - the receipts for the transportation expenses of the victim's father who traveled from Bicol to Pangasinan to be with the victim.

The collective evidence adduced by the prosecution shows that at around 9:20 p.m. of 21 February 1998, while Rommel was squatting along Burgos Street, Zone 4 of Poblacion, Bayambang, Pangasinan, trying to disentangle the warped chain of the *tribike* he was driving, a tricycle driven by petitioner Graciano, and which had as passengers, the accused Jeffrey and Pedro, came by and stopped at the other side of the street. Rommel was with Maylani Poquiz and Analyn Fernandez. Jeffrey told Rommel to move the *tribike* to the far side of the road. Rommel replied that the road was wide enough for the tricycle to pass through. The three men on board the tricycle alighted. Jeffrey proceeded to the direction of Rommel with Graciano and Pedro following immediately behind. Without warning, Jeffrey punched Rommel's face. Graciano and Pedro lost no time and joined in the onslaught by punching the victim until he fell in the muddy canal at the side of the road. Pedro continued the attack by kicking the victim several times. As Rommel was trying to lift himself out of the canal, Pedro ordered Graciano and Jeffrey to kill the victim. Jeffrey right away drew a knife and lunged the same at Rommel's back several times. Rommel tried to dodge the attack, but his effort did not totally spare him from harm as he absorbed some wounds at his back and on the eyebrow. Feeling helpless, Rommel raised his two hands and pleaded his attackers to stop. He was nonetheless stabbed on the left side of his armpit and fell to the ground on his butt. The three assailants boarded the tricycle and sped off. Maylani Poquiz shouted for help so Rommel could be brought to the hospital. Rommel was first taken to the Bayambang Emergency Hospital and was later transferred to the Provincial General Hospital where he was confined for three days.

The medical certificate of Rommel shows that there were three non-penetrating wounds sustained by him: first, at the back or the scapular area; second, near the left armpit or the intercostal space, mid-axillary line; and third, at the eyebrow or the supra-orbital area.

Dr. Mario Ferdinand Garcia, the attending physician of Rommel, testified that the victim could still survive his injuries even without the immediate medical assistance. He admitted though that he injected the patient with anti-tetanus serum to prevent him from dying of tetanus.

As a result of the incident, the victim's father, Dionisio Camacho, who was attending to family matters in Bicol, was forced to travel to Pangasinan and incur expenses, as evidenced by receipts, in the amount of P1,880.00. The victim's father likewise spent P10,476.75 for hospital and medical bills.

On the other hand, accused Jeffrey invoked self-defense, while accused Pedro and petitioner Graciano interposed the defense of denial. To prove their respective theories, only the testimonies of the three were presented.

Jeffrey, 21 years old and nephew of accused Pedro, testified that on the night in question, he and his companions, Graciano and Pedro, were riding on a tricycle driven by Graciano, heading home from a send-off party of a certain Atty. Benedicto Cayabyab, when they were stalled as someone was blocking the middle of the road.

[5] He told the man, who was then fixing the tribike, to move to the side of the road.

[6] The man, whom he identified as Rommel, responded rudely, "*Vulva of your mother all of you, this road is not yours.*" Jeffrey tried to talk to Rommel and approached him. As he was approaching, Rommel brandished a screwdriver and stabbed Jeffrey. Jeffrey parried the strike and pushed Rommel to the canal at the side of the road. [7] Rommel fell. He, together with Graciano and Pedro, left. He also said that during the incident, Pedro was inside the tricycle sleeping, while Graciano stayed on the driver's seat. [8] When asked during cross-examination if he reported to the police officers the attempt on his life by Rommel, he responded that it was not necessary, as he thought that such incident was inconsequential. [9]

Pedro, 51 years old, testified he was drunk and was asleep throughout the journey from Atty. Cayabyab's party to his house. He came to know of the pushing incident involving Jeffrey and Rommel when he was in his house when Jeffrey narrated to him the occurrence. [10] Upon learning of the incident, he, too, did not deem it necessary to report it to the police authorities. [11]

Graciano corroborated the testimony of Jeffrey, stating that while they were plying Burgos Street, they slowed down by Rommel's side, as the latter was fixing a *tribike* in the middle of the street. Jeffrey instructed Rommel to move his *tribike* to the side of the road and to fix it there. Rommel replied by uttering offensive and obscene words. Jeffrey went near Rommel and a heated argument between the two followed. Graciano saw Jeffrey push Rommel, with the latter falling into the canal. Graciano further said that during the commotion, he remained on the driver's seat, while Pedro was intoxicated and asleep on the passenger's seat. On cross-examination, he said he neither saw Rommel stab Jeffrey with a screw driver nor did he see Jeffrey stab Rommel. [12]

On 17 August 1999, the RTC rendered a decision finding petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

WHEREFORE, premises considered, herein three accused, Jeffrey Calpao Poquiz, Pedro Pidlaon Poquiz and Graciano Santos Olalia, Jr., nicknamed "Junior", are hereby found guilty beyond reasonable doubt of the crime of Frustrated Murder penalized by Article 248 in relation to Articles 6 and 50

of the Revised Penal Code, as amended by R.A. No. 7659. They should suffer the indeterminate prison term of six (6) years, one (1) month and ten (10) days of prision mayor, minimum, to twelve (12) years and one (1) day of reclusion temporal, maximum, including the accessory penalties provided by law. They should proportionately pay Dionisio Mabanglo Camacho, the father of the victim who shouldered the total expenses of P12,356.75.^[13]

On 27 August 1999, Graciano, Pedro and Jeffrey filed a notice of appeal.

In an Order dated 30 August 1999, the RTC ordered the transmittal of the entire records of the case to the Court of Appeals.^[14]

Despite their notice of appeal, on 31 August 1999, Pedro and Graciano, nonetheless, filed a Motion for Reconsideration.^[15]

Since all the accused already perfected their appeal, and since the RTC lost jurisdiction over the case by reason of the appeal, it did not resolve the motion for reconsideration.

The Court of Appeals, on 25 September 2006, promulgated its Decision affirming the decision of the RTC, with modification on the penalty imposed, thus:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 56 of San Carlos City, Pangasinan in Criminal Case No. SCC-2818 finding appellants Jeffrey Poquiz, Pedro Poquiz, and Junior Olalia GUILTY beyond reasonable doubt is AFFIRMED with Modification. As modified, the appellants are hereby sentenced to suffer the indeterminate penalty of Six (6) Years, One (1) Month and Ten (10) Days of prision mayor as minimum to Fourteen (14) Years, Eight (8) Months and one (1) Day of reclusion temporal as maximum. The appellants' solidary liability for the amount of P12,356.75 to the victim's father Dionisio Mabanglo Camacho is AFFIRMED.^[16]

On 19 October 2006, petitioner alone filed a Motion for Reconsideration which was denied by the Court of Appeals in a Resolution^[17] dated 2 March 2007.

Hence, the instant petition filed by petitioner Graciano Santos Olalia, Jr.

Petitioner asserts that the prosecution failed to establish his guilt beyond reasonable doubt.

This submission is unmeritorious.

The prosecution, through the testimony of Rommel, positively identified petitioner as one of the men who assaulted him. Rommel likewise declared in the witness stand that he heard Pedro order petitioner and Jeffrey to kill him:

Pros. Manaois:

Q: While you were fixing your *tribike* beside the road, near the corner, do you recall if there was any unusual incident that

happened?

A: Yes, sir.

Q: What was that unusual incident?

A: The tricycle of Pedro Poquiz arrived, sir.

Q: And what happened when the tricycle of Pedro Poquiz arrived?

A: They stopped near us, sir.

Q: And when they stopped, what happened next?

A: They shouted, they were asking us (sic) to move our *tribike* at the side of the road, sir.

Q: And what did you do?

A: I told them "the road is wide enough" and they can pass through, sir.

Q: After you told them that "the road is wide enough," they can pass through, what happened next?

A: They alighted, sir.

Q: Who alighted?

A: The three (3) of them, sir.

Q: And what did they do to you, if any?

A: Jeffrey Poquiz boxed me on my face, sir.

Q: How about Pedro Poquiz, what did he do to you?

A: He also boxed me, sir.

Q: How about Junior Olalia, what did he do to you?

A: The three helped one another in mauling me, sir.

Q: After you were boxed on the face several times, what happened to you after you were boxed by the three (3) accused on the face?

A: I fell on the canal, sir.

Q: And what happened next after you fell on the canal?

A: When I fell on the canal, Pedro Poquiz kicked me several times, sir.