

EIGHTH DIVISION

[CA-G.R. CR NO. 32262, March 24, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS.
ALBERTO VIADO, JR. Y REYES AND ERNESTO VIADO Y REYES,
ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J.C., J.:

Brothers Alberto Viado, Jr. y Reyes (Alberto) and Ernesto Viado y Reyes (Ernesto) are before the Court seeking the reversal of the Decision dated September 12, 2006 of the Regional Trial Court (RTC), Branch 122 of Caloocan City, in Crim. Case No. C-56115 (1999) which found them guilty of Frustrated Homicide for which they were sentenced to suffer six (6) months and one (1) day of prision correccional as minimum, to six (6) years and one (1) day of prision mayor as maximum, plus damages.

The Information filed on March 23, 1999 charged Alberto and Ernesto of Frustrated Homicide in this wise:

"That on or about the 21st day of March, 1999 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without any justifiable cause, with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, hit with a bottle and stab with a bladed weapon on the back portion of his head one Narciso Tapia y Castro, thus, performing all the acts of the commission of the crime of Homicide, but nevertheless did not produce it by reason or causes independent of the will of the herein accused, that is, due to the timely, able and efficient medical attendance rendered to the victim at the MCU Hospital, this city, which prevented the latter's death.

Contrary to law." (Records, p. 1).

At their arraignment on May 10, 1999, the two pleaded "not guilty". (Records, p. 55).

Trial ensued and the prosecution presented the testimonies of: the victim Narciso Tapia (Narciso), his aunt Crisanta Avanzado (Crisanta), SPO3 Eliseo Gargaritano (SPO3 Gargaritano) and Dr. Michael E. Matias (Dr. Matias). The prosecution also presented: receipts covering Narciso's medical expenses; Narciso's statements at the hospital; pictures taken inside the operating room as well as at the police detachment, and; medical certificate and other records of the victim. (Records, pp. 161-166).

According to Narciso, he attended a birthday party of a neighbor at an alley near

their house, around 7 p.m. of March 21, 1999. At about 11 p.m., he saw some of the visitors at a next table, barangay councilors which included herein appellant-Alberto, mauling a man. When the man ran away, Narciso and his companions stood up and were about to leave the party. When he was about three steps from the place, Ernesto suddenly jumped on his back and said "are you going to help"? Ernesto then repeatedly boxed the right side of his face even when Narciso already fell to his knees. Ernesto took a bottle and hit Narciso's head several times. Then he stabbed the left side of Narciso's neck with the use of the bottle causing blood to ooze from Narciso's neck. Narciso's aunt, Elena Tapia, asked what they were doing to him which prompted Ernesto to stand up and go inside the celebrant's house. Narciso also stood up and went to his house where his wife gave him a towel for his wound. While waiting for his wife, who left to get money they will use to bring him to the hospital, Alberto and Ernesto arrived. Ernesto said, "Putang ina kuya patayin na natin yan si Narciso." Alberto, who was then in possession of a 2 ½ feet-long samurai, responded "Mga putang ina ninyo kayo ang mga salot sa Mascardo." Alberto thereafter hit Narciso twice with a samurai on the side of his neck while Ernesto blocked Narciso's path. Narciso struggled to enter his house and when he got there, he passed out, regaining consciousness only at the hospital. (TSN, February 21, 2000, pp. 4-11).

Crisanta, Narciso's aunt, testified on the medical and legal expenses of the family. (TSN, August 17, 1999, pp. 2-7, September 14, 1999, p. 19, Exhs. "A" to "A-126"). SPO3 Gargaritano, meanwhile testified on the conduct of investigation, the statements taken from Narciso at the hospital right, as well as on the photos taken at the hospital and the police detachment. (TSN, September 14, 1999, pp. 3-9; October 18, 1999, p. 2).

Finally, Dr. Matias, surgeon at the MCU Hospital, testified that were it not for timely medical intervention, Narciso would have died. At the time Narciso was brought to the hospital, his blood pressure was 70/40. Blood was oozing profusely from a transected (completely severed) major blood vessel, the sternocleidomastoid vein connected to the superior vena cava of the heart, as well as from the partial transection of the other veins. Dr. Matias also explained that Narciso's injuries affected the functions of his eyes as well as his ability to rotate his neck. (TSN, October 9, 2000, pp. 25-33).

Specifically, Narciso suffered:

"Multiple hacking wound[s]:

Incised wound, 10 cm. submandibular area (L) with complete transection of proximal sternocleidomastoid m. (L), external jugular vein, stylohyoid m. submandibular gh. (L) partial transection of facia art. & vein.

Lacerated wound, 6 cm. stellate (L) occipital area incised wound 2 cm. pinna (L) ear." (Medical Certificate, Exh. "F").

For the defense, both Alberto and Ernesto took the witness stand. Alberto's partial direct testimony however was stricken off the record, as he did not continue with his testimony despite the opportunity given him. (See Records, pp. 237, 242, Rollo, p. 27).

As for Ernesto, he averred that Narciso's cousin, Edilberto, was mad at one of the visitors, a certain Raul, whom Edilberto tried to box but in the process hit Alberto. A melee ensued ("nagkagulo na"). Narciso approached Alberto and Ernesto tried to pacify him (Narciso). Ernesto pulled Narciso's arms until Narciso fell to the ground. A certain Dante pacified them and brought Ernesto inside the gate. When Narciso stood up, he went to the gate and challenged Ernesto to a fistfight. Ernesto denied having anything to do with the charges against him and claimed that that he does not know any reason why Narciso would accuse him of frustrated homicide. (TSN, April 19, 2005, pp. 6-12).

On September 12, 2006, the RTC rendered the herein assailed Decision:

"WHEREFORE, premises considered, accused ERNESTO VIADO and ALBERTO VIADO JR., are found GUILTY beyond reasonable doubt of the crime charged, and are hereby sentenced to suffer the penalty of Six (6) months and One (1) day of Prision Correccional, as minimum, to Six (6) years and One (1) day of Prision Mayor as maximum, for each of them.

Further, both the said accused are hereby ordered to pay jointly and severally the private complainant the amount of Seventy Five thousand Fifty Eight Pesos and Sixty Four Centavos, (P75,058.64) as civil liability, representing the medical expenses incurred by the victim and the amount of P50,000.00 as attorneys fees.

SO ORDERED." (Rollo, pp. 30-31).

The trial court held that the prosecution was able to establish that both Alberto and Ernesto performed all the acts of commission of the crime of homicide but nevertheless did not produce the intended outcome for reasons independent of their will, that is, due to the timely medical intervention that was administered to the victim. (Rollo, p. 28).

Appellants Alberto and Ernesto are now before the Court claiming that:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANTS LIABLE FOR ATTORNEY'S FEES. (Rollo, p. 84).

Appellants aver that the prosecution was not able to establish with moral certainty that they intended to kill Narciso as the altercation started between Edilberto and Raul. Narciso's wounds was supposedly caused by a broken bottle which supports their claim of lack of intent to kill. Appellants also assert that the trial court erred in giving weight to Narciso's testimony who tended to distort facts in his favor. No witness corroborated his claim despite the fact that there were other persons in the scene. The prosecution likewise failed to prove the existence of conspiracy, while the