

EIGHTH DIVISION

[CA-G.R. CR NO. 34871, May 28, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SHERWIN MONTALBAN Y HEDIERA, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

Accused-appellant Sherwin Montalban is charged with two (2) counts of frustrated homicide contained in the following informations:

Criminal Case No. 16051-SP

That on January 7, 2005 at about 11:30 o'clock in the evening at Barangay West Poblacion, Municipality of Rizal, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without any justifiable cause, and while conveniently armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon one ARNULFO LAZARO y CIAR, thereby inflicting upon the latter stab wound on his chest, thus accused has performed all the acts of execution which could have produced the crime of homicide, as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Arnulfo C. Lazaro, which prevented his death, to his damage and prejudice.

CONTRARY TO LAW.^[1]

Criminal Case No. 16052-SP

That on January 7, 2005 at about 11:30 o'clock in the evening at Barangay West Poblacion, Municipality of Rizal, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, without any justifiable cause, and while conveniently armed with a bladed weapon, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon one JONATHAN CIAR BAYOT, thereby inflicting upon the latter hemopneumothorax (L), thus accused has performed all the acts of execution which could have produced the crime of homicide, as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Jonathan C. Bayot, which prevented his death, to his damage and prejudice.

CONTRARY TO LAW.^[2]

Montalban was arrested on February 1, 2009.^[3] When arraigned,^[4] he pleaded "not guilty." Trial then ensued.

The version of the prosecution as stated by the Solicitor General is as follows:

4. On 7 January 2005 at around 10:30 o'clock in the evening, while private complainants Arnulfo Lazaro [Arnulfo] and Jonathan Bayot [Jonathan] were drinking at a plaza with their friends including Mark Urmenta [Mark], Francis Vista [Francis] and prosecution witness, Cesar Acedera [Cesar] to celebrate town *fiesta*, appellant Montalban and his friends arrived. Appellant suddenly threw a stone at private complainants' group which missed and hit an iron fence. Afterwards, appellant, who was carrying a knife at that time, said "*Anong gusto ninyo?*" and challenged one of the private complainants' friends, Francis, to a fight.

5. Jonathan approached appellant and asked him "*Bakit naman nambato ka?*" Without any provocation, appellant suddenly stabbed Jonathan with a knife several times hitting him at the back and the lower portion of his shoulder.

6. Upon seeing appellant stabbed his cousin Jonathan, Arnulfo, together with Cesar, tried to pacify appellant. He instructed Jonathan to leave and in an attempt from inflicting more harm to his companions, he held appellant's hands and embraced him. Appellant, however, was able to free himself from Arnulfo's grip and embrace. While this was happening, Jonathan and Cesar left Arnulfo.

7. After he freed himself, appellant stabbed Arnulfo with his knife and hit him in the chest and lower left arm. Despite his injuries, Arnulfo ran away from appellant and proceeded to the house of a friend, where Jonathan and the others were waiting.

x x x

Bayot was brought to the hospital. Lazaro,^[5] on the other hand, proceeded to the police station to report the incident. Then, he was subsequently brought to the hospital due to his stab wound.^[6] Bayot sustained six stab wounds^[7] and was confined for 15 days.^[8] On the other hand, Lazaro was also confined for 15 days^[9] and was under observation for three days due to internal hemorrhage.^[10] The prosecution also presented the Medico-Legal Certificate^[11] of Lazaro prepared by Dr. Welmino R. Obungen containing the following findings:

= Hemothorax 2^o to stab wound, (L) chest.

Operation Done: Thoracostomy tube insertion, (L).

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In the opinion of the undersigned these injuries will incapacitated (sic) or require medical attendance for **more than thirty (30) days xxxx** if without complications.

Dr. Obungen testified that Lazaro's wounds could have been fatal.^[12]

PO2 Encarnacion testified that the military army brought the suspects and victims at the police station after the incident.^[13] Bayot did not know the name of their assailant who was wearing a red shirt.^[14] But when confronted by Montalban in the police station, Bayot identified Montalban as the one who stabbed him.^[15]

For the defense, Montalban denied that he stabbed Lazaro and Bayot. He claimed that he was at the plaza watching a program with friends when suddenly a commotion occurred.^[16] Vista, Arcedero, Lazaro and Bayot were shouting and throwing stones in front of them.^[17] Vista signalled Montalban to approach him by waiving his hand, but Montalban did not pay attention. Then, Vista returned to his friends who were drinking.^[18] Later, Vista went back with a bottle hidden behind him and hit Montalban.^[19] Montalban ran away, but the police arrested and brought him to the police station.

Nino Dorado testified that he was with Montalban at the plaza when Vista ran amuck at their group.^[20] He hit Montalban on his nape with a bottle.^[21] Montalban stooped down and was then ganged-up by Vista and his companions, Lazaro and Bayot.^[22] Dorado ran and asked for help.^[23] When he returned to the scene, Montalban was already being assisted by the police.^[24]

The RTC convicted Montalban of two counts of frustrated homicide with the following dispose:^[25]

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 16051:

a. **FINDING** the accused **SHERWIN MONTALBAN y HEDIERA** guilty beyond reasonable doubt of the crime of Frustrated Homicide, imposing upon him an indeterminate penalty of imprisonment of Six (6) Months and One (1) Day of *Prision Correccional* to Eight (8) years and One (1) day of *Prision Mayor*; and

b. **DIRECTING** the accused to pay the victim, Arnulfo Lazaro y Ciar, the following: the amount of 9,090.05, as actual compensatory damages; P25,000.00, as exemplary damages; P25,000.00, as moral damages, and to pay the costs of litigation.

In Criminal Case No. 16052:

a. **FINDING** the accused **SHERWIN MONTALBAN y HEDIERA** guilty beyond reasonable doubt of the crime of Frustrated Homicide, imposing upon him an Indeterminate penalty of imprisonment of Six (6) Months and One (1) Day of *Prision Correccional* to Eight (8) Years and One (1) Day of *Prision Mayor*; and

b. **DIRECTING** the accused to pay Jonathan Bayot y Ciar the following: the amount of P11,090.05, as actual and compensatory damages; P25,000.00, as exemplary damages; P25,000.00, as moral damages; and the costs of the litigation.

SO ORDERED.

Hence, Montalban interposed this appeal^[26] assigning the following errors:

I.

THE COURT A *QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE.

II.

THE COURT A *QUO* GRAVELY ERRED IN FAILING TO GIVE CREDENCE TO THE TESTIMONIES OF THE DEFENSE WITNESSES.

III.

THE COURT A *QUO* GRAVELY ERRED IN NOT FINDING THE ABSENCE OF INTENT TO KILL.^[27]

Essentially, Montalban assails the credibility of the witnesses as follows: (1) Bayot testified that he approached Montalban frontally but the stab wounds were located at the back of his left shoulder indicating that Bayot was attacked from behind; (2) the witnesses were intoxicated when the incident happened impairing their vision,^[28] and (3) while Montalban was identified as the one who stabbed Bayot and Lazaro, there were other perpetrators involved in the incident.^[29] Montalban also asserts that his intent to kill was not proven because he was allegedly provoking Vista and not Lazaro and Bayot. Likewise, the prosecution failed to show the gravity and nature of the wounds.^[30]

The appeal lacks merit.

Time and again the Supreme Court has emphasized that in criminal cases, the evaluation of the credibility of the witnesses is left to the sound discretion of the trial court, whose conclusion deserves much weight and respect for the trial judge has direct opportunity to observe the witness' demeanor, conduct, and attitude under examination.^[31] As such, the trial court's findings on the credibility of the witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of proof that substantial facts and circumstances were overlooked, misunderstood or misapplied which could have affected the result of the case.^[32]

In the present case, We find no reason to disturb the findings of the RTC. The testimonies of all three prosecution witnesses (Lazaro, Bayot and Acedera) interlock in their material points – that (1) when approached, Montalban suddenly stabbed Bayot; (2) Lazaro and Acedera who were near went to Bayot's rescue; (3) Lazaro held Montalban but he managed to get free and stabbed Lazaro in the chest; (4) Acedera was behind Bayot when he was stabbed by Montalban.^[33] While minor discrepancies may be found in their testimonies, they do not damage the essential integrity of the evidence in its material whole.^[34] Inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.^[35]

As to Montalban's defense of denial, the same will not prosper. He was positively identified by Acedero and by the victims, Lazaro and Bayot themselves.^[36] The place of incident was well lighted as it happened near an electric post and a fast

food chain.^[37] Moreover, during the investigation, PO2 Encarnacion confirmed that Bayot identified Montalban at the police station as the one who stabbed him.^[38] Thus, the identification of the accused by the witnesses cannot be doubted.

We are not swayed by Montalban's claim that the intent to kill was not sufficiently established. Records show that Montalban was armed with a knife and repeatedly stabbed Bayot behind his left shoulder. While he stopped, when Lazaro embraced him, he struggled to get loose and stabbed Lazaro in the chest. Evidently, the means employed by Montalban and the nature, and location of the wounds sustained by the victims showed his intent to kill them. As held in *Cervantes v. People of the Philippines*:^[39]

Intent to kill is a state of mind that the courts can discern only through external manifestations, i.e., acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,^[40] We considered the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. We also consider motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.

Further, We cannot disregard the circumstance that Montalban fled and remained at large for two years.^[41] Montalban's hiding and failure to surrender indicate an implied admission of guilt "*for a truly innocent person would normally grasp the first available opportunity to defend himself and to assert his innocence.*"^[42]

Verily, We find that Montalban committed frustrated homicide against Lazaro who sustained a stab wound in the chest. Dr. Obungen testified that the wound penetrated Lazaro's lung cavity and accumulated blood. The wound was fatal and he would have died if not for timely medical intervention.^[43]

Against Bayot, however, We find Montalban liable for attempted homicide. Bayot testified that he sustained six stab wounds behind his left shoulder^[44] and was hospitalized for 15 days.^[45] However, there is dearth of medical evidence to support the prosecution's claim that Bayot would have died without timely medical intervention.^[46] Dr. Obungen did not testify as to the nature, extent, depth, and severity of his wounds. Since evidence failed to show that the wound is fatal, the doubt created by the lack of evidence should be resolved in favor of Montalban.^[47]

The penalty for homicide is *reclusion temporal*.^[48] Corollarily, Article 51 of the Revised Penal Code, as amended, provides that the imposable penalty for a frustrated and an attempted crime shall be lower by one and two degrees than that prescribed by law for the consummated felony.^[49]

In accordance with the Indeterminate Sentence Law, the minimum imposable penalty for frustrated homicide^[50] shall be *prision correccional* in any of its period, which ranges from six months and one day to six years, and the maximum term is *prision mayor* in its medium period, with the range of eight years and one day to ten