

THIRD DIVISION

[CA-G.R. CR NO. 35960, November 12, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE VELORIA Y RAPSING, ACCUSED-APPELLANT.

D E C I S I O N

DE GUIA-SALVADOR, R., J.:

On appeal is the Decision dated 08 March 2013 of the Regional Trial Court (RTC) of Manila, Branch 33, in Criminal Case No. 10-280419, finding accused Felipe Veloria y Rapsing ("***appellant***") guilty beyond reasonable doubt of attempted homicide.

THE INDICTMENT

An Information dated 21 December 2010 was filed with the RTC, charging appellant with the crime of frustrated homicide allegedly committed against Rogelio Biales y Bautista ("***private complainant***") as follows:

"That on or about December 15, 2010, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully, and feloniously attack assault and use personal violence against ROGELIO BIARES y BAUTISTA, by then and there chasing and attacking the latter with a deadly weapon, and stabbing him several times, hitting him on his left forearm and right hand, thereby inflicting upon him stab wounds which are necessarily fatal, thus performing all the acts of execution which would have produced the crime of homicide as a consequence, but which nevertheless did not produce it by reason of causes independent of his will, that is, the parrying of the thrusts by said ROGELIO BIARES y BAUTISTA, the arrival and intervention of PO1 Jeffrey A. Tabarnilla who arrested the accused and the timely and able medical assistance rendered to said ROGELIO BIARES y BAUTISTA, which saved his life.

Contrary to law."^[1]

Upon arraignment, appellant, assisted by Atty. Jesus Laurel B. Ilagan, pleaded "***NOT GUILTY***" to the charge.^[2]

Thereafter, trial ensued with the prosecution presenting as witnesses private complainant, and PO1 Jeffrey A. Tabarnilla ("***PO1 Tabarnilla***"), the police officer who arrested appellant.

For the defense, on the other hand, the following witnesses testified: (1) appellant;

(2) Jerry Salapudin ("**JERRY**"); and (3) Marvin Ortiz ("**MARVIN**").

The Facts

Version of the Prosecution

The Solicitor General summarized the evidence for the prosecution in the Appellee's Brief, thus:

"At the time of the incident, appellant and the [private complainant] were FX drivers.

On 15 December 2010, around 10:00 a.m. near Meisic Mall at Reina Regente St., Binondo, Manila, [private complainant] was waiting for passengers when, all of a sudden and without any warning, he was attacked by appellant with a kitchen knife from behind.

Surprised, [private complainant] parried the attack with his arm and fought for the possession of the knife; but, as a result, he was hit three (3) times with the knife, his left arm and right fingers sustaining stab wounds and lacerations.

At that time, PO1 Tabarnilla was on board a motorcycle on the opposite road when he heard someone shout, 'Pulis may sinaksak!'

Sensing the presence of the police, appellant ran and boarded a passing jeepney.

Meanwhile, PO1 Tabarnilla drove to the other side of the road where the cry came from, and asked [private complainant] where his assailant sought refuge. The [private complainant] pointed to appellant, who was already seated at the passenger's side of the jeepney.

PO1 Tabarnilla sped off and after a brief chase, caught up with the jeepney. He maneuvered his motorcycle to cut in front of the jeepney, thereby blocking its way and forcing it to stop.

Seeing that he was cornered, appellant quickly alighted from the jeepney, drew his knife from his pocket, and directed it at PO1 Tabarnilla. In response, PO1 Tabarnilla drew his firearm and aimed it at appellant.

When appellant saw the firearm, he dropped his knife and surrendered.

Meanwhile, the [private complainant] was brought to the Ospital ng Maynila Medical Center hospital where he underwent surgery and was confined for almost two days."

Version of the Defense

At the time of the incident, appellant was 69 years old and is the oldest in the group

of Tamaraw FX drivers plying the route of Reina Regente to Binondo Church. Appellant is closely acquainted with private complainant who is also a driver in the same route. Private complainant would often play jokes on appellant by suddenly holding his buttocks, scrotum, and penis.

Appellant recalled that at 10:15 a.m. of 15 December 2010, he just finished installing the air cleaner hose of his vehicle, and was still holding the kitchen knife he used to cut it, when private complainant touched his anus. Surprised, appellant quickly turned around, and accidentally hit private complainant's left forearm with the knife. Private complainant tried to grab the knife from appellant, but the latter repelled him. Having sustained a small wound in his right hand in the process, private complainant shouted that he had been stabbed and ran away. For his part, heeding the advice of his co-drivers, appellant boarded a passenger jeepney to proceed to the barangay headquarters to surrender. The passenger jeepney appellant was riding was only fifteen (15) meters away from the barangay headquarters when PO1 Tabarnilla blocked it and arrested appellant.

Defense witness JERRY is a tricycle driver who parks near Meisic Mall in front of the area where the Tamaraw FX drivers, like appellant and private complainant, park their vehicles. Appellant is well-known at the area as private complainant's friend, and by his monicker "*Tatay*", being the oldest among the drivers in the area. In the morning of 15 December 2010, he parked his tricycle and saw appellant repairing his car. At about 10:00 a.m., he left the area to convey a passenger. Upon his return ten minutes later, he learned of the stabbing incident involving appellant.

Defense witness MARVIN is a sidecar driver who frequents 1188 Mall. At 9:00 a.m. of 15 December 2010, he was waiting for a passenger some two (2) meters away from the appellant who was then repairing his vehicle. He corroborated the account of appellant on how private complainant (1) sustained the injury on his left forearm, (2) tried to wrest the knife from appellant, and (3) left the crime scene while shouting that he had been stabbed.

RULING OF THE RTC

After trial, the RTC rendered the appealed decision finding appellant guilty of attempted homicide, thus:

"WHEREFORE, judgment is hereby rendered finding the accused Felipe Veloria y Rapsing guilty beyond reasonable doubt of the crime of **Attempted Homicide** under Article 249 of the Revised Penal Code as principal and is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum to two (2) years and four (4) months of *prision correccional* as maximum and to pay the costs.

SO ORDERED."^[3]

Insisting on his innocence, appellant perfected the appeal at bench with the timely filing of his Notice of Appeal on May 20, 2013.^[4]

The Issues

In urging the reversal of the appealed decision, appellant ascribes to the RTC the following errors:

I.

THE RTC ERRED IN CONVICTING APPELLANT WHEN NO FELONIOUS ACT OR OMISSION WAS COMMITTED BY APPELLANT. THE STAB WOUNDS INFLICTED WERE ACCIDENTAL, AND THAT THE PROXIMATE CAUSE THEREOF WAS [PRIVATE COMPLAINANT'S] OWN ACTS.

II.

THE RTC ERRED IN CONVICTING APPELLANT DESPITE ABSENCE OF MOTIVE.

III.

THE RTC ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ATTEMPTED HOMICIDE.^[5]

The Court's Ruling

We find partial merit in the appeal. Appellant may be held criminally liable only for the crime of slight physical injuries for failure of the prosecution to prove his intent to kill private complainant.

In his Brief, appellant claimed having accidentally hit private complainant with a knife when he quickly turned around upon being surprised by the latter's joke of touching his anus. In the absence of any intent to kill or harm private complainant, appellant argued that the resulting injuries were not occasioned by a felonious act, either by *dolo* or *culpa*, thus he is entitled to an acquittal.

In criminal cases, the prosecution has the burden of proof to establish the guilt of the accused. However, once the defendant admits the commission of the offense charged, but raises an exempting circumstance as a defense, the burden of proof is shifted to him.^[6] With his admission that he caused the injuries on the left forearm and a finger in the right hand of private complainant but simultaneously invoking exemption from criminal liability under Article 12(4)^[7] of the Revised Penal Code, as amended (**RPC**), appellant must establish his defense relying on the strength of his own evidence. "Accident" is an affirmative defense which the accused is burdened to prove with clear and convincing evidence.^[8] As a legal consequence of appellant's admission, even if the evidence of the prosecution is weak, it can no longer be disbelieved.^[9] Conversely, if the accused fails to prove his affirmative defense, he can no longer be acquitted.^[10]

The Supreme Court explained in ***Talampas v. People***^[11] the concept of accident as

a ground of exemption from criminal liability, thus:

"Article 12 (4) of the Revised Penal Code, the legal provision pertinent to accident, contemplates a situation where a person is in fact in the act of doing something legal, exercising due care, diligence and prudence, but in the process produces harm or injury to someone or to something not in the least in the mind of the actor — an accidental result flowing out of a legal act. Indeed, accident is an event that happens outside the sway of our will, and although it comes about through some act of our will, it lies beyond the bounds of humanly foreseeable consequences. In short, accident presupposes the lack of intention to commit the wrong done."

By invoking the exempting circumstance of accident under Article 12 (4) of the RPC, appellant has the burden of proving its elements with clear and convincing evidence, to wit: (1) he was performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) without any fault or intention of causing it.^[12]

In the case at bar, appellant failed to exercise due care, diligence and prudence when instead of putting down his kitchen knife after he was done with the repairs to his vehicle, he continued to hold on to it.^[13] So also, even if he was actually surprised by the act of private complainant of touching his anus, he could have avoided inflicting the alleged injuries if he did not swing his knife towards his back as he turned around.^[14] In sum, for failing to clearly and convincingly prove the exempting circumstance of accident, and for admitting responsibility for the injury sustained by private complainant, appellant is criminally liable for the injury suffered by the private complainant.

However, We find that the trial court erroneously convicted appellant of attempted homicide considering the prosecution's failure to establish his intent to kill the private complainant. The Supreme Court has held that the intent to kill, being an essential element of the offense of frustrated or attempted homicide, must be proved by clear and convincing evidence, and with the same degree of certainty as required of the other elements of the crime.^[15] The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt.^[16]

Evidence to prove intent to kill in crimes against persons may consist, *inter alia*, of (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 of, or immediately after the killing of the victim; (4) the circumstances under which the crime was committed; and (5) the motive of the accused.^[17]

In the case at bench, the evidence of the prosecution failed to establish appellant's intent to kill private complainant.

It bears stressing that private complainant sustained only a single three-centimeter **(3-cm)** stab wound on the medial aspect of his left forearm as uniformly stated in the temporary Medical Certificate issued by Dr. Edelweis Z. Velasquez of the Ospital