

## **SPECIAL SIXTH DIVISION**

**[ CA-G.R. CR.-HC. NO. 06577, December 05, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE MAHINAY, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**BALTAZAR-PADILLA, J.:**

Brought before this Court is an appeal<sup>[1]</sup> from the Joint Decision<sup>[2]</sup> dated December 3, 2013 rendered by the Regional Trial Court of Taguig City, Branch 153 finding accused-appellant guilty as charged in Criminal Case No. 133671-H for Murder and guilty for Attempted Murder in Criminal Case No. 133672 where he was charged with Frustrated Murder.

The Informations<sup>[3]</sup> filed against accused-appellant read:

#### **CRIMINAL CASE NO. 133671-H**

*"That on or about the 3<sup>rd</sup> day of March, 2004, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, with the use of a firearm – a deadly weapon, did, then and there willfully, unlawfully and feloniously attacked, assault and shot with the said firearm, one Albert Villanueva y Parungao, which directly cause the latter's death.*

*CONTRARY TO LAW."*

#### **CRIMINAL CASE NO. 133672**

*"That on or about the 3<sup>rd</sup> day of March, 2004, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of the qualifying circumstances of treachery and evident premeditation, with the use of a firearm, a deadly weapon, did, then and there willfully, unlawfully and feloniously attack, assault and shot with the said firearm, one Eric Labao on his body, thus performing all the acts of execution which would have produce the crime of murder as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is due to the timely and able medical assistance rendered to said Eric Labao, which prevented his death.*

*CONTRARY TO LAW."*

These two cases were tried jointly.

Upon arraignment, accused-appellant pleaded "*not guilty*" to the crimes imputed to him.<sup>[4]</sup>

To establish the guilt of accused-appellant, the prosecution presented Eric Labao, Marie Joy Villanueva and Domingo Dionisio. Their testimonies established the following facts:

Accused-appellant Jessie Mahinay was an employee in a fishpond at Talisay, Taguig City. Albert Villanueva alias "Abak" (victim in the murder case) and Eric Labao (victim in the frustrated murder case) were his co-employees.

At around 12:00 noon on March 3, 2004, Eric Labao was cooking lunch inside a nipa hut in a fish pen in Laguna Lake located at Barangay Wawa, Taguig City. Labao was with "Jun", "Alfie", "Tata" and "Kuya Abak" or victim Albert Villanueva. He was about two arms away from accused-appellant.

While he was cooking, Labao heard a gunshot. When he looked around, he saw Albert Villanueva clutching the gunshot wound on his chest. He then saw accused-appellant going back and forth in the nipa hut holding a .38 caliber gun. After Villanueva fell down, accused-appellant turned to Labao and shot him at the back before he could escape. Their other companions managed to escape by jumping into the water while Labao was only able to hit the water after he was already shot by accused-appellant. He was rushed to the hospital for treatment by Domingo Dionisio, Albert Villanueva's uncle. He survived but Villanueva died.

According to Labao, the shooting was sudden and without any warning. It was not even preceded by any conversation or argument between accused-appellant and the deceased Villanueva. There was also no disagreement between him and accused-appellant.

By reason of Villanueva's death, his family and heirs suffered great loss and damage which could not be compensated with money. They spent around P54,000.00 for his funeral. As for Labao, his treatment lasted for five (5) days and he is claiming P100,000.00 for the damages he sustained.

After the prosecution and defense agreed on the genuineness and due execution of the Medico-Legal Report and the Anatomical Sketch of the late Albert Villanueva which was prepared by Dr. Voltaire Nulud, Medico-Legal Officer, his testimony was dispensed with.

For its part, the defense initially presented accused-appellant to testify. However, on October 1, 2013, the defense made a manifestation that it was waiving the presentation of evidence in its favor. Accused-appellant moved to strike off from the record his initial testimony and that in lieu thereof, a memorandum in support of his defense will be filed. The said motion was granted by the trial court.<sup>[5]</sup>

In the Memorandum<sup>[6]</sup> submitted by the defense, it was asserted that the prosecution failed to establish the elements of treachery and evident premeditation that would qualify the crime to murder, thereby, creating a reasonable doubt as to the guilt of accused-appellant that warrants his acquittal.

Not finding credence on accused-appellant's defense, the trial court convicted him of murder and attempted murder in its assailed Joint Decision, viz –

*"**WHEREFORE**, foregoing considered, this court hereby finds accused Jessie Mahinay **GUILTY** beyond reasonable doubt for the crimes of Murder and the lesser offense of Attempted Murder. Accordingly, he is hereby sentenced as follows:*

*1) For the murder of Albert Villanueva in Criminal Case No. 133671-H, accused Jessie Mahinay is **SENTENCED** to suffer the penalty of reclusion perpetua and **ORDERED** to pay the heirs of Albert Villanueva the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages and P25,000.00 as temperate damages; and*

*2) For the attempted murder of Eric Labao in Criminal Case No. 133672, accused Jessie Mahinay is **SENTENCED** to suffer imprisonment from six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum, and **ORDERED** to pay Eric Labao the amounts of Php25,000.00 as civil indemnity, Php30,000.00 as moral damages , Php25,000.00 as temperate damages and Php20,000.00 as exemplary damages.*

**SO ORDERED."**

Hence, the extant appeal assigning the following errors allegedly committed by the trial court:

*"I*

*THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.*

*II*

*ON THE ASSUMPTION THAT ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR ATTEMPTED MURDER IN*

*III*

*ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE SHOOTING OF ALBERT VILLANUEVA AND ERIC LABAO IS QUALIFIED BY TREACHERY.*"<sup>[7]</sup>

In seeking his acquittal, accused-appellant assails the credibility of eyewitness and victim Eric Labao. According to him, Labao's testimony was self-serving and does not sufficiently establish his guilt beyond reasonable doubt. No one corroborated Labao's testimony that he shot him and the late Albert Villanueva although it was alleged that there were other persons who witnessed the shooting incident.

Accused-appellant insists that intent to kill was not proven beyond reasonable doubt. Hence, assuming that he shot Labao, the crime committed was simply physical injury and not attempted murder. The prosecution also failed to establish the qualifying circumstance of treachery that would qualify the crimes charged against him to murder for the death of Villanueva and attempted murder, for the injury sustained by Labao.

On the other hand, plaintiff-appellee maintains that the prosecution was able to prove accused-appellant's guilt beyond reasonable doubt.

After a judicious scrutiny of the facts and the records of the case, WE hold that the trial court did not err in convicting accused-appellant.

In giving full faith and credence to the testimony of Labao, the trial court considered the fact that he was not simply a witness but also a victim in the shooting incident involving accused-appellant. While Labao did not see how accused-appellant actually shot Villanueva, the series of events that took place on the day that Villanueva died and Labao was shot by accused-appellant leads to no other reasonable conclusion that the accused-appellant did not only shoot Labao but also shot Villanueva. The records show that on the day of the shooting incident, Labao was with accused-appellant, the late Villanueva and their co-workers in a nipa hut in a fish pen situated in the middle of Laguna Lake. Labao was only two arms away from accused-appellant when a shot was fired. When Labao looked around, he saw Villanueva clutching his wounded chest after which the latter fell down. He also saw accused-appellant holding a .38 caliber gun while going around the nipa hut with his companions jumping into the water to escape apparently to avoid accused-appellant's further attack. Thereafter, accused-appellant shot Labao hitting him at the back before the latter could manage to jump into the lake.

Through the unwavering, spontaneous, straightforward and categorical testimony of Labao the prosecution was able to prove the identity of accused-appellant as the perpetrator of the crimes. It is established jurisprudence that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court.<sup>[8]</sup> Likewise, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect

because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.<sup>[9]</sup>

Furthermore, in his memorandum submitted to the trial court, accused-appellant did not even deny the fact that he shot Villanueva and Labao. He simply disputed the presence of the qualifying circumstances of treachery and evident premeditation to support his plea of acquittal.

In the face of the positive identification made by Labao, the relevant testimonies of the other witnesses and the absence of showing of any ill motive on their part, WE give due weight to the finding of the trial court that it was accused-appellant who shot Villanueva and Labao.

Accused-appellant claims that considering the nature of the injury sustained by Labao, the crime committed was only slight physical injury because intent to kill was not duly proven by the prosecution.

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.<sup>[10]</sup> In *Esmeraldo Rivera, et al. vs. People*,<sup>[11]</sup> the Supreme Court explained that:

*"An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by dolo.*

*In People v. Delim, the Court declared that **evidence to prove intent to kill in crimes against persons may consist, inter alia, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused.** If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed."* (Emphasis supplied).

In the extant case, the overt actions of accused-appellant and the totality of the circumstances surrounding the commission of the crimes clearly depict an intention on his part to kill his victims. First off, the weapon used by accused-appellant was a .38 caliber gun which undisputably is a deadly instrument, one that could kill an individual with even only one mortal shot. Then, accused-appellant shot Labao at his upper back body where the bullet could pierce through the victim's vital organs like the heart. Another, the attack made was sudden, swift and unexpected giving Labao no time and chance to defend himself or even to dissuade accused-appellant from pursuing his course of action. Also, the shooting was done in a relatively isolated