



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**HERMIE OLARTE y TARUG,
and RUBEN OLAVARIO y MAUNAO,**
Petitioners,

G.R. No. 197731

Present:

- versus -

PERALTA,*
BERSAMIN,**
DEL CASTILLO,
*Acting Chairperson,****
MENDOZA, and
LEONEN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

06 JUL 2015

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RESOLUTION

DEL CASTILLO, J.:

Petitioners Hermie Olarte y Tarug (Olarte) and Ruben Olavario y Maunao (Olavario), together with Salvador Pasquin y Marco (Pasquin), were charged with the crime of frustrated homicide in an Information that reads as follows:

That on or about September 15, 2002 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously stab one EUGENE VILLOSTAS y MARTINEZ, thus performing all the acts of execution which would constitute the crime of Homicide as a consequence but which 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.

CONTRARY TO LAW.¹

* Per Special Order No. 2088 dated July 1, 2015.
** Per Special Order No. 2079 dated June 29, 2015.
*** Per Special Order No. 2087 (Revised) dated July 1, 2015.
¹ Records, p. 1; the case was docketed as Criminal Case No. 759-V-02.

All the three accused posted² bail. But since Pasquin jumped bail, only petitioners were arraigned on June 25, 2003 where they pleaded not guilty to the crime charged.³ Trial thereafter ensued.

The prosecution averred that in the early morning of September 15, 2002, the victim Eugene M. Villostas (Villostas) was fetched by his half-brother, Charlie Penilla (Penilla), from a drinking session. On their way home, Villostas decided to buy cigarettes from a nearby videoke bar at Gen. T. de Leon, Valenzuela City. Inside the bar, however, three men who belonged to a group then singing and drinking suddenly stabbed him on different parts of his body. They only stopped when bystanders started throwing stones at them. This whole incident was witnessed by Penilla who was then only seven to eight arms length away from the crime scene.

Barangay tanods immediately responded and brought the malefactors to the *Barangay* Hall where they were later identified as petitioners and their co-accused Pasquin. Meanwhile, Villostas was rushed to the Valenzuela General Hospital where he was treated by Dr. Jolou A. Pascual (Dr. Pascual).

During trial, Dr. Pascual testified that Villostas sustained multiple stab wounds described as follows:

Multiple Stab Wound
5cm 4th ICS anterior axillary, left 3.5 cm 5th ICS
5cm curvilinear subcostal mid axillary, right
2cm anterior shoulder, left
4cm anterior shoulder, left⁴

According to him, all these wounds could have caused Villostas' death were it not for the timely medical attention given him.⁵

The defense, on the other hand, alleged that at around 2:00 o' clock in the morning of September 15, 2002, while petitioners, Pasquin and some other companions were having a drinking spree inside a videoke bar on Gen. T. De Leon, Valenzuela City, several persons threw stones at them hitting Olarte and another companion. Their group thus disbanded. While most of them headed straight home, Olarte, together with a certain Joni, went to the *Barangay* Hall to have the stoning incident entered in its blotter. Upon arrival thereat, however, they were surprised that Olarte, Olavario and Pasquin were being implicated in a stabbing incident. The three were then brought to the Valenzuela General

² Id. at 6, 20, and 37.

³ Id. at 59.

⁴ TSN dated September 17, 2004, pp. 11-20.

⁵ Id.

Hospital where Villostas identified them as his assailants. Thereafter, they were arrested and detained at the city jail.

On April 27, 2009, the Regional Trial Court (RTC) of Valenzuela City, Branch 172, rendered its Decision⁶ finding petitioners guilty as charged, *viz.*:

WHEREFORE, judgment is hereby rendered finding Hermie Olarte y Tarug and Ruben Olavario y Maunao guilty beyond reasonable doubt as PRINCIPALS [in] the crime of FRUSTRATED HOMICIDE and [are] hereby sentenced x x x to suffer an imprisonment of two (2) years, 4 (four) months and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor medium as maximum. They are also ordered to pay jointly and solidarily the victim Eugene Villostas y Martinez the amount of Php22,462.05 for medical expenses as actual damages, Php20,000.00 as moral damages and costs of suit.

Since x x x accused Salvador Pasquin y Marco has not yet been arrested and arraigned despite the issuance of order of arrest on November 8, 2002, let an alias warrant of arrest be issued against said accused Salvador Pasquin y Marco. Meantime, let the case against him be archived to be retrieved as soon as he is arrested.

SO ORDERED.⁷

Petitioners filed a Notice of Appeal⁸ which was granted by the RTC in its Order⁹ of May 13, 2009.

Before the Court of Appeals (CA),¹⁰ petitioners questioned the credibility of Villostas and Penilla as prosecution witnesses. They pointed out inconsistencies in their testimonies respecting the victim's degree of intoxication at the time of the incident, the kind or brand of liquor that he imbibed, and the length of time that he had been drinking immediately prior thereto. Petitioners argued that such inconsistencies rendered doubtful their identification as the culprits by said prosecution witnesses.

The CA, in its February 9, 2011 Decision,¹¹ debunked petitioners' arguments as it found the inconsistencies pointed out by them as relating to mere minor details. On the other hand, it found no cogent reason to deviate from the findings of the trial court as regards petitioners' culpability, thus:

⁶ Id. at 152-158; penned by Presiding Judge Nancy Rivas-Palmones.

⁷ Id. at 158.

⁸ Id. at 161.

⁹ Id. at 165.

¹⁰ The appeal before the CA was docketed as CA-G.R. CR No. 32640.

¹¹ CA *rollo*, id. at 170-184; penned by Associate Justice Mariflor P. Punzalan-Castillo and concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante.

WHEREFORE, premises considered, the April 27, 2009 Decision of the Regional Trial Court of Valenzuela City, Branch 172, in Criminal Case No. 759-V-02, convicting the [petitioners] of the crime of Frustrated Homicide is AFFIRMED.

SO ORDERED.¹²

Petitioners' Motion for Reconsideration¹³ was likewise denied in a Resolution¹⁴ dated July 13, 2011.

Hence, this Petition for Review on *Certiorari*¹⁵ under Rule 45 of the Rules of Court where petitioners raise the following errors:

THE TRIAL COURT ERRED IN NOT ACQUITTING PETITIONERS OF THE CRIME OF FRUSTRATED HOMICIDE.

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE EVIDENCE ON [RECORD] THAT NEITHER OF THE PETITIONERS WAS THE AUTHOR OF THE CRIME.¹⁶

Petitioners insist that the testimonies of Villostas and Penilla are devoid of credibility as they contain several inconsistencies. These inconsistencies rendered doubtful the said witnesses' identification of petitioners as the assailants. Petitioners also point out that they themselves went to the authorities to report the incident. This, according to them, negates their involvement in the crime because had they been the real perpetrators, they would not dare report the matter to the authorities. Moreover, they contend that the lower courts failed to properly appreciate the testimony of one Rodel Roque who categorically stated on the witness stand that he saw Villostas being stabbed by only one person and that person was neither of the petitioners. In view of these, petitioners pray that the assailed CA Decision be reversed and set aside and that they be acquitted of the crime charged.

Our Ruling

The Petition must be denied.

Suffice it to state that the errors raised by the petitioners are all "appreciation of evidence" errors or factual errors which are not within the

¹² Id. at 183.

¹³ Id. at 186-201.

¹⁴ Id. at 212-213.

¹⁵ *Rollo*, pp. 3-35.

¹⁶ Id. at 11.

province of a petition for review on *certiorari* under Rule 45. The Court had already explained in *Batistis v. People*¹⁷ that:

Pursuant to Section 3, Rule 122, and Section 9, Rule 45, of the *Rules of Court*, the review on appeal of a decision in a criminal case, wherein the CA imposes a penalty *other than* death, *reclusion perpetua*, or life imprisonment, is by petition for review on *certiorari*.

A petition for review on *certiorari* raises only questions of law. Sec. 1, Rule 45, *Rules of Court*, explicitly so provides, *viz*[.]:

Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.¹⁸

Here, the assigned errors, requiring as they do a re-appreciation and re-examination of the trial evidence, are evidentiary and factual in nature.¹⁹ The petition must therefore be denied on this basis because “*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin,”²⁰ which was not shown to be the case here.

At any rate, the Court observes that the CA correctly affirmed the RTC’s conviction of petitioners for frustrated homicide. The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code exist.²¹ These elements were proved during trial. First, direct and positive testimonies of prosecution witnesses established that Villostas sustained seven stab wounds on vital parts of his body caused by a pointed sharp object. Plainly, the nature, location and number of wounds sustained by him demonstrate petitioners’ intent to kill. Next, the injuries suffered by Villostas were all fatal. Particularly critical were the 5-centimeter wound below his left armpit, the 3.5-centimeter

¹⁷ 623 Phil. 246 (2009).

¹⁸ *Id.* at 254; citations omitted, emphasis and italics in the original.

¹⁹ *Id.* at 255.

²⁰ *Id.*

²¹ *Josue v. People*, G.R. No. 199579, December 10, 2012, 687 SCRA 675, 682.

wound on the mid-part of his left chest which required inserting a tube thereon to drain blood so as not to impede his breathing, and the 5-centimeter stab wound on the right side of his abdomen which also injured his liver.²² As testified to by Dr. Pascual, Villostas would have succumbed to death due to the said injuries if not for the timely medical attention. Finally, no qualifying circumstance for murder was alleged in the Information to have attended the commission of the crime.


The Court, however, notes that while the penalty imposed upon petitioners is also proper, there is a need to modify the awards made in favor of Villostas. The actual damages awarded by the RTC was only ₱22,642.05. Hence, there is a need to award ₱25,000.00 as temperate damages in lieu of actual damages in a lesser amount.²³ Also, pursuant to prevailing jurisprudence, the award of moral damages must be increased from ₱20,000.00 to ₱25,000.00.²⁴ All these awards shall earn interest at the legal rate of six percent (6%) *per annum* to commence from the date of finality of this Resolution until fully paid.²⁵

WHEREFORE, the petition is **DENIED**. The Decision dated February 9, 2011 of the Court of Appeals in CA-G.R. CR No. 32640 which affirmed the April 27, 2009 Decision of the Regional Trial Court of Valenzuela City, Branch 172 in Criminal Case No. 759-V-02 convicting petitioners Hermie Olarte y Tarug and Ruben Olavario y Maunao of the crime of frustrated homicide is **AFFIRMED with the MODIFICATIONS** that the victim Eugene Villostas y Martinez is awarded (1) temperate damages of ₱25,000.00 in lieu of actual damages; (2) moral damages in an increased amount of ₱25,000.00; and that (3) the said awards shall be subject to interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice

²² TSN dated September 17, 2004, pp. 14-18.

²³ *People v. Martin*, 588 Phil. 355, 365 (2008).

²⁴ *Abella v. People*, G.R. No. 198400, October 7, 2013, 706 SCRA 781, 796-797.

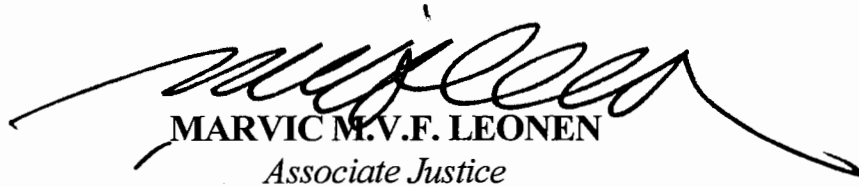
²⁵ *Id.* at 797.



LUCAS P. BERSAMIN
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

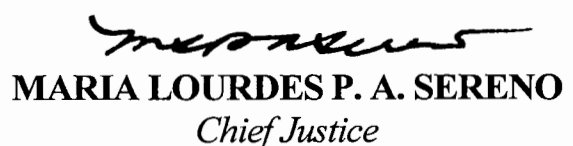
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

