



Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

**BENJAMIN M. OLIVEROS, JR.,
 OLIVER M. OLIVEROS and
 MAXIMO Z. SOTTO,**
 Petitioners,

G.R. No. 242552

Present:

PERALTA, *C.J.*, Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 ROSARIO,* *JJ.*

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
 Respondent.

MAR 03 2021

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DECISION

CAGUIOA, J.:

It is a fundamental principle in criminal law that all doubts should be resolved in favor of the accused. It is the prosecution's duty to prove beyond reasonable doubt each and every element of the crime charged, otherwise the accused should be acquitted. This is in consonance with the presumption of innocence enshrined in no less than the Constitution.

Before the Court is a Petition for Review on Certiorari¹ filed under Rule 45 of the Rules of Court from the Decision² dated January 31, 2018 and Resolution³ dated October 17, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 38307, which affirmed the Decision⁴ dated November 16, 2015 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC), in Criminal Case No. L-9894, finding herein petitioners Benjamin M. Oliveros, Jr. (Benjamin), Oliver M. Oliveros (Oliver) and Maximo Z. Sotto (Maximo) guilty of the crime of Frustrated Murder.

* Designated as additional member per Raffle dated January 25, 2021 vice Associate Justice Samuel H. Gaerlan.

¹ See Petition for Review on Certiorari filed on December 13, 2018; *rollo*, pp. 10-36.

² Id. at 41-57. Penned by Associate Justice Samuel H. Gaerlan (now a member of this Court), with Associate Justices Mariflor P. Punzalan Castillo and Marie Christine Azcarraga-Jacob, concurring.

³ Id. at 58-59.

⁴ Id. at 60-71. Penned by Presiding Judge Loreto S. Alog, Jr.

The Facts

An Information for Frustrated Murder was filed against petitioners, namely Benjamin and Oliver, the accusatory portion of which reads:

“That on or about October 30, 2013 in the afternoon inside the public market, Poblacion, Binmaley, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused in conspiracy with each other and with intent to kill did, then and there willfully, unlawfully, and feloniously assault by taking advantage of their superior strength being armed with bolos, by punching Glenn F. Apostol, [the] offended party, on the part of the accused Oliver Oliveros who thereafter held on the back (*sic*) the said offended party and that [while] in [a] defenseless position, accused Benjamin Oliveros, Jr. hacked the face of the offended party, as the offended party who was bloodied fell on the ground, the said accused together with John Doe, mauled him; and as the offended party was moving away, the accused Oliver Oliveros who was handed a bolo by John Doe chased the offended party and hacked the latter with the bolo on his right shoulder, and as a result of the said assault on the unarmed offended party, he suffered ‘Hacking wound 9 cm zygomatic area left, Hacking wound 5 cm, shoulder right, Lacerated wound 3 cm., frontal area,’ thus, the said accused performed all the acts of execution which would [have] produced Murder as a consequence but which, nevertheless did not produce it by reason of competent medical intervention that prevented his death, to the prejudice and damage of the said offended party.”⁵

On November 5, 2013, the RTC approved the cash bond posted by Benjamin and Oliver. During arraignment, Benjamin and Oliver pleaded not guilty to the crime charged.⁶

On January 9, 2014, the RTC granted the prosecution’s Motion to Insert Name of Maximo. Granting the said motion, the RTC ordered the inclusion of Maximo’s name as an accused and corollary, for his arrest as well. Thus, on January 12, 2014, Maximo was arrested. He, however, posted a cash bond after his motion for bail was granted.⁷

Version of the Prosecution

The prosecution presented as witnesses the following: 1. Glenn F. Apostol (Glenn), private complainant; 2. Virgilio Apostol (Virgilio), Glenn’s father; 3. Irma delos Santos (Irma), eyewitness; and 4. Dr. Melquiades Manaois (Dr. Manaois), the physician who attended to Glenn.

⁵ Id. at 42.

⁶ Id.

⁷ Id. at 43.



Glenn testified that he knows Oliver and Benjamin because they were his neighbors. He also knows Maximo since he is the live-in partner of Mimielyn Oliveros⁸ (Mimielyn), the elder sister of Oliver and Benjamin.

At about 5:30 in the afternoon on October 20, 2013, Glenn and Virgilio went to the public market of Poblacion, Binmaley to buy fish. Glenn drove the tricycle, while Virgilio rode inside the sidecar.

Glenn noticed that Benjamin was following him when the latter stopped his scooter while the former was parking his tricycle. From the side mirror of the tricycle, Glenn saw Benjamin giving him dagger looks. Virgilio advised him not to mind Benjamin. Glenn and Virgilio then proceeded inside the fish center. Unable to find the kind of fish (*palo-palo*) they wanted, they went outside and found one being sold by a sidewalk vendor. As Virgilio was paying, Glenn saw Benjamin still aboard his scooter about five (5) meters away as if buying feeds. Thereafter, Benjamin drove his scooter towards Glenn, stopped with the front wheels of the scooter in between Glenn's legs. Benjamin inquired what the problem was and why Glenn was looking at him. Glenn answered that there was no problem. Then, Benjamin left.

While Glenn and Virgilio were on their way to the tricycle, Mimielyn, who has a small meat stall in the market, approached them and said: "*Grabe la tay pandederal mod agik. Ya say imbabagan ya no umpaway ya kagawad et maong na walay nagawaan to.*" (The way you besmirch my brother is too much. You said that if he wins Barangay Kagawad, you doubt if he can do any good). Glenn denied being the source of the malicious talks mentioned by Mimielyn. He even told Mimielyn to bring him the person who was spreading the rumor so he would be able to confront him. Mimielyn cursed him and insisted on her assertion. Glenn cursed Mimielyn back. Virgilio then urged Glenn to leave, saying to Mimielyn: "*Sikayo ingen. Mambabantak kayoy basura ed arapan ya abong mi.*" (You're the one at fault. You threw your trash in front of our house). Mimielyn likewise cursed him.⁹

After some exchange of words, Glenn challenged Mimielyn to file a case against him. Then, Glenn and Virgilio re-entered the fish center. Mimielyn called someone on the phone after the exchange of words with Glenn and Virgilio and followed them. A few moments later, Benjamin and Oliver arrived aboard a scooter. They challenged Glenn to a fight and suddenly punched him. The latter was able to evade the attack. Oliver then went behind Glenn and held him. While Glenn was in that position, Benjamin hacked him with a bolo, hitting him on his face and forehead. Thereafter, Oliver and Benjamin, together with Maximo who came from Mimielyn's stall, mauled and kicked Glenn. Benjamin then punched Virgilio above his right eye causing the latter to fall. While Virgilio was on the ground, Benjamin, Oliver, and Maximo kicked him in different parts of his body.

⁸ Also spelled as "Memielyn O. Sotto" in some parts of the *rollo* and records.

⁹ *Rollo*, p. 44.

Mimielyn handed a bolo to Maximo who hacked Virgilio with it. Glenn parried the blow with the use of his right hand. Maximo then passed the bolo to Oliver who hacked Glenn on the shoulder. Glenn fell to his hands and knees. While Glenn was in said position, Mimielyn strangled him from behind and pulled his hair.

Seeing Benjamin and Maximo still kicking Virgilio and with Oliver still in possession of the bolo, Glenn pulled Mimielyn towards him to protect his person from further blows. Glenn was able to run but Oliver and Benjamin still chased him.

Fortunately, six (6) policemen arrived and arrested Benjamin and Oliver. At that time, however, Maximo and Mimielyn had already left the scene.

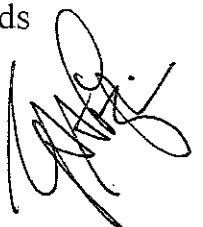
The police rushed Glenn and Virgilio to the Lingayen Community Hospital. According to Dr. Manaois, the hacking wounds were plain cut wounds probably caused by a bladed object which were located on the left cheek and right shoulder. Another lacerated wound, which was probably caused by a blunt object, was found on the left side of his forehead. There was also a fracture on the cheekbone. Dr. Manaois further said that without timely medical attention, such injuries could have caused blood loss and infection, which could result to death depending on the resistance of Glenn's body to the infection.

Version of the Defense

Benjamin, Oliver, and Maximo, as well as Mimielyn, testified for the defense.

Benjamin confirmed that Oliver is his elder brother, while Mimielyn is his sister. He and his brother are pig butchers. He knows Glenn because he was their neighbor in San Isidro Sur, Binmaley, Pangasinan. Benjamin clarified, however, that his family seldom talked with Glenn's family because Glenn was easily irked by the jokes he made.

Benjamin further testified that at about past five o'clock in the afternoon of October 20, 2013, he went to the town proper of Binmaley to buy feeds for the pigs he was going to butcher. As Benjamin was about to leave the fish center aboard his motorcycle, Glenn, with extended hands and spread legs, blocked his way. Glenn asked Benjamin why he was staring at him. When Benjamin answered that he was merely trying to earn a living and was not staring at him, Glenn acted to punch him. But Virgilio, Glenn's father, who was with him at that time, held his hands. Taking the opportunity, Benjamin started the engine of his motorcycle and left for home. When he reached home, Oliver told him that Mimielyn was in trouble. As such, they went to their stall at the public market in Binmaley. Thereat, he saw Glenn kick his sister. He was shocked and afraid to go near them. Then, he heard Oliver telling them to stop. He saw Glenn run towards Oliver and punched the latter. Thus, Oliver pushed Glenn towards



the coconut container. Then, Glenn punched him, but Oliver was able to evade the attack. Benjamin picked up a bolo which was placed in their market stall and with it, he hacked Glenn on his face. He also testified that when Glenn held Mimielyn's hair and raised her up, he was fearful that his sister might be dropped by Glenn, thus he hacked him again, hitting him at the right portion of his upper body. Mimielyn fell with her hair still being held by Glenn. Benjamin was able to catch her and pulled her at the time the police arrived.

Benjamin further stated that he did not notice Maximo during the entire incident. He also narrated that he saw Virgilio bring out his gun during the commotion.

Oliver claimed that he received a call from Mimielyn informing him to pick up the money for the purchase of feeds. She also told him that Virgilio and Glenn were at their store and that Glenn kicked her. Oliver and his brother were prompted by what Mimielyn told him, hence they proceeded to their market stall. When they arrived at the stall, he saw Glenn kicking his sister while the latter was seated on the floor. When he tried to pacify Glenn, the latter punched him and he was thrown to a coconut tree and lost consciousness. When he regained consciousness, he saw Benjamin pulling Mimielyn away from Glenn because the latter was pulling Mimielyn's hair. He then pulled Benjamin. After which, the police arrived.

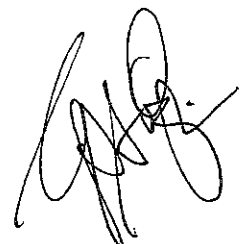
Mimielyn testified that she was selling meat at their market stall on October 30, 2013 in the afternoon when Virgilio and Glenn went to where she was and bad mouthed her, which persisted despite her ignoring them. When she turned her back, Glenn held her on the waist and lifted her. She then called her brother on the phone for help. She likewise urged Oliver to get the money being used in buying pigs.¹⁰ When Oliver arrived, she was being lifted by Glenn. Oliver appealed to Glenn to stop. Then Benjamin hacked Glenn. After which, Glenn threw her to the ground. She denied that Oliver and Maximo hacked Glenn. She, however, reiterated that Maximo was frightened because Virgilio threatened to shoot him. She also claimed that Glenn lifted her right leg by his right hand and his left hand under her armpit.

Ruling of the RTC

In its Decision dated November 16, 2015, the RTC found petitioners guilty of Frustrated Murder, to wit:

WHEREFORE, premises considered, the accused are hereby found guilty beyond reasonable doubt, as conspirators, of frustrated murder defined and penalized under Art. 248 in relation to Art. 50 of the Revised Penal Code and are accordingly sentenced to suffer an indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of

¹⁰ Id. at 80.



reclusion temporal, as maximum, and such accessory penalties provided for by law.

The accused are likewise found solidarily liable to pay the private complainant actual damages, moral damages, and exemplary damages in the respective amounts of P25,000.00, P40,000.00 and P20,000.00, the same to earn 6% interest from the finality of this judgment until fully paid.

SO ORDERED.¹¹

The RTC ruled that petitioners are liable for the crime of Frustrated Murder. There were material inconsistencies in the testimonies of the defense witnesses which created doubt on the veracity thereof.¹² It further ruled that intent to kill and the presence of the aggravating circumstance of abuse of superior strength were sufficiently proven by the prosecution.¹³ Such intent to kill can be conclusively said to have been pursued by petitioners with abuse of superior strength since the aggressors purposely used excessive force rendering the victim unable to defend himself.¹⁴

Aggrieved, petitioners appealed to the CA.

Ruling of the CA

In the Decision dated January 31, 2018, the CA affirmed the conviction by the RTC with modification as to damages:

WHEREFORE, premises considered, the 16 November 2015 Decision rendered by the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69 in Crim. Case No. L-9894 convicting the appellants is hereby **AFFIRMED**.

The appellants are hereby **SOLIDARILY LIABLE TO PAY** Glenn Apostol the following damages:

1. The amount of P50,000.00 as civil indemnity;
2. The amount of P50,000.00 as moral damages;
3. The amount of P50,000.00 as exemplary damages; and
4. All monetary awards shall earn an interest at the rate of 6% per annum from the finality of this decision until full satisfaction.

SO ORDERED.¹⁵

The CA ruled that petitioners cannot claim that they acted in defense of a stranger and defense of a relative as they failed to prove that there was

¹¹ Id. at 71.

¹² Id. at 68.

¹³ Id. at 69.

¹⁴ Id.

¹⁵ Id. at 56.

unlawful aggression on the part of Glenn.¹⁶ The evidence on record clearly revealed the intent to kill on the part of petitioners since they hacked Glenn three (3) times and two (2) of those hacks were directed at his face.¹⁷ It further ruled that the wound inflicted on Glenn were mortal wounds which could have caused his death were it not for the timely medical treatment given to him.¹⁸ Lastly, the CA ruled that abuse of superior strength attended the commission of the crime.¹⁹

Hence, this petition.

Issues

Whether the CA erred in affirming the conviction of petitioners for the crime of Frustrated Murder.

The Court's Ruling

The petition is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears from the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.²⁰ This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.²¹ The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²²

After a careful review and scrutiny of the records, the Court affirms the conviction of petitioners, but only for the crime of Attempted Murder, not Frustrated Murder.

Petitioners acted in conspiracy with one another and with abuse of superior strength.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. A conspiracy need not be established by direct evidence but may be proven through the series of acts done by each of the accused in pursuance of their

¹⁶ Id. at 50-51.

¹⁷ Id. at 52-53.

¹⁸ Id. at 53-54.

¹⁹ Id. at 54.

²⁰ *People v. Duran Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

²¹ Id.

²² *Ramos v. People*, G.R. No. 218466 & 221425, January 23, 2017, 815 SCRA 226, 233.



common unlawful purpose. For collective responsibility among the accused to be established, it is sufficient that at that time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill the victim.²³

In the present case, conspiracy between petitioners was sufficiently established by the prosecution. As observed by the RTC:

In this case, conspiracy among the three accused is not hard to see. As recalled by Glenn, and corroborated by his father[,] Virgilio and prosecution witness Erma delos Santos, the accused Oliver, upon arrival at the fish center with his brother and co-accused Benjamin after being summoned through a cellular phone call by their sister Mimielyn, endeavored to punch Glenn, and when he failed to make a hit, Oliver held Glenn from behind. While the latter was in such position, Benjamin hacked him on the face and forehead with a bolo. Thereafter, the three accused, including Maximo who was at that time with Mimielyn in their meat stall located near the scene of the incident, kicked Virgilio in different parts of his body; and when Maximo acted to hack Virgilio with a bolo given him by Mimielyn, Glenn, to protect his father, parried the blow, resulting to his injury at the right hand. Maximo then passed the bolo to Oliver who used it in hacking Glenn at the right shoulder.²⁴

In this connection, the RTC and CA were likewise correct in ruling that the qualifying circumstance of abuse of superior strength attended the commission of the crime. Abuse of superior strength is present not only when the offenders enjoy numerical superiority, or there is a notorious inequality of forces between the victim and the aggressor, but also *when the offender uses a weapon which is out of proportion to the defense available to the offended party.*²⁵ Thus, the Court quotes with approval the following ratiocination of the CA:

This Court noted the testimony of the victim that while Oliver was holding him, Benjamin took the opportunity and hacked him. His testimony was corroborated by the testimony of Irma that while Oliver and Glenn were fighting, Benjamin hacked the latter on the face. The victim further stated that Oliver and Benjamin, together with [Maximo] mauled and kicked Glenn. This Court observed that the appellants' moves are in unity and indicative of how they took advantage of their superior strength. **We are of the same view with the OSG that appellants did not only take advantage of their numerical superiority, they also armed themselves with bolos to render their victim defenseless as there was a huge disparity and inequality of forces between them.**²⁶ (Emphasis supplied)

Based on the foregoing, it is indeed clear that the three (3) petitioners acted in conspiracy as they performed felonious acts with such closeness and

²³ *People v. Magalang*, G.R. No. 84274, January 27, 1993, 217 SCRA 571, 574.

²⁴ *Rollo*, pp. 66-67.

²⁵ *People v. Hermo*, G.R. No. 135026, February 15, 2002, 377 SCRA 148, 153.

²⁶ *Rollo*, p. 54.

coordination that indicate a common purpose or design²⁷ and they purposely and deliberately took advantage of their superior strength to inflict harm upon the hapless and unarmed victim, Glenn.

Intent to kill was sufficiently proven by the prosecution.

The defense argues that intent to kill was not proven by the prosecution. However, this argument is bereft of merit.

An essential element of Murder and Homicide, whether in their consummated, frustrated or attempted stages, 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*.²⁸

In *People v. Delim*,²⁹ 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.³⁰

In the present case, the prosecution mustered the requisite quantum of evidence to prove the intent of petitioners to kill Glenn. As pointed out by the RTC and affirmed by the CA, unsatisfied with just mauling the victim, petitioners also hacked Glenn three (3) times.³¹ Two (2) of the three (3) hacks were directed at Glenn's face. In addition, even as when Glenn was wounded and was no longer a threat to them, petitioners still hacked him at the shoulder.³² As if still not enough, petitioners further kicked and mauled Glenn.³³ In fact, even when Glenn was able to escape, petitioners still gave chase to him.³⁴

Thus, without a doubt, petitioners intended to kill Glenn had the latter not been able to escape.

The defense failed to prove that petitioners acted in defense of a

²⁷ *People v. Hilario*, G.R. No. 114268, May 31, 1995, 244 SCRA 633, 639.

²⁸ *Rivera v. People*, G.R. No. 166326, January 25, 2006, 480 SCRA 188, 196.

²⁹ G.R. No. 142773, January 28, 2003, 396 SCRA 386, 400.

³⁰ *Rivera v. People*, supra note 28, at 197.

³¹ *Rollo*, p. 53.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

relative and in defense of a stranger.

Petitioners try to justify their criminal acts by claiming that they acted in defense of a relative (Benjamin and Oliver) and in defense of a stranger (Maximo). However, this claim is belied by the evidence on record.

Self-defense, when invoked as a justifying circumstance, implies the admission by the accused that he committed the criminal act. Generally, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt rather than upon the accused that he was in fact innocent. When the accused, however, admits killing the victim, it is incumbent upon him to prove any claimed justifying circumstance by clear and convincing evidence. Well-settled is the rule that in criminal cases, self-defense shifts the burden of proof from the prosecution to the defense.³⁵

For the claim of defense of a relative and defense of a stranger to prosper, the following elements must be present:

ART. 11. *Justifying Circumstances.*—The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.³⁶

Based on the doubtful and inconsistent account by the defense witnesses of what had transpired during the incident, none of the requisites of defense of

³⁵ *People v. Samson*, G.R. No. 214883, September 2, 2015, 769 SCRA 171, 180-181.

³⁶ REVISED PENAL CODE, Art. 11.



a relative or defense of a stranger were proven by the defense in the instant case.

The initial and crucial point of inquiry is whether there was unlawful aggression on the part of the victim for absent this essential element, no self-defense can be successfully interposed. If there is no unlawful aggression, there is nothing to prevent or to repel and the second requisite of self-defense will have no basis either.³⁷ As correctly observed by the RTC, whether Glenn initiated the unlawful aggression is highly uncertain and doubtful:

For one, some of the narratives in the defense's account go beyond logic and normal human experience. Mimielyn recollected that it was while Glenn was already carrying her up above his head that she called for help with the use of her cellular phone. Oliver, who received the call, testified that Mimielyn not only told him about her being kicked by Glenn; she likewise urged him to then pick up from their stall the money to be used in the purchase of pig[s] to be butchered. Under such a delicate situation where her person, if not her life, was in jeopardy, it is a wonder how Mimielyn could have still thought of such matter which, given the then prevailing circumstances, can be deemed of not much importance then. Likewise, Oliver claimed to have been boxed by Glenn on the face as he approached Mimielyn to help her, with a force so strong that he was thrown back and lost consciousness. Significantly, however, Oliver failed to adduce any evidence to prove any injury he suffered, not even just a hematoma. Had Glenn truly boxed Oliver in the manner the latter portrayed, injuries, which for sure were evident to the naked eye would need medical attention, could have resulted. Moreover, Benjamin's assertion that even after he was already hacked on the face[,] Glenn was still able to seize Mimielyn and lift her up appears too fantastic for a man like Glenn who was not shown, aside from the bare declarations of Oliver and Benjamin that he was a karate expert, and who was already severely injured at that time, to be actually endowed with Herculean power and strength. It is axiomatic that for testimonial evidence to be credible, it should come not only from the mouth of a credible witness, but should also be credible, reasonable, and in accordance with human experience.

What is more, there are material inconsistencies in the defense's account which create doubt on the veracity thereof. Maximo, speaking of the incident between Mimielyn, on one hand, and Glenn and Virgilio, on the other hand, prior to the hacking incident, stated that when the Apostols badmouthed Mimielyn, the latter retaliated with [a] barrage of words also. **Mimielyn, however, said that when the Apostols spoke harsh words against her, she kept her silence and merely turned her back. Mimielyn recalled that Benjamin and Oliver arrived at the scene separately[,] with a gap of about five minutes, on board separate vehicles. The latter, however, testified that, upon receipt of the call from Mimielyn, they went to the fish center together aboard a motorcycle. While Maximo recalled having seen Glenn kicking Mimielyn several times prior to the arrival of Benjamin and Oliver, and the latter two accused likewise testified having witnessed said kicking incident at the time of their arrival, Mimielyn had not said so and merely asserted that when she turned her back from Glenn, the latter seized her and lifted her up above his head. Mimielyn also remembered that the lifting up happened**

³⁷ *People v. Morato*, G.R. Nos. 95358-59, July 5, 1993, 224 SCRA 361, 368.

before, and was in progress at the time of, the arrival of Benjamin and Oliver at the scene. The three accused, however, uniformly asserted that it was actually thereafter. As to the precise moment when the hacking incident happened, Benjamin testified that it was after Glenn attacked him that, in self-protection, he took hold of a bolo from their meat stall and hacked Glenn. In contrast, Maximo and Mimielyn proclaimed that it was while the latter was being lifted up by Glenn that Benjamin hacked him. For persons who witnessed the same incident, why the foregoing variances?³⁸ (Emphasis supplied and citation omitted)

Furthermore, assuming arguendo that there was unlawful aggression on the part of Glenn, the second requisite is likewise lacking because the means used by petitioners to prevent or repel the alleged attack by Glenn is not reasonable. Although it is true that the law does not require perfect equality of forces between the aggressor and the person making the defense, surely, the use of a bolo by the three (3) petitioners who were acting in conspiracy and helping each other against the bare hands of the victim is not at all commensurate, even if the latter is alleged to be a karate expert.³⁹

The mitigating circumstance of passion or obfuscation should not be appreciated in favor of petitioners.

Petitioners alternative claim of passion or obfuscation likewise deserves no credit.

There is passion and obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus *so powerful as to overcome reason*.⁴⁰

To be entitled to this mitigating circumstance, the following elements must be present: (1) there should be an act both unlawful and sufficient to produce such condition of mind; and (2) the act that produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.⁴¹

The elements of said mitigating circumstance are sorely lacking in the instant case.

The Court has consistently held that the obfuscation must originate from lawful feelings. *The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his*

³⁸ *Rollo*, pp. 67-68.

³⁹ *Id.* at 85-86.

⁴⁰ *People v. Lobino*, G.R. No. 123071, October 28, 1999, 317 SCRA 606, 613.

⁴¹ *People v. Cuasay*, G.R. No. 180512, October 17, 2008, 569 SCRA 870, 878.

*sanity and self-control, because the cause of this condition of mind must necessarily have preceded the commission of the offense.*⁴²

In this connection, as previously discussed, due to the inconsistent testimonies of the defense witnesses, aside from the phone call from Mimielyn that she was allegedly being attacked by Glenn, there is no clear evidence that petitioners witnessed Glenn initiate any attack against Mimielyn, which would have given rise to passion or obfuscation on the part of petitioners. What is sure though is that petitioners and the victim had a quarrel or a fight.

Petitioners should be liable for Attempted Murder and not Frustrated Murder, as the nature of the wounds sustained by the victim were not proven by the prosecution to be fatal.

In the assailed Decision, the CA affirmed the RTC's finding that petitioners should be liable for Frustrated Murder. The CA held:

For this Court, the mere location of the wounds unquestionably indicates that the same were fatal were it not for the timely medical treatment. This Court also concurs with the trial court that the appellants presented no evidence to contradict the testimony of the physician as an expert witness.⁴³

On the other hand, the defense argues that the RTC erred in convicting them of Frustrated Murder considering that the wounds sustained by the victim were not fatal.⁴⁴ The defense maintains that since the wounds are non-mortal, the crime was only committed in the attempted stage.

On this issue, the Court rules in favor of petitioners.

It was an error for the RTC and CA to conclude that the wounds suffered by the victim were fatal based merely on the location of the hack wounds, two (2) of which were on the victim's face. The rulings of the lower courts also run contrary to the testimony of the medico-legal officer that such injuries, without medical timely attention, **could only possibly cause death to the victim due to infection and/or tetanus.**⁴⁵ The testimony of Dr. Manaois is worth revisiting:

Q Doctor, what would have happened to the private complainant considering his injuries that he received? What would happen to him if no timely medical attention was given to him?

A He might lose blood. *The wounds will get infected, sir.*

⁴² *People v. Lobino*, supra note 40, at 613-614.

⁴³ *Rollo*, p. 54.

⁴⁴ *Id.* at 53.

⁴⁵ *Id.* at 163.



Q What else?

A Could have tetanus, infection, sir.

Q Would these injuries be sufficient to cause his death?

A *It's possible, sir.*

Q And how long would it take for him to die, if no medical treatment was given to him?

A *It depends on the resistance of his body for the infection sir (sic).*⁴⁶
(Emphasis and italics supplied)

To start, it is worth emphasizing two (2) matters in the testimony of Dr. Manaois:

First, the medico-legal officer testified that the injuries may only *possibly* cause the victim's death. Second, if ever the victim would die because of the wounds he sustained, his death would not be caused by the wounds themselves, but his injuries *might* cause blood loss or he might *possibly* die due to *infection or tetanus* if timely medical attention had not been given.

Article 6 of the Revised Penal Code (RPC), as amended defines the stages of a felony in the following manner:

ART. 6. *Consummated, frustrated, and attempted felonies.*— Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is **frustrated** when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an **attempt** when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance. (Emphasis supplied)

In *Palaganas v. People*,⁴⁷ the Court made the following distinctions between frustrated and attempted felony:

- 1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.

⁴⁶ TSN, December 4, 2014, pp. 7-8; id. at 53.

⁴⁷ G.R. No. 165483, September 12, 2006, 501 SCRA 533 cited in *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322.

- 2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.⁴⁸

Specific to this case, it is well-settled that in order to convict an accused for the crime of Frustrated Murder or Homicide, as the case may be, the nature of the wounds sustained by the victim should be fatal. Otherwise, the accused can only be convicted of Attempted Murder or Homicide. The crucial point to consider is the nature of the wound inflicted which must be supported by independent proof showing that the wound inflicted was sufficient to cause the victim's death without timely medical intervention.⁴⁹

In this connection, the Court subscribes to the following prevailing jurisprudence:

In *People v. Costales*,⁵⁰ the Court ruled that when the character of the wounds sustained by the victim is doubtful, **any doubt should be resolved in favor of the accused:**

In Crim. Case No. T-2056, accused-appellant was charged by the trial court with frustrated murder but was convicted only for attempted murder. In its *Decision*, the trial court explained that the failure of the prosecution to present a medical certificate or competent testimonial evidence showing that Crispina would have died from her wound without medical intervention, justified the accused's conviction for attempted murder only.

We call to mind *People v. De La Cruz* where this Court ruled that the crime committed for the shooting of the victim was attempted murder and not frustrated murder for the reason that "his injuries, though no doubt serious, were not proved fatal such that without timely medical intervention, they would have caused his death." **In fact, as early as *People v. Zaragosa*, we enunciated the doctrine that where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated murder.**⁵¹ (Emphasis supplied and italics in the original)

Similarly, in *People v. Vibal, Jr.*,⁵² the Court held that the accused should only be convicted of Attempted Murder because there was nothing in the evidence that would show that the wound would be fatal if not medically attended to:

The Court affirms the conclusion of the CA that the appellants should be held criminally liable for the complex crime of Direct Assault with

⁴⁸ Id. at 555, cited in *Serrano v. People*, id. at 337-338.

⁴⁹ *Serrano v. People*, id. at 338.

⁵⁰ G.R. Nos. 141154-56, January 15, 2002, 373 SCRA 269.

⁵¹ Id. at 281-282.

⁵² G.R. No. 229678, June 20, 2018, 867 SCRA 370.

Attempted Murder in Criminal Case No. 17648-B. It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present.⁵³ But, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide.

Here, the use of firearms and the manner of the commission of the crime by the appellants unmistakably show that they intended to kill PO3 Almendras and that treachery was present. However, no evidence was adduced to show that the nature of gunshot wounds sustained by PO3 Almendras was sufficient to cause the latter's death without timely medical intervention. We note that the attending physician of PO3 Almendras was not called to the witness stand to testify on the gravity or character of the gunshot wounds inflicted on the said victim. **Also, no evidence was introduced to prove that PO3 Almendras would have died from his gunshot wounds without timely medical attendance. Where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder.**⁵³ (Emphasis supplied)

Further, in *Epifanio v. People*,⁵⁴ the Court held that since there was no evidence introduced to prove that the victim would have died from his wound without timely medical attendance, the accused can only be convicted of Attempted Murder:

No evidence in this case was introduced to prove that Crisaldo would have died from his wound without timely medical attendance. It is well-settled that where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder.⁵⁵

In *Paddayuman v. People*,⁵⁶ the Court held that since the medico-legal officer **did not categorically state that the wound sustained by the victim was fatal**, the accused should only be convicted of Attempted Homicide:

We agree with the trial court that attempted homicide was committed by petitioner. Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Here, petitioner stabbed the victim twice on the chest, which is indicative of an intent to kill. Believing that Maximo was dying,

⁵³ Id. at 395-396.

⁵⁴ G.R. No. 157057, June 26, 2007, 525 SCRA 552.

⁵⁵ Id. at 563-564.

⁵⁶ G.R. No. 120344, January 23, 2002, 374 SCRA 278.

petitioner left. However, there is no evidence that the wounds sustained by the victim were fatal enough as to cause death. This can be gleaned from the testimony of Dr. Pintucan who did not categorically state whether or not wounds were fatal. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. In the instant case, the uncertainty on the nature of the wounds warrants the appreciation of a lesser gravity of the crime committed as this is in accordance with the fundamental principle in Criminal Law that all doubts should be resolved in favor of the accused. Thus, in *People v. Pilonos*, this Court held that even if the victim was wounded but the injury was not fatal and could not cause his death, the crime would only be attempted.⁵⁷ (Emphasis and underscoring supplied)

In the instant case, the CA made a conclusion that since two (2) of the three (3) hack wounds are on the victim's face, said wounds are fatal because the victim was hacked near the brain, a vital organ of the human body.⁵⁸ However, interestingly, in *Serrano v. People*,⁵⁹ although the stab wound could have been fatal since the victim testified that he saw his intestines come out, **no exact evidence existed to prove the gravity of the wound**, thus the Court convicted the accused only of Attempted Homicide:

When nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner. Thus, the crime committed should be attempted, not frustrated, homicide.

Under these standards, we agree with the CA's conclusion. From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death. As correctly observed by the CA, the victim's attending physician did not testify on the gravity of the wound inflicted on the victim. We consider, too, the CA's observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound. There was also no proof that without timely medical intervention, the victim would have died. This paucity of proof must necessarily favor the petitioner.⁶⁰ (Emphasis supplied)

In these five (5) above-cited cases, the victims all sustained wounds. The victims in the first two cases were shot, the victim in the third case was stabbed on the scapular area, the victim in the fourth case was stabbed on the chest, and the victim in the last case was stabbed on the left side of his stomach which caused his intestines to show, a situation much worse than what happened in the instant case. Surely, in all these cases, the victims also suffered blood loss which *might* also cause their death. And yet, the Court still held the crime to be only in the attempted stage because it was not

⁵⁷ Id. at 288.

⁵⁸ *Rollo*, p. 53.

⁵⁹ *Supra* note 47.

⁶⁰ Id. at 339.

categorically and unequivocally stated by the doctors that their injuries were sufficient to cause their death. The same situation inheres in this case.

Here, petitioners hacked Glenn twice in the face and even chased after him, which are indeed indicative of an intent to kill. However, there is no evidence that the wounds sustained by Glenn were fatal enough to cause his death. Dr. Manaois **failed to categorically state whether the wounds sustained by the victim are fatal**. This cannot be inferred from the fact alone that he was hacked in the face. In fact, it is doubtful whether the stab wounds themselves were grave enough to cause Glenn's death because Dr. Manaois merely mentioned that Glenn *might* lose blood and it is *possible* for him to die because of infection or tetanus if no timely medical attention was given. These are the only things that were testified upon.

In this relation, it is settled that circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but **must be based on facts of unquestionable existence.**⁶¹ **The uncertainty on the nature of the wounds warrants the appreciation of a lesser gravity of the crime committed as this is in accordance with the fundamental principle in Criminal Law that all doubts should be resolved in favor of the accused.**⁶²

On a final note, in deciding the guilt of an accused, the Court must always bear in mind that the life and liberty of the accused are at stake. Although petitioners in this case are indeed guilty of trying to kill the victim and should be punished for their criminal act, the prosecution failed to prove beyond reasonable doubt that the wounds sustained by the victim were fatal. Thus, petitioners should only be liable for Attempted Murder.

Under Article 248 of the RPC, as amended, the penalty imposed for the crime of Murder is *reclusion perpetua* to death. For the crime of Attempted Murder, the penalty shall be *prision mayor*, since Article 51 of the RPC states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the RPC. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. Therefore, the penalty imposed should be imprisonment from six (6) years of *prision*

⁶¹ *Paddayuman v. People*, supra note 56, at 288, citing *People v. Lopez*, G.R. No. 131151, August 25, 1999, 313 SCRA 114, 125.

⁶² *Paddayuman v. People*, id.

correccional, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.⁶³

Finally, in view of the Court's ruling in *People v. Jugueta*,⁶⁴ petitioners should each pay Twenty Five Thousand Pesos (₱25,000.00) as civil indemnity, Twenty Five Thousand Pesos (₱25,000.00) as moral damages, and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages to Glenn.

WHEREFORE, in view of the foregoing, the petition is hereby **PARTIALLY GRANTED**. The Court **DECLARES** petitioners **BENJAMIN M. OLIVEROS, JR., OLIVER M. OLIVEROS, and MAXIMO Z. SOTTO GUILTY** of **ATTEMPTED MURDER** defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, and sentences them to each suffer the indeterminate penalty of imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. They are further ordered to pay Glenn F. Apostol the amount of Twenty Five Thousand Pesos (₱25,000.00) as civil indemnity, Twenty Five Thousand Pesos (₱25,000.00) as moral damages, and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages **EACH**. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.


SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

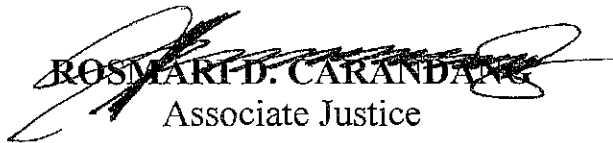
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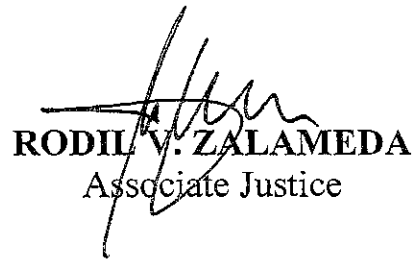


DIOSDADO M. PERALTA
Chief Justice
Chairperson

⁶³ *Fantastico v. Malicse, Sr.*, G.R. No. 190912, January 12, 2015, 745 SCRA 123, 142-143.

⁶⁴ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

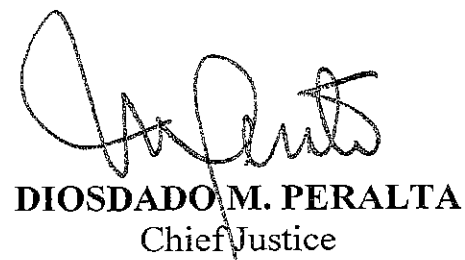

ROSMARID D. CARANDANG
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

(On leave)
RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

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


DIOSDADO M. PERALTA
Chief Justice

