



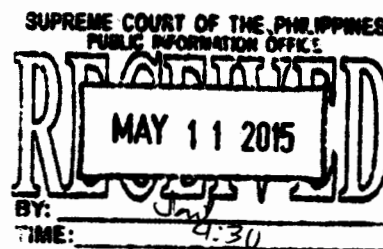
Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 9, 2015** which reads as follows:*

“G.R. No. 216643 (Jeffrey Luna y Aguilar, *petitioner* v. People of the Philippines, *respondent*.)

In an Information filed with the Regional Trial Court (RTC), Branch 12 of Zamboanga City, petitioner was charged for frustrated homicide. The accusatory portion reads:

That on or about January 7, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and stab with the use of said weapon that he was then armed with at the person of one MOISES SIANO y MAGSALAY, thereby inflicting [stab] wound on the fatal part of the latter’s body which ordinarily would cause his death, thus performing all the acts of execution which would have produced the crime of Homicide as a consequence, but nevertheless did not produce it by reason of some causes independent of the will of said accused, that is, by the timely and proper medical attention rendered to the said Moises Siano y Magsalay which prevented his death, to the damage and prejudice of the said offended party.¹

On 7 January 2003, according to the prosecution, Moises Siano (Moises) and Edgardo Gazetta (Edgardo) were walking along Sagrada Familia Village in Canelar, Zamboanga City when they were blocked by the group of Jung-Jung Villablanca (Jung-jung), Eugene Villablanca

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¹ Rollo, pp. 55-56.

(Eugene), and petitioner. A fistfight then erupted between the two groups. Jung-jung hit Moises on the lip with the scabbard of a bolo. Moises then ran towards his house to get his bolo. He met Jung-jung's group in a store and the fight continued. When Jung-jung fell on the ground, petitioner wrestled the bolo from Moises and stabbed him with a knife. Moises was brought to the hospital where he was given prompt medical attention.

Petitioner denied stabbing Moises. He claimed that he only watched Moises and Jung-jung fight. He asserted that he did not see the stabbing because during the fight, Moises' companions started throwing stones at him so he took cover inside the house of a Paulo Basa.

After trial, the RTC found petitioner guilty beyond reasonable doubt for the crime of frustrated homicide and sentenced him to an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum; and ordered him to pay Moises the sum of ₱10,000.00 as moral damages, ₱10,000.00 as reimbursement for the latter's hospital expenses, and the cost of litigation.

On appeal, the Court of Appeals affirmed² the Decision of the RTC with modifications as to the penalty imposed and damages awarded. The dispositive portion reads:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 12, in Zamboanga City, finding appellant Jeffrey Luna guilty beyond reasonable doubt in Criminal Case No. 19731, is **AFFIRMED WITH MODIFICATION**. Appellant Jeffrey Luna is found guilty of frustrated homicide and sentenced to a prison term of one (1) year and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor* medium, as maximum. He is also ordered to pay Moises Siano ₱25,000 as moral damages and ₱25,000 as temperate damages.³

The appellate court agrees with the trial court that petitioner was positively identified by Moises as the one who stabbed him. Moises was steadfast and categorical in his testimony. The appellate court also observed that the manner of the attack was done frontally and at close range, thus, allowing Moises to see his assailant; that the scene of the crime

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² Id. at 55-64; Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos concurring.

³ Id. at 63.

was adequately illuminated; and that Moises and petitioner knew each other, thereby allowing Moises to readily identify petitioner. The appellate court dismissed petitioner's reliance on the Affidavit of Desistance allegedly executed by Moises to exculpate himself. The appellate court found it improbable that Moises would suddenly turn around and declare appellant to be innocent after going through the process of having petitioner arrested, positively identified and tried in court. Moreover, the appellate court pointed out that said affidavit is unnotarized and filed long after the trial was concluded.

In the instant petition, petitioner insists on his innocence by citing the following circumstances: 1) the presence of Jung-jung's cousin Eugene raises serious doubt on petitioner's authorship of the crime, since it was more probable for said relative to come to the aide of Jung-jung; 2) lack of strong reason on the part of petitioner to interfere with the fight; 3) the improbability that petitioner stayed within harm's way from the said adversaries; 4) the on-court declaration of Moises exculpating petitioner from the charge. Petitioner assails the award of damages inasmuch as he claims innocence of the crime charged.

A petition for review under Rule 45 of the Rules of Court generally bars any question pertaining to the factual issues raised. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions.⁴

We find no compelling reason to deviate from the findings of the trial court, as affirmed by the Court of Appeals. Factual findings of the RTC, when affirmed by the Court of Appeals, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record.⁵

The appellate court gave full credence to the testimony of the victim who positively identified petitioner as the assailant. The appellate court noted that the victim's credibility is strengthened by his lack of improper motive to falsely accuse petitioner of the crime charged.

The crime of frustrated homicide is committed when: (1) an 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

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⁴ *Co v. Yeung*, G.R. No. 212705, 10 September 2014.

⁵ *Sabay v. People*, G.R. No. 192150, 1 October 2014.

because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present.⁶

As observed by the appellate court, petitioner's intent to kill was established by the weapon he used in the assault, as well as the nature and location of the wound sustained by the victim. The appellate court noted that the victim's assertion is supported by Dr. Alawaddin, one of the surgeons who attended the victim during his operation, who affirmed that Moises suffered a stab wound and that the same was fatal if not given prompt medical attention.

We agree with the Court of Appeals' imposition of penalty. As it aptly explained:

Article 249 of the Revised Penal Code provides the penalty of reclusion temporal for the crime of consummated homicide. Under Article 50 of the same code, the penalty for a frustrated crime is one degree lower than that prescribed law; thus, frustrated homicide is only punishable by prision mayor. Applying the Indeterminate Sentence Law, the minimum penalty to be meted out on petitioner should be anywhere within the range of six (6) months and one (1) day to six (6) years of prision correccional, and the maximum should be taken from the medium period of prision mayor x x x the range of which is eight (8) years and one (1) day to ten (10) year. Considering that no aggravating and mitigating circumstance attended the commission of the crime, appellant should be sentenced to an indeterminate prison term of one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor as maximum.⁷

We likewise affirm the award of moral and temperate damages in the amount of ₱25,000.00 each in light of our ruling in *Abella v. People*.⁸ In addition, we shall impose on all the monetary awards for damages interest at the legal rate of six percent (6%) per *annum* from date of finality of the decision until fully paid.

WHEREFORE, the petition is **DENIED**. The Decision dated 27 June 2014 of the Court of Appeals in CA-G.R. CR No. 00860-MIN is hereby **AFFIRMED** with **MODIFICATION** in that the petitioner is

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⁶ *Josue v. People*, G.R. No. 199579, 10 December 2012, 687 SCRA 675, 682.

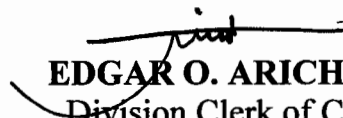
⁷ *Rollo*, pp. 61- 62.

⁸ G.R. No. 198400, 7 October 2013, 706 SCRA 781, 797.

also ordered to pay interest at the rate of six percent (6%) per *annum* on the moral and temperate damages from the finality of this decision until fully paid.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court mdlv
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