



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 September 2020** which reads as follows:*

“G.R. No. 249709 (Marco Cruz y Ruiz and Nassib Dimaagal v. People of the Philippines). – After a judicious study of the case, the Court resolves to **DENY** the instant petition¹ and **AFFIRM with MODIFICATION** the June 20, 2019 Decision² and the October 3, 2019 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 42268 finding petitioners Marco Cruz y Ruiz (Cruz) and Nassib Dimaagal (Dimaagal; collectively, petitioners) guilty beyond reasonable doubt of the crime of Attempted Murder. Accordingly, they are each sentenced to suffer the penalty of imprisonment for an indeterminate period of two (2) years, ten (10) months, and twenty (20) days of *prision correccional*, as minimum, to six (6) years, one (1) month, and eleven (11) days of *prision correccional*, as maximum, and to each pay the victim, Nelson R. Sacristia (Sacristia), the following amounts: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as exemplary damages.

The principal and essential element of the crime of Attempted or Frustrated Murder is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proven in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.⁴ In this case, the prosecution was able to establish the intent on the part of petitioners to kill Sacristia, since it was established that: (a) Cruz shot Sacristia repeatedly, while Dimaagal drove the van, ensuring ease of escape; (b) Sacristia was hit on his abdomen, arm, and leg before the gun jammed; (c) because of Sacristia’s presence of mind, he was able to run from petitioners, and as a result, petitioners failed to perform all the acts of execution, which should have produce the felony; and (d) the attempt to kill was qualified by treachery, since Sacristia, unarmed and unable to defend himself, was attacked using a gun in a stealthy manner. Moreover, the

¹ *Rollo*, pp. 14-32.

² *Id.* at 38-49. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Marie Christine Azcarraga-Jacob and Gabriel T. Robeniol, concurring.

³ *Id.* at 51-52.

⁴ *Pentecostes, Jr. v. People*, 631 Phil. 500, 514 (2010).

totality of circumstances⁵ in this case⁶ shows that Sacristia positively identified petitioners as his assailants. Finally, there being no indication that the courts *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.⁷

SO ORDERED. (Baltazar-Padilla, *J.*, on leave.)”

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
28 SEP 2020
With
9/25

⁵ “*People v. Teehankee, Jr.* introduced in this jurisdiction the totality of circumstances test, which relies on factors already identified by the United States Supreme Court in *Neil v. Biggers* [409 U.S. 188 (1972)]: (1) the witness’ opportunity to view the criminal at the time of the crime; (2) the witness’ degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.” (See *People v. Nunez*, G.R. No. 209342, October 4, 2017).

⁶ Records revealed that the victim was able to petitioners’ faces because the van they were riding was only one (1) meter away from him, the street was sufficiently illuminated by the light from the gas station, and there was a heavy traffic in the area so the van was moving slowly (see *rollo*, pp. 44-45 and 79).

⁷ See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018.

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THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 273
Marikina City
(Crim. Case No. 2013-15008-MK)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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*with copy of CA Decision dated 20 June 2019
Please notify the Court of any change in your address.
GR249709. 09/02/2020B(182)URES *h/k*