



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 March 2022** which reads as follows:*

“G.R. No. 251155 (*Ervin Jose Patulin and Chris Anthony Casinillo v. People of the Philippines*). – This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated December 3, 2019 of the Court of Appeals which affirmed the judgment of conviction of petitioners Ervin Jose Patulin (Patulin) and Chris Anthony Casinillo (Casinillo) (collectively, petitioners) for attempted murder with modification as to the award of pecuniary liabilities.

Petitioners, together with accused Jeffrey Cayanan (Cayanan) were indicted for the crime of frustrated murder in an Information, the accusatory portion of which reads:

That, on or about the 8th day of May, 2005, in the Municipality of Cainta, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, with intent to kill and by means of the qualifying circumstances of treachery, evident premeditation and abuse of superior strength, aggravated by the circumstance of nighttime, which qualifies the crime to frustrated murder, with the use of a steel pipe, did then and there willfully, unlawfully and feloniously assault, attack and hit with said steel pipe one Dean Steven Baricuatro y Toronon, thereby hitting him in the head and different parts of his body, which ordinarily would have caused his death, thus, performing all the acts of execution which would produce the crime of murder as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, due to the timely arrival of the security guard on duty and due to the timely medical assistance rendered unto said Dean Steven Baricuatro y Toronon, which prevented his death.

CONTRARY TO LAW.³

¹ *Rollo*, pp. 9-25.

² *Id.* at 36-48. Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Ramon M. Bato, Jr. and Ruben Reynaldo G. Roxas.

³ *Id.* at 37.

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Upon arraignment, petitioners pled *not guilty* while Cayanan remained at large.⁴

According to the evidence for the prosecution, on May 8, 2005 at around 2 a.m., the victim, Dean Steven Baricuatro (Baricuatro), was walking with other persons, namely, Justine Cabanganan (Justine), Gerogina Cabanganan (Gerogina), and Melanie Monsayac (Melanie) along Leo Street in Cainta, Rizal. When they passed in front of the house of Patulin, they noticed that the latter was drinking with Casinillo and Cayanan in the dark. One of the drinking men invited Baricuatro to have a cigarette, but he refused. Thereafter, Baricuatro and Melanie accompanied Gerogina and Justine to their house and stayed there. After 15 minutes, when Baricuatro and Melanie were about to leave, Baricuatro noticed that Cayanan was peeping at their location, as if he wanted to know if they already left. Baricuatro felt uneasy, so he and Melanie used another route to go to Melanie's house, a route that did not require passing by Patulin's house. On his way home, Baricuatro saw Cayanan who approached and told him about the slippers which he allegedly stole from them. When Baricuatro did not answer, Patulin approached Cayanan and gave the latter an iron pipe. Suddenly, Cayanan hit Baricuatro's forehead with the iron pipe, which action knocked the latter unconscious on the ground.⁵

Baricuatro regained consciousness as he was being punched and mauled by the three men. The struggle continued until Baricuatro heard Casinillo say, "*May tao.*" This prompted Patulin to leave while Casinillo and Cayanan dragged Baricuatro into a dark place. Subsequently, Baricuatro was brought to the garage of Patulin's house and was made to lean on a car parked in the same garage. Casinillo and Cayanan punched him, ordering him to keep quiet. Later, Baricuatro noticed a security guard stop in front of the house. Baricuatro shouted for help while Casinillo and Cayanan hid themselves. Baricuatro eventually escaped and ran toward his house. Upon arriving, he collapsed. When he regained consciousness, he was in a vehicle with his sister on the way to the hospital. In a Medical Certificate dated May 9, 2005, the attending physician indicated that Baricuatro suffered multiple injuries secondary to mauling.⁶

According to the evidence for the defense, Patulin, Casinillo and Cayanan were having a drinking spree at Patulin's house when Baricuatro passed by and inquired if the group had a cigarette. When the group replied that they did not, Baricuatro snatched the cigarette which was already in Cayanan's mouth, puffed it and threw it away. Provoked, Cayanan asked Baricuatro why he did that, but the latter replied, "*Tapos ka na ba magsalita?*" This led to a heated argument. Baricuatro suddenly punched Cayanan, picked up a stone, and hurled it at him. The latter was able to evade it, but the stone

⁴ Id.

⁵ Id. at 27, 28, and 38.

⁶ Id. at 28 and 38.

hit Casinillo's forehead instead, causing Casinillo to lose consciousness. When Casinillo woke up, he was already in a hospital. Thereafter, he and his mother went to the barangay to have the incident placed on the blotter.⁷

After trial on the merits, the trial court, in its Decision⁸ dated June 23, 2017, convicted petitioners of the crime of attempted murder. It found that the aggravating circumstances of superior strength and nighttime are absorbed in the qualifying circumstance of treachery since it was not shown that petitioners deliberately sought or took advantage of the darkness of the night to ensure the commission of the crime. Further, the prosecution failed to prove evident premeditation. The trial court sentenced petitioners to suffer the indeterminate prison term of Four (4) Years and Two (2) Months of *prision correccional*, as minimum, to Ten (10) Years of *prision mayor*, as maximum, and to pay the offended party the amount of ₱40,000.00 representing moral damages, ₱20,000.00 representing temperate damages and ₱10,000.00 representing exemplary damages.⁹

On appeal, the CA affirmed the conviction. It found that the prosecution was able to establish the existence of *alevosia* since the victim was defenseless when the three assailants assaulted him. However, since there is no evidence to show that the wound would be fatal if not medically attended to, the doubt should be resolved in favor of petitioners and the crime is merely attempted and not frustrated murder. However, the CA deleted the award of temperate damages and modified the civil indemnity, moral and exemplary damages to ₱50,000.00 each with interest at 6% per annum from finality of the decision until fully paid.¹⁰

Hence, this Petition for Review on *Certiorari* on the following grounds:

- I. The trial court and the CA erred in not allowing [petitioner] Ervin Jose Patulin and his witnesses to testify in his behalf after the denial of his Demurrer to Evidence with oral leave of court. Hence, a violation of his constitutional right to due process.
- II. The trial court and the CA erred in their findings that there was Treachery in the commission of the Offense.
- III. The CA erred in increasing the monetary damages against the [petitioners].¹¹

⁷ Id. at 29 and 39.

⁸ Id. at 26-34.

⁹ Id. at 33.

¹⁰ Id. at 47.

¹¹ Id. at 16.

On the procedural ground, We agree with the People that there is no record of the alleged oral motion for leave of court to file demurrer to evidence nor any record that the trial court ever granted the same. Even the petitioners admitted that Patulin's counsel allegedly made said oral motion,¹² but there were no minutes in the records of the case nor any record of the trial court granting said motion.

Hence, We are constrained to treat the demurrer to evidence as having been filed without leave of court. Pursuant to Section 23, Rule 119 of the Rules of Court, the denial of the demurrer to evidence filed without leave of court operates as a waiver of the accused of the right to present their evidence, and judgment may be rendered on the basis of the evidence for the prosecution, keeping in mind that the conviction of the accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.¹³

On the substantive ground, petitioners argue that treachery is absent since it was Baricuatro who provoked the accused into a fistfight, and that it was Baricuatro who started the fight but was only overpowered because the three of them—petitioners and Cayan—ganged up on him. Petitioners also contend that they had no intention to kill Baricuatro, but only to hurt him for provoking them.

There is treachery when the following essential elements are present:

- (a) at the time of the attack, the victim was not in a position to defend [himself or herself]; and
- (b) the accused consciously and deliberately adopted the particular means, method or form of attack employed x x x.¹⁴

The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself or herself, thereby ensuring its commission without risk of the aggressor, without the slightest provocation on the part of the victim.¹⁵

However, We have also held that even if the attack is not unexpected as when the victim was forewarned of the danger to his/her life, treachery may also be appreciated where he/she was not in a position to defend himself/herself or repel the attack, being unarmed at the time of the infliction of the *coup de grace*.¹⁶ What is decisive is that the execution of the attack, without the slightest provocation from the unarmed victim, made it impossible

¹² Id. at 13.

¹³ *People v. Swan*, 627 Phil. 174, 192-193 (2010).

¹⁴ *People v. Rucal*, 817 Phil. 665, 677-678 (2017).

¹⁵ *People v. Vermudez*, 361 Phil. 952, 959 (1999).

¹⁶ *People v. Bugarin*, 807 Phil. 588, 601 (2017).

for the victim to defend himself/herself or to retaliate.¹⁷ Certainly, the victim here, Baricuatro, could not be reasonably expected to repel the attack with his bare arms, considering the weapon used, *i.e.*, an iron pipe.

Petitioners would like Us to believe that since there was provocation on the part of Baricuatro, there could be no treachery even if he was defenseless at the time of the attack. However, such is a question of fact that this Court may not pass upon. This Court, not being a trier of facts, is limited under a Rule 45 petition to a review of errors of law that may have been committed by the courts *a quo*. Accordingly, factual findings of the trial court including its evaluation of the credibility of witness testimonies, when affirmed by the appellate court, are binding on Us, save for a few recognized exceptions such as when the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.¹⁸ The assessment of the credibility of witnesses, being properly within the domain of trial courts, is entitled to great respect absent a showing of the foregoing exceptions.¹⁹

Indeed, neither the trial court nor the CA lent credence to petitioners' version of the story that Baricuatro provoked them. Further, they found that the unarmed and defenseless Baricuatro struggled to escape as he was punched and hit many times on the head and body with a long iron pipe. Intent to kill and not merely to injure was thus properly inferred from the means used by the offenders as well as the location and number of wounds inflicted.²⁰ It is of no moment that petitioners were former friends of Baricuatro since such fact does not negate intent to kill.

However, as aptly observed by the trial court and affirmed by the CA, since there was no evidence to show that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt which must be resolved in favor of petitioners.²¹ Considering the presence of treachery, the crime should be attempted and not frustrated murder.

The contention that the trial judge who penned the decision was not the one who heard the evidence and observed the demeanor of the witnesses must fail. It is sufficient that the judge, in deciding the case, must base his or her ruling completely on the records before him or her, in the way that appellate courts do when they review the evidence of the case raised on appeal. Thus, a judgment of conviction penned by a different trial judge is not erroneous if he or she relied on the records available to him or her. It is not necessary for the validity of a judgment that the judge who penned the decision should actually

¹⁷ *People v. Javier*, 336 Phil. 177, 191 (1997).

¹⁸ *People v. Francica*, 817 Phil. 972, 991 (2017).

¹⁹ *People v. Amistoso*, 701 Phil. 345, 357 (2013).

²⁰ See *Rivera v. People*, 575 Phil. 824, 833 (2006).

²¹ *Paddayuman v. People*, 425 Phil. 84, 95 (2002).

hear the case in its entirety, for he or she can merely rely on the transcribed stenographic notes taken during the trial as the basis for his or her decision.²²

As a general rule, the factual findings of trial courts deserve respect and are not disturbed on appeal, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, and would otherwise materially affect the disposition of the case. This rule, however, does not apply when the judge who penned the decision was not the same one who had heard the prosecution witnesses testify, as in the present case.²³ Nonetheless, after having thoroughly reviewed the records of the case, We find no reason to alter the factual findings of the trial court, which were affirmed by the CA, as regards the credibility of the testimonies of the prosecution witnesses.

Finally, petitioners contend that there was no evidence presented to show that private complainant was entitled to actual, moral and exemplary damages, and that the CA even increased the award of damages without basis. To recall, the trial court awarded ₱40,000.00 in moral damages, ₱20,000.00 in temperate damages and ₱10,000.00 in exemplary damages. On appeal, the CA deleted the amount of temperate damages and awarded moral and exemplary damages, as well as civil indemnity, in the amount of ₱50,000.00 each, supposedly pursuant to our pronouncement in *People v. Jugueta*.²⁴

In *Jugueta*, however, We ruled that “in the attempted murder, the civil indemnity, moral damages and exemplary damages is ₱25,000.00 each.”²⁵ In *People v. Bugarin*²⁶ and *People v. Haloc*,²⁷ We likewise awarded moral and exemplary damages as well as civil indemnity in the amount of ₱25,000.00 each for attempted murder. The CA likewise erred in deleting temperate damages considering the pecuniary loss suffered by the victim for hospitalization although the exact amount was not proved. We therefore reinstate the award of ₱20,000.00 in temperate damages.

WHEREFORE, the Decision dated December 3, 2019 of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. Petitioners Ervin Jose Patulin and Chris Anthony Casinillo are found **GUILTY** beyond reasonable doubt of the crime of Attempted Murder, defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, and are sentenced to suffer the indeterminate prison term of Four (4) Years and Two (2) Months of *prision correccional*, as minimum, to Ten (10) Years of *prision mayor*, as maximum, and to pay the offended party, jointly and severally, the amount of

²² *Kummer v. People*, 717 Phil. 670, 680 (2013).

²³ *People v. Cawaling*, 355 Phil. 1, 26 (1998).

²⁴ 783 Phil. 806 (2016).

²⁵ *Id.* at 849.

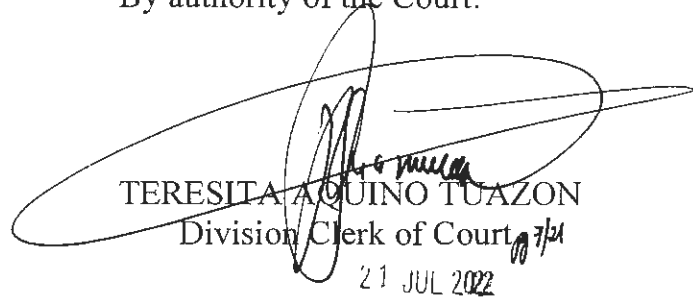
²⁶ 807 Phil. 588, 603 (2017).

²⁷ 839 Phil. 1042 (2018).

₱20,000.00 as temperate damages, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages; and ₱25,000.00 as civil indemnity, with interest at 6% per annum from finality of the Resolution until fully paid.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUZON
Division Clerk of Court
21 JUL 2022

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(Crom. Case No. 07-33309)

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*with copy of the CA Decision dated December 3, 2019
Please notify the Court of any change in your address.
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