



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 13, 2022, which reads as follows:*

**G.R. No. 253938 – FRUCTOSO SALUDAR y CABATAÑA, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.**

X ----- X

RESOLUTION

After reviewing the Petition for Review on *Certiorari*<sup>1</sup> (Petition) and its annexes, inclusive of the Court of Appeals' (CA) Decision<sup>2</sup> dated July 31, 2019 and Resolution<sup>3</sup> dated September 30, 2020 in CA-G.R. CR No. 41653 and the Decision<sup>4</sup> dated October 16, 2017 of Branch 49 of the Regional Trial Court of Cataingan, Masbate (RTC) in Criminal Case No. 2096-09, the Court resolves to **DENY** the Petition for failure of petitioner Fructoso Saludar y Cabataña (petitioner) to sufficiently show that the CA committed any reversible error in the challenged Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

*Positive identification prevails over denial*

Petitioner comes before this Court claiming that Arturo Acuesta's (Arturo) identification of him as the perpetrator of the crime was unreliable due to Arturo's inconsistent and contrary to human experience narration of events.<sup>5</sup> According to petitioner, Arturo could not have witnessed the precise moment when petitioner allegedly fired the gun because Arturo was looking in the opposite direction and focused on the ground while picking up a shovel.<sup>6</sup>

<sup>1</sup> *Rollo*, pp. 11-34-A.

<sup>2</sup> *Id.* at 36-47. Penned by Associate Justice Mario V. Lopez (now a Member of this Court), with Associate Justices Maria Elisa Sempio Diy and Gabriel T. RobcnioI concurring.

<sup>3</sup> *Id.* at 49-52. Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Ramon A. Cruz and Gabriel T. RobcnioI concurring.

<sup>4</sup> *Id.* at 68-75. Penned by Presiding Judge Arturo Clemente B. Revil.

<sup>5</sup> *Id.* at 19-24, 36.

<sup>6</sup> *Id.* at 20.

It is well settled that the trial court's evaluation of the credibility of witnesses is entitled to great respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by the Court, particularly when the CA affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.<sup>7</sup>

The Court finds that no compelling reason exists to warrant a deviation from the foregoing principles and that the RTC and the CA committed no error in giving credence to the testimonies of the prosecution witnesses. Thus, the Court sustains the uniform findings of the RTC and the CA, upholding Arturo's credibility, who was an eyewitness to the crime and was himself the victim of the shooting incident. The CA Decision reflects these findings and reasoning:

Fructoso avers that his identity was not established. Arturo could not have seen who fired the gun because he was facing the opposite direction, particularly, on the ground because he was picking up a shovel. This argument does not persuade. Arturo's straightforward narration of the incident and the location of the victim and the accused reveal that it was Fructoso who aimed the gun, and fired two shots, at him. Arturo testified as follows:

X X X X

CROSS-EXAMINATION

ATTY. CABATAÑA:

Q: You said in the direct-examination that you saw the accused opening the window while you were picking your shovel?

A: Yes, sir. When I glanced at their house I saw him opening the window and that was the time I picked the shovel and I saw him pointed (sic) the gun towards me, shot me and hit me. When I looked back I was again shot but it did not hit me and then I ran.

X X X X

ATTY. CABATAÑA:

Q: When he opened the window your attention was called by the creaking sound?

A: Yes, sir.

Q: And by that sound you were curious to see where it came from?

A: Yes, sir.

Q: And you saw the accused holding the gun and immediately fired at you?

<sup>7</sup> *People v. Salahuddin, et al.*, 778 Phil. 529, 544-545 (2016); citation omitted.

A: When I picked up the shovel he shot me, sir.

These circumstances confirm the identification of the accused as the assailant. Arturo had a good look at Fructoso when he turned his attention to the direction of a creaking sound. At that moment, Fructoso was opening the glass window of his house. Fructoso was holding a gun and shot Arturo who was only two (2) meters away. Arturo is familiar with the assailant because they had been neighbors since December 2007.<sup>8</sup>

The Court notes that in accepting the truth of the identification and the account of how the shooting incident occurred, the RTC and the CA considered Arturo's proximity to the window that petitioner opened, which was about two meters away, as well as Arturo's familiarity with petitioner, given that they had been neighbors for a year.

Moreover, Arturo could not have erred in his identification because when he turned his attention to the creaking sound, he saw petitioner open the window, even though he had no inkling that petitioner would shoot him at that point. Only when Arturo was about to pick up a shovel did he notice petitioner aiming the gun towards him, prompting Arturo to turn his back on petitioner. At this time, petitioner shot Arturo. When Arturo looked back at petitioner, the latter fired a second, unsuccessful shot at Arturo.

Petitioner further questions the credibility of Arturo's testimony and points to Ka Marlon as the perpetrator of the crime, who allegedly looks identical to him.<sup>9</sup> In support of this argument, petitioner's wife, Dionesia Saludar (Dionesia), claims that when she heard the sound of broken glass, she went inside their house to check what had happened. She met Ka Marlon there, who told her that he had shot Arturo.<sup>10</sup>

The Court remains unconvinced even if petitioner's alibi was corroborated by his wife. The Court has consistently given less probative weight to a defense of alibi when it is corroborated by relatives, as in this case, where petitioner's alibi was corroborated only by his wife. For corroboration to be credible, the same must be offered preferably by disinterested witnesses.<sup>11</sup> Being petitioner's wife, Dionesia cannot be considered a disinterested witness.

It also bears emphasis that petitioner never presented any proof to substantiate his defense that Ka Marlon committed the crime. Nobody except his wife corroborated his alibi. As the RTC and the CA pointed out, if Ka Marlon was the perpetrator, petitioner and his wife could have informed the police, especially since Ka Marlon admitted the crime to petitioner's wife.<sup>12</sup>

<sup>8</sup> *Rollo*, pp. 41-43; citations omitted.

<sup>9</sup> *Id.* at 24.

<sup>10</sup> *Id.* at 39.

<sup>11</sup> *People v. Perez*, G.R. No. 241779, December 9, 2020, citing *People v. Pulgo*, 813 Phil. 205 (2017).

<sup>12</sup> *Rollo*, pp. 43, 72.

Against the positive identification of Arturo, petitioner offered nothing but denial and alibi. For alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed, as he must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.<sup>13</sup> Here, it was not physically impossible for petitioner to have been present at the crime scene. By petitioner's admission and as corroborated by his wife, petitioner was at the piggery outside of their house, which is only within walking distance to where the crime was committed.

Accordingly, between Arturo's categorical and positive identification of petitioner as the person who shot him on one hand and petitioner's inherently weak denial and alibi on the other, the former prevails.

*The prosecution was able to establish intent to kill on the part of petitioner*

Petitioner argues that the prosecution failed to prove his intent to kill because Arturo only sustained a single gunshot wound, which resulted in his confinement for only three days before being immediately released.<sup>14</sup>

The Court disagrees.

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. In murder or homicide, the offender must have the intent to kill. If he or she did not have such intent, he or she is liable only for physical injuries.<sup>15</sup>

In *People v. Castrence*,<sup>16</sup> the Court considered the following determinants of intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. The Court also considered the words uttered by the offender at the time he or she inflicted injuries on the victim as an additional determinative factor.<sup>17</sup>

Here, petitioner's intent to kill Arturo was evident in his acts of shooting him at close range and the nature of Arturo's gunshot wound. Arturo was defenseless and unarmed, whereas, petitioner was armed with a gun. Equally important, almost immediately after the first shot, petitioner fired a

<sup>13</sup> *People v. PFC Malejana*, 515 Phil. 584, 597 (2006).

<sup>14</sup> *Rollo*, pp. 26-29.

<sup>15</sup> *People v. Castrence*, G.R. No. 227882, August 27, 2020 (Unsigned Resolution).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, citing *Fantastico, et al. v. Malicse, Sr., et al.*, 750 Phil. 120 (2015).

second shot at Arturo but missed, showing petitioner's intent to ensure Arturo's death. More, petitioner is nowhere to be found immediately following the shooting incident.

That Arturo sustained only one gunshot wound is insignificant. What is crucial is that Arturo was injured as a result of the shooting. Dr. Roy Rex Lazaro (Dr. Lazaro) opined that Arturo could have died from the gunshot wound injury he sustained were it not for the timely medical attention given to him.<sup>18</sup> Dr. Lazaro further pointed out that the gunshot wound, which penetrated Arturo's lungs — a major organ of the body — would cause him to have difficulty breathing and eventually lose consciousness if the bleeding in the lungs was not immediately treated.<sup>19</sup> In short, it was the emergency major operation done on Arturo which saved his life.

The Court now turns to the stage of the felony. The second paragraph, Article 6 of the Revised Penal Code (RPC) provides that:

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. (Emphasis supplied)

As discussed, Arturo sustained a gunshot wound injury, which hit a major organ of his body. Dr. Lazaro opined that Arturo would have died if not for the timely medical attention afforded him. In accordance with Article 6 of the RPC, the crime is frustrated, given that petitioner performed all the acts of execution but the crime was not consummated because of the timely medical intervention applied to Arturo.

*Petitioner has waived his right to question the defects in the Information filed against him*

In support of petitioner's claim that he should be acquitted of the crime charged, petitioner raises for the first time in this Petition the argument that the qualifying circumstance of treachery could not be appreciated against him because the acts constituting treachery were not sufficiently averred in the Information. Petitioner points out that the mere use of the word treachery is not sufficient because the word 'treachery' is a conclusion of law.<sup>20</sup>

In *People v. Solar*<sup>21</sup> (*Solar*), the Court held that for the Information alleging the existence of treachery to be sufficient, it must have factual averments on how the person charged had deliberately employed means,

<sup>18</sup> *Rollo*, pp. 37, 74.

<sup>19</sup> *Id.* at 96-97.

<sup>20</sup> *Id.* at 25.

<sup>21</sup> G.R. No. 225595, August 6, 2019, 912 SCRA 271.

methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make.<sup>22</sup> The Court then declared in *Solar* the following for the guidance of the Bench and the Bar:

In sum, the Court, continually cognizant of its power and mandate to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, hereby lays down the following guidelines for the guidance of the Bench and the Bar:

1. Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3(e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

**Failure of the accused to avail [of] any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.**

Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below[.]<sup>23</sup>

In the present case, petitioner failed to question the alleged insufficiency of the Information by availing of any of the remedies provided under the procedural rules. In fact, he voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have understood the acts imputed against him and waived any of the waivable defects in the Information. Consequently, treachery may be appreciated against petitioner if this qualifying circumstance was clearly established and proven during trial.

*Treachery attended the commission of the crime; thus, petitioner is guilty beyond reasonable doubt of frustrated murder*

<sup>22</sup> Id. at 311-312.

<sup>23</sup> Id. at 314-315; emphasis supplied.

The only issue that remains is whether the presence of treachery was sufficiently proven in this case.

In arguing that no treachery attended the commission of the crime, petitioner states there is nothing on record that shows that the assailant consciously or deliberately adopted the means of attack employed on Arturo.<sup>24</sup>

The Court rules that treachery attended the crime.

The essence of treachery is the sudden, unexpected, and unforeseen attack on the person of the victim, without the slightest provocation on the part of the latter.<sup>25</sup> The elements of treachery are the following: (1) the means of execution employed gives the person no opportunity to defend himself or herself, or retaliate; and (2) the means of execution were deliberately or consciously adopted.<sup>26</sup>

These elements are present here. *First*, the shooting incident was so unexpected and sudden that Arturo was not able to evade the same. Petitioner suddenly attacked as Arturo was about to pick up a shovel, giving him absolutely no opportunity to defend himself or retaliate. *Second*, petitioner deliberately adopted, or prepared for, his chosen mode of attack by shooting Arturo through the window of his house, showing that he consciously adopted means to ensure the execution of the crime. In deliberately using his gun to attack the armless victim while in the safety of his own home, petitioner not only ensured the execution of the crime, but he also avoided any risk to himself.

The crime being qualified by treachery, both the RTC and the CA, therefore, did not err in convicting petitioner of frustrated murder.

For the crime of frustrated murder, the minimum imposable penalty should be within the range of *prision mayor*, i.e., six (6) years and one (1) day to twelve (12) years; and the maximum imposable penalty is within *reclusion temporal* in its medium period, i.e., fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.<sup>27</sup> As a result, the CA correctly sentenced petitioner to the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

Finally, the CA properly ordered the payment of the following to Arturo — Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as exemplary damages.

<sup>24</sup> *Rollo*, p. 25.

<sup>25</sup> *People v. Se*, G.R. No. 152966, March 17, 2004, 425 SCRA 725, 732.

<sup>26</sup> *People v. Peralta*, G.R. No. 128116, January 24, 2001, 350 SCRA 198, 210.

<sup>27</sup> *People v. Dela Cruz*, G.R. No. 252273, June 23, 2021 (Unsigned Resolution); citation omitted.

**WHEREFORE**, premises considered, the Petition is **DENIED** for lack of merit. The Decision dated July 31, 2019 and Resolution dated September 30, 2020 of the Court of Appeals in CA-G.R. CR No. 41653 are **AFFIRMED**. Petitioner Fructoso Saludar y Cabataña is **GUILTY** beyond reasonable doubt of the crime of Frustrated Murder and is meted the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

He is further **ORDERED** to pay the victim Arturo Acuesta the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as exemplary damages.

An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this Resolution until fully paid.

**SO ORDERED.**

By authority of the Court:

*Mis-DCBatt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *8-73-21*

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