



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 April 2022** which reads as follows:*

“G.R. No. 256970 (*Vladimir Javier v. People of the Philippines*). – This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking to annul and set aside the Decision² dated September 29, 2020 and the Resolution³ dated June 11, 2021 of the Court of Appeals (CA) in CA-G.R. CR No. 43469 which affirmed the Decision⁴ dated April 26, 2019 of the Regional Trial Court of San Pablo City, Laguna, Branch 29 (RTC) in Criminal Case No. 15324-SP with modification as to the pecuniary liabilities.

I

On December 6, 2006, an Information was filed charging petitioner Vladimir Javier (petitioner) with the crime of frustrated homicide, the accusatory portion of which reads:

That on or about January 15, 2004, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, did then and there, willfully and feloniously attack, assault and stab one DANTE NOEL B. MENDOZA with an icepick, with which the accused was then conveniently provided, thereby inflicting a wound upon the person of said Dante Noel B. Mendoza which ordinarily would have caused his death, the accused having thus performed all the acts of execution necessary to consummate the crime of homicide but nevertheless did not produce it by reason of some cause independent of the will of the perpetrator, that is, by the timely and prompt medical attendance given to said offended party.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 9-28.

² *Id.* at 76-97. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Pedro B. Corales and Alfredo D. Ampuan.

³ *Id.* at 108-109.

⁴ *Id.* at 29-37. Penned by Presiding Judge Luvina P. Roque.

⁵ *Id.* at 29.

Upon arraignment, petitioner pleaded '*not guilty*.'⁶

The version of the prosecution is as follows:

On January 15, 2004, at around 10:00 p.m., the victim in this case, Dante Noel Mendoza (victim), was at a town fiesta having a drinking spree with his friends Francis Rapa (Rapa), Joseph Castillo (Castillo), Michael De Mesa (De Mesa), and a certain Christopher. When Castillo accidentally bumped the table beside them, one of the persons at said table slapped him. A commotion ensued and the individuals from the other table attacked the group of the victim. Suddenly, a person who was later identified as petitioner, emerged from the street holding an ice pick, ran towards the victim's direction and attacked the latter. The victim felt weak and dizzy and almost fainted as a result. De Mesa brought the victim to the San Pablo City District Hospital for immediate medical attention.⁷

The victim reported the stabbing incident to the police authorities on October 19, 2004, or more than nine months after the incident as he was busy and did not know petitioner's name. It was his friend, Rapa, who witnessed the incident and informed him of the name of petitioner. The victim saw Rapa two months after the incident and requested that they both go to a nearby police station to report the identity of petitioner as the suspect in the stabbing incident. However, their statement was not put in writing at the police station.⁸

De Mesa corroborated the testimony of the victim, saying that he witnessed how the stabbing incident took place. However, he did not execute an affidavit when he reported the stabbing incident since he did not then know petitioner's name and it was Rapa who personally knew the latter.⁹

Dr. Norman Reinoso Isberto (Dr. Isberto), the physician who examined the victim, observed that the latter sustained one stab wound, approximately 0.5 cm in width and 1 cm in length, and multiple perforations in the intestines. He immediately performed an operation to treat the injuries, otherwise the victim would have suffered from bleeding and infection. According to the physician, said injuries incapacitated the victim and required medical attendance for more than 30 days.¹⁰

On the other hand, the version of the defense is as follows:

On January 15, 2004, petitioner was at the Jollibee Plaza having a drinking session with his friends, Dolfelyn Abrenica, Micmic Dolorico

⁶ Id. at 77.

⁷ Id. at 77-78.

⁸ Id. at 78.

⁹ Id.

¹⁰ Id. at 78-79.

(Dolorico), Herbert Palma (Palma), and a certain Jayson Oliva (Oliva), Jenalyn, and Oliver. Suddenly, their table was run over by a motorcycle being driven by the victim, which caused the table to overturn. Due to the impact of the collision, the victim fell to the ground. When petitioner stood up, he immediately punched Dolorico which caused the latter's lip to bleed. Dolorico was about to retaliate, but the number of people in the area increased. The victim was stabbed by petitioner's cousin, Palma, on the right abdomen using an icepick. Petitioner was just a meter away from Palma while he was on the left side of the victim. A *barangay tanod* arrived at the scene to help the victim, but the latter refused.¹¹

Petitioner only found out about the criminal case against him when he received a subpoena from the prosecutor's office. He executed a counter-affidavit¹² to refute the allegations against him and voluntarily surrendered when the case was elevated before the trial court as evidenced by a Certificate of Voluntary Surrender issued by said court. He failed to tag Palma as the perpetrator before the police authorities and the *barangay* officers, and in his counter-affidavit because Palma's family was well-known in their community. Since Palma died three years ago and because the case already tolled, he felt compelled to tell the truth.¹³

Oliva testified that he was with petitioner when a motorcycle driven by the victim suddenly bumped their table. A commotion ensued afterwards where he saw Dolorico being punched. He later on heard someone shout, "*may nagsaksakan*" but he did nothing. He neither saw the stabbing incident nor the assailant and the victim. Thereafter, he accompanied Dolorico to the police station to report the punching incident together with petitioner.

The trial court found petitioner guilty as charged. The dispositive portion of its Decision¹⁴ reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Vladimir Javier 'GUILTY' beyond reasonable doubt of the crime of Frustrated Homicide under the Revised Penal Code. He is hereby sentenced to suffer an indeterminate penalty of four years of prision correccional as minimum to eight years and one day of prision mayor as maximum. He is also directed to pay private complainant Dante Noel Mendoza moral damages in the amount of [P]20,000.00 plus interest of 6% per annum from the finality of this decision until full payment, plus costs of suit.

SO ORDERED.¹⁵

¹¹ Id. at 79.

¹² Id.

¹³ Id. at 79-80.

¹⁴ Id. at 29-37.

¹⁵ Id. at 36.

On appeal, the CA affirmed the RTC Decision with modification as to the pecuniary liabilities. It ordered petitioner to pay the victim civil indemnity and moral damages in the amount of ₱30,000.00 each plus interest of six percent (6%) per annum from finality of the decision until full payment thereof.¹⁶

The CA subsequently denied petitioner's Motion for Reconsideration¹⁷ in its Resolution dated June 11, 2021.¹⁸

Hence, this Petition for Review on *Certiorari* arguing that the identity of petitioner was not proven beyond reasonable doubt; that assuming that he is the assailant, the prosecution failed to prove intent to kill; and that he should have been entitled to the mitigating circumstance of voluntary surrender.¹⁹

II

The elements of frustrated homicide are: (1) the accused intended to kill his or her victim, as manifested by his or her use of a deadly weapon in his or her assault; (2) the victim sustained fatal or mortal wound but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code, as amended, is present.²⁰

Before discussing intent to kill, it is worthy to note that although the victim was aware of the information in the police blotter that a certain "Putot Palma" was the suspect, and despite the fact that petitioner himself points to said Palma, his deceased cousin, as the assailant, the victim positively identified petitioner as the one who stabbed him. The fact that he was unable to timely report the identity of petitioner does not impair his credibility for as long as the delay is sufficiently explained. As observed by the CA, the victim explained that when he learned about the identity of petitioner from Rapa two months after the incident, he and Rapa went to the police station but their statement was not reduced in writing. Thus, on October 19, 2004, he went back to the police station to enter a new police blotter and to execute his *Sinumpaang Salaysay*, naming petitioner as the perpetrator.²¹

Petitioner contends that his defense that it was Palma who stabbed the victim is not merely a denial but is a positive assertion akin to an affirmative defense. As argued by petitioner, this is a matter of whose version is worthy of belief. It is settled that the factual findings of the trial court, when affirmed by the CA, are considered binding and conclusive. Absent material matters

¹⁶ Id. at 96.

¹⁷ Not attached to the petition.

¹⁸ Id. at 108-109.

¹⁹ Id. at 14-15.

²⁰ *Serrano v. People*, 637 Phil. 319, 337 (2010).

²¹ *Rollo*, p. 93.

that were overlooked, the trial court's appreciation of the witnesses' comportment is entitled to the highest respect, it having had the opportunity to observe their demeanor during trial. Further, factual questions are not the proper subject of an appeal by *certiorari*.²²

The essential element in frustrated or attempted homicide is the intent of the offender to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter. We considered the following factors to determine the presence of intent to kill, namely: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, during, or immediately after the act; and (4) the circumstances under which the crime was committed and the motives of the accused.²³

Petitioner faults the CA for considering only the nature and location of the wounds, and not the other factors such as the means used by the alleged malefactor, the number of wounds sustained by the victim, and the conduct of the alleged malefactor before, during, or immediately after the incident. Petitioner submits that these external factors should be used not only in determining the presence of intent to kill but also the absence thereof.

Petitioner's argument is bereft of merit.

While it is true that there is only one stab wound inflicted upon the victim, the number of wounds inflicted is only one of the considerations in proving intent to kill. The means used by the malefactors and the nature and location of the wounds also manifest intent to kill.²⁴ In this case, there is no doubt that the means employed by petitioner, *i.e.*, an ice pick, is a deadly weapon.²⁵ While the stab wound covered a relatively small surface area, *i.e.*, 1 cm by 0.5 cm, the wound was deep enough to perforate the intestines of the victim. Although the examining physician failed to state the exact depth of the wound, the fact that the victim sustained multiple perforations in his intestines shows that the weapon was able to pierce through several layers of intestines. More importantly, the character of the injury is such that the victim would have died had it not been for the physician's timely medical assistance and intervention, as revealed by the latter's testimony, *viz.*:

²² RULES OF COURT, Rule 45, Section 1.

²³ *De Guzman v. People*, 748 Phil. 452, 459 (2014).

²⁴ *Mahawan v. People*, 595 Phil. 397, 419 (2008).

²⁵ *People v. Ferrer*, 415 Phil. 188 (2001); and *People v. Angeles*, 294 Phil. 428 (1993).

- Q - What type of treatment did you applied (sic) on Dante Mendoza?
A - Patient was immediately sent to the operating room for an exploration lapper, Ma'am.
- Q - Will you state in layman's term, what is this operation all about?
A - The patient's abdomen was open and the findings were enterrouhapy (sic) with the operation the patient sustained multiple perforations in the intestines. "*Nabutas po ang mga bituka ng pasyente.*" **We did the appropriate operation to treat and save the life of the patient, Ma'am.**
- Q - Do you still remember the physical condition of Dante Mendoza at the time that he was brought to the hospital?
A - The patient, as per record, went to the hospital ambulating, it was noted that he was positive for alcoholic breath and we noticed the stab wound in his abdomen, Ma'am.
- Q - There is only one (1) stab wound?
A - Yes, one (1) stab wound in the abdomen Ma'am.
- Q - **Would you kindly tell the honorable Court of this stab wound if untreated or not operated it would have caused his death?**
A - **Most probably, the victim will suffering (sic) from bleeding and from infection, Ma'am.**²⁶ (Emphases supplied)

It is clear from the foregoing that the prosecution has proven the elements of frustrated homicide beyond reasonable doubt.

As regards petitioner's claim of entitlement to the mitigating circumstance of voluntary surrender, We agree with the CA that notwithstanding the Certificate of Voluntary Surrender issued by the trial court, petitioner's alleged surrender was not voluntary. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself or herself unconditionally to the authorities, either because he or she acknowledges his or her guilt, or he or she wishes to save them the trouble and expense necessarily incurred in his or her search and capture. Voluntary surrender presupposes repentance. Submitting himself or herself to the authorities to clear his or her name does not show any intent to surrender unconditionally.²⁷

Finally, while We agree with the imposition of civil indemnity and moral damages in the amount of ₱30,000.00 each pursuant to our ruling in *People v. Jugueta*,²⁸ We observe that the trial court failed to award temperate damages. As testified by the victim, he incurred hospitalization and medical expenses in the amount of more or less ₱45,000.00, although no document was presented to substantiate said amount. It is undisputed, however, that the

²⁶ TSN dated August 14, 2007, p. 5.

²⁷ *People v. Abolidor*, 467 Phil. 709, 720 (2004).

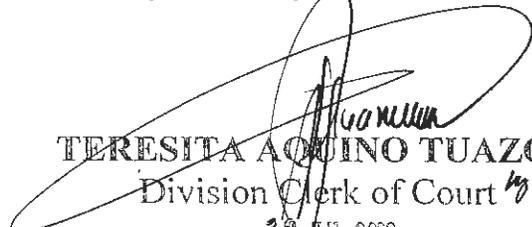
²⁸ 783 Phil. 806 (2016).

victim underwent an operation, was confined at the hospital for nine days, and required medical attendance and follow-ups for more than 30 days. Given the circumstances, We deem it proper to impose temperate damages in the amount of ₱30,000.00.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated September 29, 2020 and the Resolution dated June 11, 2021 of the Court of Appeals in CA-G.R. CR No. 43469 are **AFFIRMED with MODIFICATION**. Petitioner Vladimir Javier is found **GUILTY** beyond reasonable doubt of the crime of frustrated homicide and is sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. He is also **ORDERED TO PAY** the victim Dante Noel Mendoza civil indemnity, moral damages and temperate damages in the amount of ₱30,000.00 each, which amounts shall be subject to six percent (6%) interest per annum from the finality of this Resolution until full payment.

SO ORDERED.” (Perlas-Bernabe, *S.A.J.*, on official leave.)

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *by 7/12*
 12 JUL 2022

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*with copy of CA Decision dated 29 September 2020 and Resolution dated 11 June 2021
Please notify the Court of any change in your address.
 GR256970. 04/25/2022(80)URES