



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **March 13, 2023** which reads as follows:

“**G.R. No. 258214 (Romeo H. Peralta, Petitioner v. People of the Philippines, Respondent)**. — Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the Decision² dated December 3, 2020 and the Resolution³ dated November 15, 2021 of the Court of Appeals (CA) in CA-G.R. CR No. 43942, which affirmed the Decision⁴ dated July 24, 2019 of the Regional Trial Court of Agoo, La Union, Branch 31 (RTC), finding petitioner Romeo H. Peralta (petitioner) guilty beyond reasonable doubt of the crime of Frustrated Murder.

The Facts

This case stemmed from an Information⁵ filed before the RTC, charging petitioner with the crime of Frustrated Murder, the accusatory portion of which reads:

On or about the 5th day of August 2013, in the Municipality of Rosario, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot ARMANDO P. PICAR, without giving the latter any opportunity to defend himself coupled by a manifest plan to consummate the crime which resulted to the infliction of injuries to ARMANDO P. PICAR thus performing all the acts of execution which would produce the crime of murder as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the accused, that is, by the timely medical intervention rendered to said ARMANDO P. PICAR, all to the damage and prejudice of the said offended party.

¹ *Rollo*, pp. 3–16.

² *Id.* at 17–56. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Elihu A. Ybañez and Florencio M. Mamauag, Jr.

³ *Id.* at 67–69. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Florencio M. Mamauag, Jr. and Carlito B. Calpatura.

⁴ *Id.* at 71–84. Penned by Executive Judge Romeo M. Atillo, Jr.

⁵ *Id.* at 70.

The crime is attended by the qualifying aggravating circumstance of treachery and evident premeditation due to the act of the accused in waiting for ARMANDO P. PICAR in a dark place and in shooting him without warning and opportunity to defend himself. The crime is further attended by the special aggravating circumstance of use of unlicensed firearm.

The prosecution alleged that petitioner and his nephew, Armando Picar (Armando), had strained relations. Petitioner, who was annoyed with Armando's chicks that had entered his yard, was suspected by Armando's wife to have killed their missing pets. The misunderstanding between petitioner and Armando was further intensified by petitioner's ownership claim over the land where Armando's house was erected, thereby causing anger to Armando. In fact, prior to the shooting incident, Armando's wife had an altercation with petitioner as the latter was offended when she cut off the electrical connection of their house from petitioner's house and applied for a separate electrical connection.⁶

On the date of the incident, Harvey Picar (Harvey), son of Armando, saw petitioner and Inocencio "Enciong" Marquez (Enciong)⁷ having a drinking spree at a store. When petitioner saw Harvey, he told him "*Mga apo, hindi kayo kasali*" (My grandchildren, you are not part of this). At around 7:00 p.m. of even date, while Armando was having dinner with his family and friends, they suddenly heard petitioner shouting from the outside: "*Armando[,] [r]jumwar ka ta agtung-tung ta, agayos ta, umay ka ta may-maysak!*" (Armando, you come out and let's talk. Let's settle. Come, I am alone here): Upon hearing petitioner's shouting, Harvey peeped through the gaps of the *sawali* wall of their house and saw petitioner holding a shotgun while standing by the fence outside their house. When Armando went out of the house, he stood near the back door and turned on his flashlight as the house was dark due to lack of electricity. Thereafter, Armando saw petitioner running towards their house holding something. Armando then pointed his flashlight at the *molave* tree and noticed Enciong while petitioner was seen standing near the makeshift fence located at the back portion of Armando's house. Feeling that petitioner and Enciong were about to do something bad to him, Armando then focused the flashlight on the fence and noticed that petitioner, who was wearing a white t-shirt, had moved closer. Afterwards, Armando saw a flash of light coming from where petitioner was standing and heard a gunshot. Armando then felt that he was hit by a bullet; thus, Armando, thinking that he might be shot again, immediately dropped to the ground and took cover. Harvey then saw Armando crawling towards their house, bleeding from the right upper chest. Armando later heard petitioner shout threatening words: "*Na-unget ka ah, kita-en ta man tatta!*" (You are mean, let us see now!), and saw petitioner already standing near the place where Armando was

⁶ Id. at 19.

⁷ "Ensiong" in some parts of the *rollo*.

hiding. Armando crawled to get his 9-mm caliber pistol, but the gun jammed as he tried to load the ammunition.⁸

Terrified, Armando and his family tried to escape and seek help from former Barangay Captain Peralta while Armando's visitors ran towards the highway. On their way, Armando noticed petitioner with what appeared to be a shotgun in his hand, and Enciong following them. Then, Armando successfully fixed his gun and fired at petitioner's direction. At the house of the former barangay captain, Armando surrendered his gun to PO1 Tony S. Fernandez.

Thereafter, Armando was brought to Agoo Family Hospital where his wounds were initially attended to by Dr. Aspiras. Armando was later referred to a surgeon, Dr. Juan Komiya, Jr., having in mind that Armando might die due to bleeding caused by gunshot wounds. Per a medical certificate, Armando's injuries caused by two pairs of gunshot wounds required 20 days of medical attention.⁹

In his defense, petitioner and Enciong posed a version of the incident different from that of Armando's. Petitioner averred that at about 7:00 p.m. of the date of the incident, he was invited by Enciong and a certain Rodel to drink beer at a store below his house. Rodel offered to sell him a "*paltik*" or a homemade shotgun, but petitioner refused and intimated his intention of settling the problem with his nephew. Rodel then told petitioner that he is badly in need of money. Thus, petitioner asked Rodel to accompany him to Armando's compound before he will lend him the money.¹⁰

At the southern portion of the boundary fence, petitioner called Armando by uttering, "Armando, my son, let's just settle this matter." Subsequently, somebody turned on a flashlight along Armando's house. While Armando was at the western portion of their house near a tree flashing his light, petitioner heard a gunshot coming from Armando's house. Petitioner did not see who fired. Instead, petitioner told his companions to just go back to his house. At that time, Rodel fired back at the direction where the first gunshot came from because he was almost hit by it. Petitioner further claimed that there were again two shots when they were about to leave the place. Thereafter, Rodel sped away onboard a motorcycle and accidentally dropped his gun while petitioner and Enciong fled to the former's house. It was only while in detention that petitioner knew about the gun when the police officers told him about its recovery.¹¹

⁸ Id. at 19–20.

⁹ Id. at 21.

¹⁰ Id. at 22.

¹¹ Id. at 22–23.

For his part, petitioner denied the allegations that he uttered “*Naunget ka, kitaen taman tatta!*” (You are mean, let us see now!). To evade liability, petitioner further contended that: (1) Armando’s place is slightly elevated; (2) he is right-handed; (3) he just met Rodel in a cockpit arena; and (4) he voluntarily surrendered to the police authorities because he was the suspect.¹²

To corroborate petitioner’s testimony, Enciong confirmed that he was with petitioner on the date of the incident because he was working thereat, and further denied petitioner’s involvement in the shooting incident. To his mind, petitioner had the intention of resolving his disagreements with Armando. According to Enciong, he and petitioner drank one (1) bottle of beer at a nearby store. Thereafter, they left the store and walked their way home where they met this Rodel and offered to sell a shotgun to petitioner. Petitioner declined the offer with the thought of mending the rift with his nephew. Upon reaching petitioner’s house, petitioner asked them to accompany him in talking to Armando. While they were near a *sagat* tree standing side by side, petitioner shouted “Armando, my son, let’s just settle because I’m alone here.” Immediately thereafter, petitioner heard a gunshot coming from Armando’s place, then a flashlight was directed to them coming from the same location. With that, petitioner allegedly told them, “Let’s just go home. I think my nephew misinterpreted it.” At that moment, Rodel drew his gun and fired it once. Enciong and petitioner walked away and checked those people who were shouting while Rodel rushed towards his motorcycle and left the place. On his way home with Kagawad Pinong, Enciong’s flashlight was pointed to the place where he supposedly slipped and saw the firearm at the place where Rodel’s motorcycle came from. Knowing that he did not have the authority to possess a firearm, Enciong picked it up, gave it to Kagawad Pinong, and then went home.¹³

The RTC Ruling

In a Decision¹⁴ dated July 24, 2019, the trial court found petitioner guilty beyond reasonable doubt of the crime charged. Accordingly, petitioner was sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum, and was ordered to pay Armando the amounts of ₱26,171.00 as actual damages, ₱30,000.00 as moral damages, ₱30,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages.¹⁵

In convicting petitioner, the trial court gave credence to the positive and categorical testimony of the prosecution witnesses. The court found that

¹² Id. at 23.

¹³ Id. at 23–24.

¹⁴ Id. at 71–84.

¹⁵ Id. at 84.

petitioner shot and hit Armando on the upper portion of his body which would have been fatal had it not been for the timely medical treatment of his injuries.¹⁶ When petitioner suddenly shot Armando, thereby totally depriving Armando of the opportunity to defend himself, treachery qualified the crime. However, the special aggravating circumstance of unlicensed firearm was not proven.

Aggrieved, petitioner appealed to CA.

The CA Ruling

In a Decision¹⁷ dated December 3, 2020, the CA affirmed the RTC ruling with modification, adjusting the awards of damages to conform with the prevailing jurisprudence, in that it ordered petitioner to pay Armando ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱26,171.00 as actual damages, plus interest at the rate of six percent (6%) per annum on all monetary awards, from date of finality of the decision until fully satisfied.¹⁸

The CA found no indication that the trial court committed any error in giving weight to the unequivocal testimonies of the prosecution witnesses whose accounts of the shooting incident converged on material points. In this regard, the CA pointed out that the prosecution witnesses were all at the crime scene during the shooting incident and that they unanimously identified petitioner as the assailant.¹⁹ Thus, the CA concluded that the prosecution had established the circumstances which satisfactorily support petitioner's conviction.

Undaunted, petitioner moved for reconsideration,²⁰ which was denied in a Resolution²¹ dated November 15, 2021; hence this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for Frustrated Murder.

¹⁶ Id. at 78.

¹⁷ Id. at 17-56.

¹⁸ Id. at 55.

¹⁹ Id. at 40.

²⁰ Id. at 57-65.

²¹ Id. at 67-69.

The Court's Ruling

The petition is denied.

It must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²²

Guided by the foregoing, the Court modifies petitioner's conviction from Frustrated Murder to Frustrated Homicide, as will be explained hereunder.

To recapitulate, petitioner was charged with Frustrated Murder committed against Armando. Article 248 of the Revised Penal Code (RPC) provides, *viz.*:

ARTICLE 248. *Murder.* - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x

Thus, in order for the prosecution to prove the guilt of an accused beyond reasonable doubt for the crime of Murder, the following elements must be present, to wit: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.²³ In this relation, there is frustrated murder when the perpetrator 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 perpetrator's will.²⁴

²² *People v. Bernardo*, G.R. No. 242696, November 11, 2020 [Per J. Perlas-Bernabe, Second Division], citing *Arambulo v. People*, 857 Phil. 828, 836 (2019) [Per J. Perlas-Bernabe, Second Division].

²³ *People v. Dela Cruz*, 626 Phil. 631, 639 (2010) [Per J. Velasco, Jr., Third Division].

²⁴ See *People v. Gaborne*, 791 Phil. 581 (2016) [Per J. Perez, Third Division], citing *Serrano v. People*, 637 Phil. 319, 335 (2010) [Per J. Brion, Third Division].

In this case, the courts *a quo* correctly ruled that the prosecution had established beyond reasonable doubt that petitioner was indeed the perpetrator who waited for Armando and later on shot the latter. Unfortunately for petitioner, Armando survived the attack due to the timely medical treatment on his sustained injuries — a cause independent of petitioner's will. Indeed, Armando endured the attack, but petitioner's criminal liability remains.

In appreciating treachery, the RTC reasoned that petitioner purposely took advantage of the darkness by strategically positioning himself and lured Armando to go outside of his house by assuring him that he was alone, when in fact he was not, and fired at Armando who was taken by surprise of the unexpected attack employed. Thus, petitioner's conscious and deliberate adoption of the mode of attack deprived Armando of the opportunity to evade or repel the attack and to defend himself before the shot was made.²⁵ As affirmed by the CA, Armando was caught off guard when petitioner fired at him; thus, making the attack on Armando deliberate, sudden, and unexpected. While Armando had no opportunity to defend himself, petitioner was not exposed to any danger in view of the unexpected attack.²⁶ All these indicate that petitioner employed means to ensure the execution of the crime without risk to himself arising from the defense Armando might make.²⁷

However, and upon circumspect review of the records, the Court disagrees with the conclusions of the courts *a quo* as regards the presence of the qualifying circumstance of treachery.

“Treachery must be proven as indubitably as the crime itself.”²⁸ It bears stressing that the essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part.²⁹ The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.³⁰ However, and as pointed out by Justice Amy C. Lazaro-Javier during the deliberations of this case, there can be no treachery when the attack is preceded by a heated exchange of words between the accused and the victim, or when the victim is aware of the hostility of the assailant towards the former.³¹ As Justice Mario V. Lopez aptly stated during the deliberations of

²⁵ *Rollo*, p. 82.

²⁶ *Id.* at 48.

²⁷ *Id.*

²⁸ *People v. Aquino*, 396 Phil. 303 (2000) [Per J. Bellosillo, Second Division].

²⁹ *People v. Abadies*, 436 Phil. 98, 105 (2002) [Per J. Ynares-Santiago], citing *People v. Garcia*, 409 Phil. 152, 171 (2001) [Per J. Kapunan, First Division].

³⁰ *People v. Bugarin*, 807 Phil. 588, 599 (2017) [Per J. Peralta, Second Division], citing *People v. Gutierrez*, 625 Phil. 471, 480 (2010) [Per J. Nachura, Third Division].

³¹ *People v. Alegre*, G.R. No. 254381, February 14, 2022 [Per J. Hernando, Second Division].

this case, for a prior altercation to successfully negate treachery, the altercation that must precede the act is of such nature or gravity as to amount to a warning of the oncoming onslaught.

In *People v. Reyes*,³² the Court *En Banc*, through Justice Vicente V. Mendoza, held:

Treachery is of course present when the shooting is unexpected and sudden, giving an unarmed victim no chance whatsoever to defend himself. The two conditions for treachery are that (1) at the time of the attack, the victim was not in a position to defend himself, and (2) the offender consciously adopted the particular means, method, or form of attack employed by him. **It is to be recalled, however, that there had already been a long-standing grudge and bad blood between the families of accused-appellant and of the victim as early as June or July of 1996.** In fact, accused-appellant had sought the intercession of the victim's brother, Toribio, so that the family feud could be settled. It should be recalled further that **Nicasio had been warned of the attack by accused-appellant.** This was why he (Nicasio) tried to use Roman as a shield. These circumstances negate the probability of a surprise attack. Indeed, Roman Dalisay testified that when he was ordered by Nicasio to drop to the ground, he asked Nicasio to run. **Had accused-appellant intended to surprise Nicasio to ensure that the latter would not be able to defend himself, accused-appellant would not have forewarned Roman.** He would just have attacked Nicasio without any warning. Thus, in *People v. Rillorta*, this Court ruled that there is no treachery if an assault is preceded by a heated exchange of words between the accused and the deceased. And, in *People v. Rivera*, it was held that **there is no treachery if the victim was aware of the hostility of the assailant toward him.** (Emphases supplied)

Here, it bears stressing that Armando was aware of petitioner's hostility before the incident happened due to their undeniably strained relationship. To recapitulate, petitioner was already upset with Armando's chicks that had entered his yard. Thus, when Armando's pets went missing, Armando's wife suspected that it was petitioner who killed their pets. Petitioner and Armando's rift grew more when petitioner claimed ownership over the land where the house of Armando was erected. Worse, Armando's wife had an altercation with petitioner prior to the shooting incident. With these, Armando was forewarned of an impending attack when petitioner started shouting at him and challenging him to come out of the house. Had petitioner intended to guarantee the death of Armando, he could not have forewarned Armando. More so, even the testimony of Armando belies the suddenness of the attack when he testified that he had to turn off the flashlight as he already suspected that petitioner had an intention to do something bad to him.³³ In fact, Armando was given sufficient time to run or even defend himself when Armando saw petitioner charging towards him. Evidently, there can be no

³² 420 Phil. 343 (2001) [*En Banc*].

³³ *Id.* at 29.

sudden and unexpected attack tantamount to treachery that can be appreciated in this case.

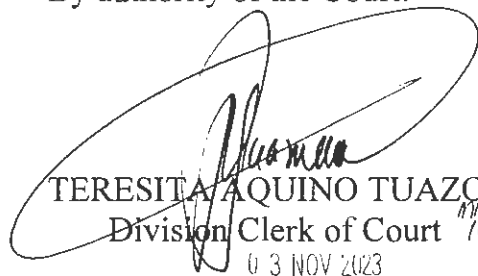
Absent the presence of the qualifying circumstance of treachery in this case, petitioner can only be convicted of Frustrated Homicide.³⁴

Under the RPC, frustrated homicide has a prescribed penalty of *prision mayor*.³⁵ Applying the provisions of the Indeterminate Sentence Law, petitioner must be sentenced to suffer the 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. Furthermore, and pursuant to prevailing jurisprudence,³⁶ petitioner must pay the victim ₱26,171.00 as actual damages, ₱30,000.00 as civil indemnity, and ₱30,000.00 as moral damages, all with legal interest at the rate of 6% per annum from finality of this ruling until full payment.

FOR THESE REASONS, the instant petition is **DENIED**. The Decision dated December 03, 2020 and the Resolution dated November 15, 2021 of the Court of Appeals in CA-G.R. CR No. 43942 are hereby **AFFIRMED with MODIFICATION**, in that petitioner Romeo H. Peralta is **GUILTY** beyond reasonable doubt of the crime of Frustrated Homicide under the Revised Penal Code. He is sentenced to suffer the penalty of imprisonment for an indeterminate period 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 to pay the victim, Armando Picar, the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages,³⁷ and ₱26,171.00 as actual damages, all with legal interest at the rate of 6% per annum from finality of this ruling until full payment.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
6 3 NOV 2023

³⁴ See *People v. Calinawan*, G.R. No. 226145, February 13, 2017 [Per J. Mendoza, Second Division].

³⁵ RPC, Article 250.

³⁶ *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

³⁷ *Id.*

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. A-6336)

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*with copy of CA Decision dated December 3, 2020
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GR258214. 3/13/2023(287)URES *1/10/23*