



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **February 8, 2023** which reads as follows:*

“G.R. No. 259240 (Johnny Johnson, Jr. a.k.a. “Bibe Puti”, Petitioner v. People of the Philippines, Respondent). — This Court resolves the Appeal from the Decision¹ dated June 18, 2021 and Resolution² dated February 21, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 44037, which affirmed with modification the Decision³ rendered by the Regional Trial Court (RTC). The CA found Johnny Johnson, Jr. (*Johnson*) guilty of attempted homicide.

Johnson was charged, together with Rommel Balmaceda (*Balmaceda*) and Manuel Osias (*Osias*), with attempted murder of Ronnie Tuquero y Tugilida (*Tuquero*) under the following information:

That on or about the 24th day of June 2013, in Quezon City, Philippines, the said accused conspiring, confederating with and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery did then and there willfully, unlawfully and feloniously, commence the commission of the crime of Murder directly by overt acts, upon the person of RONNIE TUQUERO y TUGILIDA by then and there shooting him in his shoulder, but said accused was not able to perform all the acts of execution which would produce the crime of Murder by reason of cause/s or accident other than his own spontaneous desistance, in that accused was prevented by other person/s present from further inflicting harm upon said complainant, to the damage and prejudice of the said offended party.

Accused planned the commission of the crime prior to its execution until its commission and consciously adopting sudden and unexpected mode/s of attack upon the victim to ensure that victim will not be able to defend himself this, accused, committed the crime with the attending circumstances of evident premeditation and treachery.

CONTRARY TO LAW.⁴

¹ *Rollo*, pp. 36-45. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justice Walter S. Ong and Associate Justice Bonifacio S. Pascua concurring.

² *Id.* at 47-48. Dated February 21, 2022.

³ *Id.* at 64-78. The September 13, 2019 Decision was rendered by Acting Presiding Judge Maria Luisa Lesle G. Gonzales-Betic of Branch 90, Regional Trial Court, Quezon City.

⁴ *Id.* at 37.

juo/12

At the arraignment, Johnson and Balmaceda pleaded not guilty to the charge while Osias remained at-large. Pre-trial commenced, and thereafter, trial on the merits ensued.⁵

The versions of the prosecution and the defense were summarized by the RTC in this manner:

EVIDENCE FOR PROSECUTION

The following persons testified for the Prosecution: Ronnie Tuquero ("victim Ronnie"); Mary Sharon Saavedra; Mario Tuquero ("Mario," brother of the victim Ronnie); Elpha Tuquero ("Elpha," wife of the victim Ronnie); Jean Tuquero ("Jean," sister of the victim Ronnie).

The evidence of the Prosecution is summarized thus: on 23 June 2013, Jacklyn Johnson ("Jacklyn," wife of the accused Rommel) went to the house of the Tuqueros at 29 Silangan Street, Kaingin Bukid, Barangay Apolonio Samson, Balintawak, Quezon City ("Tuquero House"), looking for Mario Tuquero, and shouting "*Tangina niyo. Ilabas niyo si Mario. Nasaan si Mario?*"; when the victim Ronnie's wife Elpha told Jacklyn that Mario was not around, Jacklyn suddenly hit the display cabinet of the Tuqueros with a piece of wood; the sister of the victim Ronnie, Jean, went out of the house, confronted Jacklyn, and Jacklyn and Jean had a fight marked with hair pulling and cursing; the neighbors of the Toqueros tried to pacify Jean and Jacklyn, but to no avail; after about 20 minutes of fighting, the family members of Jean (Mary Jane Toquero ["Mary Jane," sister of the victim Ronnie], Rogelio Toquero ["Rogelio," father of the victim Ronnie], Mario, and the victim Ronnie), and the family members of Jacklyn (the appellant Johnny, the accused Rommel, and the accused Manuel), arrived to pacify Jean and Jacklyn; Rogelio shouted at Jean and Jacklyn to stop fighting, and pushed Jean and Jacklyn away from each other; the appellant Johnny (with a fan knife in hand) suddenly threatened Rogelio saying "*Gusto mo ikaw ang saksakin ko nito?*," and the appellant Johnny tried to stab Rogelio, but the neighbors of the Toqueros were able to stop the appellant Johnny from stabbing Rogelio; later, Jean and Jacklyn stopped fighting; the victim Ronnie escorted Rogelio, Mary Jane, and Jean, into the Tuquero house, while Mario and Errol James ("Errol," son of the victim Ronnie) stayed outside the house; realizing that Errol was still outside, the victim Ronnie went out to get his son Errol (who was with Mario); as the victim Ronnie was about to bring Errol inside the house, the accused Rommel handed to the appellant Johnny a gun, and the appellant Johnny pointed the gun at the victim Ronnie, and fired two shots at the victim Ronnie (one bullet hit the victim Ronnie on the right shoulder, the second bullet hit Errol on the abdomen); the appellant Johnny then aimed the gun at Mario, and fired two shots, but the appellant Johnny missed Mario, and instead hit Errol on the knee); the appellant Johnny and the accused Rommel immediately fled the crime scene; Mario rushed the victim Ronnie and Errol to the Quezon City General Hospital; per the Quezon City General Hospital Provisional Medico-Legal Certificate issued by Dr. Fabian, the victim Ronnie had "Gunshot wound, shoulder right."

⁵ *Id.*

EVIDENCE FOR DEFENSE

The following persons testified for the Defense: the appellant Johnny; the accused Rommel (brother-in-law of the appellant Johnny); Jacklyn Johnson ("Jacklyn," wife of the accused Rommel).

The evidence of the Defense is summarized thus: on 24 June 2013, at around 9:00 a.m., the appellant Johnny went to the house of his sister Jacklyn to borrow money, but Jacklyn was not there; while the appellant Johnny was talking to the accused Rommel (Jacklyn's husband), Annie Tuquero ("Annie," mother of the victim Ronnie) passed by Jacklyn's house, and cursed at the appellant Johnny and his family saying "putang ino mo, magnanakaw kayo," "[y]ung nanay mo, pakantot. Yung nanay ninyo ng kapatid mong habae, pakantot. Mga puta yung nanay mo at saku yung kapatid mong habae"; the appellant Johnny tried to reason with Annie, but Annie continued cursing at the appellant Johnny, and then Annie left; Jacklyn called the appellant Johnny on the phone, and asked the appellant Johnny about what Annie did, and the appellant Johnny told Jacklyn what had happened; Jacklyn went to the Tuquero House to confront Annie, but Annie was not there; Jacklyn and Buboy Tuquero (son of Annie) had a heated discussion, and Jean (who was holding a piece of wood) went out to meet Annie, and Jacklyn tried to grab the piece of wood from Jean; during the tussle, the piece of wood hit the glass cabinet, and Jacklyn and Jean started pulling each other's hair, and Jean tore Jacklyn's clothes; Aileen told the appellant Johnny that Jacklyn and Jean were fighting, so the appellant Johnny rushed to the Tuquero House; when the appellant Johnny arrived at the Tuquero House, the appellant Johnny saw Rogelio, Mario, and the victim Ronnie holding Jacklyn, while Annie was tearing Jacklyn's clothes, and Jean was pulling Jacklyn's hair; the appellant Johnny quickly went to Jacklyn's aide, pulled out a nail file, and pointed the nail file to the Tuqueros, to get near Jacklyn; the appellant Johnny hugged Jacklyn (who was almost half naked), and the accused Rommel arrived to help the appellant Johnny and Jacklyn; the accused Rommel successfully pulled the appellant Johnny and Jacklyn (the accused Rommel's wife) from the fray, and while the three (the accused Rommel, the appellant Johnny, and Jacklyn) were regaining their composure, Mario went out of the house holding a *sumpak*, so the three (the accused Rommel, the appellant Johnny, and Jacklyn) immediately left the Tuquero House, and went to the house of Michelle Balmaceda (sister of the accused Rommel); the appellant Johnny denied shooting the victim Ronnie, and claimed that he had no knowledge on how the victim Ronnie sustained the gunshot wound.⁶

On September 13, 2019, the RTC rendered its Decision finding Johnson guilty of attempted homicide while acquitting Balmaceda and archiving the case with regard to Osias, the dispositive portion reads:

WHEREFORE, accused Johnny Johnson, Jr. a.k.a. "Bibe Puti" is found guilty beyond reasonable doubt of Attempted Homicide under Arts. 249 and 250, of the Revised Penal Code and is hereby sentenced to suffer the penalty of six (6) months of arresto mayor, as minimum to four (4) years and two (2) months of prision correccional, as maximum. As for accused Rommel Balmaceda, he is hereby acquitted on reasonable doubt.

⁶ *Id.* at 37-39.

20/12

On the civil aspect, accused Johnson is ordered to pay Ronnie Tuquero the amounts of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, PHP 50,000.00 as exemplary damages. Complainant is entitled to an interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

As for accused Manuel Osias a.k.a. "Atoy", let warrant of arrest be issued for his apprehension. The case against him is ordered archived, to be revived upon his subsequent surrender or arrest.

SO ORDERED.⁷ (Emphasis in the original)

On appeal, the CA affirmed with modification the Decision of the RTC, thus:

ACCORDINGLY, we **MODIFY** the Decision dated 13 September 2019 of the Regional Trial Court, Branch 90, Quezon City, in Criminal Case No. R-QZN-16-13251-CR, as follows: 1) upon proof beyond reasonable doubt, we convict the appellant Johnny Johnson Jr. a.k.a. "Bibe Puti" of Attempted Homicide, and sentence him to imprisonment of six months of *arresto mayor* (as minimum), to four years and two months of *prision correccional* (as maximum); 2) we order the appellant Johnny Johnson Jr. to pay the victim Ronnie Tuquero y Tugilida the following sums: PHP 20,000.00 as civil indemnity; PHP 20,000.00 as moral damages; and PHP 20,000.00 as exemplary damages.

The total amount awarded shall earn interest at the legal rate of six percent per annum from the finality of this Decision, until full payment.

SO ORDERED.⁸ (Emphasis in the original)

In affirming the conviction of Johnson, the CA opined that the State was able to prove that Johnson had the intent to kill the victim Tuquero. According to the CA, such intent was manifested by the use of a gun and firing the same multiple times. In fact, the first shot hit the victim on the shoulder. The death of Tuquero would have resulted were it not for the poor aim of Johnson.⁹

The CA further held that the wound sustained by Tuquero was not fatal or mortal as the State did not present the attending physician to testify on the nature of the wound.¹⁰

With regard to the presence of the qualifying circumstances of treachery and evident premeditation, the CA pointed out that the prosecution failed to

⁷ *Id.* at 39–40.

⁸ *Id.* at 44.

⁹ *Id.* at 42.

¹⁰ *Id.*

adduce evidence to prove that the two alleged circumstances were present at the time of the commission of the crime charged.¹¹

Johnson filed a motion for reconsideration, which the CA denied in its Resolution¹² dated February 21, 2022. Thus, the present appeal to this Court.

Johnson claims that the CA gravely erred in denying the appeal despite the prosecutor's failure to prove all the elements of attempted homicide due to the inconsistent testimonies of its witnesses.¹³ Johnson seeks the indulgence of this Court to review the factual findings of the RTC and the CA.

The State, through the Office of the Solicitor General (*OSG*), submitted its comment. The *OSG* seeks the denial of the petition as it seeks the review of factual matters and the case does not fall within the procedural exceptions.¹⁴ The *OSG* further argues that the CA ruled that the element of intent to kill is present.

This Court's Ruling

The Petition is without merit.

Section 1, Rule 45 of the Rules of Court is clear that petitioners may only raise questions of law.¹⁵ This is because the resolution of the factual issues are supposed to be resolved by trial courts. This Court, as it is not a trier of facts will not ascertain the facts but would rather subscribe to the findings of the courts that passed upon the case. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.¹⁶

In different occasions, We recognized the following exceptions as to the limitation of the subject of review, as follows:

- (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
- (b) When the inference made is manifestly mistaken, absurd, or impossible;

¹¹ *Id.* at 43.

¹² *Id.* at 47-48.

¹³ *Id.* at 20.

¹⁴ *Id.* at 126.

¹⁵ Section 1, Rule 45 of the Rules of Court reads:

SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

¹⁶ *Angeles v. Pascual*, 673 Phil. 499 (2011) [Per J. Bersamin, First Division].

page 12

- (c) When there is grave abuse of discretion;
- (d) When the judgment is based on a misapprehension of facts;
- (e) When the findings of facts are conflicting;
- (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the CA's findings are contrary to those by the trial court;
- (h) When the findings are conclusions without citation of specific evidence on which they are based;
- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.¹⁷

In the instant case, this Court finds no cogent reason to warrant reversing or modifying the findings of the CA, which are consistent with the established facts. We find that the CA had already exhaustively reviewed the case and came up with the correct appreciation of the pieces of evidence.

As correctly ruled by the CA, the State proved all the elements of attempted homicide. The pertinent portion of the Decision reads:

The first element of Attempted Homicide was present. There was intent to kill on the part of the appellant Johnny when the appellant Johnny fired at the victim Ronnie.

What is important in attempted felonies is intent. In attempted homicide, what is important is intent to kill. Further, repeated shots aimed at a victim is a clear indication of intent to kill.

The appellant Johnny's intent to kill the victim Ronnie, is proved by the following circumstances: by the nature of the weapon used (i.e.: the gun, a deadly weapon); by the repeated shots fired at the victim Ronnie (i.e.: the appellant Johnny fired the first shot at the victim Ronnie, hitting the victim Ronnie on the shoulder; the appellant Johnny, in furtherance of the intent to kill, fired the second shot at the victim Ronnie). The killing or death of the victim Ronnie would have resulted, were it not for the poor aim of the appellant Johnny.

Clearly, the above-described circumstances showed the appellant Johnny's intent to kill the victim Ronnie.

The second element of Attempted Homicide was present. The wound sustained by the victim Ronnie was not a fatal or mortal wound.

A mortal or fatal wound is one that is inflicted sufficient to cause the victim's death without timely medical intervention.

...

¹⁷ *Sps. Andrada v. Pilhino Sales Corporation*, 659 Phil. 70 (2011) [Per J. Bersamin, Third Division].

The third element of Attempted Homicide was present. The Prosecution did not prove the presence of any of the qualifying circumstance for murder under Article 248, Revised Penal Code.

Although the Information alleged the qualifying circumstances of treachery and premeditation, the Prosecution did not adduce evidence to prove that the Attempted Homicide was attended by treachery and premeditation, to qualify the crime to Attempted Murder.¹⁸

We likewise find that the CA correctly junked the defense of denial. We have consistently ruled that denial is inherently a weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.¹⁹

FOR THESE REASONS, this Court **DENIES** the Petition for lack of merit. The Decision dated June 18, 2021 and Resolution dated February 21, 2022 of the Court of Appeals in CA-G.R. CR No. 44037 are **AFFIRMED**.

This Court **FINDS** Johnny Johnson, Jr. guilty of attempted homicide and **IMPOSES** the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

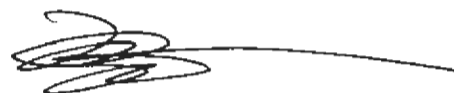
This Court **ORDERS** Johnny Johnson, Jr. to pay Ronnie Tuquero y Tugilida the following sums: PHP 20,000.00 as civil indemnity; PHP 20,000.00 as moral damages; and PHP 20,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *pg 10/12*

13 OCT 2023

¹⁸ *Rollo*, pp. 6 -7.

¹⁹ *People v. Mat-an*, 826 Phil. 511, 524 (2018) [Per J. Martires, Third Division].

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 90
Quezon City
(Crim. Case No. R-QZN-16-13251-CR)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 44037

Please notify the Court of any change in your address.
GR259240. 2/08/2023(196)URES

