



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RODOLFO GUEVARRA and JOEY GUEVARRA,

Petitioners,

G.R. No. 170462

Present:

CARPIO, J.,
Chairperson,
 BRION,
 PEREZ,
 MENDOZA,* and
 PERLAS-BERNABE, JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
 Respondent.

FEB 05 2014 *HA Macabalog Perfecto*

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DECISION

BRION, J.:

We review in this petition for review on *certiorari*¹ the decision² dated October 24, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 28899. The CA affirmed, with modification on the amount of damages, the joint decision³ dated April 16, 2004 of the Regional Trial Court (RTC), Branch 20, Cauayan City, Isabela, finding Rodolfo Guevarra and Joey Guevarra (*petitioners*) guilty beyond reasonable doubt of the crimes of frustrated homicide and homicide.

* In lieu of Associate Justice Mariano C. del Castillo per Raffle dated February 5, 2014.

¹ Under Rule 45 of the Rules of Court; *rollo*, pp. 22-39.

² Penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo (now a Member of this Court); CA *rollo*, pp. 207-222.

³ Penned by Judge Henedino P. Eduarte; *rollo*, pp. 58-68.

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Factual Antecedents

Rodolfo and his son, Joey, were charged with the crimes of frustrated homicide and homicide under two Informations which read:

In Criminal Case No. Br. 20-1560 for Frustrated Homicide:

That on or about the 8th day of January, 2000, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, with intent to kill and without any just motive, did then and there, willfully, unlawfully and feloniously, assault, attack, hack and stab for several times with a sharp pointed bolo one Erwin Ordoñez, who as a result thereof, suffered multiple hack and stab wounds on the different parts of his body, which injuries would ordinarily cause the death of the said Erwin Ordoñez, thus, performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Erwin Ordoñez, which prevented his death.⁴

In Criminal Case No. Br. 20-1561 for Homicide:

That on or about the 8th day of January, 2000, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, with intent to kill and without any just motive, did then and there, willfully, unlawfully and feloniously, assault, attack, hack and stab for several times with a sharp pointed bolo one David Ordoñez, who as a result thereof, suffered multiple hack and stab wounds on the different parts of his body which directly caused his death.⁵

Although the informations stated that the crimes were committed on January 8, 2000, the true date of their commission is November 8, 2000, as confirmed by the CA through the records.⁶ The parties failed to raise any objection to the discrepancy.⁷

On arraignment, the petitioners pleaded not guilty to both charges.⁸ The cases were jointly tried with the conformity of the prosecution and the defense. At the pre-trial, the petitioners interposed self-defense, which

⁴ Id. at 58.

⁵ Id. at 59.

⁶ Id. at 43.

⁷ Ibid.

⁸ Ibid.



prompted the RTC to conduct a reverse trial of the case.⁹ During the trial, the parties presented different versions of the events that transpired on November 8, 2000.

Version of the Defense

To prove the petitioners' claim of self-defense, the defense presented the testimonies of Rodolfo, Joey, and the petitioners' neighbor, Balbino Agustin.

Testimony of Rodolfo

Rodolfo, who was then fifty-five (55) years old, narrated that, at around 11:00 p.m., on November 8, 2000, brothers Erwin Ordoñez and David Ordoñez, together with their companion, Philip Vingua, forced their way into his compound and threw stones at his house and tricycle. Through the back door of his house, Rodolfo went down to the basement or "*silung*" and shouted at the three men to stop. David saw him, threatened to kill him, and struck him with a "*panabas*," hitting him on the palm of his left hand. Rodolfo responded by reaching for the bolo tucked in the "*solera*" of his house, and hacked and stabbed Erwin and David until the two brothers fell to the ground. Upon seeing Erwin and David lying on the ground, Rodolfo called on someone to bring the brothers to the hospital. He stayed in his house until the policemen arrived.

Testimony of Joey

Joey, who was then thirty-one (31) years old, narrated that, at around 11:00 p.m., on November 8, 2000, he was awakened by the sound of stones being thrown at their house in Bliss, Paddad, Alicia, Isabela. Through the window, he saw Erwin, David and Philip breaking into their gate, which was made of wood and interlink wire and located five (5) to six (6) meters away from their house. He then heard his father Rodolfo say to the three men, "*kung ano man ang problema bukas na natin pag-usapan[.]*"¹⁰ and David retorted in their dialect, "*Okininam nga lakay adda ka gayam dita, patayin taka[.]*"¹¹

⁹ Id. at 59.

¹⁰ Translated into English as "If you have a problem with me, let us just discuss it tomorrow." (Id. at 43.)

¹¹ Translated into English as "Vulva of your mother, so there you are, old man. I am going to kill you." (Id. at 43-44.)

Testimony of Balbino

Balbino narrated that, from inside his house in Bliss, Paddad, Alicia, Isabela, at around 10:00 p.m., on November 8, 2000, he heard a person from the outside saying “*Sige banatan ninyo na[.]*”¹² He opened his door and saw David, Erwin and Philip throwing stones at the house of his neighbor Crisanto Briones. Briones got mad and scolded the three men, “Why are you hitting my house? Why don’t you hit the house of your enemy, *mga tarantado kayo!*”¹³ David, Erwin and Philip then aimed their stones at the petitioners’ house. Balbino heard David calling out to Joey, “*Joey, kung tunay kang lalaki lumabas ka diyan sa kalsada at dito tayo magpatayan[.]*”¹⁴ but no one came out of Rodolfo’s house. The stoning lasted for about thirty (30) minutes.

Afterwards, Balbino saw David, Erwin and Philip destroy Rodolfo’s gate and pull the gate towards the road. He heard David say to his companions, “*koberan ninyo ako at papasok kami[.]*”¹⁵ David, Erwin and Philip entered the petitioners’ compound and damaged Rodolfo’s tricycle with stones and their “*panabas.*” Also, he heard Rodolfo say to David in Filipino that they could just talk about their problems with him the following day. But David approached Rodolfo and hacked him with a “*panabas.*” Rodolfo parried the blow with the back of his hand, and David and Rodolfo struggled for the possession of the “*panabas.*”

Balbino also saw Erwin hit Rodolfo on the face with a stone and Joey was hit on his right foot, causing Rodolfo and Joey to retreat to the “*silung*” of their house from where Rodolfo got “something shiny,” and with it stabbed David and Erwin. He saw the two brothers fall to the ground.

Version of the Prosecution

As its rebuttal witness, the prosecution presented the sole testimony of Erwin who survived the hacking.

Erwin narrated that, at around 10:00 to 11:00 p.m., on November 8, 2000, he, his brother David and Philip went to a birthday party and passed

¹² Translated into English as “Go ahead, give him a beating.” (Id. at 44.)

¹³ CA rollo, p. 55.

¹⁴ Translated into English as “Joey, if you are indeed a man, you come out to the street and fight me.” (Rollo, p. 44.)

¹⁵ Translated into English as “Provide us cover, as we will enter.” (Ibid.)

in front of the petitioners' compound. He was walking twenty (20) meters ahead of his companions when, suddenly, Philip ran up to him saying that David was being stabbed by Joey with a bolo. While approaching the scene of the stabbing, which was three (3) meters away from where his brother David was, Erwin was met by Rodolfo who then hacked him, hitting his arm and back. Thereafter, Rodolfo and Joey dragged Erwin inside the petitioners' compound and kept on hacking him. He was hacked and stabbed thirteen (13) times. He became weak and ultimately fell to the ground.

Erwin denied that he and David threw stones at the petitioners' house and damaged Rodolfo's tricycle. They did not likewise destroy the petitioners' gate, which was only damaged when his brother David clung on to it while he was being pulled by Rodolfo and Erwin into their compound. While they were being hacked and stabbed by Rodolfo and Erwin, stones actually rained on them and people outside the petitioners' gate were saying, "Do not kill the brothers. Allow them to come out."¹⁶

After the incident, Erwin and David, both unconscious, were brought to the hospital. David died in the hospital while being treated for his wounds.

The RTC's Ruling

In a decision dated April 16, 2004, the RTC gave credence to the prosecution's version of the incident and found the petitioners guilty beyond reasonable doubt of the crimes of frustrated homicide and homicide. It disbelieved the defense's version of the events due to material inconsistencies in the testimonies of the defense witnesses. It denied the petitioners' claim of self-defense for lack of clear, convincing and satisfactory supporting evidence.

The RTC explained in its decision that "[w]hen an accused invokes the justifying circumstance of self-defense, he loses the constitutional presumption of innocence and assumes the burden of proving, with clear and convincing evidence, the justification for his act";¹⁷ that self-defense is an affirmative allegation which must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.¹⁸ The RTC held that the

¹⁶ Id. at 45.

¹⁷ Id. at 62.

¹⁸ Id. at 63.



petitioners miserably failed to prove that there was unlawful aggression on the part of the victims, Erwin and David.

Accordingly, the RTC disposed of the case as follows:

WHEREFORE, finding the accused Rodolfo Guevarra and Joey Guevarra guilty beyond reasonable doubt of the crimes for which they are charged, and absent any mitigating or aggravating circumstance/s that attended the commission of the crimes, the Court hereby sentences each of the accused to suffer –

In Criminal Case No. Br. 20-1560 for Frustrated Homicide – an indeterminate penalty ranging from Three (3) years and one day of prision correccional as minimum to Nine (9) years of prision mayor as maximum and to indemnify the victim Erwin Ordoñez moral damages in the amount of Twenty Thousand (₱20,000.00) Pesos, without any subsidiary imprisonment in case of insolvency. Cost against the accused.

In Criminal Case No. Br. 20-1561 for Homicide – an indeterminate penalty ranging from Eight (8) years and one day of prision mayor as minimum to Fifteen (15) years of Reclusion Temporal as maximum and to indemnify the heirs of the deceased David Ordoñez Sixty Thousand (₱60,000.00) Pesos plus Thirty Thousand (₱30,000.00) Pesos as moral damages without subsidiary imprisonment in case of insolvency. Costs against the accused.

The bail bonds of the accused are CANCELLED.¹⁹

The CA's Ruling

On appeal, the CA affirmed the RTC's judgment and convicted the petitioners of the crimes charged. As the RTC did, the CA found that Erwin and David committed no unlawful aggression sufficient to provoke the actions of the petitioners; that "[a]ggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense or to others whom that person is seeking to defend."²⁰ Even assuming the truth of the petitioners' claims that David challenged Joey to a fight and threatened to kill Rodolfo on the night of November 8, 2000, the CA held that these acts do not constitute unlawful aggression to justify the petitioners' actions as no real or actual danger existed as the petitioners were then inside the safety of their own home.

¹⁹ Id. at 68; italics supplied.

²⁰ Id. at 48.

The CA further held that the petitioners' plea of self-defense was belied by the nature and number of wounds inflicted on Erwin, who sustained thirteen (13) stab wounds on his arm and back, and David, who suffered around ten (10) stab wounds on his back and stomach causing his death. These wounds logically indicated that the assault was no longer an act of self-defense but a determined homicidal aggression on the part of the petitioners.²¹

The CA, however, found error in the amounts of civil indemnity and moral damages awarded by the RTC. Thus, the CA modified the RTC's decision in this wise:

WHEREFORE, the appealed Decision is **AFFIRMED** with **MODIFICATION**. In Crim. Case No. Br. 20-1561, appellants RODOLFO GUEVARRA and JOEY GUEVARRA are each ordered to pay the heirs of the deceased David Ordonez the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and another Fifty Thousand Pesos (₱50,000.00) as moral damages.²²

The Petition

In the present petition, the petitioners raise the following issues:

A.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THE PRESENCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE DESPITE CLEAR AND CONVINCING EVIDENCE SHOWING THE ELEMENTS OF SELF-DEFENSE.

B.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE LONE WITNESS OF THE PROSECUTION.

²¹ Id. at 53.

²² CA rollo, p. 222; emphases supplied.



C.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS
ERRED IN NOT ACQUITTING PETITIONER JOEY GUEVARRA
WHO HAS NO PARTICIPATION IN THE SAID INCIDENT.²³

Our Ruling

**We deny the present petition as we find no reversible error in the
CA decision of October 24, 2005.**

At the outset, we emphasize that the Court's review of the present case is *via* a petition for review under Rule 45, which generally bars any question pertaining to the factual issues raised. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions, among them, the lack of sufficient support in evidence of the trial court's judgment or the appellate court's misapprehension of the adduced facts.²⁴

The petitioners fail to convince us that we should review the findings of fact in this case. Factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record.²⁵ We find that both the RTC and the CA fully considered the evidence presented by the prosecution and the defense, and they have adequately explained the legal and evidentiary reasons in concluding that the petitioners are guilty of the crimes of frustrated homicide and homicide.

In the absence of any showing that the trial and appellate courts overlooked certain facts and circumstances that could substantially affect the outcome of the present case, we uphold the rulings of the RTC and the CA which found the elements of these crimes fully established during the trial.

The crime of frustrated homicide is committed when: (1) an "accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying

²³ Rollo, p. 27; emphasis ours.

²⁴ See *Gotis v. People*, 559 Phil. 843, 849 (2007).

²⁵ *Maxwell Heavy Equipment Corporation v. Yu*, G.R. No. 179395, December 15, 2010, 638 SCRA 653, 658.

circumstance for murder under Article 248 of the Revised Penal Code is present.”²⁶

On the other hand, the crime of homicide is committed when: (1) a person is killed; (2) the accused killed that person without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.²⁷

The petitioners’ intent to kill was clearly established by the nature and number of wounds sustained by their victims. Evidence to prove intent to kill in crimes against persons may consist, among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim.²⁸ The CA aptly observed that the ten (10) hack/stab wounds David suffered and which eventually caused his death, and the thirteen (13) hack/stab wounds Erwin sustained, confirmed the prosecution’s theory that the petitioners purposely and vigorously attacked David and Erwin.²⁹ In fact, the petitioners admitted at the pre-trial that “the wounds inflicted on the victim Erwin Ordoñez would have caused his death were it not for immediate medical attendance.”³⁰

By invoking self-defense, the petitioners, in effect, admitted to the commission of the acts for which they were charged, albeit under circumstances that, if proven, would have exculpated them. With this admission, the burden of proof shifted to the petitioners to show that the killing and frustrated killing of David and Erwin, respectively, were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the persons resorting to self-defense.³¹

Of all the burdens the petitioners carried, the most important of all is the element of unlawful aggression. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.³² The element of unlawful aggression must be proven first in order

²⁶ *Josue v. People*, G.R. No. 199579, December 10, 2012, 687 SCRA 675, 682.

²⁷ *SPO1 Nerpio v. People*, 555 Phil. 87, 94 (2007).

²⁸ *People v. Lanuza*, G.R. No. 188562, August 24, 2011, 656 SCRA 293, 300.

²⁹ *Rollo*, p. 53.

³⁰ *Id.* at 59.

³¹ *People v. Silvano*, 403 Phil. 598, 606 (2001); and *People v. Plazo*, 403 Phil. 347, 357 (2001).

³² *People v. Basadre*, 405 Phil. 216, 229-230 (2001).

for self-defense to be successfully pleaded. There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.³³

As the RTC and the CA did, we find the absence of the element of unlawful aggression on the part of the victims. As the prosecution fully established, Erwin and David were just passing by the petitioners' compound on the night of November 8, 2000 when David was suddenly attacked by Joey while Erwin was attacked by Rodolfo. The attack actually took place outside, not inside, the petitioners' compound, as evidenced by the way the petitioners' gate was destroyed. The manner by which the wooden gate post was broken coincided with Erwin's testimony that his brother David, who was then clinging onto the gate, was dragged into the petitioners' compound. These circumstances, coupled with the nature and number of wounds sustained by the victims, clearly show that the petitioners did not act in self-defense in killing David and wounding Erwin. The petitioners were, in fact, the real aggressors.

As to the penalties and damages awarded

We affirm the penalties imposed upon the petitioners, as they are well within the ranges provided by law, but modify the damages awarded by the CA.

In addition to the ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the CA, we award ₱25,000.00 to each of the victims as temperate damages, in lieu of the actual damages they sustained by reason of the crimes. Article 2224 of the Civil Code states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.

Also, we impose on all the monetary awards for damages interest at the legal rate of six percent (6%) per annum from date of finality of the decision until fully paid.³⁴

WHEREFORE, the petition is **DENIED**. The decision dated October 24, 2005 of the Court of Appeals is hereby **AFFIRMED** with **MODIFICATION** in that the petitioners are also ordered to pay Erwin

³³ *People v. Catbagan*, 467 Phil. 1044, 1075 (2004).


³⁴ *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384.



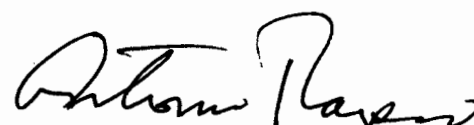
Ordoñez and the heirs of David Ordoñez the amount of ₱25,000.00 as temperate damages.

The petitioners shall pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral and temperate damages from the finality of this decision until fully paid.

SO ORDERED.

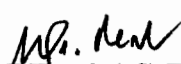

ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice