Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

GARY FANTASTICO and ROLANDO VILLANUEVA, Petitioners,	**G.R. No. 190912**
	Present:
- *versus*-	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
ELPIDIO MALICSE, SR. and PEOPLE OF THE PHILIPPINES, Respondents.	**Promulgated:** January 12, 2015

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DECISION

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, dated January 20, 2010 , of petitioners Gary Fantastico and Rolando Villanueva assailing the Decision[2] dated August 31, 2007 and Resolution[3] dated January 7, 2010 of the Court of Appeals (*CA*) in CA-G. R. CR. No. 31719, affirming the Decision[4] dated March 31, 2008 of the Regional Trial Court, Branch 11, Manila, in Criminal Case No. 93-127049, finding petitioners guilty of attempted murder.

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1 *Rollo*, pp. 3-120.

2 Penned by Associate Justice Andres B. Reyes, with Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison, concurring.

3 *Rollo*, pp. 26-28.

4 Penned by Presiding Judge Cicero D. Jurado, Jr.; *id.*, at 60-65.

The following are the antecedents:

On the afternoon of June 27, 1993, Elpidio Malicse, Sr. (*Elpidio*) was outside the house of his sister Isabelita Iguiron (*Isabelita*) in Pandacan, Manila when all of a sudden, he heard Isabelita's son, Winston, throwing invectives at him. Thus, Elpidio confronted Isabelita but she also cursed him, which prompted the former to slap the latter. On that occasion, Elpidio was under the influence of alcohol.

The *Barangay* Chairman heard what transpired and went to the place where the commotion was taking place in order to pacify those who were involved. Elpidio was eventually persuaded to go home where he drank some coffee. Thereafter, Elpidio went back to the house of Isabelita to offer reconciliation. On his way there, he passed by the house of *Kagawad* Andy Antonio and requested the latter to accompany him, but was instead told to go back home, leaving Elpidio to proceed alone.

Upon reaching Isabelita's house, Elpidio saw the former's son, Titus Iguiron (*Titus*) and her son-in-law Gary Fantastico (*Gary*) and asked the two where he can find their parents. Titus and Gary responded, "*putang ina mo, and kulit mo, lumayas ka, punyeta ka*."

In his anger with the response of Titus and Gary, Elpidio kicked the door open and saw Isabelita's elder son, Salvador Iguiron (*Salvador*) behind the door holding a rattan stick or *arnis*. Salvador hit Elpidio on the right side of his head that forced the latter to bow his head but Salvador delivered a second blow that hit Elpidio on the right eyebrow. Salvador attempted to hit Elpidio for the third time but the latter got hold of the rattan stick and the two wrestled on the floor and grappled for the possession of the same rattan stick. Then Titus ran towards the two and sprayed something on Elpidio's face. Not being able to free himself from the clutches of Salvador and to extricate himself, Elpidio bit Salvador's head.

Gary hit Elpidio on the right side of his head with a tomahawk axe when the latter was about to go out of the house. Elpidio tried to defend himself but was unable to take the tomahawk axe from Gary. Elpidio walked away from Titus but Gary, still armed with the tomahawk axe and Salvador, with his *arnis*, including Titus, chased him.

Roland (*Rolly*) Villanueva, without any warning, hit Elpidio on the back of his head with a lead pipe which caused the latter to fall on the ground. Elpidio begged his assailants to stop, but to no avail. Salvador hit him countless times on his thighs, legs and knees using the rattan stick.

While he was simultaneously being beaten up by Salvador, Titus, Gary, Rolly, Nestor, Eugene and Tommy, he tried to cover his face with his arm. Gary hit him with the tomahawk axe on his right leg, between the knees and the ankle of his leg, which caused the fracture on his legs and knees. Rolly hit Elpidio's head with a lead pipe, while Tommy hit him with a piece of wood on the back of his shoulder.

Thereafter, a certain "Mang Gil" tried to break them off but Titus and Gary shouted at him: "*Huwag makialam, away ng mag-anak ito*" and the two continued to maul Elpidio. The people who witnessed the incident shouted "*maawa na kayo*" but they only stopped battering him when a bystander fainted because of the incident. Elpidio then pretended to be dead. It was then that concerned neighbors approached him and rushed him to the emergency room of the Philippine General Hospital (*PGH*).

Thus, a case for Attempted Murder under Article 248, in relation to Article 6 of the Revised Penal Code, was filed against Salvador Iguiron, Titus Malicse Iguiron, Saligan Malicse Iguiron, Tommy Ballesteros, Nestor Ballesteros, Eugene Surigao and petitioners Gary Fantastico and Rolando Villanueva. The Information reads:

> That on or about June 27, 1993, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and taking advantage of superior strength, commence the commission of the crime of murder directly by overt acts, to wit: by then and there hitting the head of Elpidio Malicse, Sr. y de Leon with a piece of rattan, axe, pipe and a piece of wood and mauling him, but the said accused did not perform all the acts of execution which should have produced the crime of murder, as a consequence, by reason of causes other than their own spontaneous desistance, that is, the injuries inflicted upon Elpidio Malicse, Sr. y de Leon are not necessarily mortal.

They all pleaded "not guilty." The defense, during trial, presented the following version of the events that transpired:

Around 4:30 p.m. of June 27, 1993, Salvador was at the second floor of their house when he heard his tenth son Winston crying while the latter was being castigated by Elpidio. He went down and told Elpidio to come back the next day to settle. His wife Isabelita called the *Barangay* Chairman two blocks away. *Barangay* Chairman Joseph Ramos and Elpidio's wife and daughter went to the house and Elpidio was given warm water, but he showered his daughter and Winston with it. Elpidio was brought to his house and the former told the *Barangay* Chairman that it was a family problem. Elpidio went back to the house of Salvador where Titus was sitting on the sofa. Elpidio asked Titus to open the door until the former kicked the door

open. Titus escaped through the open door and Salvador went out of the house because another child was on the roof, afraid that the said child might fall. Thereafter, Elpidio went to the street.

According to petitioner Gary Fantastico, he was inside their house with his wife and Titus when the incident occurred. He and his wife ran upstairs, while Titus went out when Elpidio hit the door. Elpidio had a reputation for hurting people when drunk and Gary learned that Elpidio was brought to the hospital because he was mauled by the people.

During trial, one of the accused, Salvador Iguiron died. Eventually, the trial court, in a Decision dated March 31, 2008, acquitted Titus Iguiron, Saligan Iguiron and Tommy Ballesteros but found Gary Fantastico and Rolando Villanueva guilty beyond reasonable doubt for Attempted Murder. The dispositive portion of the said decision reads:

> WHEREFORE, the foregoing premises considered, the Court finds Gary Fantastico and Rolando Villanueva GUILTY of the crime of attempted murder and sentences them to an indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum, to ten (10) years as maximum. They are also ordered to pay the actual damages of ₱17,300.00 and moral damages of ₱10,000.00.
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> Accused Titus Iguiron, Saligan Iguiron and Tommy Ballesteros ACQUITTED.
>
> SO ORDERED.

After their motion for reconsideration was denied, petitioners appealed the case to the CA, but the latter court affirmed the decision of the RTC and disposed the case as follows:

> WHEREFORE, finding no reversible error in the decision appealed from, we hereby AFFIRM the same and DISMISS the instant appeal.
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> SO ORDERED.

A motion for reconsideration was filed, but it was denied by the same court.

Hence, the present petition.

Petitioners stated the following arguments:

THE CONCLUSIONS DRAWN BY THE COURT OF APPEALS AND THE TRIAL COURT FROM THE FACTS OF THE CASE ARE INCORRECT.

THE INFORMATION ITSELF IN THIS CASE DOES NOT ALLEGE ALL THE ELEMENTS AND THE NECESSARY INGREDIENTS OF THE SPECIFIC CRIME OF ATTEMPTED MURDER.

NOT ALL OF THE ELEMENTS OF ATTEMPTED MURDER ARE PRESENT IN THIS CASE.

THERE IS NO TREACHERY OR ANY OTHER QUALIFYING CIRCUMSTANCE TO SPEAK OF IN THIS CASE.

THE LOWER COURT AND THE COURT OF APPEALS FAILED TO CONSIDER THE PRESENCE OF MITIGATING CIRCUMSTANCES.

THERE ARE MANIFEST MISTAKES IN THE FINDINGS OF FACTS BY THE COURT OF APPEALS AND THE TRIAL COURT.

THE CONVICTION OF THE PETITIONERS WAS BASED ON THE WEAKNESS OF THE DEFENSE EVIDENCE, NOT ON THE STRENGTH OF THE PROSECUTION EVIDENCE.

THE TESTIMONY OF THE RESPONDENT THAT IT WAS THE PETITIONERS WHO ATTACKED HIM IS INDEED UNCORROBORATED AND THUS SELF-SERVING.

CLEARLY, THERE ARE SO MUCH REVERSIBLE ERRORS IN THE DECISION OF THE COURT OF APPEALS AND THE LOWER COURT THAT INJURIOUSLY AFFECTED THE SUBSTANTIAL RIGHTS OF THE PETITIONERS AND THESE SHOULD BE CORRECTED BY THIS HONORABLE COURT.

At the outset, it bears stressing that under the Rules of Court, an appeal by *certiorari* to this Court should only raise questions of law distinctly set forth in the petition.[5]

In the present case, the issues and arguments presented by the petitioners involve questions of facts. Therefore, the present petition is at once dismissible for its failure to comply with the requirement of Rule 45 of the Rules of Court, that the petition should only raise questions of law.

The distinction between a "question of law" and a "question of fact" is settled. There is a "question of law" when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-

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[5] 1997 Rules of Civil Procedure, Rule 45, Sec. 1.

litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.[6]

At any rate, the arguments of herein petitioners deserve scant consideration.

It is the contention of the petitioners that the Information filed against them was defective because it did not state all the elements of the crime charged. However, a close reading of the Information would show the contrary. The Information partly reads:

> x x x but the said accused did not perform all the acts of the execution which should have produced the crime of murder, as a consequence, by reason of causes other than their own spontaneous desistance, that is, the injuries inflicted upon Elpidio Malicse, Sr. y de Leon are not necessarily mortal.

From the above-quoted portion of the Information, it is clear that all the elements of the crime of attempted murder has been included.

The last paragraph of Article 6 of the Revised Penal Code defines an attempt to commit a felony, thus:

> There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[7]

The essential elements of an attempted felony are as follows:

> The offender commences the commission of the felony directly by overt acts;
>
> He does not perform all the acts of execution which should produce the felony;
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> The offender's act be not stopped by his own spontaneous desistance;
>
> The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[8]

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6 *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 420.
7 *Rivera v. People*, 515 Phil. 824, 833 (2006).
8 *Id.*, citing *People v. Lizada*, 444 Phil. 67 (2003).

The first requisite of an attempted felony consists of two (2) elements, namely:

> (1) That there be external acts;
> (2) Such external acts have direct connection with the crime intended to be committed.[9]

The Court in *People v. Lizada*[10] elaborated on the concept of an overt or external act, thus:

> An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The raison d'etre for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.[11]

Petitioners question the inclusion of the phrase “not necessarily mortal” in the allegations in the Information. According to them, the inclusion of that phrase means that there is an absence of an intent to kill on their part. Intent to kill is a state of mind that the courts can discern only through external manifestations, *i.e.*, acts and conduct of the accused at the time of the assault and immediately thereafter. In *Rivera v. People*,[12] this Court considered the following factors to determine the presence of an 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

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9 Reyes, *Revised Penal Code*, 1981, Vol. I, p. 98.
10 *People v. Lizada*, *supra* note 8.
11 *Id.* at 98-99.
12 *Supra* note 7, citing *People v. Delim*, 444 Phil. 430, 450 (2003).

motives of the accused. This Court also considers motive and the words uttered by the offender at the time he inflicted injuries on the victim as additional determinative factors.[13] All of these, were proven during the trial. Needless to say, with or without the phrase, what is important is that all the elements of attempted murder are still alleged in the Information. Section 6, Rule 110 of the Rules on Criminal Procedure states:

> Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.

In any case, it is now too late for petitioners to assail the sufficiency of the Information on the ground that the elements of the crime of attempted murder are lacking. Section 9, Rule 117 of the Rules of Court provides:

> SEC. 9. Failure to move to quash or to allege any ground therefor.- The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

Anent the probative value and weight given to the testimony of Elpidio by the CA and the RTC, the same is not ridden with any error. In *People v. Alvarado*,[14] we held that greater weight is given to the positive identification of the accused by the prosecution witness than the accused's denial and explanation concerning the commission of the crime. This is so inasmuch as mere denials are self-serving evidence that cannot obtain evidentiary weight greater than the declaration of credible witnesses who testified on affirmative matters.[15]

It is clear from the records that Elpidio was able to make a positive identification of the petitioners as the assailants, thus:

> Q. Then what happened next Mr. Witness?
> A. When I was able to free myself from Salvador Iguiron, I got out of the door of the house, then, I saw Gary was hiding in the kitchen door holding an axe. Tonahawk with blade of ax was dull and had a handle of one foot, with the diameter of one inch.

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13 *Epifanio v. People*, 552 Phil. 620, 630 (2007).
14 341 Phil. 725, 734 (1997).
15 *People v. Gidoc*, 604 Phil. 702, 713 (2009).

Q. Why did you know that the ax blade of the tom was dull? (sic)
A. I also used that.

Q. Where do you usually keep that in the house of Iguiron?
A. In the kitchen.

Q. How far is that kitchen from where Gary emerged from?
A. He is right in the kitchen.

Q. Then what happened?
A. When I was able to free myself from Salvador, Gary Iguiron was hiding in the kitchen door and holding a tomhack (sic) whose edge is dull and he hit me on my right side and my head and I got injury (sic) and blood profusely oozing, I want to get hold of the tomhawk (sic).

Q. Were you able to get of the tomhawk (sic) from Gary?
A. No sir.[16]

x x x x

Q. You said while on that street somebody hit you from behind, who was that?
A. Rolly Villanueva.

Q. Why do you say that it was Rolly Villanueva, considering that it was hit from behind?
A. Because they were about 5 of them at the main gate of the compound.

Q. Who are they?
A. Rolando Villanueva, Nestor Ballesteros, Tommy Ballesteros, Eugene Surigao, Saligan Iguiron.

Q. You said you were hit by Rolando from behind, do you have occasion to see first before you were hit?
A. When I was hit I fell down and I was able to see who hit (sic0, I saw him.

Q. When you fell down, you were able to realize it was Rolando Villanueva who hit you, you mean you realized what he used in hitting you from behind?
A. It was a pipe. ½ inch thick, 24 inches in length.

Q. You said you fell down because of the blow of Rolando Villanueva and you saw him holding that pipe, how was he holding the pipe when you saw him?
A. When I fell down he was about trying to hit me again.[17]

In connection therewith, one must not forget the well entrenched rule that findings of facts of the trial court, its calibration of the testimonial evidence of the parties as well as its conclusion on its findings, are accorded

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16 TSN, August 29, 1994, pp. 20-22.
17 *Id.* at 24-26.

high respect if not conclusive effect. This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and deportment of the witness as they testify.[18] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[19]

It is also of utmost significance that the testimony of Elpidio is corroborated by the medico-legal findings as testified by Dr. Edgar Michael Eufemio, PGH Chief Resident Doctor of the Department of Orthopedics. He testified as to the following:

> Q. And as head of that office, Mr. Witness, why are you here today?
> A. Actually, I was called upon by the complainant to rectify regarding, the findings supposedly seen when he was admitted and when I saw him in one of the sessions of our Out Patient Department.
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> Q. When was this follow-up session at your department did you see this complainant?
> A. Based on the chart, I think it was four (4) months post injury when I first saw the patient.
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> Q. Why does he has (sic) to make a follow up in your department?
> A. Based on this chart, he sustained bilateral leg fractures which necessitated casting. Normally, casting would take around three (3) months only but since the nature of his fracture was relatively unstable, I think it necessitated prolong immobilization in a case.
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> PROSECUTOR TEVES:
> Q. Did you personally attend on his needs on that date when you saw him?
> A. Yes, ma'am.
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> Q. And what could have been the cause of these injuries he sustained?
> A. I think one of his leg has close fracture, meaning, probably it was caused by a blunt injury rather than a hacking injury, one on the left side, with an open wound which was very much compatible with a hack at the leg area.[20]

Petitioners also claim that the prosecution was not able to prove the presence of treachery or any other qualifying circumstance.

In this particular case, there was no treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the

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18 *People v. Dumadag*, G.R. No. 147196, June 4, 2004, 431 SCRA 65, 70.
19 *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.
20 TSN, July 23, 1996, pp. 5-6.

attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.[21] From the facts proven by the prosecution, the incident was spontaneous, thus, the second element of treachery is wanting. The incident, which happened at the spur of the moment, negates the possibility that the petitioners consciously adopted means to execute the crime committed. There is no treachery where the attack was not preconceived and deliberately adopted but was just triggered by the sudden infuriation on the part of the accused because of the provocative act of the victim.[22]

The RTC, however, was correct in appreciating the qualifying circumstance of abuse of superior strength, thus:

> In the case at bar, the prosecution was able to establish that Salvador Iguiron hit Elpidio Malicsi, Sr. twice on the head as he was entered (sic) the house of the former. Gary Fantastico hit the victim on the right side of the head with an axe or tomahawk. The evidence also show that Rolando "Rolly" Villanueva hit the victim on the head with a lead pipe. And outside while the victim was lying down, Gary hit the legs of the victim with the tomahawk. lvador also hit the victim with the rattan stick on the thighs, legs and knees. And Titus Iguiron hit the victim's private organ with a piece of wood. The Provisional Medical Slip (Exh. "D"), Medico Legal Certificate and Leg Sketch (Exh. "D-2") and the fracture sheet (Exh. "D-4") all prove that the victim suffered injuries to both legs and multiple lacerations on his head. The injury on one leg which was a close fracture was caused by a blunt instrument like a piece of wood. This injury was caused by Salvador Iguiron. The other leg suffered an open fracture caused by a sharp object like a large knife or axe. This was caused by Gary Fantastico who used the tomahawk or axe on the victim. The multiple lacerations on the head were caused by Gary, Rolly and Salvador as it was proven that they hit Elpidio on the head. There is no sufficient evidence that the other, accused, namely Saligan Iguiron Y Malicsi, Tommy Ballesteros, Nestor Ballesteros and Eugene Surigao harmed or injured the victim. Titus having sprayed Elpidio with the tear gas is not sufficiently proven. Neither was the alleged blow by Titus, using a piece of wood, on the victim's private organ sufficiently established as the medical certificate did not show any injury on that part of the body of the victim.

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[21] *People of the Philippines v. Danilo Feliciano, Jr., et al.*, G.R. No. 196735, May 5, 2014, citing *People v. Leozar Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747 [Per J. Velasco, Third Division], citing *People v. Amazan*, 402 Phil. 247, 270 (2001) [Per J. Mendoza, Second Division]; *People v. Bato*, 401 Phil. 415, 431 (2000) [Per J. Pardo, First Division]; *People v. Albarido*, G.R. No. 102367, October 25, 2001, 368 SCRA 194.

[22] See *People v. Tavas*, G.R. No. 123969, February 11, 1999, 303 SCRA 86.

> The said injuries inflicted on the complainant after he went back to his sister Isabelita's house. When he kicked the door, the melee began. And the sequence of the injuries is proven by victim's testimony. **But it was a lopsided attack as the victim was unarmed, while his attackers were all armed (rattan stick, tomahawk and lead pipe). And the victim was also drunk. This establishes the element of abuse of superior strength. The suddenness of the blow inflicted by Salvador on Elpidio when he entered the premises show that the former was ready to hit the victim and was waiting for him to enter. It afforded Elpidio no means to defend himself. And Salvador consciously adopted the said actuation. He hit Elpidio twice on the head. Treachery is present in this case and must be considered an aggravating circumstance against Salvador Iguiron.** Rolly Villanueva, Gary Fantastico and Salvador Iguiron were all armed while Elpidio, inebriated, had nothing to defend himself with. There is clearly present here the circumstance of abuse of superior strength.[23] (Emphasis supplied)

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime."[24] "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim."[25] The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.[26] "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."[27] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[28]

Anent the penalty imposed by the RTC and affirmed by the CA, which is an indeterminate penalty of eight (8) years and one (1) day as minimum, to ten (10) years as maximum and ordered them to pay actual damages of ₱17,300.00 and moral damages of ₱10,000.00, this Court finds an obvious error.

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23 *Rollo*, pp. 63-64.
24 *People v. Daquipil*, 310 Phil. 327, 348 (1995).
25 *People v. Casingal*, 312 Phil. 945, 956 (1995).
26 *People v. Escoto*, 313 Phil. 785, 800-801 (1995).
27 *People v. Ventura*, 477 Phil. 458, 484 (2004).
28 *People v. Moka*, 273 Phil. 610, 621 (1991).

For the crime of attempted murder, the penalty shall be *prision mayor*, since Article 51 of the Revised Penal Code states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.[29] Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. Therefore, the penalty imposed should have been imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

WHEREFORE, the Petition for Review on *Certiorari* dated January 20, 2010 of petitioners Gary Fantastico and Rolando Villanueva is hereby **DENIED.** Consequently, the Decision dated August 31, 2007 and Resolution dated January 7, 2010 of the Court of Appeals are hereby **AFFIRMED** with the **MODIFICATION** that the petitioners are sentenced to an indeterminate penalty of imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Petitioners are also **ORDERED** to pay ₱17,300.00 as actual damages, as well as ₱10,000.00 moral damages as originally ordered by the RTC. In addition, interest is imposed on all damages awarded at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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[29] *People v. Adallom*, G.R. No. 182522, March 7, 2012, 667 SCRA 652, 680.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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