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Third Division

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RONALD IBAÑEZ, EMILIO IBAÑEZ,
and DANIEL "BOBOT" IBAÑEZ,
Petitioners,

G.R. No. 190798

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

January 27, 2016

Wilfredo V. Lapitan

X

X

DECISION

PEREZ, J.:

On appeal is the September 25, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR. No. 31285 which affirmed with modifications the July 17, 2007 Decision² of the Regional Trial Court (RTC), Branch 255 of Las Piñas City, convicting Ronald Ibañez (Ronald), Emilio Ibañez (Emilio) and Daniel "Bobot" Ibañez (Bobot) (collectively, petitioners) of the crime of frustrated homicide.

¹ *Rollo*, pp. 15-28; penned by CA Associate Justice Apolinario D. Bruselas, Jr., with Presiding CA Justice (now retired) Conrado M. Vasquez, Jr. and CA Associate Justice Jose C. Reyes, Jr.
² *Id.* at 44-58; penned by Judge Raul Bautista Villanueva.

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The Facts

For allegedly stoning, hitting and stabbing Rodolfo M. Lebria (Rodolfo), the petitioners together with their co-accused, Boyet Ibañez (Boyet) and David Ibañez (David), who have remained at large, were charged with the crime of frustrated homicide in an Information³ dated October 11, 2001. The accusatory portion thereof reads:

“That on or about 15th day of July, 2001, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping and aiding one another, with intent to kill and without justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault, stone, hit with an spade and stab with bladed weapons one RODOLFO M. LEBRIA, thereby inflicting upon him physical injuries, thus performing all the acts of execution which would produce the crime of Homicide as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said RODOLFO M. LEBRIA, which prevented his death.

CONTRARY TO LAW.”

After posting their bail bond at ₱24,000.00 each, Ronald, Bobot and Emilio were released on bail.⁴ Arraignment of Ronald and Bobot was held on May 9, 2002. Emilio was, in turn, arraigned on December 10, 2002. All the petitioners entered a plea of not guilty to the crime charged.⁵ After termination of pre-trial on April 23, 2003,⁶ trial on the merits immediately followed. In the course of trial, two versions of what transpired on the early morning of July 15, 2001 surfaced. These conflicting versions of the incident, as culled from the records, are as follows:

Version of the Prosecution

In his narration, Rodolfo claimed that Ronald and his sons Emilio, Bobot, Boyet and David were his neighbors in CAA, Las Piñas City. Rodolfo recalled that he had visitors on the day of the incident. When his guests left at around 1:00 a.m. of July 15, 2001, Rodolfo accompanied them outside his house. After about thirty minutes and as he was about to go inside, Rodolfo noticed some garbage in front of his house. Addressing nobody in particular, Rodolfo uttered in the vernacular “*bakit dito tinambak ang basura sa harap ng aking bahay na malawak naman ang pagtataponan ng basura?*”⁷ Emilio and Boyet, who was then present and angered

³ Records, p. 1.

⁴ Id. at 15-90.

⁵ *Rollo*, pp. 44-45.

⁶ Id. at 45.

⁷ Records, p. 8.

by what they heard, threw stones at the private complainant hitting him twice on the forehead. With blood oozing from his forehead, Rodolfo went inside his house to cleanse his face obscured by blood and emerged again, this time, carrying a 2” x 2” (dos por dos) piece of wood. Rodolfo was caught off guard when he was hit on the head with a shovel by another accused, David.⁸ Then, Ronald held Rodolfo, rendering him helpless, as Boyet and Bobot simultaneously stabbed him in the abdomen.⁹ At this point, Rodolfo fell to the ground, lying flat and eventually lost consciousness. When he regained consciousness, Rodolfo found himself at the Las Piñas District Hospital (LPDH) but was later on transferred to the Philippine General Hospital (PGH) for the much-needed surgical procedure. At the PGH, Rodolfo was operated on, confined for nine days and incurred hospital expenses amounting to ₱30,000.00.¹⁰

PO2 Sulit testified that he was the investigating police officer who took the statements of Rodolfo’s daughter Ruth Ann Lebria (Ruth) and Rodolfo’s wife, Salvacion Lebria (Salvacion) when they went to the police station to complain about the incident. PO2 Sulit disclosed that when he asked Ruth and Salvacion why Rodolfo was not with them, he was informed that Rodolfo was still undergoing medication and treatment for the injuries suffered from the petitioners. PO2 Sulit also testified that he endorsed the complaint against the petitioners to the Office of the City Prosecutor of Las Piñas for proper disposition.¹¹

To corroborate Rodolfo’s testimony, the prosecution presented Ruth and Salvacion as witnesses.

Ruth testified that she actually witnessed the entire incident which she admitted was preceded by the utterance made by his father.¹² Her testimony on how Ronald, Emilio, Bobot, Boyet and David ganged up on her father and who among them stoned, hit, held and stabbed Rodolfo perfectly matched the latter’s sworn declarations.¹³

Salvacion, who was also home on that fateful morning, confirmed the beating and stabbing her husband endured in the hands of the petitioners and their co-accused. Salvacion also submitted receipts in the total amount of ₱2,174.80, representing the medical expenses incurred for the treatment of Rodolfo’s injuries resulting from the incident.¹⁴

The prosecution presented the Medico-Legal Certificate issued by the

⁸ TSN, p. 20.

⁹ Id. at 21-24.

¹⁰ Id. at 29-30.

¹¹ *Rollo*, p. 47.

¹² Id.

¹³ Id. at 48-49.

¹⁴ Id. at 48 and 51.

Records Division of the PGH showing that Rodolfo suffered multiple stab wounds in the abdomen and underwent an exploratory laparotomy,¹⁵ the standard surgery in abdominal trauma cases involving life-threatening injuries.¹⁶

Version of the Defense

To refute the accusations against them, the petitioners offered an entirely different scenario.

Not only did he deny the allegations against him but Ronald even claimed that he was the one who was stabbed by Rodolfo. Ronald averred that the incident happened within the vicinity of his home, which was about four meters away from the house of Rodolfo.¹⁷ When Ronald heard Rodolfo shouting at around 2:00 a.m., he tried pacifying Rodolfo by telling him that they would just talk later in the day. Unappeased, Rodolfo allegedly destroyed the bicycle belonging to Ronald's son-in-law. Rodolfo then attacked Ronald by stabbing him on his right arm. It was during this time that Ronald's son, Bobot, came to his rescue but was prevented from doing so as Bobot was also struck with a knife by Rodolfo. Ronald and his son instituted a criminal complaint against Rodolfo for attempted homicide but nothing came out of it. In support of his testimony, Ronald presented a picture taken the day after the incident showing a slipper purportedly belonging to Rodolfo and a *balisong*. Ronald further insisted that all the other accused were not around as they were residing elsewhere at that crucial time.

Bobot testified that he immediately rushed outside his house, which is located beside his father's, upon hearing Ronald shout, "*Tulongan mo ako, ako'y sinaksak.*"¹⁸ However, he was not able to save his father as he himself was stabbed twice with a knife by Rodolfo. A struggle for the possession of the knife between Bobot and Rodolfo ensued and in the process, the latter accidentally sustained a stab wound in the abdomen. Still, Bobot asserted that it was Rodolfo who ran away from the scene of the crime. Meanwhile, Ronald had already left for the nearby police detachment to seek help.

Accused Emilio, for his part, interposed denial and alibi as his defenses. He emphatically denied that he threw a stone at Rodolfo. On the date and time of the incident, Emilio claimed that he was working overtime as a laborer in Moonwalk, Las Piñas City, which is one kilometer away from the crime scene. He argued that he was just unfortunately dragged into this case which had nothing to do with him

¹⁵ Id. at 135; Medical Certificate of Rodolfo M. Lebria.

¹⁶ Seymour I. Schwartz, M.D., G. Tom Shires, M.D., Frank C. Spencer, M.D., John M. Daly, M.D., Josef E. Fischer, M.D., Aubrey C. Galloway, M.D., *Principles of Surgery*, Volume I (New York: McGraw-Hill Companies, Inc., 1999), pp. 167-168.

¹⁷ *Rollo*, p. 49.

¹⁸ TSN, p. 295.

at all.¹⁹

The defense likewise proffered two medical certificates to support the petitioners' claims. The July 15, 2001 medical certificate issued by Dr. Ma. Cecilia Leyson (Dr. Leyson), of the Ospital ng Maynila, declared that Ronald's body bore lacerations and hematoma at the time she attended to him. Nevertheless, Dr. Leyson acknowledged that she had no idea how the injuries were sustained by Ronald. The other medical certificate dated March 20, 2006 was issued by Dr. Renato Borja (Dr. Borja), a physician affiliated with the Parañaque Community Hospital where Bobot was taken after getting injured. Based on the hospital records, Dr. Borja testified that Bobot had sustained wounds on the head and chest, possibly caused by a sharp instrument.²⁰

Petitioners' Representation in the Trial Court Proceedings

In view of the petitioners' allegation that they were denied of right to counsel, a narration of petitioners' representation in the trial court proceedings is imperative.

During the arraignment on May 9, 2002, Ronald and Bobot were assisted by Atty. Bibiano Colasito, who was selected as their counsel *de officio* only for that occasion. At his arraignment on December 10, 2002, Emilio appeared with the assistance of Atty. Antonio Manzano (Atty. Manzano), who was then appointed by the trial court as counsel *de officio* for all the accused. In the pre-trial conference that followed, Atty. Manzano appeared for the petitioners. Atty. Manzano was informed that the trial for the presentation of prosecution evidence was set on June 18, 2003.

Both Rodolfo and PO2 Sulit completed their respective testimonies during the June 18, 2003 hearing. However, Atty. Manzano failed to appear at the said hearing despite prior notice. Likewise, Ronald, one of the petitioners, absented himself from the same hearing. As a result, the RTC issued the June 18, 2003 Order,²¹ the pertinent portion of which reads:

Due to the failure of Atty. Manzano to appear in today's proceeding despite due notice and so as not to delay the proceedings herein, his right to cross-examine the said two (2) witnesses is deemed waived. At the same time, Atty. Manzano is hereby fined the amount of ₱2,000.00 for his absence in today's proceedings despite the fact that the same has been previously set and known to him, without even filing any motion or pleading regarding his inability to appear herein which clearly indicates a show of disrespect to the authority of this Court.

¹⁹ *Rollo*, pp. 49-50.

²⁰ *Id.* at 50.

²¹ *Records*, pp. 180-181.

Let a warrant of arrest be issued against accused Ronald Ibañez for failing to appear in today's hearing despite notice and the bond posted by him for his provisional liberty confiscated in favor of the government. As such, the bondsman BF General Insurance Company, Inc., is hereby directed to produce the body of the said accused within thirty (30) days from receipt of this Order and to show cause why no judgment should be rendered against the bond.

The Director of the National Bureau of Investigation and the Director of the Criminal Investigation Service Command, PNP, Camp Crame, are hereby directed to explain within five (5) days from receipt of this Order why the warrants of arrest issued against Boyet Ibañez and David Ibañez remain unimplemented and/or no return submitted to this Court.

Thereafter, Atty. Manzano withdrew as petitioners' counsel *de officio*. In its Order²² dated September 3, 2003, the trial court appointed Atty. Gregorio Cañeda, Jr. (Atty. Cañeda) as the new counsel *de officio* of the petitioners. On the same date, Atty. Cañeda conducted the cross-examination of Ruth and even expressed his desire to continue with the cross-examination of said witness on the next scheduled hearing. In the hearing of September 17, 2003, Atty. Cañeda appeared for the petitioners but Bobot and Emilio did not show up. This prompted the trial court to issue the corresponding warrants for their arrest and the bonds posted by them for their provisional liberty were ordered confiscated in favor of the government. Despite the continued absence of his clients, Atty. Cañeda religiously attended the succeeding hearings. On November 5, 2003, upon his request, the trial court relieved Atty. Cañeda of his designation as counsel *de officio* for the petitioners.

Per the trial court's Order²³ dated February 10, 2004, Atty. Ma. Teresita C. Pantua (Atty. Pantua), of the Public Attorney's Office, was designated as the petitioners' counsel *de officio*. However, Atty. Pantua's designation was recalled upon her manifestation that she had previously assisted Rodolfo in initiating the present case. In her stead, the trial court appointed the petitioners' current counsel *de officio*, Atty. Juan Sindingan (Atty. Sindingan).

Since then, Atty. Sindingan has been representing the petitioners. With his help, all three petitioners finally appeared before the trial court on May 5, 2005. Atty. Sindingan handled the cross-examination of another prosecution witness, Salvacion, as well as the presentation of evidence for the defense.

After both parties had rested their case, they were required to submit their respective memoranda in thirty (30) days. Atty. Sindingan submitted the Memorandum for the petitioners while no memorandum was ever filed by the prosecution. Thereafter, the case was deemed submitted for decision.

²² Id. at 214.

²³ Id. at 250-251.

The RTC's Ruling

The RTC accorded more weight to the positive testimonies of the prosecution witnesses over the declarations of the defense, thus, the dispositive portion of its judgment reads:

WHEREFORE, the foregoing considered, the Court finds accused Ronald Ibañez, Emilio Ibañez and Daniel "Bobot" Ibañez GUILTY beyond reasonable doubt of the crime of frustrated homicide and hereby sentences them to each suffer the penalty of imprisonment of SIX (6) YEARS AND ONE (1) DAY of *prision mayor*, as minimum, up to EIGHT (8) YEARS of *prision mayor*, as maximum, as well as to suffer the accessory penalties provided for by law.

Also, accused Ronald Ibañez, Emilio Ibañez and Daniel "Bobot" Ibañez are ordered to pay to private complainant or victim Rodolfo Lebria the sum of ₱2,174.80 representing his actual medical expenses.

With costs de officio.

SO ORDERED.²⁴

The petitioners filed a motion for reconsideration of the RTC Decision but this was denied in an Order²⁵ dated October 11, 2007. Undaunted, the petitioners elevated their case to the CA. They faulted the trial court for totally disregarding their claim that Rodolfo was the aggressor and for not recognizing that Bobot was merely acting in self-defense when Rodolfo was stabbed. The petitioners also asserted that they were deprived of their constitutional right to counsel.

The CA's Ruling

The CA agreed with the trial court's judgment of conviction but modified the penalty imposed. The appellate court sentenced the petitioners to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. The CA also found it proper to award ₱15,000.00 as temperate damages and ₱30,000.00 as moral damages to Rodolfo. The petitioners sought a reconsideration of the CA's decision. Still, their motion was denied in the Resolution²⁶ of December 28, 2009.

²⁴ *Rollo*, p. 58.

²⁵ *Id.* at 75-77.

²⁶ *Id.* at 12.

The Issue

Hence, the present petition for review on certiorari raising the lone issue of whether the petitioners were deprived of their constitutionally guaranteed right to counsel.

The Court's Ruling

The Court sustains the conviction of the petitioners with modification.

No Deprivation of Right to Counsel

The right invoked by the petitioners is premised upon Article III, Section 14 of the Constitution which states that:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, x x x.

Guided by the constitutionally guaranteed right of an accused to counsel and pursuant to its rule-making authority, the Court, in promulgating the Revised Rules of Criminal Procedure, adopted the following provisions:

Rule 115, SEC. 1. *Rights of accused at the trial.* – In all criminal prosecutions, the accused shall be entitled to the following rights:

xxxx

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. x x x

xxxx

Rule 116 of the same Rules makes it mandatory for the trial court to designate a counsel *de officio* for the accused in the absence of private representation. It provides:

SEC. 6. *Duty of court to inform accused of his right to counsel.* – Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel *de officio* to defend him.

SEC. 7. *Appointment of counsel de officio.* – The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de officio* such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused.

The right to be assisted by counsel is an indispensable component of due process in criminal prosecution.²⁷ As such, right to counsel is one of the most sacrosanct rights available to the accused.²⁸ A deprivation of the right to counsel strips the accused of an equality in arms resulting in the denial of a level playing field.²⁹ Simply put, an accused without counsel is essentially deprived of a fair hearing which is tantamount to a grave denial of due process.³⁰

On the basis of this ratiocination and as a last ditch effort to be exculpated, the petitioners insisted that they were denied of their right to counsel when their counsel *de officio* failed to appear on the June 18, 2003 trial court hearing during which Rodolfo and PO2 Sulit gave their testimonies. As a consequence, the petitioners argued that they were divested of the opportunity to cross-examine the said two prosecution witnesses.

The Office of the Solicitor General (OSG), for its part, disputed the petitioners' claim that they were deprived of their constitutional right to counsel. In their May 5, 2010 Comment³¹ on the instant petition, the OSG pointed out that since the beginning of the proceedings in the trial court until the filing of the present petition before this Court, three (3) counsel *de officio* were appointed and represented the petitioners³² and to which designation the latter did not raise any protest.³³ The OSG opined that the trial court judge made sure that the petitioners were adequately assisted by a counsel *de officio* when they failed to engage the services of a lawyer of their own choice. Thus, the OSG recommended the dismissal of the petition.

The Court agrees with the position taken by the OSG.

²⁷ *People v. Ferrer*, 454 Phil. 431, 448 (2003).

²⁸ *Regala v. Sandiganbayan*, 330 Phil. 678, 701 (1996).

²⁹ *People v. Serzo, Jr.*, 340 Phil. 660, 673 (1997).

³⁰ *People v. Liwanag*, 415 Phil. 271, 287 (2001).

³¹ *Rollo*, pp. 147-160.

³² *Id.* at 156.

³³ *Id.* at 35.

There was no denial of right to counsel as evinced by the fact that the petitioners were not only assisted by a counsel *de officio* during arraignment and pre-trial but more so, their counsel *de officio* actively participated in the proceedings before the trial court including the direct and cross-examination of the witnesses.³⁴ As aptly found by the CA, the petitioners were duly represented by a counsel *de officio* all throughout the proceedings except for one hearing when their court appointed lawyer was absent and Rodolfo and PO2 Sulit presented their testimonies.³⁵ As previously stated, it was during said hearing when the trial court declared that the cross-examination of the said two prosecution witnesses was deemed waived.

*Mere opportunity and not actual cross-examination is the essence of the right to cross-examine.*³⁶ The case of *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.* thoroughly explained the meaning and substance of right to cross-examine as an integral component of due process with a *colatilla* that the same right may be expressly or impliedly waived, to quote:

The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.³⁷

Such is the scenario in the present case where the reason why Rodolfo and PO2 Sulit were not subjected to cross-examination was not because the petitioners were not given opportunity to do so. Noticeably, the petitioners' counsel *de officio* omitted to mention that in the June 18, 2003 hearing, Ronald, one of the accused, did not show up despite prior notice. Thus, the bail bond posted for his provisional liberty was ordered confiscated in favor of the government. Ironically, Ronald comes to this Court asserting the very right he seemingly waived and abandoned for not attending the scheduled hearing without justifiable cause. Moreover, neither did the petitioners interpose any objection to the presentation of testimony of the prosecution witnesses during the June 18, 2003 hearing nor did their counsel *de officio* subsequently seek a reconsideration of the June 18, 2003 Order.

Further, the trial court judge, when he issued the June 18, 2003 Order, was merely exercising a judicial prerogative. No proof was presented by the defense showing that the exercise of such discretion was either despotic or arbitrary.

³⁴ Id.

³⁵ Id. at 34.

³⁶ *People v. Narca*, 341 Phil. 696, 706 (1997).

³⁷ *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 159 Phil. 310, 315-317 (1975).

Going by the records, there is no indication that any of the counsel *de officio* had been negligent in protecting the petitioners' interests. As a matter of fact, the counsel *de officio* kept on attending the trial court hearings in representation of the petitioners despite the latter's unjustified absences.

In sum, the Court is not persuaded that the absence of the counsel *de officio* in one of the hearings of this case amounts to a denial of right to counsel. Nor does such absence warrant the nullification of the entire trial court proceedings and the eventual invalidation of its ruling. In *People v. Manalo*, the Court held *that the fact that a particular counsel de officio did not or could not consistently appear in all the hearings of the case, is effectively a denial of the right to counsel, especially so where, as in the instant case, there is no showing that the several appointed counsel de officio in any way neglected to perform their duties to the appellant and to the trial court and that the defense had suffered in any substantial sense therefrom.*³⁸

Guilt Proven Beyond Reasonable Doubt

At any rate, the factual findings of the RTC as affirmed by the CA, which are backed up by substantial evidence on record, led this Court to no other conclusion than that the petitioners are guilty of frustrated homicide.

The elements of frustrated homicide are: (1) the 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 circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.³⁹ There being no prior determination by both the trial and appellate courts of any qualifying circumstance that would elevate the homicide to murder, the Court will simply limit its discussion to the first two elements.

In ascertaining whether intent to kill exists, the Court considers the presence of the following factors: (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, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.⁴⁰

Here, intent to kill Rodolfo was evident in the manner in which he was attacked, by the concerted actions of the accused, the weapon used and the nature

³⁸ 232 Phil. 105, 117 (1987).

³⁹ *People v. Lanuza*, 671 Phil. 811, 819 (2011).

⁴⁰ *De Guzman v. People*, G.R. No. 178512, November 26, 2014.

of wounds sustained by Rodolfo.

Both the RTC and CA correctly appreciated the presence of conspiracy. Conspiracy presupposes unity of purpose and unity of action towards the realization of an unlawful objective among the accused.⁴¹ Its existence can be inferred from the individual acts of the accused, which if taken as a whole are in fact related, and indicative of a concurrence of sentiment.⁴² In this case, conspiracy was manifested in the spontaneous and coordinated acts of the accused, where two of them delivered the initial attack on Rodolfo by stoning, while another struck him with a shovel and the third held him so that the other two can simultaneously stab Rodolfo. It was only when Rodolfo laid helpless on the ground and had lost consciousness that the accused hurriedly left the scene. This chain of events leading to the commission of the crime adequately established a conspiracy among them.

Plainly, the kind of weapon used for the attack, in this case, a knife and the vital parts of Rodolfo's body at which he was undeniably stabbed demonstrated petitioners' intent to kill. The medico-legal certificate revealed that Rodolfo sustained multiple stab wounds in the epigastrium, left upper quadrant of the abdomen resulting to internal injuries in the transverse colon (serosal), mesentery and left kidney.⁴³ Given these injuries, Rodolfo would have succumbed to death if not for the emergency surgical intervention.

With respect to the petitioners' defenses of denial and alibi, the Court concurs with the lower courts' rejection of these defenses. An assessment of the defenses of denial and alibi necessitates looking into the credibility of witnesses and their testimonies. Well-settled is the rule that in determining who between the prosecution and defense witnesses are to be believed, the evaluation of the trial court is accorded much respect for the simple reason that the trial court is in a better position to observe the demeanor of the witnesses as they deliver their testimonies.⁴⁴ As such, the findings of the trial court is accorded finality unless it has overlooked substantial facts which if properly considered, could alter the result of the case.⁴⁵

In the instant case, the Court finds no cogent reason to deviate from this rule considering the credibility of the prosecution witnesses.

The trial and appellate courts were right in not giving probative value to petitioners' denial. Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward

⁴¹ *People v. Reyes*, 600 Phil. 738, 770 (2009).

⁴² *People v. Melencion*, 407 Phil. 400, 411 (2001).

⁴³ *Rollo*, p. 135.

⁴⁴ *People v. Cueto*, 443 Phil. 425, 433 (2003).

⁴⁵ *People v. Sotes*, 329 Phil. 126, 132 (1996).

narration of the prosecution witnesses.⁴⁶ Between an affirmative assertion which has a ring of truth to it and a general denial, the former generally prevails.⁴⁷ The prosecution witnesses recounted the details of the crime in a clear, detailed and consistent manner, without any hint of hesitation or sign of untruthfulness, which they could not have done unless they genuinely witnessed the incident. Besides, the prosecution witnesses could not have mistakenly identified the petitioners as Rodolfo's perpetrators considering there is so much familiarity among them. The records are also bereft of any indication that the prosecution witnesses were actuated by ill motives when they testified against the petitioners. Thus, their testimonies are entitled to full faith and credit.

In contrast, the petitioners' testimonies are self-serving and contrary to human reason and experience.

The Court notes that the defense presented no witnesses, other than themselves, who had actually seen the incident and could validate their story. Additionally, aside from the medical certificates of Ronald and that of Bobot which was issued almost five (5) years since the incident occurred, the defense have not submitted any credible proof that could efficiently rebut the prosecution's evidence.

Further, the Court finds it contrary to human reason and experience that Ronald, would just leave his son Bobot, while the latter was being stabbed and struggling for the possession of the knife with Rodolfo, to go to a police station for assistance. Logic dictates that a father would not abandon a son in the presence of actual harm.

For the defense of alibi to prosper, the petitioners must not only prove by clear and convincing evidence that he was at another place at the time of the commission of the offense but that it was physically impossible for him to be at the scene of the crime.⁴⁸ Emilio himself admitted that he was just one kilometer away from the crime scene when the incident happened during the unholy hour of 1:00 a.m. of July 15, 2001. As such, Emilio failed to prove physical impossibility of his being at the crime scene on the date and time in question. Just like denial, alibi is an inherently weak defense that cannot prevail over the positive identification by the witnesses of the petitioners as the perpetrators of the crime.⁴⁹ In the present case, Emilio was positively identified by the prosecution witnesses as one of the assailants. Moreover, alibi becomes less credible if offered by the accused himself and his immediate relatives as they are expected to make declarations in his favor,⁵⁰ as in this case, where Emilio, his father and brother insisted that the former was

⁴⁶ *People v. Kulais*, 354 Phil. 565, 592 (1998).

⁴⁷ *Id.*

⁴⁸ *Escamilla v. People*, G.R. No. 188551, February 27, 2013, 692 SCRA 203, 213.

⁴⁹ *People v. Liwanag*, 415 Phil. 271, 297 (2001).

⁵⁰ *People v. Camat*, 326 Phil. 56, 72 (1996).

somewhere else when the incident occurred. For these reasons, Emilio's defense of alibi will not hold.

Anent Bobot's claim of self-defense, it is undeserving of any serious consideration or credence. Basic is the rule that the person asserting self-defense must admit that he inflicted an injury on another person in order to defend himself.⁵¹ Here, there is nothing on record that will show that Bobot categorically admitted that he wounded Rodolfo.

Based on the foregoing, the Court upholds the trial and appellate courts' conviction of the petitioners for frustrated homicide.

Penalty and Civil Liability

Article 249 of the Revised Penal Code provides that the impossible penalty for homicide is *reclusion temporal*. Article 50 of the same Code states that the impossible penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by *prision mayor*. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional* and the maximum penalty should be taken from the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the imposition by the CA of imprisonment of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, is proper.

As regards the civil liability of the petitioners, the Court sustains the award of moral and temperate damages with modification as to the latter's amount.

Pursuant to Article 2224 of the Civil Code, temperate damages may be recovered when some pecuniary loss has been suffered but the amount of which cannot be proven with certainty. In *People v. Villanueva*⁵² and *Serrano v. People*,⁵³ the Court ruled that in case the amount of actual damages, as proven by receipts during trial is less than ₱25,000.00, the victim shall be entitled to ₱25,000.00 temperate damages, in lieu of actual damages of a lesser amount. In the instant case, only the amount of ₱2,174.80 was supported by receipts. Following the prevailing jurisprudence, the Court finds it necessary to increase the temperate damages from ₱15,000.00 to ₱25,000.00.

⁵¹ *Mahawan v. People*, 595 Phil. 397, 407 (2008).

⁵² 456 Phil. 14, 29 (2003).

⁵³ 637 Phil. 319, 338 (2010).

The award of moral damages is justified under Article 2219 of the Civil Code as Rodolfo sustained physical injuries which were the proximate effect of the petitioners' criminal offense. As the amount is left to the discretion of the court, moral damages should be reasonably proportional and approximate to the degree of the injury caused and the gravity of the wrong done.⁵⁴ In light of the attendant circumstances in the case, the Court affirms that ₱30,000.00 is a fair and reasonable grant of moral damages.

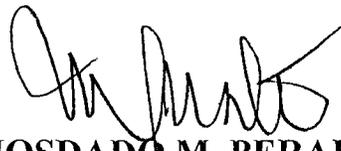
WHEREFORE, the assailed Court of Appeals Decision dated September 25, 2009 in CA-G.R. CR. No. 31285 is **AFFIRMED** with **MODIFICATION**. Petitioners **RONALD IBAÑEZ**, **EMILIO IBAÑEZ** and **DANIEL "BOBOT" IBAÑEZ** are found guilty of frustrated homicide and sentenced to a prison term of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. They are also ordered to pay **RODOLFO LEBRIA** Twenty Five Thousand Pesos (₱25,000.00) as temperate damages and Thirty Thousand Pesos (₱30,000.00) as moral damages.

SO ORDERED.


JOSE PORTUGAL PEREZ
 Associate Justice

WE CONCUR:

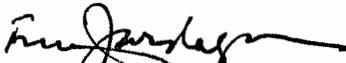

PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


DIOSDADO M. PERALTA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

⁵⁴

Yuchengco v. Manila Chronicle Publishing Corp., et al., 677 Phil. 422, 436 (2011).


FRANCIS H. JARDELEZA
Associate Justice

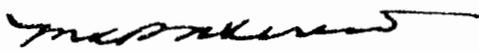
ATTESTATION

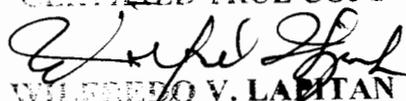
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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

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

CERTIFIED TRUE COPY

WILFREDO V. LAPID
Division Clerk of Court
Third Division

FEB 16 2016