



Republic of the Philippines
 Supreme Court
 Manila

CERTIORARI
 WILSON
 Division Clerk of Court
 Third Division

DEC 01 2016

THIRD DIVISION

BONIFACIO NIEVA y MONTERO, **G.R. No. 188751**
 Petitioner,

- versus -

Present:
 VELASCO, JR.,* *J.*, *Chairperson*,
 PERALTA,** *Acting Chairperson*,
 PEREZ,
 REYES, and
 JARDELEZA, *JJ.*

PEOPLE OF THE PHILIPPINES,
 Respondent. Promulgated:

November 16, 2016

Wilfredo Lopez

x-----x

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*¹ of the February 25, 2009 Decision² and July 9, 2009 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 31336, finding petitioner Bonifacio Nieva (Nieva) guilty beyond reasonable doubt of the crime of frustrated homicide.

Facts

In an Information dated November 2, 2005, Nieva was charged with the crime of Frustrated Murder in the Regional Trial Court (RTC) of Malabon, Branch 73.⁴ The accusatory portion of the Information, docketed as Criminal Case No. 33415-MN, reads:

* On leave.

** Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

¹ *Rollo*, pp. 10-35.

² *Id.* at 86-103; penned by Associate Justice Ramon R. Garcia with Associate Justices Jose L. Sabio, Jr. and Magdangal M. De Leon, concurring.

³ *Rollo*, pp. 115-116.

⁴ *Id.* at 86-87.

J

That on or about the 28th day of October 2005, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, while armed with a gun, with intent to kill, treachery and evident premeditation, did, then and there, willfully, unlawfully and feloniously attack, assault, shoot with the said gun one **JUDY DELATAVO IGNACIO**, hitting the latter on her left leg, thus accused performed all the acts of execution which would produce the crime of Murder, but which nevertheless did not produce it by reason of some other causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to the victim which prevented her death.

CONTRARY TO LAW.⁵

During arraignment, Nieva entered a plea of not guilty. Trial then ensued. The prosecution presented five (5) witnesses, namely: the victim, Judy Ignacio (Judy); the eyewitnesses, Luna Ignacio (Luna) and Raymundo Delatavo (Raymundo); the attending physician, Dr. Dindohope Serrano (Dr. Serrano); and the arresting officer, PO2 Jesus Del Fiero (PO2 Del Fiero).⁶

Prosecution's version

On October 28, 2005, at around six o'clock in the evening, Luna and Raymundo were doing carpentry works for Judy at Kaunlaran, Hernandez, Catmon, Malabon City. Judy was supervising the construction of her nipa hut when Nieva arrived and approached her.⁷ Judy was then the President of the Catmon Homeowners Association. Nieva inquired on the electrification project of the Homeowners Association, to which Judy replied that the matter was already taken care of by the Manila Electric Company (MERALCO).⁸ However, Nieva suddenly shouted at Judy and cursed her saying: "*Mga putang ina nyo, lima kayo mga president kayo, kung gusto nyo magkaroon ng mga problema, bibigyan ko kayo ng mga problema ngayon.*"⁹ He then drew a .357 caliber revolver (wrapped in a white piece of cloth) from his waist.¹⁰ Overwhelmed with fear, Judy clung to Luna's back and used him as a shield against Nieva.¹¹

Nieva, who was about two arms' length away, pointed his gun at Judy and fired several times but the gun jammed.¹² At this point, Raymundo, who was at the roof of the nipa hut, jumped from the hut to help her aunt, Judy. However, before Raymundo reached Judy, he heard a gunshot and saw Judy

⁵ *Id.* at 87-88.

⁶ *Id.* at 88.

⁷ *Id.* at 73.

⁸ *Id.* at 75.

⁹ *Id.* at 73.

¹⁰ *Id.* at 75.

¹¹ *Id.* at 73.

¹² *Id.* at 73-75.



fall to the ground.¹³ As she simultaneous fell, Judy was able to push Luna towards Nieva. Luna and Nieva then grappled for the gun. With the help of Raymundo, Luna seized the gun from Nieva.¹⁴

Judy was brought to the Manila Central University (MCU) Hospital. Dr. Serrano, a surgeon at the MCU Hospital, attended to the wound of Judy. He stated that Judy suffered a gunshot wound at her right leg, which caused a bone fracture at her right tibia and lacerated wound at the left thigh.¹⁵ He confirmed that Judy's gunshot wound could have led to her death if not for the timely medical attention.¹⁶

Meanwhile, PO2 Del Fiero, who was also a resident of Kaunlaran, Hernandez, Catmon, Malabon City, went to the scene of the crime upon learning that Judy was shot. Luna surrendered the gun to PO2 Del Fiero.¹⁷ Thereafter, PO2 Del Fiero arrested Nieva in the latter's home.¹⁸

Defense's version

The defense had three witnesses, namely: petitioner Nieva himself; his wife, Luz, and son, Julius. However, the testimonies of Luz and Julius were dispensed with since they would merely corroborate Nieva's defense.¹⁹

Nieva narrated that at about six-thirty in the evening, while on his way to buy cigarettes, he passed by the Kaunlaran ng Samahan Hernandez Catmon Homeowners, where he met Judy. He inquired on the electrification of the Homeowners Association and Judy informed him that it was already done.²⁰ Thereafter, a heated argument ensued between him and Judy. The latter accused him of having a hand on an electric post that fell down. Irritated, Nieva pulled a handkerchief from his pocket and wrapped it on his right hand, preparatory to boxing Judy. Suddenly, however, Luna got in front of Judy and pointed a gun towards Nieva.²¹

Nieva then grabbed the gun from Luna. In the process, the gun went off and Nieva was unaware if the bullet hit anyone. He and Luna went down as they continued to wrestle for the possession of the gun. However, Raymundo intervened and smashed Nieva at the back with a hammer causing Nieva to let go of Luna.²²

¹³ *Id.* at 75.

¹⁴ *Id.* at 76.

¹⁵ *Id.* at 76-77.

¹⁶ *Id.* at 89.

¹⁷ *Id.* at 77.

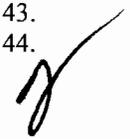
¹⁸ *Id.* at 89.

¹⁹ *Id.* at 45.

²⁰ *Id.* at 43.

²¹ *Id.* at 44.

²² *Id.*



As Luna now had the gun, Nieva clung at Raymundo. Luna failed to shoot Nieva because the latter's wife, who happens to be Luna's first cousin, shielded Nieva with her body.²³

RTC Ruling

In its Decision²⁴ dated October 11, 2007, the RTC convicted Nieva of Frustrated Homicide only, to wit:

x x x [T]he Court cannot agree that this is a case of frustrated murder. The reason is simple.

As stated above, it is not disputed that an argument between complainant and the accused immediately preceded the shooting incident. There was, therefore, no evident premeditation and there could be no treachery as well. Consequently, the Court finds that the offense committed is frustrated homicide only.²⁵

In the absence of any aggravating or mitigating circumstance, Nieva was sentenced to imprisonment of six (6) years and one (1) day of *prision correccional*, as minimum, to twelve (12) years and 1 day of *prision mayor*, as maximum. He was also ordered to pay Judy the amount of ₱40,000.00 by way of reimbursement for her hospitalization expenses; and another ₱40,000.00 as moral damages.²⁶

Nieva appealed to the CA. He took issue with the inconsistencies of the testimonies of the prosecution witnesses, particularly Judy, Luna and Raymundo. He also claimed that the exempting circumstance of accident is applicable in his case;²⁷ but assuming that he is criminally liable, he should only be convicted of physical injuries because he had no intent to kill Judy.²⁸

CA Ruling

In its Decision dated February 25, 2009, the CA affirmed Nieva's conviction, with modification only as to the penalty imposed. The decretal portion reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated October 11, 2007 of the Regional Trial Court, Branch 73, Malabon City finding accused appellant Bonifacio Nieva y Montero guilty beyond reasonable doubt of the crime of Frustrated Homicide is **AFFIRMED with MODIFICATION** in that he is sentenced to suffer imprisonment of four (4) years,

²³ *Id.*

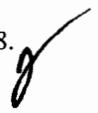
²⁴ *Id.* at 60-66. Penned by Pairing Judge Benjamin M. Aquino, Jr.

²⁵ *Id.* at 65-66.

²⁶ *Id.* at 66.

²⁷ *Id.* at 45.

²⁸ *Id.* at 57-58.



two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.²⁹

Nieva filed a Motion for Reconsideration³⁰ which the CA denied in its Resolution dated July 9, 2009; hence, this petition for review.

Issue

Whether the CA erred in affirming the conviction of Nieva.

Our Ruling

We rule in the negative and resolve to deny the petition.

Nieva submits the following defenses to prove that he is innocent of the crime of frustrated homicide:

- a. The accounts of the prosecution witnesses are highly questionable;
- b. Nieva is exempt from criminal liability because the shooting of Judy is a mere accident; and
- c. Nieva had no intent to kill Judy, thus, he should only be convicted of physical injuries.

We are not persuaded.

As his first defense, Nieva harps on the alleged inconsistencies among the testimonies of Judy, Luna and Raymundo, particularly on the position of the gun during the shooting incident. He recounts that while Judy testified that the gun was pointed to the ground when it fired, Luna claimed that the gun was pointed to him (Luna) since he was in front of Judy; whereas, Raymundo averred that when the gun was fired, it was pointed at Judy.³¹ Nieva maintains that the conflicting versions of the prosecution witnesses strongly suggest that Nieva did not really aim a gun towards Judy and that Judy might have only fabricated the charge against Nieva to pin him down because of the animosity between them.³²

At the outset, it is a basic rule that questions on the credibility of witnesses is best addressed to the trial courts because of their unique position to not only examine real and testimonial evidence but also observe the elusive and incommunicable evidence of the witnesses' deportment while on stand, a privilege which is denied to the appellate court.³³ The trial

²⁹ *Id.* at 102-103.

³⁰ *Id.* at 104-109.

³¹ *Id.* at 24.

³² *Id.* at 24-25.

³³ *People v. Barcelá*, G.R. No. 208760, April 23, 2014, 723 SCRA 647, 660, citing *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

court's assessment of the credibility of the witnesses is therefore accorded great respect on appeal, in the absence of evidence showing that the trial court disregarded or overlooked significant facts that would merit the reversal of its findings.³⁴ The reviewing court is bound by the findings of the trial court, more so when the same is affirmed by the appellate court on appeal.³⁵

In the case before us, both the RTC³⁶ and the CA³⁷ found that the witnesses categorically and positively identified Nieva to have fired a gun towards Judy. Nieva fired the gun several times, with each attempt misfiring, until finally the gun went off and hit Judy at her upper right leg. The perceived inconsistency on where the gun was aimed at is a trivial matter which cannot negate the credibility of the witnesses, especially where the witnesses were consistent on their account relating to the principal occurrence, which is the shooting of Judy, and their positive identification of Nieva as the assailant.³⁸

Further, far from weakening the credibility of the witnesses, minor inconsistencies actually bolster their credibility. Thus, in *People v. Malate*,³⁹ we stated that:

Furthermore, accused-appellant cannot plausibly bank on the minor inconsistencies in the testimony of the complainant to discredit her account of the incident. **Even if they do exist, minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed. Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.** As aptly held in the American case of *State v. Erikson*, the rule that a victim's testimony in sexual assault cases must be corroborated "does not apply where the inconsistency or contradiction bears upon proof not essential to the case." **Well to point, even the most truthful witnesses can sometimes make mistakes, but such minor lapses do not necessarily affect their credibility.**⁴⁰ (Emphasis supplied; citations omitted.)

In this connection, we concur with the CA's finding that the slight variance on Judy's testimony as to the aim of the gun could have been

³⁴ *People v. Barcelá*, *supra*, at 660-661, citing *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

³⁵ *People v. Laog*, G.R. No. 178321, October 5, 2011, 658 SCRA 654, 665-666, citing *People v. Dominguez, Jr.*, *supra*.

³⁶ *Rollo*, p. 65.

³⁷ *Id.* at 93-94.

³⁸ See *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 194-195, citing *People v. Bernabe*, G.R. No. 185726, October 16, 2009, 604 SCRA 216, 231.

³⁹ G.R. No. 185724, June 5, 2009, 588 SCRA 817.

⁴⁰ *Id.* at 827-828.

attributed to the suddenness of the situation and her confusion.⁴¹ Thus, the minor lapse in her testimony does not affect her credibility.

As his next defense, Nieva denies that he fired a gun towards Judy. Instead, he accuses Luna to have brought the gun, pointed it against him and together they grappled for the possession of the same until suddenly the gun fired. He pleads that the shooting of Judy is a mere accident; hence, he should be exempt from criminal liability.⁴²

We disagree. It is well-entrenched in jurisprudence that denial is an intrinsically weak defense.⁴³ If not substantiated by clear and convincing evidence, denial is merely a negative and self-serving evidence which has no weight in law. It cannot prevail over the categorical and consistent positive identification of credible witnesses.⁴⁴ Here, Nieva's version of the story is not substantiated with proof other than his own bare assertions. Nieva's testimony cannot stand against the testimonies of Judy, Luna and Raymundo which are consistent in material points.

Nieva cannot also invoke the exempting circumstance of accident to free him from criminal liability. Article 12 (4), Book I of the Revised Penal Code of the Philippines⁴⁵ (Revised Penal Code) reads:

Art. 12. *Circumstances which exempt from criminal liability.* – The following are exempt from criminal liability:

x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

The basis for exemption under the above-stated provision is the complete absence of negligence and intent. The accused commits a crime but there is no criminal liability. An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.⁴⁶ It is an affirmative defense which the accused is burdened to prove by clear and convincing evidence.⁴⁷

⁴¹ *Rollo*, p. 100.

⁴² *Id.* at 25-27.

⁴³ *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 672.

⁴⁴ *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847, citing *People v. Caisip*, G.R. No. 119757, May 21, 1998, 290 SCRA 451, 456.

⁴⁵ Act No. 3815 (1930).

⁴⁶ *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 104, citing *Jarco Marketing Corporation v. Court of Appeals*, G.R. No. 129792, December 21, 1999, 321 SCRA 375, 385.

⁴⁷ *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 227, citing *Toledo v. People*, *supra* at 104.

To successfully claim the defense of accident, the accused must show that the following circumstances are present: (1) a person is performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) he had no fault in or intention of causing the injury.⁴⁸ **None of these circumstances are present in this case.**

To start, Nieva was not performing a lawful act when he drew a gun and pointed it at Judy. Thus, in *People v. Nepomuceno, Jr.*,⁴⁹ we ruled that drawing a weapon in the course of a quarrel, the same not being in self-defense, is unlawful, as it at least constitutes light threats.⁵⁰ Subsequently, Nieva fired the gun several times. In his initial attempts, the bullet of the gun jammed; yet, Nieva did not stop until the gun finally fired and hit its target. This clearly shows that Nieva intentionally and persistently performed the act complained of in order to successfully maim Judy. He cannot now claim that he is without fault.

As his last defense, Nieva submits that he has no intent to kill Judy considering that the gun was pointed to the ground when it was fired and Judy's wound was not fatal.⁵¹

Nieva's contentions are untenable.

In *Rivera v. People*,⁵² we explained that intent to kill may be proved by: (a) the means used by the malefactors; (b) the nature, location and number of wounds sustained by the victim; (c) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; (d) the circumstances under which the crime was committed; and (e) the motives of the accused.⁵³

We concur with the findings of the CA that intent to kill was present.⁵⁴ It is undisputed that Nieva used a gun, a deadly weapon, in assaulting Judy. At that time, Judy was unarmed and could not have defended herself. Nieva fired the gun several times towards Judy. If the bullets had not jammed, Nieva could have killed Judy through multiple gunshot wounds. As it was, the gun's bullets jammed and the gun fired only once; albeit, leaving Judy with a wound on her upper right leg, which according to Dr. Serrano could have caused her death if not for the timely medical intervention at the MCU Hospital. Prior to the incident, Nieva also admitted that there had been several quarrels between him and Judy.⁵⁵ These circumstances showing the weapon used, the nature of the wound sustained

⁴⁸ *People v. Castillo*, *supra*, at 227 citing *Toledo v. People*, *supra* note 46, at 105.

⁴⁹ G.R. No. 127818, November 11, 1998, 298 SCRA 450.

⁵⁰ *People v. Nepomuceno, Jr.*, *supra*, at 459.

⁵¹ *Rollo*, pp. 27-31.

⁵² G.R. No. 166326, January 25, 2006, 480 SCRA 188.

⁵³ *Rivera v. People*, *supra*, at 197, citing *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386, 400.

⁵⁴ *Rollo*, p. 101.

⁵⁵ *Id.* at 25, 51.

by Judy, and the conduct of Nieva before and during the incident, manifest Nieva's intent to kill Judy.

Nieva repeatedly uses the testimony of Judy that the gun was aimed at the ground when it fired in order to exculpate him from liability. However, as we had explained earlier, Nieva fired the gun several times before the bullet finally went off. With the urgency and suddenness of the situation, minor lapses in Judy's testimony cannot be used against her.

In fine, the prosecution established beyond reasonable doubt the elements of frustrated homicide, which are: *first*, the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; *second*, the victim sustained a fatal or mortal wound but did not die because of timely medical assistance; and *third*, none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code, as amended, is present.⁵⁶

Finally, in light of recent jurisprudence, we modify the award of damages granted by the RTC and affirmed by the CA. *People v. Juguet*⁵⁷ teaches that where the crime of frustrated homicide is committed, moral damages as well as civil indemnity should be awarded to the victim in the amount of ₱30,000.00 each. Thus, we rule that Judy is entitled to recover civil indemnity in the amount of ₱30,000.00. However, we decrease the amount of moral damages given by the courts *a quo* from ₱40,000.00 to ₱30,000.00. The monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this decision until fully paid.⁵⁸

WHEREFORE, the petition is **DENIED** for lack of merit. The February 25, 2009 Decision and July 9, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 31336 are hereby **AFFIRMED** with **MODIFICATIONS** in that:

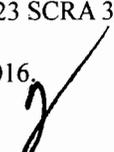
1. The award of moral damages is decreased from ₱40,000.00 to ₱30,000.00;
2. Judy Ignacio is awarded civil indemnity in the amount of ₱30,000.00; and
3. An interest of six percent (6%) *per annum* is imposed on all monetary awards from the date of the finality of this Decision until full payment.

SO ORDERED.

⁵⁶ *De Guzman, Jr. v. People*, G.R. No. 178512, November 26, 2014, 742 SCRA 501, 506-507, citing *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 339.

⁵⁷ G.R. No. 202124, April 5, 2016.

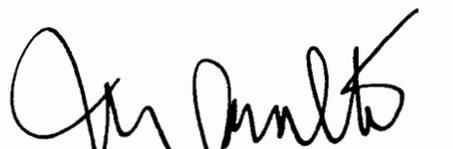
⁵⁸ *People v. Caballero*, G.R. No. 210673, June 29, 2016.




FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

(On Leave)
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
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.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

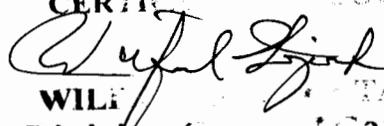
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified 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

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WILFORD E. TAN
Division Chairperson
Third Division
DEC 07 2018