Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EDEN ETINO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 206632

Present:

SERENO, *C.J., Chairperson,*
LEONARDO-DE CASTRO,
PERALTA,*
DEL CASTILLO, *and*
TIJAM, *JJ.*

Promulgated:
FEB 14 2018

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DECISION

DEL CASTILLO, *J.*:

We resolve this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the August 29, 2012 Decision[1] and the March 11, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 00896. The CA affirmed with modification the January 14, 2008 Decision[3] of the Regional Trial Court (RTC), Branch 29, Iloilo City, which found petitioner Eden Etino guilty beyond reasonable doubt of the crime of frustrated homicide, in that the CA ordered petitioner to pay the victim ₱25,000.00 as moral damages and ₱10,000.00 as temperate damages.

The Antecedent Facts

Petitioner was charged with the crime of frustrated homicide in an Information[4] dated June 19, 2003 which reads:

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* Designated as additional member per September 25, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

1 *Rollo*, pp. 27-37; penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles.

2 Id. at 23-24; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy.

3 Id. at 38-44; penned by Judge Gloria G. Madero.

4 Records, p. 1.

> That on or about the 5th day of November 2001, in the Municipality of Maasin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed firearm of unknown caliber, with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot JESSIEREL LEYBLE with said unlicensed firearm he was then provided at the time, hitting and inflicting upon the victim gunshot wounds on the different parts of his body, 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 some cause or causes independent of the will of the accused, that is, by the timely medical attendance rendered to the said Jessierel Leyble which prevented his death.

Upon arraignment, petitioner entered a plea of not guilty.[5] Trial thereafter ensued.

The Evidence for the Prosecution

The prosecution's evidence consists mainly of the testimonies of complainant Jessierel Leyble (Leyble), Isidro Maldecir (Maldecir), and Nida Villarete Sonza (Sonza), the Administrative and Medical Officer of the West Visayas State University Medical Center (WVSUMC).

During the trial, Leyble testified that, "at about 4:30 o'clock in the afternoon of November 5, 2001, while he and his companions[,] Isidro Maldecir and Richard Magno[,] were walking on their way home to Bgy. [sic] Pispis, Maasin, Iloilo, he was shot with a 12 gauge shotgun by the [petitioner,] Eden Etino[,] hitting the back portion of his right shoulder and other parts of his body."[6]

Leyble's testimony was corroborated by Maldecir who categorically stated that Leyble was shot by petitioner from behind, and was thereafter brought to the Don Benito Lopez Memorial Hospital (now known as the WVSUMC) for treatment.[7]

To prove the injuries suffered by Leyble, the prosecution presented Sonza "in her capacity as [the officer] in-charge of the security of all the medical records of the patients [in the WVSUMC] for the reason that Dr. Rodney Jun Garcia, then Chief Resident, Surgery Department, [WVSUMC], who treated [Leyble was] unable to testify as he is now based in General Santos City."[8]

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5 See Order dated August 14, 2003, id. at 55; penned by Judge Rene B. Honrado.
6 *Rollo*, p. 39. See also TSN, July 22, 2004, pp. 4-6.
7 *Rollo*, p. 40. See also TSN, December 16, 2004, pp. 5-9.
8 *Rollo*, p. 39.

In compliance with the Subpoena Duces Tecum[9] issued by the RTC on February 22, 2005, Sonza brought the medical records of Leyble to court which included: a) Medical Certificate[10] dated December 20, 2001, b) Trauma Sheet[11] dated November 5, 2001, c) Admission and [Discharge] Record[12] and d) Operative Records[13] dated November 16, 2001, and certified the same to be true and faithful reproductions of the original documents.[14]

The Evidence for the Defense

The defense presented the testimonies of Bautista Etino, Wenifredo Besares, Joeseryl Masiado and of petitioner himself to prove his alibi.[15]

The witnesses testified that, "at about 4:30 in the afternoon of November 5, 2001, [petitioner] was with Bgy. [sic] Captain Manuel Bornejan, Wenifredo Besares and [Bautista Etino at] the house of the latter which was situated about one kilometer away from where they heard shots that afternoon."[16] They also alleged that the filing of the criminal complaint was precipitated by a pending Comelec[17] gun-ban case before the RTC filed against Leyble, wherein petitioner was the witness.[18]

The Regional Trial Court Ruling

In its January 14, 2008 Decision,[19] the RTC found petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It ruled that petitioner was positively identified as the perpetrator of the crime charged against him, especially so, when the complainant, Leyble, was alive to tell what actually happened.[20]

Accordingly, the RTC sentenced petitioner to suffer the penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Notably, it did not award any damages in favor of Leyble, as it found that the prosecution had failed to discharge its burden of presenting evidence on the civil aspect of the case.[21]

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9 Records, p. 124.
10 Id. at 126.
11 Id. at 127.
12 Id. at 128.
13 Id. at 129.
14 TSN, April 21, 2005, pp. 4-6.
15 *Rollo*, p. 40.
16 Id.
17 Commission on Elections
18 *Rollo*, pp. 40-41.
19 Id. at 38-44.
20 Id. at 43.
21 Id. at 43-44.

The Court of Appeals Ruling

On appellate review, the CA affirmed with modification the RTC Decision in that, it ordered petitioner to pay Leyble the amounts of ₱25,000.00 as moral damages and ₱10,000.00 as temperate damages.[22]

The CA ruled that "the trial court did not err in giving full weight and credence to the testimonies of the prosecution witnesses. Evaluation of the testimonies of the prosecution witnesses amply [showed] that Jessierel Leyble succinctly but clearly narrated how he was shot and he also categorically identified [petitioner] as his assailant."[23]

In addition, the CA held that the mere delay in the filing of the complaint did not necessarily undermine the credibility of witnesses; and in this case, the fear of reprisal explained why it took some time for Leyble to file the complaint and to finally reveal the identity of his assailant.[24]

The CA also rejected petitioner's claim that Leyble filed the case against him because he testified against the latter in the Comelec gun-ban case. It explained that "[e]ven assuming that there was a grudge between Leyble and [petitioner], that [did] not automatically render the testimony of Leyble unbelievable. Moreover, considering that Leyble had positively identified [petitioner], whom he [knew] from childhood, as his assailant, motive [was] no longer essential or relevant."[25]

Finally, the CA held that Leyble was entitled to moral damages, as it was clear from his testimony that he sustained gunshot wounds on his shoulder; and to temperate damages for the medical treatment he received but for which no documentary evidence was presented to prove the actual costs thereof.[26]

Petitioner moved for reconsideration, but the CA denied the motion in its Resolution[27] dated March 11, 2013. As a consequence, petitioner filed the present Petition for Review on *Certiorari* before the Court, assailing the CA's August 29, 2012 Decision[28] and the March 11, 2013 Resolution.

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22 Id. at 35-36.
23 Id. at 31-32.
24 Id. at 34.
25 Id.
26 Id. at 35-36.
27 Id. at 23-24.
28 Id. at 27-37.

The Issues

Petitioner raises the following issues for the Court's consideration:

First, whether the CA erred in holding that his guilt for the charged crime of frustrated homicide was proven beyond reasonable doubt, since the physician who examined the victim was not presented in court;

Second, whether the CA erred when it found the testimonies of petitioner and his witnesses to be incredible and unbelievable; and,

Third, whether the CA erred when it disregarded petitioner's defenses, *i.e.*, the lapse of unreasonable time for Leyble to file the complaint against him, the failure of Leyble to positively identify him as the assailant, and Leyble's motive in filing the case against him.

The Court's Ruling

At the outset, we clarify that questions of fact, as a rule, *cannot* be entertained in a Rule 45 petition, where the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the lower courts.[29] Nevertheless, when it appears that the assailed judgment is based on a *misapprehension of facts*, and the findings of the lower courts are *conclusions without citation of specific evidence* on which they are based,[30] as in this case, the Court may probe questions of fact in a Rule 45 proceeding.

Article 6 of the Revised Penal Code defines the stages of a felony as follows:

> ART. 6. Consummated, frustrated, and attempted felonies. – Consummated felonies, as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is **frustrated** when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.
>
> 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

[29] See *Far Eastern Surety and Insurance Company, Inc. v. People*, 721 Phil. 760, 770 (2013) citing *Remalante v. Tibe*, 241 Phil. 930 (1988).

[30] See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

> should produce the felony by reason of some cause or accident other than his own spontaneous desistance. (Emphasis supplied)

In *Palaganas v. People*,[31] the Court outlined the distinctions between a frustrated and an attempted felony:

> 1.) In frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.
>
> 2.) In frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.
>
> In addition to these distinctions, we have ruled in several cases that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound/s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. **If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury**.[32] (Emphasis supplied)

Thus, in order to determine whether the crime committed is attempted or frustrated parricide, murder or homicide, or only *lesiones* (physical injuries), the crucial points to consider are: a) *whether the injury sustained by the victim was fatal*, and b) *whether there was intent to kill on the part of the accused.*[33]

No proof of the extent of injury sustained by the victim

It is settled that "where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, **the character of the wound is doubtful**," and **such doubt should be resolved in favor of the accused.**[34]

In this case, we find that the prosecution failed to present evidence to prove that the victim would have died from his wound without timely medical

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31 533 Phil. 169 (2006).

32 Id. at 193.

33 See also Aquino, Ramon C., THE REVISED PENAL CODE, Volume II, 1997 Edition, p. 626.

34 *Epifanio v. People*, 552 Phil. 620, 631 (2007). Emphasis supplied.

assistance, as his Medical Certificate[35] alone, **absent the testimony of the physician who diagnosed and treated him, or any physician for that matter,**[36] is *insufficient* proof of the nature and extent of his injury. This is especially true, given that said Medical Certificate merely stated the victim's period of confinement at the hospital, the location of the gunshot wounds, the treatments he received, and his period of healing.[37]

Without such proof, the character of the gunshot wounds that the victim sustained enters the realm of doubt, which the Court must necessarily resolve in favor of petitioner.[38]

The intent to kill was not sufficiently established

"The assailant's intent to kill is the main element that distinguishes the crime of physical injuries from the crime of homicide. The crime can only be homicide *if* the intent to kill is proven."[39] The intent to kill must be proven "in a clear and evident manner [so as] to exclude every possible doubt as to the homicidal intent of the aggressor."[40]

In *Rivera v. People*,[41] the Court ruled that "[i]ntent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence"[42] which may consist of:

> [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.[43]

Moreover, the Court held in *Rivera* that intent to kill is only presumed *if* the victim dies as a result of a deliberate act of the malefactors.[44]

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35 Records, p. 125.

36 See *People v. Bernaldez*, 355 Phil. 740, 757 (1998), where the Court held that "[h]owever, since [the Medical Certificate] involved an opinion of one who must first be established as an expert witness, it could not be given weight or credit unless the doctor who issued it be presented in court to show his qualifications. Here, a distinction must be made between admissibility of evidence and probative value thereof."

37 Records, p. 126.

38 See *Serrano v. People*, 637 Phil. 319, 336 (2010).

39 Id. at 333. Italics supplied.

40 *Engr. Pentecostes, Jr. v. People*, 631 Phil. 500, 512 (2010).

41 515 Phil. 824 (2006).

42 Id. at 832.

43 Id.

44 Id.

Although it was sufficiently shown that petitioner fired a 12 gauge shotgun at the victim, there was simply no other evidence on record that tended to prove that petitioner had *animus interficendi* or intent to kill the victim. On the contrary, none of the prosecution's witnesses testified that petitioner had indeed aimed and fired the shotgun *to kill* the victim.

It is to be noted, likewise, that petitioner only fired a *single* shot[45] at *close-range,*[46] but did *not* hit any vital part of the victim's body – the victim's wounds, based on his Medical Certificate, were located at the right deltoid (through and through) and the left shoulder[47] – and he immediately *fled* the scene right after the shooting.[48] These acts certainly do not suggest that petitioner had intended to kill the victim; for if he did, he could have fired multiple shots to ensure the latter's demise.

Besides, by the victim's own narration of events, it appears that he did not sustain any fatal injury as a result of the shooting, considering that he and his companions even went in pursuit of petitioner after the incident, *viz.*:

> [ASST. PROV. PROS. GUALBERTO BALLA]
> Q: After Eden Etino shot you, what happened afterwards?
> A: I shouted to my companion to help me because I have injuries.
>
> Q: Did they help you at that particular instance?
> A: Yes sir.
>
> Q: How about Eden Etino, what did he do Mr. Witness?
> A: **When we ran to the hilly portion**, they were no longer there.[49] (Emphasis supplied)

Under these circumstances, we cannot reasonably conclude that petitioner's use of a firearm was sufficient proof that he had intended to kill the victim. After all, it is settled that "[i]ntent to kill *cannot* be automatically drawn from the mere fact that the use of firearms is dangerous to life."[50] Rather, "[*a*]*nimus interficendi* must be established with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt."[51]

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45 Both Leyble and Maldecir testified that petitioner fired a single shot. See TSN, July 22, 2004, p. 7, and also TSN, December 16, 2004, p. 12.

46 By Maldecir's testimony, petitioner was close to the victim when he fired the shot, at "around three (3) arm's length" away. See TSN, December 16, 2004, p. 7.

47 Records, p. 126.

48 See TSN, July 22, 2004, p. 7, and also TSN, December 16, 2004, p. 9.

49 TSN, July 22, 2004, pp. 19-20.

50 *Dado v. People*, 440 Phil. 521, 538 (2002); citing *People v. Villanueva*, 51 Phil. 488, 491 (1928). Italics supplied.

51 Id.

This is not to say that petitioner is without any criminal liability. When the intent to kill is lacking, but wounds are shown to have been inflicted upon the victim, as in this case, **the crime is not frustrated or attempted homicide but physical injuries only.**[52] Since the victim's period of incapacity and healing of his injuries was more than 30 days – he was confined at the hospital from November 5 to 25, 2001, or for 20 days, and his period of healing was "two (2) to four (4) weeks barring complications"[53] – the crime committed is **serious physical injuries** under Article 263, par. 4 of the Revised Penal Code.[54]

Petitioner's Defenses

We reject petitioner's contention that the prosecution failed to identify him as the victim's assailant, given that he "was not identified and never mentioned [in the police blotter] as the one who shot the victim" even though it was the victim himself who personally reported the incident to the authorities.[55]

Based on the Police Blotter dated January 18, 2002, the victim had identified petitioner and his companions as his assailants during the November 5, 2001 shooting incident, *viz.*:

> 9:20 A.M – (Shooting Incident) Jessirel Leyble y Subade, 25 years old, single, and a resident of Brgy[.] Pispis, Maasin, Iloilo reported personally to this Office alleging that last November 5, 2001 at around 4:30 P.M. while he was on their [sic] way home at Brgy[.] Pispis, this Municipality[,] was waylaid and shot with a firearms [*sic*] **by the group of Eden Etino, Bautista Etino, Joeserel Masiado, Alfredo Jabadan, Wiliam Besares and Wencfredo Besares,** all resident [sic] of the same place. As a result, he sustained gunshot wounds on the back portion of his body and was confined at West Visayas State University Hospital, Jaro, Iloilo City.[56]

In addition, the prosecution's witnesses never wavered in their positive identification of petitioner as the victim's assailant. The pertinent portion of the victim's testimony is quoted below:

> [ASST. PROV. PROS. GUALBERTO BALLA]
> Q: Do you know the accused Eden Etino?
> A: Yes, sir.
>
> Q: If he is inside the courtroom[,] can you point to him?
> A: There.

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52 See *Engr. Pentecostes, Jr. v. People*, supra note 40 at 512-513.

53 Records, p. 126.

54 See *People v. Oraza*, 83 Phil. 633, 635-636 (1949), where the Court held that "it is sufficient that the [present case] came under the provisions of [A]rticle 263, paragraph 4, of the [C]ode inasmuch as **the period of incapacity and healing of the injuries was more than thirty days** but not more than ninety days." Emphasis supplied.

55 *Rollo*, pp. 16-17.

56 See Certification dated January 19, 2002, records, p. 9.

Court Interpreter:
Witness is pointing to a person inside the courtroom who, when asked[,] answered to the name Eden Etino.

PROS. BALLA
Q: For how long have you known the accused in this case?
A: Since childhood.

x x x x

Q: **Who shot you Mr. Witness?**
A: **Eden Etino**[.][57] (Emphasis supplied)

We also consider the following pieces of evidence which amply support petitioner's positive identification as the assailant in this case: ***first,*** the manner of attack was done at close-range,[58] and the victim was able to turn around right after the shot was fired;[59] ***second,*** the shooting incident happened in broad daylight (at around 4:30 in the afternoon)[60] in an open field,[61] so the assailant could clearly be seen; and ***third,*** the victim could readily identify petitioner as his assailant because they had known each other since childhood.[62]

Given these circumstances, we find petitioner's identification as the victim's assailant to be positive and conclusive. As a result, the defenses of denial and alibi raised by petitioner must necessarily fail. After all, "[a]libi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused. And it is only axiomatic that positive testimony prevails over negative testimony."[63]

We likewise reject petitioner's claim that the delay in the filing of the complaint against him generates doubt as to his guilt. It is settled that the failure to file a complaint to the proper authorities would *not* impair the credibility of the complainant *if* such delay was satisfactorily explained.[64] In this case, the victim testified that he filed the case after noticing that petitioner was still after him:

[ATTY. EDGAR SUMIDO]
Q: This incident happened on November 5, 2001 and it was only filed March 6, 2003?
A: **At first, I did not intend to file a case against him because I thought they will settle the case, but later I noticed that he was after me.**

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57 TSN, July 22, 2004, pp. 3-5.
58 By Maldecir's testimony, petitioner was close to the victim when he fired the shot, at "around three (3) arm's length" away. See TSN, December 16, 2004, p. 7.
59 TSN, July 22, 2004, p. 6.
60 Id. at 4-5.
61 TSN, December 16, 2004, p. 6.
62 TSN, July 22, 2004, p. 4.
63 *Vidar v. People*, 625 Phil. 57, 73 (2010).
64 *People v. Ramirez, Jr.*, 454 Phil. 693, 702 (2003).

Q: What do you mean by the word that the accused is after you, Mr. Witness?
A: Because when I met him, he waylaid me.

x x x x

Q: But you stated before that the reason you filed this case [was] because the accused is after you?

The reason that you filed this case [was] because you thought that the accused [was] after you?

A: Because last month, he even intended to do something against me.[65] (Emphasis supplied)

The victim's initial reluctance to file the complaint is not uncommon, considering "the natural reticence of most people to get involved in a criminal case."[66] Fear of reprisal, too, is deemed as a valid excuse for the temporary silence of a prosecution witness (or in this case, the victim) and has been judicially declared to not have any effect on his credibility.[67]

Finally, we find no sufficient evidence on record to support petitioner's claim that the victim had ill motives to falsely institute the complaint and testify against him. Even assuming *arguendo* that the victim held a grudge against petitioner for having testified against him in another case,[68] the existence of such grudge would *not* automatically render his testimony in this case false and unreliable.[69] "In the absence of any showing that a witness was actuated by malice or other improper motives, his *positive and categorical declarations* on the witness stand under a solemn oath deserve full faith and credence."[70]

The Proper Penalty

Under Article 263, par. 4, of the Revised Penal Code, "[a]ny person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer" "[t]he penalty of ***arresto mayor*** **in its maximum period to *prision correccional* in its minimum period** [which ranges from four (4) months and one (1) day to two (2) years and four (4) months], if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person **for more than thirty days.**"[71]

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65 TSN, July 22, 2004, pp. 13-15.
66 *People v. PO3 Pelopero*, 459 Phil. 811, 827 (2003).
67 *People v. Dorio*, 437 Phil. 201, 209-210 (2002).
68 *Rollo*, pp. 17-18.
69 *People v. Medina*, 479 Phil. 530, 541 (2004).
70 *People v. Dorio*, supra note 67 at 210.
71 Emphasis supplied.

"Under the Indeterminate Sentence law, the *maximum term* of the indeterminate sentence shall be taken, in view of the attending circumstances that could be properly imposed under the rules of the Revised Penal Code, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code."[72]

In the absence of any modifying circumstance, the maximum term of the indeterminate sentence in this case shall be taken within the *medium period*[73] of the penalty prescribed under Article 263, par. 4, or one (1) year and one (1) day to one (1) year and eight (8) months of *prision correcional*. The minimum term shall be taken within the range of *arresto mayor* in its minimum and medium periods[74] or from one (1) month and one (1) day to four (4) months.

The Civil Liabilities

Article 2219 of the Civil Code provides that moral damages may be awarded in criminal cases resulting in physical injuries,[75] as in this case. Although the victim did not testify on the moral damages that he suffered, his Medical Certificate[76] constitutes sufficient basis to award moral damages, since "ordinary human experience and common sense dictate that such wounds inflicted on [him] would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury."[77] Thus, we affirm the CA's award of moral damages in the amount of ₱25,000.00 in the victim's favor.

We also agree with the CA that the victim is entitled to temperate damages in the amount of ₱10,000.00, as it is clear from the records that the victim received medical treatment at the WVSUMC and was, in fact, confined at the hospital for twenty days,[78] although no documentary evidence was presented to prove the cost thereof.[79]

WHEREFORE, we **DENY** the Petition for Review on *Certiorari*. The August 29, 2012 Decision and the March 11, 2013 Resolution of the Court of Appeals in CA-G.R. CR No. 00896 are **AFFIRMED** with **MODIFICATION** in that, petitioner Eden Etino is found guilty beyond reasonable doubt of the crime of **SERIOUS PHYSICAL INJURIES** and is sentenced to suffer the indeterminate penalty of imprisonment of four (4) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

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72 See *Serrano v. People*, supra note 38 at 337.
73 See REVISED PENAL CODE, Article 64(1).
74 See Reyes, Luis B., THE REVISED PENAL CODE, Book 2, 17th Edition, 2008, pp. 1072-1073.
75 CIVIL CODE, Article 2219(1).
76 Records, p. 126.
77 See *People v. Ibañez*, 455 Phil. 133, 167-168 (2003).
78 Records, p. 126.
79 See *Santos v. Court of Appeals*, 461 Phil. 36, 56 (2003). See also CIVIL CODE, Article 2224.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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