Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOHNNY GARCIA YAP @ "CHARLIE" a.k.a. JOHNNY YAP y GARCIA @ "CHARLIE,"
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 234217

Present:

PERALTA, *J.*, *Chairperson*,
LEONEN,
GESMUNDO,*
REYES, J.C., JR., and
HERNANDO,* *JJ.*

Promulgated:

November 14, 2018

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal and setting aside of the Decision[1] of the Court of Appeals (*CA*), dated March 8, 2017, in CA-G.R. CR No. 38903, which affirmed the August 7, 2015 Decision[2] of the Regional Trial Court (*RTC*) of Manila, Branch 27, in Criminal Case No. 13-297324, finding herein petitioner guilty of the crime of attempted murder, and the May 3, 2016 Order[3] of the RTC, Branch 14, denying petitioner's Motion for Reconsideration. Petitioner also assails the September 22, 2017 Resolution[4] of the CA, which denied his Motion for Reconsideration.

The antecedents are as follows:

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* On wellness leave.

1 Penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Noel G. Tijam (now a member of this Court) and Eduardo B. Peralta, Jr., *rollo*, pp. 45-55.

2 Penned by Judge Teresa Patrimonio-Soriaso; CA *rollo*, pp. 55-73.

3 Penned by Judge Buenaventura Albert J. Tenorio, Jr.; *id.* at 74-79.

4 Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla and Jhosep Y. Lopez; *id.* at 159-161.

In an Information filed by the Assistant City Prosecutor of Manila, herein petitioner Johnny Garcia Yap (*Yap*) was charged with the crime of attempted murder, as defined and penalized under Article 248, in relation to Article 6 of the Revised Penal Code (*RPC*), as amended. The accusatory portion of the Information reads, thus:

> That on or about November 5, 2012, in the City of Manila, Philippines, the said accused did then and there, willfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, commence the commission of the crime of Murder directly by overt acts, by then and there forcing one GEORGE HAO ANG, to drink coffee which was laced with benzodiazipines, a sleep-inducing psychoactive drug, without the knowledge of the said GEORGE HAO ANG, which immediately made the latter fall asleep, and while he was sleeping, the said accused repeatedly hit the said GEORGE HAO ANG on the head with a rolling pin that caused profuse bleeding thereof, but said accused did not perform all the acts of execution which would have produced the crime of Murder as a consequence by reason of some cause other than his own spontaneous desistance, that is said GEORGE HAO ANG was able to walk away from the accused and ran fast for his safety.
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> CONTRARY TO LAW.[5]

Upon arraignment, Yap entered a plea of not guilty.[6] However, during pre-trial, he manifested that he invokes self-defense.[7] As a consequence, trial on the merits ensued whereby the defense presented its evidence-in-chief first.

The defense and the prosecution presented conflicting versions of the antecedent facts.

According to the defense, petitioner Yap and the alleged victim, George Hao Ang (*Ang*), had been friends for more than ten (10) years prior to the questioned incident, and they have gone out together fishing, gambling and meeting girls. Around 3:20 in the afternoon of November 5, 2012, Yap and Ang met at the Kentucky Fried Chicken (*KFC*) store along Vito Cruz St. in Manila for the purpose of meeting some girls. Since it was drizzling, they decided to wait inside Ang's car. While waiting, Yap informed Ang that they are going to meet the same set of girls they have previously gone out with before. Ang complained because he did not like the girl with whom he was paired. This led to an argument between the two. Ang then punched Yap's face causing the latter to retaliate. They then engaged in a scuffle and in the process, Ang got hold of a rolling pin and used the same to hit Yap on the forehead. Yap was eventually able to wrest possession of

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5 Records, Vol. I, pp. 1-2.
6 *Id.* at 101.
7 *Id.* at 105-106.

the rolling pin and was able to hit Ang also in the forehead causing a wound from which blood oozed. Ang tried to recover possession of the rolling pin from Yap, but the latter bit the former's hand. The rolling pin fell and, thereafter, both Yap and Ang got out of the car and ran towards opposite directions.

On the other hand, the prosecution alleged that on November 5, 2012, Ang and Yap met at the KFC store along Vito Cruz St., in Manila because the latter wanted to introduce the former to a businessman. Between 2:30 and 3:00 in the afternoon, Yap arrived carrying two cups of coffee and a plastic bag. Ang invited Yap to go inside the KFC, but the latter insisted that that they wait inside Ang's car. Yap then offered Ang a cup of coffee, but the latter refused because he does not drink coffee. Yap, nonetheless, insisted saying that the cup of coffee he bought was expensive. Ang acceded and took a sip but Yap encouraged him to finish his coffee. Ang drank ¾ of the coffee. Shortly thereafter, he felt groggy and, subsequently, lost consciousness. Upon regaining consciousness, Ang felt something hit his head. Thereupon, he saw Yap holding a bloodied rolling pin and hitting him with it. He tried to parry the blows and kept asking Yap why he was hitting him but the latter did not reply and, instead, hit him several times more. Feeling helpless, Ang opened the car door and successfully escaped despite Yap's attempt to prevent him from doing so. He was eventually able to ask help from passers-by who brought him to the hospital.

After trial, the RTC rendered judgment finding Yap guilty as charged. The dispositive portion of the RTC decision, dated August 7, 2015, reads as follows:

> **WHEREFORE, IN VIEW OF ALL THE FOREGOING,** the Court finds accused **JOHNNY GARCIA YAP @ "Charlie" a.k.a. JOHNNY YAP y GARCIA @ "Charlie"**, GUILTY beyond reasonable doubt of the crime of Attempted Murder and hereby sentences him to suffer the penalty on (sic) imprisonment of from (sic) **Four (4) Years and Two (2) months, as minimum, to Eight (8) years as the maximum penalty**; to pay the complainant the sum of P18,287.00 as actual damages and P20,000.00 as moral damages.
>
> Costs against the accused.
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> **SO ORDERED.**[8]

The RTC ruled that the essential elements of an attempted felony are present in the instant case and there was intent to kill. The trial court also found the circumstance of treachery to be present, but ruled that evident premeditation was absent.

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8 Records, Vol. II, p. 21. (Emphasis in the original)

Yap filed a Motion for Reconsideration[9] essentially contending that his conviction was not warranted by the evidence on record. However, the RTC denied the Motion for Reconsideration in its Order dated May 3, 2016.

Aggrieved by the ruling of the RTC, Yap appealed to the CA arguing that: (1) treachery was not proven because there was no direct or circumstantial evidence to establish that he put a sleep-inducing substance in Ang's cup of coffee; (2) the prosecution failed to prove his guilt beyond reasonable doubt; and (3) the trial court erred in failing to appreciate his exculpatory theory, as it constitutes not only self-defense but also denial.[10] Yap was allowed to continue on provisional liberty under the same bail pending his appeal.[11]

In its assailed Decision, the CA found no merit in Yap's appeal and affirmed the judgment of the RTC, thus:

> **WHEREFORE**, premises considered, the instant Appeal is **DISMISSED**. Accordingly, the assailed Decision and Order of the Regional Trial Court of Manila, Branch 27 and Branch 14, dated 7 August 2015 and 3 May 2016, respectively, are hereby **AFFIRMED *in toto***.
>
> **SO ORDERED.**[12]

The CA held that by invoking self-defense during pre-trial, Yap has admitted performing the criminal act and it is incumbent upon him to prove the presence of any claimed justifying circumstance. The CA, however, ruled that the defense failed to establish the essential element of unlawful aggression on the part of Ang; that the RTC correctly found that the severity and location of the injuries sustained by Ang are indicative of a serious intent to inflict harm upon him and not merely accidentally inflicted as Yap claims. The CA also gave credence to the findings of the RTC of the presence of the qualifying circumstance of treachery.

Yap filed a Motion for Reconsideration,[13] but the CA denied it in its Resolution of September 22, 2017.

Hence, the present petition for review on *certiorari* filed by Yap[14] based on the following grounds:

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9 *Id.* at 32-59.
10 See Appellant's Brief, CA *rollo*, pp. 32-54.
11 Records, Vol. II, p. 171.
12 *Rollo*, p. 54. (Emphasis in the original)
13 CA *rollo*, pp. 113-132.
14 Hereinafter referred to as "petitioner."

(FIRST)
THE HONORABLE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS IN AFFIRMING THE JUDGMENT OF CONVICTION DESPITE THE GROSS MISTAKE OF THE COUNSEL FOR THE PETITIONER IN INTERPOSING SELF-DEFENSE.

(SECOND)
THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THE SUPREME COURT IN NOT CONSIDERING THE INABILITY OF THE PROSECUTION TO PROVE THE QUALIFYING CIRCUMSTANCES ALLEGED IN THE INFORMATION.

(THIRD)
THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE IN A WAY NOT PROBABLY IN ACCORD WITH LAW IN NOT HOLDING THAT THE CRIME, IF ANY, COMMITTED BY THE ACCUSED IS PHYSICAL INJURIES ONLY AND NOT ATTEMPTED MURDER DUE TO THE ABSENCE OF ANY QUALIFYING CIRCUMSTANCE.[15]

The basic issue for this Court's resolution in the present petition is whether or not the CA correctly upheld the conviction of herein petitioner for attempted murder.

The Court finds the petition partly meritorious.

As a preliminary matter, petitioner contends that he should not be bound by his previous counsel's gross mistake in invoking self-defense as the latter did not explain the nature and concept of such defense to him.

The Court is not persuaded.

It is a well-settled rule that the client is bound by the counsel's conduct, negligence, and mistakes in handling the case; and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently.[16] An exception to this rule is consistently enunciated in a number of cases,[17] and that is when the negligence of counsel had been so egregious that it prejudiced his client's interest and denied him his day in court.

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15 *Rollo*, p. 18.

16 *Pascual, et al. v. People*, 606 Phil. 451, 461 (2009).

17 *People v. Bitanga*, 552 Phil. 686, 696 (2007), citing *Apex Mining, Inc. v. Court of Appeals*, 377 Phil. 482, 493 (1999); *Salonga v. Court of Appeals*, 336 Phil. 514, 527 (1997); *Legarda v. Court of Appeals, et al.*, 272-A Phil. 394, 406 (1991).

In the instant case, the general rule applies and the above exception finds no application because petitioner failed to prove that his previous counsel's act of invoking self-defense, on petitioner's behalf, is tantamount to gross negligence as to deprive petitioner of his right to due process. The Court agrees with the Office of the Solicitor General (*OSG*) that records would show that petitioner was ably represented by his former counsel during trial and was not denied due process, as shown by the following: *first*, petitioner and his wife were able to take the witness stand where they themselves were personally able to present their case to the court during direct examination; *second*, during cross-examination, petitioner was able to knowingly and intelligently answer the questions propounded to him by the prosecutor and the trial judge; and *third*, when the prosecution presented its case, petitioner, through his former counsel, was able to examine the witnesses and the evidence presented.

It is true that the right to be assisted by counsel is an indispensable component of due process in criminal prosecution and that such right is one of the most sacrosanct rights available to the accused.[18] As to the essence of the right to counsel, this Court has held as follows:

> x x x The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.
>
> The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.[19]

In the present case, the Court finds no error in the OSG's argument that there is nothing on record which would show that petitioner's former counsel handled his defense in an incompetent manner nor did he evade his duties as such. On the contrary, petitioner, through his previous counsel, was able to participate actively in the proceedings before the trial court.

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18 *Ibañez v. People*, 779 Phil. 436, 453 (2016).

19 *People v. Bermas*, 365 Phil. 581, 595 (1999).

Moreover, for the abovementioned exception to apply, the gross negligence of counsel should not be accompanied by his client's own negligence or malice.[20] In this regard, the Court likewise agrees with the OSG's observation and accompanying argument that petitioner was guilty of negligence for his failure to raise the issue of his former counsel's alleged incompetence before the trial court and the CA, after engaging the services of a new counsel. It appears that this defense is a mere afterthought because if petitioner and his present counsel really believed that the previous counsel was guilty of gross incompetence in handling petitioner's case, they would have brought this matter to the attention of either the RTC or the CA at the first instance. But they did not. Hence, they must suffer the effect of their passivity and inaction.

Neither can petitioner claim ignorance as a layman with respect to the consequences of his counsel's invocation of self-defense. Settled is the rule that when petitioner is at fault or not entirely blameless, there is no reason to overturn well-settled jurisprudence or to interpret the rules liberally in his favor.[21] Where petitioner failed to act with prudence and diligence, his plea that he was not accorded the right to due process cannot elicit this Court's approval or even sympathy.[22] In the instant case, the OSG was correct in contending that it is petitioner's obligation to make inquiries with his counsel regarding his case, including its merits, the legal strategy to be employed and even the evidence to be presented. It does not require a man well-versed with the law to perform this duty. Failing in this regard, petitioner should suffer whatever adverse judgment is rendered against him.

Going to the merits of the case, the Court finds that petitioner's claim of self-defense does not deserve merit. It is settled that a person invoking self-defense admits to having inflicted harm upon another person - a potential criminal act under Title Eight (Crimes Against Persons) of the Revised Penal Code (RPC).[23] However, he or she makes the additional, defensive contention that even as he or she may have inflicted harm, he or she nevertheless incurred no criminal liability as the looming danger upon his or her own person justified the infliction of protective harm to an erstwhile aggressor.[24] Hence, it becomes incumbent upon the accused to prove by clear and convincing evidence the three (3) elements of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[25] Of these elements, the accused must, initially, prove

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20 *Pascual, et al. v. People, supra* note 16.
21 *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 185-186 (2005).
22 *Id.*
23 *Velasquez, et al. v. People*, 807 Phil. 438, 449 (2017).
24 *Id.*
25 *People v. Lalongisip*, 635 Phil. 163, 171 (2010).

unlawful aggression, because without it, there can be no self-defense, either complete or incomplete.[26]

In the instant case, both the RTC and the CA found that, contrary to the claims of petitioner, the evidence of the case shows that there was no unlawful aggression coming from Ang. The Court finds no error on the part of the RTC and the CA in holding that the records are bereft of sufficient proof to support petitioner's allegation that Ang punched and hit him on the face. In fact, the CA held that petitioner stated in his testimony that he has no evidence of his claimed injury and, indeed, his medical certificate states that he did not exhibit any external signs of physical injuries at the time of his examination.[27] Neither was there competent evidence to prove petitioner's claim that Ang's head injuries were accidentally self-inflicted when petitioner supposedly lost grip of the rolling pin when he and Ang were fighting for its possession which allegedly caused Ang to hit himself on the head. The RTC also observed that petitioner never mentioned during the police investigation that he acted in self-defense. Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances.[28] It has been appropriately emphasized that the court has no test of the truth of human testimony, except its conformity to human knowledge, observation, and experience.[29] Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[30] In sum, the Court finds no error in the decision of both the RTC and the CA that petitioner's assertion of self-defense cannot be justifiably appreciated for being uncorroborated by independent and competent evidence, and for being extremely doubtful by itself.

The foregoing notwithstanding, this Court finds that the RTC and the CA committed error in finding petitioner guilty beyond reasonable doubt of the crime of attempted murder.

At this point, it bears to reiterate the settled rule that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.[31] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[32]

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26 *Id.*
27 See Exhibit "I-4"; records, vol I, p. 289.
28 *Medina, Jr. v. People*, 724 Phil. 226, 238 (2014).
29 *Id.*
30 *Id.*
31 *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017).
32 *Id.*

Murder is defined and punished by Article 248 of the RPC, as amended by Republic Act No. 7659, to wit:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x
>
> 2. With evident premeditation;
>
> x x x x

To successfully prosecute the crime of murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[33]

On the other hand, the third paragraph, Article 6 of the RPC provides that:

> x x x x
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> 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.

The essential elements of an attempted felony are as follows: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[34]

With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the

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33 *Id.*

34 *Fantastico, et al. v. Malicse, Sr., et al.*, 750 Phil. 120, 131 (2015).

life of the person attacked.[35] Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor.[36] Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*.[37] Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter.[38] The following factors are considered to determine the presence of intent to kill, namely: (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.[39]

In the instant case, a careful review of the records reveals that petitioner's alleged intent to kill Ang cannot be clearly inferred from the surrounding circumstances. As to the means used by petitioner, there is no evidence to show that he carried with him any deadly weapon during his meeting with Ang. The rolling pin which he used as a weapon to hit Ang was already inside the latter's car when they met. Also, if petitioner really intended to kill Ang, he would have hit the latter several times. However, the physician, who examined Ang and was presented as a witness by the prosecution, testified that the injuries sustained by Ang were only caused by a single blow to the forehead.[40] As to the nature, location and number of wounds, contrary to the conclusion of the CA, there is no evidence to show that Ang's wounds were serious and severe. He did not obtain any head fracture and his injuries proved to be superficial as they only consisted of a hematoma, contusion and laceration.[41] In fact, the laceration is only about an inch in length.[42] Moreover, Ang was fully treated within two hours and was immediately sent home.[43] The superficiality of the injuries sustained by the private complainant is a clear indication that his life and limb were never in actual peril. With respect to the conduct of petitioner, and the surrounding circumstances before and during the time that Ang was injured, there is no clear evidence of petitioner's intent to kill the former. In fact, even at the time that he testified in court, Ang was still at a loss why petitioner wanted to harm him.

Based on the foregoing circumstances, while it is clear that petitioner really intended to harm Ang, it cannot be concluded nor inferred beyond

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35 *Engr. Pentecostes, Jr. v. People*, 631 Phil. 500, 512 (2010).
36 *Id.*
37 *De Guzman, Jr. v. People*, 748 Phil. 452, 458 (2014).
38 *Id.* at 458-459.
39 *Id.* at 459.
40 See TSN, January 22, 2014, p. 15.
41 *Id.* at 9-10.
42 *Id.* at 20.
43 *Id.* at 12; see Clinical Abstract, *supra* note 27.

doubt that in causing the injuries of Ang, petitioner had intended to kill him. When such intent is lacking but wounds are inflicted upon the victim, the crime is not attempted murder but physical injuries only.[44]

Article 266 of the RPC provides that "[t]he crime of slight physical injuries shall be punished by *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period." Indeed, although the charge in the instant case is for attempted murder, a finding of guilt for the lesser offense of slight physical injuries is proper, considering that the latter offense is necessarily included in the former, as the essential ingredients of slight physical injuries constitute and form part of those constituting the offense of murder. As earlier discussed, evidence on record shows that Ang was brought to the Ospital ng Maynila for medical treatment immediately after the incident. Right after receiving medical treatment, Ang was then released as an out-patient. There was no competent evidence to establish that he was incapacitated for labor and/or required medical attendance for more than nine days. Without such evidence, the offense is only slight physical injuries.

Anent the alleged aggravating circumstance of treachery, this Court has ruled that the essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.[45] Moreover, treachery is not presumed but must be proved as conclusively as the crime itself.[46] Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence.[47] Mere probabilities cannot substitute for proof required to establish each element necessary to convict.[48]

In the instant case, there was no clear evidence to show that Ang was unconscious at the time that petitioner began to attack him. On the contrary, there is no dispute that Ang was immediately brought to the hospital after he sustained his injury and that the physician who examined him testified that he arrived at the Emergency Room of the hospital fully conscious and he did not exhibit any physical manifestations of being intoxicated or drugged.[49] This directly contradicts the evidence of the prosecution that, since the sleep-inducing drug found in Ang's urine was more than five times the therapeutic dosage given to a person, the sedative effect of the drug would

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44 *Engr. Pentecostes, Jr. v. People, supra* note 35; *People v. Villacorta*, 672 Phil. 712, 727 (2011).
45 *People v. Ortiz, Jr.*, 638 Phil. 521, 527 (2010).
46 *People v. Manzano, Jr.*, G.R. No. 217974, March 5, 2018.
47 *People v. Panerio*, G.R. No. 205440, January 15, 2018
48 *Id.*
49 TSN, January 22, 2014, pp. 20-23.

have lasted up to five hours.[50] If Ang was indeed rendered unconscious at the time that he was attacked, he should have manifested the effects of such drug at the time of his treatment at the Ospital ng Maynila, which was immediately after such attack. However, evidence proves otherwise. Furthermore, the fact that both the prosecution and the defense did not dispute the fact that there was a struggle between Ang and petitioner negates the theory of the prosecution that Ang was rendered totally defenseless. Thus, the prosecution failed to prove the presence of treachery in the instant case.

Article 266(1) of the RPC provides:

> ART. 266. *Slight physical injuries and maltreatment.* The crime of slight physical injuries shall be punished:
>
> > 1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party from labor from one to nine days, or shall require medical attendance during the same period.

Under Article 27 of the RPC, the penalty of *arresto menor* spans from one (1) day to thirty (30) days. The Indeterminate Sentence Law does not apply since the said law excludes from its coverage cases where the penalty imposed does not exceed one (1) year. In the absence of any mitigating or aggravating circumstance, the imposable penalty shall be *arresto menor* in its medium period, which ranges from eleven (11) days to twenty (20) days. Consequently, the Court imposes upon petitioner a straight sentence of fifteen (15) days of *arresto menor*.

Under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries.[51] Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act.[52] An award requires no proof of pecuniary loss. Pursuant to previous jurisprudence, an award of Five Thousand Pesos (₱5,000.00) moral damages is appropriate for less serious, as well as slight physical injuries.[53]

WHEREFORE, the instant petition for review on *certiorari* is **PARTLY GRANTED**. The Decision of the Court of Appeals, dated March 8, 2017, in CA-G.R. CR No. 38903, which affirmed the August 7, 2015 Decision of the Regional Trial Court of Manila, Branch 27 in Criminal Case No. 13-297324, finding herein petitioner guilty of the crime of attempted

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50 See TSN, March 19, 2014, pp. 19-24.
51 *People v. Villacorta, supra* note 44, at 729.
52 *Id.*
53 *Id.*

murder, is hereby **MODIFIED** and instead finds petitioner **GUILTY** beyond reasonable doubt of the crime of slight physical injuries, as defined and penalized under Article 266 of the Revised Penal Code, and sentenced to suffer the penalty of fifteen (15) days of *arresto menor*. Petitioner is **ORDERED** to **PAY** the victim, George Hao Ang, moral damages in the sum of Five Thousand Pesos (₱5,000.00).

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

On wellness leave
ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

On wellness leave
RAMON PAUL L. HERNANDO
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
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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)

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