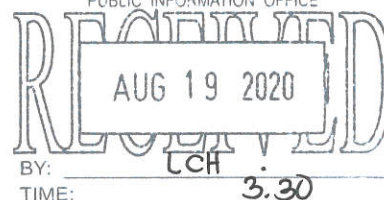




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



FIRST DIVISION

ROLANDO GEMENEZ y
PARAME,

Petitioner,

- versus -

PEOPLE OF THE
PHILIPPINES,

Respondent.

G.R. No. 241518

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

Promulgated:

MAR 04 2020 *with bubble*

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by the petitioner Rolando Gemenez y Parame (Gemenez) assailing the Decision² dated March 28, 2018 and Resolution³ dated August 15, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40018, which affirmed the Judgment⁴ dated March 22, 2017 of Branch 31, Regional Trial Court of San Pedro, Laguna (RTC) in Criminal Case No. 12-8587-SPL, finding Gemenez guilty beyond reasonable doubt of the crime of Frustrated Homicide.

The Facts

An Information was filed against Gemenez for the attack on Jerry Bechachino (Jerry), the accusatory portion of which reads:

¹ *Rollo*, pp. 11-32.

² Id. at 36-49. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a member of this Court) and Renato C. Francisco concurring.

³ Id. at 51-52.

⁴ Id. at 71-81. Penned by Judge Sonia T. Yu-Casano.

That on or about December 29, 2011, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of treachery and abuse of superior strength and with deliberate intent to take life, did then and there willfully, unlawfully and feloniously shoot twice one JERRY BECHACHINO y REYES using a shotgun while he was just walking along the street of Sout[h]ville 3A Subdivision, Barangay San Antonio, San Pedro, Laguna, not knowing of the impending danger against his life and while he was unarmed, as a consequence, he suffered gunshot wounds on his left chest, left arm and right thumb, accused, having performed all the acts of execution which would have produced the crime of MURDER but nevertheless did not produce it by reason of causes independent of his will, that is, the able and timely medical assistance given to the said Jerry Bechachino y Reyes.

CONTRARY TO LAW.⁵

Upon arraignment, Gemenez pleaded not guilty to the crime charged. Pre-trial and trial on the merits then ensued.⁶

The facts established during the trial, as summarized by the RTC, are as follows:

Jerry Bechachino y Reyes testified that he is a resident of Lot 12, Block 29, Southville 3A, Barangay San Antonio, San Pedro, Laguna. He knew the accused because at the time of the incident complained of, he was a volunteer barangay tanod of Barangay San Antonio. They were also previous neighbors in Barangay Nueva, San Pedro, Laguna. At about 1:30 in the early morning of December 29, 2011, he was on his way home from work as a welder when he met his friend Axiel inside Southville 3A. Axiel also resided in Southville. They were walking along Block 29, Lot 15 of the same Southville 3A when they noticed that accused and his companion were following them. He clearly saw their faces because the main road where they were walking was well-lighted with street lights. After a while, accused and his companion blocked their path. While standing in front of him at a distance of two meters, accused pointed his shotgun at him. Afraid that the gun might fire off, he tried to parry the gun but accused fired it twice hitting his right thumb, left chest and left arm. Accused'[s] companion also took out a gun but he did not fire it. He was dragged towards a tricycle while Axiel scurried away out of fear. He tried to run but lost consciousness. He was in comatose condition for a week and regained consciousness at the intensive care unit of the Philippine General Hospital. He identified photographs of himself in a hospital bed with several tubes attached to his naked body. As a consequence of his injuries, he incurred hospital expenses of P100,000.00 and as proof, presented receipts.

On cross-examination, he testified that he was walking home when he accidentally met along his way Axiel and Reneson as they were also living in the same subdivision. However, Reneson had to go on a different way so it was only him and Axiel who were left together when they were accosted by accused Rolando Gemenez and his companion. This time he averred that accused was with two (2) companions whose identities he did not know. He

⁵ Id. at 71.

⁶ Id.

narrated that when he was shot by the accused, the latter's two (2) companions dragged them and tried to board them on a tricycle. He asked them "Sir, ano po ang kasalanan [namin], bakit niyo po kami ginaganito?" But they did not reply. He called the men "Sir" as they were wearing the uniform of Barangay San Antonio. He recalled that after his discharge from the hospital, he stayed in their house in Manila to recuperate and filed this case only after more than a month. He was familiar with the accused because he was a barangay tanod and he saw him roam the subdivision. Accused also used to be a neighbor in Barangay Nueva for years. To his recollection, he and the accused have no quarrel in the past. He was not doing anything wrong when accused shot him but he noticed that accused was drunk when he accosted them. He did not know if accused left Southville after the incident. Accused did not try to talk to him during his recovery. He was threatened by the other members of the barangay and out of fear, Axiel, his companion that night did not want to testify and had gone into hiding.

Dr. Angelo Leaño an orthopedic surgeon at the Philippine General Hospital was next presented. He testified that the complainant Jerry Bechachino was referred to him for his injury on the thumb. When he saw the patient, he was already in the operating suite for operation of his gunshot wounds at the left side of the chest and back and at the right thumb and was hooked up to a respirator. He confirmed that the patient sustained several injuries but his participation was only for the treatment of the thumb. The rest of the injuries were treated by the trauma service of the general surgery with Dr. Vienna Encila as one of the attending surgeons as shown by the Medico Legal Certificate, a Clinical Abstract, an Anatomical Diagram and an Operating and Anaesthesia Record which he presented and identified.

X X X X

Last presented to the witness stand was Reneson Madridano y Ison. Before his presentation, he repeatedly refused to appear in court to testify warranting a show cause order from the court for unduly delaying the trial. Since he also failed to submit his explanation to the show cause order of the court, upon motion of the public prosecutor, the court cited him in contempt of court for defying the lawful order of this court and ordered his arrest. Upon his arrest, he testified that he and Jerry Bechachino are friends and he knew that accused Rolando Gemenez y Parame is a barangay tanod in their place in Barangay San Antonio. He denied the contents of the affidavit he executed which pointed to the accused as the one who shot Jerry Bechachino. While he admitted that he had executed an oath before Fiscal Frisco Marfil as to its truthfulness and veracity, he insisted that he was merely coached in its execution.⁷

On the other hand, the evidence for the defense, as summarized by the RTC, is as follows:

Accused Rolando Gemenez y Parame denied the allegations against him. He testified that on December 29, 2011, he was on duty as barangay tanod of Barangay San Antonio, San Pedro, Laguna from 9:00 in the evening until 12:00 midnight. While on duty, the barangay authorities did not receive any report of trouble/commotion. The following morning, while he was at a

⁷ Id. at 71-74.

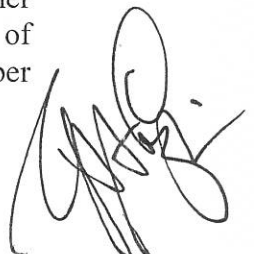


tricycle terminal to take a ride to Julie's Bakeshop where he was a chief baker, the driver of the tricycle he boarded told him that a person was shot early that morning. He did not bother to find out the name of the victim nor the place of the incident. Later on, his fellow tanods also told him of the shooting incident. He also did not bother himself with the details. He knew one Reneson Madridano, the witness presented by the prosecution, because he was the friend of the brother of the complainant Jerry Bechachino. He did not know why he was implicated by the complainant. When he first heard that Jerry Bechachino pointed to him as the assailant, he went to the barangay hall and entered it on the blotter but he cannot really recall what was entered on the blotter. He did not have a copy of the excerpt of the blotter but committed to secure a copy from the barangay which he never did. He further denied knowing Jerry Bechachino and averred that he met him for the first time during the preliminary investigation at the fiscal's office.

On the clarificatory questionings by the court on his whereabouts at the time of the incident complained of, he stated that he was at his residence sleeping.

Xerence Roche testified that she knew the parties to this case. Accused Rolando Gemenez and her husband were barangay volunteers while she and the mother of complainant Jerry Bechachino were the leaders of the block where they lived. She heard that Jerry was shot but denied that it was the accused who shot him. She pointed to a man 6 feet in height, wearing a bonnet and carrying a shotgun as the person who actually shot Jerry. She narrated that at around 1:30 in the early morning of December 29, 2011, she was fetching her husband at the corner street near their house. Her husband was at that time drinking liquor and playing a card game (tong-its) with his friends Mario Anaya and Rolando Legaspi. While she was with them, they heard a sound coming from a far distance. Thinking that it was just a tire exploding, they did not do anything. After a while, they heard another sound but this time she was sure it was gunfire because it came just around five meters away from them. They also heard shouts "Dalhin sa hospital." They were about to stand up when a man 6 feet in height, wearing a bonnet and holding a shotgun coming from the direction of the gunfire appeared and poked his shotgun at them. He also uttered words, "Hmmp, hmmp". After Mario Anaya told the man: "Wala kaming alam diyan, naglalaro lang kami", the man proceeded on his way. She testified that it could have been impossible for accused to shoot Jerry because he was not at the place of the incident when it happened. But she admitted that she did not know where he was at that precise time. She further testified that while she did not witness the armed masked man shoot Jerry, she was sure it was him who did it because he came from the direction of the gunfire. Finally, she testified that she did not know why the armed man pointed his shotgun at them but despite this, they did not report the incident to the authorities. Neither was the incident involving the masked man entered into the barangay blotter.

Leonardo Pullarca, a regular barangay tanod testified that he was a barangay tanod of Barangay San Antonio from 1995-2013. In 2009, accused joined them as volunteer tanod but accused stopped reporting for duty after the incident. Because of the long period of time that accused was a volunteer tanod they became friends. On December 28, 2011, he was on duty in the barangay outpost of Southville 3A from 6:00 in the evening until 6:00 in the morning of the following day or on December 29, 2011. Accused, on the other hand, was on duty from 9:00 o'clock in the evening until midnight of December 29, 2011. At about 1:00 o'clock in the early morning of December



29, 2011, a teenager came running to the outpost where he and his driver whose name he cannot remember were posted. The teenager was shouting: “May binaril, may binaril”. For safety reasons, he and his driver, ordered the teenager to enter the outpost and they closed its door. Afterwards, a big masked man who was carrying a shotgun passed by their outpost and exited the gate of Southville 3A. When the armed man was already out of the subdivision, several teenagers arrived asking to borrow a service vehicle to bring the person who was shot to the hospital. Two weeks after, the accused was charged with this offense. He denied that it was the accused who shot Jerry x x x because accused was already in his residence when the shooting incident happened. He insisted that it was the big man carrying a gun x x x who shot Jerry. He, however, admitted that he was only guessing that the accused was already at home at the time of the incident but he did not really see him in his house. He also admitted that he did not bother to get the names of the teenagers who reported that somebody was shot and who borrowed a service vehicle x x x. He narrated that in accordance with his duties and responsibilities, he entered the incident involving the armed men in the barangay blotter but failed to present proof of such entry.⁸

After the defense rested its case, the case was then submitted for decision.

Ruling of the RTC

After trial on the merits, in its Judgment⁹ dated March 22, 2017 the RTC convicted Gemenez of the crime of Frustrated Homicide. The dispositive portion of the said Judgment reads:

WHEREFORE, accused Rolando Parame Gemenez is hereby found GUILTY beyond reasonable doubt of Frustrated Homicide and he is hereby sentenced to suffer the penalty of six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum. He is further ordered to pay the complainant Jerry Bechachino the amount of P25,000.00 as temperate damages and P25,000.00 as moral damages with interest of 6% per annum computed from the finality of this judgment until fully paid.

SO ORDERED.¹⁰

The RTC ruled that the fact that Jerry was shot and sustained injuries was sufficiently proved by the evidence. Specifically, it held that “the pictures of the complainant on the hospital bed attached to numerous tubes further supports the theory that the injury could have been fatal if not for timely medical intervention.”¹¹

As to the identity of Jerry’s assailant, the RTC held that it was also established beyond reasonable doubt that it was Gemenez. According to the RTC, Gemenez’s mere denial and alibi could not be given more credence over

⁸ Id. at 74-76.

⁹ Supra note 4.

¹⁰ *Rollo*, p. 81.

¹¹ Id. at 76.



the positive identification of the victim himself. Apart from the testimonies of the other witnesses — who even had motive to help Gemenez as they had close relations with him — the defense presented no other evidence to establish his alibi and denial. Notably, the defense undertook to present evidence, such as records of *barangay* blotters, to bolster the credibility of their version but they eventually failed to present any such documents. Most importantly, the RTC noted that Gemenez was unable to provide for a reason why Jerry would falsely accuse him of the crime.

As to the crime committed, the RTC ruled that it was only Homicide and not Murder because neither of the qualifying circumstances of treachery or abuse of superior strength was sufficiently proven by the prosecution. The RTC held that treachery could not be appreciated because it was unclear from the evidence that Gemenez specifically sought the mode of attack to facilitate the perpetration of the crime without risk to himself. Similarly, abuse of superior strength could not be appreciated as well because there was no clear proof of Gemenez's physical superiority over Jerry, or that the former took advantage of any such superiority to consummate the offense. Thus, the trial court convicted him only for Frustrated Homicide.

Aggrieved, Gemenez appealed to the CA.

Ruling of the CA

In the assailed Decision¹² dated March 28, 2018, the CA affirmed the RTC's finding that Gemenez was the perpetrator of the crime. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED**. The March 22, 2017 *Judgment* rendered by the Regional Trial Court, Branch 31, San Pedro City, Laguna in Criminal Case No. 12-8587-SPL is hereby **AFFIRMED**. The moral damages awarded to private complainant, Jerry Bechachino, is however **MODIFIED** in that the amount is increased to **Php30,000.00**.

SO ORDERED.¹³

The CA affirmed the RTC's finding that the pictures presented as evidence sufficiently established that Jerry would have died from the injuries he sustained if not for the timely medical assistance given him. The CA similarly did not believe the alibi and denial interposed by Gemenez because he was not able to prove that it was physically impossible for him to be at the vicinity of the place where the crime was committed. Furthermore, the CA also found that Jerry did not have ill motive in pointing to Gemenez as the one who shot him. Finally, the CA ruled that slight variation in the testimony of witnesses, like Jerry's testimony in this case, does not affect the credibility of

¹² Supra note 2.

¹³ *Rollo*, p. 48.



such testimony, and is in fact even indicative of the truth because it shows that the witness was not coached and his testimony was not fabricated.

Gemenez sought reconsideration of the above Decision, but the same was denied by the CA in a Resolution¹⁴ dated August 15, 2018.

Hence, the instant case.

Issue

For resolution of the Court are the following issues submitted by Gemenez:

- (1) Whether the CA erred in upholding the credibility of the prosecution witnesses, while disregarding the consistent and corroborated testimonies of the defense witnesses;
- (2) Whether the CA erred in affirming the findings of the RTC which were plainly based on speculation and conjectures;
- (3) Whether the CA erred in affirming his conviction despite the prosecution's failure to prove the elements of frustrated homicide with evidence beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious. The evidence of the prosecution established only the elements of Attempted Homicide, instead of Frustrated Homicide.

First and Second Issues: The CA did not err in affirming the RTC's factual findings

In questioning his conviction, Gemenez claims that the prosecution was not able to establish that the attack on Jerry was made with intent to kill. He argues that the nature of the wounds sustained by Jerry were not sufficiently established by the prosecution, and consequently, there was no proof of intent to kill.

In addition, Gemenez claims that the CA erred in convicting him on the basis of Jerry's testimony when such was highly incredible. He points out that, in contrast, the testimonies of the witnesses of the defense corroborate each other on the material points.

The arguments fail to persuade.

¹⁴ Supra note 3.



With regard to the element of intent to kill, the Court rules that the prosecution was able to establish that the attack was done with intent to kill. In *De Guzman, Jr. v. People*,¹⁵ the Court pointed out that there are several ways by which courts may determine the existence 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 [as well as] the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim.”¹⁶

As will be discussed further later on, it is true that the prosecution failed to illustrate the *full extent* of the injuries sustained by Jerry. However, the prosecution was still able to establish that there was intent to kill by 1) the means used by the malefactor which, in this case, was a shotgun; and 2) the testimony of the victim himself, which was corroborated by the Medico-Legal Certificate¹⁷ presented in this case. Jerry claimed to have been shot twice, and in one of those two shots, the bullet hit his thumb before penetrating his body because he was trying to parry the gun. The Medico-Legal Certificate, in turn, indicates that he sustained three gunshot wounds, *i.e.*, on his “left chest with pulmonary contusion; on his “left arm;” and on his “right thumb.”¹⁸

Given the following evidence — the weapon used, that it was fired **twice**, along with the location of the injuries — the Court concludes that the attack was indeed made with intent to kill.

As regards Gemenez’s contention that the testimonies of the defense witnesses deserve more weight as compared with Jerry’s testimony, the Court quotes with approval the following disquisition by the RTC:

As to who fired the near fatal shots, the court is convinced that it was the accused. It should be noted that the only defense put up by the accused is denial and alibi claiming that he was not at the scene of the crime when the incident of shooting took place. He stated that he was then in his house sleeping after coming from his night duty as a volunteer barangay tanod. However, for alibi to prosper, the accused must satisfactorily prove that he was somewhere else when the crime was committed and that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, the accused failed to show by convincing evidence that it was physically impossible for him to have been at the crime scene during its commission considering that his residence was only a short 500 meters more or less away from the place where the incident happened. Likewise, as repeatedly held, positive identification by the prosecution witnesses of the accused as the perpetrator of the crime is entitled to [greater] weight than his alibi and denial. [These] guidelines [find] more compelling application when the lone witness is the victim himself whose direct and positive identification of his

¹⁵ 748 Phil. 452 (2014).

¹⁶ *Id.* at 459.

¹⁷ *Rollo*, p. 112.

¹⁸ *Id.*

assailant is almost always regarded with indubitable credibility, owing to the natural tendency of the victim to seek justice for himself, and thus strive to remember the face of his assailant and to recall the manner in which the latter committed the crime.

In this case, the accused had been known to the victim even before the commission of the crime. They have been former neighbors in Barangay Nueva and present neighbors in Southville 3A at the time of the crime. Accused was also a barangay tanod volunteer whom the victim would see roving the streets of their neighborhood. Aside from the accused [being] already known or familiar to the victim, the latter also had a clear view of his attacker. Thus, he noticed the accused following him and his companion as they were walking on the road. He had a better view of him when accused blocked his path and pointed his shotgun about two meters from him. Accused and the victim were so close to each other that the latter even managed to parry the gun with his hand, only to have his thumb blown up when the gun fired. Finally, the victim had not been shown to have been motivated by malice or ill-will in implicating the accused. When there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.

x x x x

As for the inconsistent testimony of the victim as to the number of companions accused had at that time, the court finds it too trivial to affect the credibility of the victim's testimony.

The story of defense witnesses Xerence Roche and Leonardo Pullarca about a big and gun-wielding man with bonnet who passed them and even poked a gun at Roche and company is incredible and unworthy of the slightest belief. Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. Here, the scenario portrayed by Roche and Pullarca defies the imagination, logic and common experience of mankind. They want this court to believe that a criminal, after firing at a victim would casually and with impunity roam the vicinity in that get-up even passing a barangay outpost and stopping by a group of persons and pointing a gun at them. Bad as their effort to paint a criminal different from the accused-comrade, their reaction to the alleged gun man that they claim is worse. Accused'[s] witnesses, a barangay tanod and a wife of a barangay tanod who was allegedly present when the masked man poked his shotgun at them, never attempted to give chase or report the presence of this most likely assailant. By their account, they did nothing but look at this big man as he passed by nonchalantly. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance. Such is the testimonies of the defense witnesses.

But what the defense has is not only an incredible story. Its witnesses are also not worthy of belief as they have a clear and manifest interest to absolve the accused who is their friend and fellow barangay tanod. Thus, their naturally biased testimony in support of their comrade's denial of



culpability deserves scant consideration in light of the positive identification and categorical declaration made by the victim himself against the accused. Jurisprudence holds that when the denial of the accused is tended to be established only by himself, his relatives, or friends, such denial should be accorded the strictest scrutiny as it is necessarily suspect and cannot prevail over the testimonies of the more credible testimony for the prosecution. So it must be here.¹⁹

In *People v. Sanchez*,²⁰ the Court laid down the following guidelines in the assessment of credibility of witnesses for cases on appeal:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.²¹

Applying the foregoing to the case at bar, the Court sees no substantial reason to justify the reversal of the RTC's finding as regards the credibility of the prosecution's witnesses, especially that such finding had been upheld by the CA. Thus, the Court is of the view that it was indeed Gemenez who attacked Jerry, and that the said attack was made with intent to kill.

Third Issue: The CA erred in affirming Gemenez's conviction for Frustrated Homicide, instead of merely Attempted Homicide.

While the prosecution's failure to establish the full extent of Jerry's injuries did not affect the Court's finding that the attack was made with intent to kill, it does have an impact on the *stage* of the execution of the crime.

The RTC and the CA convicted Gemenez of Frustrated Homicide because of their finding that Jerry would have died from the injuries he sustained if not for the timely medical assistance extended to him. Both courts anchored this finding only on the pictures of Jerry on the hospital bed showing that there were numerous tubes attached to him.²²

¹⁹ Id. at 76-78.

²⁰ 681 Phil. 631 (2012).

²¹ Id. at 635-636.

²² RTC Decision, p. 6; *rollo*, p. 76. CA Decision, p. 11; *rollo*, p. 46.



The RTC and the CA erred in their conclusions.

While the Medico-Legal Certificate — which shows the extent of Jerry's injuries — was correctly admitted into evidence as it was authenticated by Dr. Angelo Leano (Dr. Leano), the same was not sufficient to establish that Jerry would have died from the injuries he sustained if not for the timely medical assistance.

According to the prosecution, two doctors attended to Jerry, namely Dr. Leano and Dr. Vienna Encila (Dr. Encila). Dr. Encila was the surgeon who attended to the gunshot wounds in the chest and arm that Jerry sustained, while Dr. Leano worked on the injury to Jerry's thumb only. So while Dr. Leano was qualified to authenticate the Medico-Legal Certificate as he actually attended to Jerry, his personal knowledge, and consequently his testimony was, however, limited only to the extent of the injuries to Jerry's thumb. Dr. Leano himself testified:

Q: I have here the Medico-Legal Certificate marked as **Exhibit "C"** and your name appears on this medico-legal certificate. So, what was your participation with respect to this patient?

A: The patient was referred to me, sir. The patient was brought to the operating suite since he has gun shot wounds at the left side of the chest as well as over the left side of the back and to the right thumb. **My services was called due to the injury on the right thumb to assess the patient's right hand.**

Q: Is that the usual procedure?

A: For emergency cases, the referral to orthopedics will either be at the emergency room or in the operating room, depending on how emergency the case is, sir.

Q: What treatment did you apply to the patient?

A: For this patient, since we realized that the tip of the thumb and the nail were already missing and the finger was too short for a nail to properly grow. We closed the thumb and destroyed the part of the nail where it would start to grow, preventing any growth of the nail, sir.

COURT: You mentioned that the patient sustained several injuries. But your participation was only for the treatment of the thumb?

A: Yes, Your Honor.

Q: And the other injuries were treated by...

A: **The rest of the injuries by the trauma service of the general surgery, Your Honor.**

PROS. DE LEON: Who treated the other injuries?

A: **The other injuries were treated according to the chart by Dr. Vienna Encila, one of the attending surgeons.**²³ (Emphasis and underscoring supplied)

²³ TSN dated March 11, 2014, pp. 3-4; *rollo*, pp. 115-116.

Because Dr. Encila did not testify, there is nothing in the records therefore that explains the full extent of Jerry's injuries. The Medico-Legal Certificate only states that:

In the opinion of the doctor who attended to the patient, under normal conditions without subsequent complications and/or deeper involvement that may be present but not clinically apparent at the time of examination, the said physical injury/injuries will require medical attendance for a period of A and B - more than thirty (30) days.²⁴

What is apparent from the records therefore is only that Jerry sustained gunshot wounds in the left arm, left chest, and right thumb. The full extent of Jerry's injuries — particularly, that they would have caused his death without timely medical assistance — was thus not clearly established. That there were pictures of Jerry on the hospital bed showing that tubes were attached to him does not conclusively establish that the injuries were so serious that he would have died without timely medical assistance. Verily, the RTC and the CA were merely inferring, and this was error.

At this juncture, the Court deems it fit to emphasize that the prosecution has the burden of proving beyond reasonable doubt **each element** of the crime as its case will rise or fall on the strength of its own evidence.²⁵ Any doubt shall be resolved in favor of the accused.²⁶

As there is doubt as to the existence of the second element of Frustrated Homicide²⁷ — that the victim sustained fatal or mortal wounds but did not die because of timely medical assistance — Gemenez's conviction must thus be modified to Attempted Homicide.

Imposable Penalty on the Accused-Appellant

Considering the foregoing modification of Gemenez's conviction, it necessarily follows that the penalty to be imposed on him should likewise be adjusted. Article 249 of the Revised Penal Code imposes the penalty of *reclusion temporal* upon those who commit Homicide. Article 51 of the Revised Penal Code, in turn, provides that the penalty lower by two degrees is to be imposed when the felony committed is in the attempted stage. Thus, Gemenez should suffer the penalty of *prision correccional*.

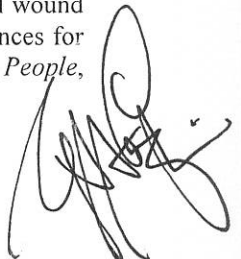
Applying, however, the Indeterminate Sentence Law, *prision correccional* should only constitute the maximum of the penalty to be

²⁴ Rollo, p. 112.

²⁵ *Moster v. People*, 569 Phil. 616, 628 (2008).

²⁶ *Id.*

²⁷ The elements of the crime 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 but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the *Revised Penal Code*, as amended, is present. (*De Guzman, Jr. v. People*, supra note 15 at 458.)



imposed by the Court. Considering all the foregoing, the Court thus imposes on Gemenez the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

Finally, in view of the Court's ruling in *People v. Jugueta*,²⁸ the damages awarded in the questioned Decision are hereby modified to ₱20,000.00 each representing civil indemnity and moral damages.

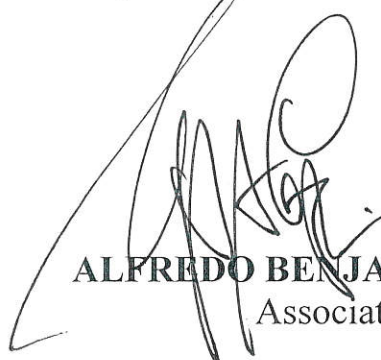
WHEREFORE, premises considered, the Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated March 28, 2018 and Resolution dated August 15, 2018 of the Court of Appeals in CA-G.R. CR No. 40018, which are consistent with this Decision. The Court of Appeals Decision finding petitioner Rolando Gemenez y Parame guilty beyond reasonable doubt is **AFFIRMED** with **MODIFICATION**.

Rolando Gemenez y Parame is hereby declared **GUILTY** of **Attempted Homicide**, and is **ORDERED** to suffer the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

He is likewise ordered to pay the victim Jerry Bechachino, **TWENTY THOUSAND PESOS** (₱20,000.00) as civil indemnity, and **TWENTY THOUSAND PESOS** (₱20,000.00) as moral damages.

All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.



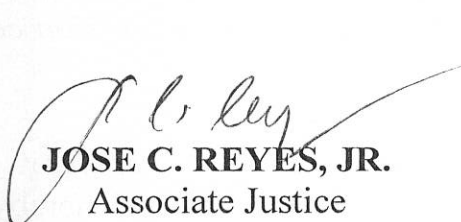
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson

²⁸ 783 Phil. 806 (2016).



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice

