Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BEETHOVEN QUIJANO,* *Petitioner,*

- versus -

PEOPLE OF THE PHILIPPINES, *Respondent.*

G.R. No. 202151

Present:

PERALTA, *C.J.*,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated: FEB 10 2021

x---x

DECISION

GAERLAN, *J.*:

The Constitution mandates that an accused enjoys the right to be presumed innocent until his/her guilt is proven beyond reasonable doubt. When a person's life and liberty are at stake, the courts must exercise utmost circumspection and ensure that each and every element of the crime is established. Notably, *to support a conviction for frustrated murder, the prosecution must establish beyond reasonable doubt that the victim's wound would have been fatal without timely medical intervention. Without this crucial fact, the accused may only be convicted of attempted murder.*

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Beethoven Quijano (Quijano) praying for the reversal of the August 27, 2010 Decision[2] and May 10, 2012

---

* Spelled in the *rollo* cover as "Quiajano".

1 *Rollo*, pp. 3-25.

2 Id. at 30-37; penned by Associate Justice Edwin D. Sorongon, with Associate Justices Portia A. Hormachuelos and Socorro B. Inting, concurring.

Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 00494. The CA affirmed the April 26, 2005 Decision[4] of the Regional Trial Court (RTC) of Cebu City, Branch 23, which convicted Quijano of frustrated murder.

Antecedents

In an Information dated September 2, 1997, Quijano was charged with frustrated murder committed as follows:

> That on or about the 21st day of June 1997, at about 3:30 o'clock dawn in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a handgun, with deliberate intent, with treachery and evident premeditation, with intent to kill, did then and there suddenly and unexpectedly attack, assault and use personal violence upon the person of one Atilano Andong by shooting him with said handgun hitting him at the right portion of his shoulder, thereby causing physical injuries which injuries would ordinarily caused the death of said Atilano Andong, thus performing all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of causes independent of the will of the herein accused, that is, by the timely medical assistance given to said Atilano Andong which prevented his death.
>
> CONTRARY TO LAW.[5]

On September 6, 1999, Quijano pleaded not guilty to the charge.[6]

The antecedent facts reveal that at 3:30 o'clock in the morning of June 21, 1997, Atilano Andong (Andong) was sleeping at home with his common-law wife Marilou Gamboa (Gamboa) and their child. Suddenly, Quijano started banging on their door and shouting Andong's name. When Andong rose from the bed, he was surprised to see Quijano standing 60 centimeters away from him, beaming a flashlight at him. Then, Quijano suddenly shot Andong on his right shoulder. Gamboa pleaded for Quijano to stop.[7]

Meanwhile, Andong's neighbors Chona Baguio (Baguio) and Rosemarie Barrellano (Barrellano) heard a gunshot. They went outside of their house and saw Quijano holding a hand gun.[8] Frightened, they rushed

---

3 Id. at 39-40; penned by Associate Justice Gabriel T. Ingles, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Pamela Ann Abella Maxino, concurring.
4 Records, pp. 32-37; rendered by Judge Generosa G. Labra.
5 Id. at 1-2.
6 Id. at 32.
7 *Rollo*, pp. 48-50; 66
8 Records, p. 33.

back inside and hid. Thereafter, they saw Andong blood-stained and with a wound on his right shoulder.[9]

Subsequently, Andong was rushed to the Vicente Sotto Memorial Hospital where he underwent an operation. He was treated by Dr. Prudencio Manubag (Dr. Manubag) and was confined for more than two weeks.[10]

During the trial, Dr. Arnold Richime submitted Andong's medical records and testified that Dr. Manubag is no longer connected with the Vicente Sotto Memorial Hospital.[11] Later on, the prosecution presented an expert witness, Dr. Roque Anthony Paradela (Dr. Paradela) who testified that Andong's injury could have been fatal if not for timely medical intervention, including the application of a close tube or CPT.

On the other hand, Quijano vehemently denied the charge leveled against him. He claimed that in the evening prior to the incident, he was at home drinking with his co-workers. He did not leave his house. He further related that he slept at past 1 o'clock in the morning of June 21, 1997 and woke up at around 10 o'clock.

Ruling of the RTC

On April 26, 2005, the RTC rendered a Decision[12] convicting Quijano of frustrated murder. The RTC held that the prosecution proved Quijano's guilt beyond reasonable doubt. Quijano shot Andong in a sudden and unexpected manner, thereby depriving the latter of any chance to defend himself.

Likewise, the RTC rejected Quijano's defenses of denial and alibi. It explained that it was not physically impossible for him to have been at the scene of the crime, considering that his house is just walking distance to Andong's residence.[13]

The RTC disposed of the case as follows:

> WHEREFORE, premises considered, the court finds the accused BEETHOVEN QUIJANO, guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER, for which he is hereby sentenced to suffer an

---

9 Id.
10 Id.
11 *Rollo*, p. 44.
12 CA *rollo*, pp. 32-37
13 Id. at 36-37.

indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY as MINIMUM to TWELVE (12) YEARS, FIVE (5) MONTHS, and ELEVEN (11) DAYS as MAXIMUM.

SO ORDERED.[14]

Aggrieved, Quijano filed a notice of appeal.[15]

Ruling of the CA

On August 27, 2010, the CA[16] affirmed the RTC's judgment. The CA held that the prosecution proved Quijano's guilt beyond reasonable doubt. The CA gave credence to the testimonies of the prosecution witnesses. According to the CA, their positive identification of Quijano as the assailant prevails over the latter's defenses of denial and alibi.[17]

Moreover, the CA declared that the testimony of Dr. Paradela may be admitted as the opinion of an expert witness, which thereby serves as an exception to the hearsay rule.

The dispositive portion of the CA Decision reads:

> *WHEREFORE,* the Decision of the Regional Trial Court, Branch 23, Cebu City in Criminal Case No. CBU-45614, finding appellant Beethoven Quijano guilty beyond reasonable doubt of the crime of frustrated murder is AFFIRMED *in toto.*
>
> Costs against the appellant.
>
> SO ORDERED.[18]

Dissatisfied with the ruling, Quijano filed a Motion for Reconsideration, which was denied by the CA in its May 10, 2012 Resolution.[19]

Undeterred, Quijano filed the instant Petition for Review on *Certiorari.*[20]

---

14 Id. at 37.
15 Id. at 139-140.
16 *Rollo*, pp. 30-37
17 Id. at 36.
18 Id. at 37.
19 Id. at 39-40.
20 Id. at 3-25.

Issues

Seeking exoneration from the charge, Quijano claims that the prosecution failed to prove his guilt for frustrated murder beyond reasonable doubt.

First, he asserts that the testimonies of the prosecution witnesses are incredible and riddled with irreconcilable inconsistencies.[21] Particularly, he points out that Gamboa and Andong varied on whether he had companions and if he uttered menacing words before shooting Andong. Likewise, Quijano alleges that it was impossible for Baguio and Barellano to have seen him shoot Andong considering that their houses are located at the back of Andong's house.[22] Quijano further claims that Baguio and Barrellano changed their story during the trial by saying that they saw Quijano because they went outside of their house after they heard gunfire.[23] Quijano contends that Baguio and Barellano have an axe to grind against him because they have an ongoing dispute with his family.[24]

Second, Quijano avers that Dr. Paradela did not treat Andong. Thus, his testimony is hearsay evidence.[25]

Third, Quijano claims that the prosecution failed to prove evident premeditation and treachery.[26] There was no proof that he deliberately chose to attack Andong at 3 o'clock in the morning under the cover of darkness to prevent detection and ensure the success of his criminal enterprise.[27] Moreover, his attack could not have been sudden and unexpected if it was preceded by banging on the door and calling Andong's name. Added to this, no less than Andong related that they quarreled the day prior to the shooting incident. By all means, Andong was forewarned of the impending attack against his life.[28]

Finally, Quijano alternatively pleads that should he be found guilty of shooting Andong, he may only be held liable for attempted homicide or frustrated homicide in view of the prosecution's failure to establish the qualifying circumstances of treachery and evident premeditation.[29]

---

21 Id. at 10.
22 Id. at 17.
23 Id. at 18.
24 Id. at 19.
25 Id. at 20-21.
26 Id. at 21.
27 Id. at 15.
28 Id.
29 Id. at 25.

On the other hand, the People, through the Office of the Solicitor General (OSG) points out that the instant petition must be dismissed outright as it raises mixed questions of fact and law. The issues pertaining to the credibility of the witnesses, as well as the circumstances surrounding the crime, are matters that involve a review of the evidence.

Moreover, the OSG avers that the only question of law raised was whether or not the testimony of Dr. Paradela should be barred as hearsay evidence. The OSG explains that Dr. Paradela was introduced as an expert witness, whose testimony constitutes an exception to the hearsay rule. The OSG further points out that Quijano is barred from belatedly questioning Dr. Paradela's testimony, considering that he stipulated on the doctor's expertise and even cross-examined him.[30]

Ruling of the Court

Upon a scrutiny of the records of the case, the Court finds that Quijano is guilty of attempted murder.

Parameters of judicial review under Rule 45 and the exceptions thereto

It must be noted at the outset that issues pertaining to the credibility of the witnesses and the re-evaluation of the evidence involve factual questions. As a general rule, factual matters are not the proper subject of an appeal by *certiorari*,[31] as it is not the Court's function to analyze or weigh the evidence which has been considered in the proceedings below.[32] Nevertheless, a review of the factual findings is justified under the following circumstances:

> (i) when the findings are grounded entirely on speculations, surmises or conjectures; (ii) when the inference made is manifestly mistaken, absurd or impossible; (iii) when there is grave abuse of discretion; **(iv) when the judgment is based on a misapprehension of facts;** (v) when the findings of fact are conflicting; (vi) when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (vii) when the findings are contrary to that of the trial court; (viii) when the findings are conclusions without citation of specific evidence on which they are based; (ix) when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;' (x) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [or] (xi) when the Court of Appeals

---

30 Id. at 146-151.

31 *Miro v. Vda. De Erederos, et al.*, 721 Phil. 772 (2013).

32 Id.

> manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[33]

The fourth exception obtains in the instant case. The trial court and the CA misapprehended certain facts, which upon re-evaluation, warrant a different conclusion.

Quijano's attack against Andong reeks of treachery

Quijano was indicted for frustrated murder qualified by treachery and evident premeditation. Essentially, Article 248 of the Revised Penal Code (RPC) defines the crime of murder as follows:

> **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 temporal in its maximum period 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
>
> 5. With evident premeditation.
>
> x x x x

Significantly, there is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[34] For treachery to be appreciated, the following requisites must be proven: (i) the employment of means, method, or manner of execution which would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (ii) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[35]

A scrutiny of the records reveals that Quijano attacked Andong in an unexpected and rapid manner. Quijano banged the door of Andong's home

---

[33] *De Leon v. Maunlad Trans Inc., et al.*, 805 Phil. 531 (2017)

[34] *People v. Bugarin*, 807 Phil. 588, 598-599 (2017).

[35] Id. at 600.

and shouted the latter's name. This sudden intrusion occurred at the dead of night, while Andong and his family were asleep. In fact, Quijano swiftly shot Andong immediately after the latter rose from the bed. The onslaught was so sudden and swift that Andong had no chance to mount a defense. He had no inkling that an attack was forthcoming and was completely unaware of the imminent peril. In turn, the deliberate swiftness of the attack significantly diminished the risk to Quijano that may be caused by Andong's retaliation.

Furthermore, Quijano deliberately and consciously adopted such vicious mode of attack. He used a firearm to easily neutralize Andong and fired from a position of relative safety. Moreover, he had a flashlight to ensure the success of his attack. Thus, there can be no denying that Quijano's assault reeks of treachery.[36]

In his defense, Quijano claims that his alleged act of banging on the door and calling Andong's name sufficiently forewarned the latter of the onslaught. Likewise, the purported altercation between him and Andong served as a sufficient warning, thereby negating treachery.

Quijano's arguments fail to persuade.

In a long line of cases, the Court clarified that treachery shall still be appreciated even if the victim was forewarned of the attack. The decisive factor is that despite the warning, the execution of the attack made it impossible for the victim to defend himself or to retaliate. The same holds true if the prior warning did not diminish the suddenness of the attack.[37]

Notably, in *People v. Ortiz, Jr.*,[38] it was stressed that even if the victim was aware of the threat to his life and of the accused's grudge against him, treachery still exists because the victim had no inkling that he would actually be attacked on that fateful night. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[39]

In the same vein, in *People v. Abendan*,[40] it was held that treachery exists even if the victim sensed that his life was in danger. After all, the warning did not diminish the suddenness of the attack, and the victim

---

[36] *People v. Las Piñas, et al.*, 739 Phil. 502, 525 (2014).

[37] *People v. Pulgo*, 813 Phil. 205, 217 (2017), citing People v. Pidoy, 453 Phil. 221, 230 (2003); *People v. Mataro*, 406 Phil. 462 (2001), *People v. Gutierrez*, 429 Phil. 124, 137 (2002), citing *People v. Arizala*, 375 Phil. 666, 680 (1999), *People v. Ortiz, Jr.*, 638 Phil. 521, 526 (2010).

[38] Id.

[39] Id. at 526.

[40] 395 Phil. 619 (2000).

remained helpless and was deprived of the slightest opportunity to defend himself.[41]

Moreover, in *People v. PFC Malejana*,[42] treachery was appreciated even if the accused fired a warning shot prior to attacking the victim. The Court explained that the "the swift unfolding of events placed the victim in a position where he could not effectively defend himself from the assault on his person." Likewise, the Court declared that the interval of time between the alleged warning and the subsequent fatal shots was not sufficient to put the victim on guard.[43]

Interestingly, in *People v. Juanito Aquino*,[44] the fact that the accused previously knocked on the door before attacking the victim did not negate treachery because the assailant still suddenly fired successive shots at the victim.[45]

As applied to the case at bar, even assuming that Andong was forewarned of the attack through Quijano's banging and shouting, the former was still caught off-guard and defenseless. Worse, the events transpired in a rapid and successive sequence that deprived Andong of any chance to retaliate, defend himself, or at the very least, escape from the onslaught.

In the same regard, the existing animosity between the parties does not negate treachery. It has been ruled that treachery is not dispelled by a prior grudge between the parties if the victim had no inkling that an attack was forthcoming,[46] or was not in a position to defend himself.[47]

The prosecution failed to prove evident premeditation

Although the attack against Andong was fraught with treachery, there was a dearth of evidence proving evident premeditation

In *People v. Rodolfo Grabador, Jr., et al.*,[48] this Court enumerated the requisites to establish evident premeditation:

---

[41] Id. at 640.
[42] 515 Phil. 584 (2006).
[43] Id. at 599.
[44] *People v. Aquino*, 348 Phil. 395 (1998).
[45] Id. at 398.
[46] *People v. Ortiz, Jr.*, supra note 37 at 526.
[47] *People v. Sebastian*, 428 Phil. 622, 626-627 (2002).
[48] G.R. No. 227504, June 13, 2018.

> Accordingly, in order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will. Evident premeditation cannot be presumed in the absence of evidence showing when and how the accused planned, and prepared for the crime, and that a sufficient amount of time had lapsed between his determination and execution. It bears stressing that absent any clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, shall be deemed insufficient.[49] (Citations omitted)

In the instant case, the prosecution failed to identify the time when Quijano decided to shoot Andong. Without this crucial data, it is impossible to conclude that indeed, there was a sufficient period of time that passed between the former's determination to kill and his actual execution, which allowed him to meditate and reflect on his plans.

Although Andong claimed that Quijano mauled him a day prior to the shooting incident, this allegation was not sufficiently proven. The alleged mauling was not witnessed by any other person. There was no police blotter or barangay incident report that would support Andong's allegation. In fact, during the trial, Andong admitted that he cannot produce a barangay incident report.[50] Certainly, these lingering doubts must be resolved in favor of Quijano.

Quijano is guilty of attempted murder

Quijano's intent to kill Andong is evident from the treacherous manner of his assault. It is likewise glaring from his choice of weapon, and his conduct at the time of the attack. In addition, he hit Andong at a vital spot in his body. Thus, the next matter to be discussed is the proper stage of the execution of the crime.

Article 6 of the RPC defines the stages in the commission of felonies:

> Art. 6. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.

---

49 Id.

50 See TSN dated July 22, 2022, pp. 4-5.

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

The distinction between a frustrated and attempted felony was elucidated in *People v. Labiaga*:[51]

> (i) In a frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in an attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.
>
> (ii) In a 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 an attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.[52]

In addition to the main distinctions, it is important to note that in frustrated murder, there must be evidence showing that the wound inflicted would have been fatal were it not for timely medical intervention.[53]

In fact, in *Serrano v. People*,[54] the Court cautioned that the accused may not be convicted of frustrated homicide in the absence of clear evidence establishing that the injury would have been fatal if not medically attended to. Particularly, the evidence required to confirm the fatal nature of the injury was the testimony of the physician who issued the victim's medical certificate, to wit:

> The danger to life of any wound is dependent upon a number of factors: the extent of the injury, the form of the wound, the region of the body affected, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment.

---

[51] 714 Phil. 77 (2013).

[52] Id. at 87, citing *Serrano v. People*, 637 Phil. 319, 335 (2010).

[53] Id., citing *People v. Costales*, 424 Phil. 321 (2002), citing *People v. Dela Cruz*, 353 Phil. 362 (1998) and *People v. Zaragosa*, 58 O.G. 4519.

[54] Supra.

> **When nothing in the evidence shows that the wound would be fatal without medical intervention, the character of the wound enters the realm of doubt; under this situation, the doubt created by the lack of evidence should be resolved in favor of the petitioner. Thus, the crime committed should be attempted, not frustrated, homicide.**
>
> Under these standards, we agree with the CA's conclusion. **From all accounts, although the stab wound could have been fatal since the victim testified that he saw his intestines showed, no exact evidence exists to prove the gravity of the wound; hence, we cannot consider the stab wound as sufficient to cause death.** As correctly observed by the CA, **the victim's attending physician did not testify on the gravity of the wound inflicted on the victim.** We consider, too, the CA's observation that the medical certifications issued by the East Avenue Medical Center merely stated the location of the wound. There was also no proof that without timely medical intervention, the victim would have died. **This paucity of proof must necessarily favor the petitioner.**[55] (Citations omitted and emphasis supplied)

Similar to the afore-cited case, the evidence fails to prove with moral certainty that Andong would have died from the gunshot wound without timely medical intervention. Unfortunately, the prosecution failed to present Dr. Manubag, the physician who treated Andong and administered the alleged life-saving procedure. The Medical Certificate alone, without the testimony of Dr. Manubag is inadequate proof of the nature and extent of Andong's injury. This lacuna may not be filled with the testimony of the expert witness Dr. Paradela, who merely testified as follows:

> Q – A while ago, you have said that you are a surgeon. Would you kindly explain to this Honorable court what this medical term mean [sic]?
> A – This GSW is gunshot wound and the point of entry is above the clavicle and then it coursed through. It exited just at the back near the scapular area of the back. I do not know when [sic] is the layman's term of scapula but near the shoulder blade and the result of that gun-shot wound, there was air and blood inside your chest.
>
> Q – In your expert opinion doctor, would you classify this kind of wound? Would this be fatal or not?
> A – This wound is fatal.
>
> Q – Why would this be fatal doctor?
> A – Because this kind of wound would kill the patient if no medical intervention like close tube or a CPT is applied."[56]

The foregoing testimony clearly shows that the lone reason given by Dr. Paradela in concluding that Andong's wound would have been fatal without timely medical intervention was simply – "because this kind of wound

---

[55] Id. at 336-337.
[56] See TSN dated November 18, 2002, p. 6.

would kill the patient if no medical intervention like close tube or CPT is applied."[57] Such a general and vague statement is insufficient to prove beyond reasonable doubt that Andong's wound would have been fatal without timely medical intervention. Likewise, the conclusion that the wound would have been mortal, was merely based on the fact that Dr. Manubag applied CPT. Worse, Dr. Paradela did not elaborate what a close tube or CPT is, how this type of procedure saved Andong's life, or Andong's condition prior to and during the operation.

Moreover, a scrutiny of Dr. Paradela's entire testimony fails to reveal any other statement regarding the fatal nature of Andong's wound. During Dr. Paradela's direct and re-direct examination, the prosecution merely asked incidental questions, such as, where he is currently connected, how long he has been working therein, his relation to Dr. Manubag, the subpoena issued by the court, the admitting chart, the general description of the wound, the number of days Andong was treated, his familiarity with the signature of Dr. Manubag, and whether Dr. Manubag is still connected with the Vicente Sotto Memorial Hospital.[58] Strangely, the inquiry about the fatal nature of Andong's wound simply consisted of one question and the lone inadequate answer given in response thereto. This is unfortunate considering that the character of the wound was a critical piece of evidence.

While it is true that the prosecution and the defense stipulated on the qualification of Dr. Paradela, this stipulation does not in any way mean that the Court must accord probative value and weight to his testimony. The stipulation solely pertained to the physician's qualification "as an expert witness being a medical doctor".[59] It did not dispense with the prosecution's burden to prove the elements of the offense.

Significantly, the Court has a wide latitude in assigning weight to the opinion of an expert witness. Section 5, Rule 133 of the New Rules on Evidence states:

Rule 133 Weight and Sufficiency of Evidence

> Section 5. Weight to be given opinion of expert witness, how determined. – In any case where the opinion of an expert witness is received in evidence, the court has a wide latitude of discretion in determining the weight to be given such opinion, and for that purpose may consider the following:

---

[57] Id.
[58] Id. at 4-7; 9-10.
[59] Id. at 4.

(a) Whether the opinion is based upon sufficient facts or data;

(b) Whether it is the product of reliable principles and methods;

(c) Whether the witness has applied the principles and methods reliably to the facts of the case; and

(d) Such other factors as the court may deem helpful to make such determination.[60]

Dr. Paradela's statement was so curt and wanting in essential details that he failed to furnish sufficient facts and data relevant to the charge. Moreover, the fact that the RTC and the CA gave probative value to Dr. Paradela's expert opinion does not in any way bind this Court to blindly adopt the same finding, especially in light of facts warranting a different conclusion.

Furthermore, a juxtaposition of the standards painstakingly enumerated in *Serrano*[61] *vis-a-vis* Dr. Paradela's testimony, patently shows that the latter's statement that the wound would have been fatal if not for the application of close tube or CPT, is definitely lacking. There was a dearth in evidence regarding the extent of the injury, the form of the wound, the blood vessels, nerves, or organs involved, the entrance of disease-producing bacteria or other organisms into the wound, the age and constitution of the person injured, and the opportunities for administering proper surgical treatment,[62] which are crucial factors in ascertaining the fatal nature of the injury.

It further bears stressing that in *Serrano*;[63] *Epifanio v. People*;[64] *People v. Lacaden*;[65] *Etino v. People*;[66] and *Gemenez v. People*,[67] the Court stressed that without the testimony of the attending physician as to the fatal nature of the victim's wounds, an accused may not be convicted of frustrated homicide or murder.

As stringently held in *Lacaden*:[68]

With respect to the crime committed against Jay, accused-appellant is charged with Frustrated Murder. For failure of the prosecution to present the testimony of the doctor who treated him to testify regarding the nature of the injury sustained by the latter, the

---

60 NEW RULES ON EVIDENCE, Rule 133, Section 5.
61 Supra note 52.
62 Id. at 336.
63 Id.
64 552 Phil. 620 (2007).
65 620 Phil. 807 (2009).
66 826 Phil. 32 (2018).
67 G.R. No. 241518, March 4, 2020
68 Supra.

> **Court cannot determine whether the injury would have produced death if not for the timely medical attention. However, accused-appellant is responsible for committing Attempted Murder.**[69]

Similarly, in *Etino*,[70] the Court warned that the medical certificate alone is insufficient proof of the nature and extent of the injury. Accordingly, any doubt must be resolved in favor of the accused:

> 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.
>
> 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 assistance, **as his Medical Certificate alone, absent the testimony of the physician who diagnosed and treated him, or any physician for that matter, 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.
>
> 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.[71] (Citations omitted)

Interestingly, in *Etino*[72] the Court intimated that the testimony of any physician might suffice, unfortunately in this case, Dr. Paradela's inadequate testimony was insufficient to prove the fatal nature of the injury.

Remarkably, in *Gemenez*,[73] the accused was convicted of attempted homicide due to the absence of the testimony of the attending physician on the nature and extent of the victim's injury. Quite similar to the instant case, in *Gemenez*,[74] the medical certificate was considered insufficient because the physician who treated the victim's fatal wounds did not testify in court. Rather, the physician who testified was the one who treated the victim's non-fatal wounds. Interestingly, the latter physician's testimony was deemed inadequate:

> 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

---

69 Id. at 826.
70 Supra.
71 Id. at 43.
72 Id.
73 Supra note 67.
74 Id.

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 the extent of the injuries to Jerry's thumb.

x x x x

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.

x x x x

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. Any doubt shall be resolved in favor of the accused.

As there is doubt as to the existence of the second element of Frustrated Homicide – 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.[75] (Emphasis supplied)

Similar to *Gemenez*,[76] the prosecution, through Dr. Paradela's testimony, failed to prove that Andong indeed sustained fatal or mortal wounds and did not die because of timely medical assistance. It was further underscored therein that the prosecution must prove beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence.[77] Any doubt shall be resolved in favor of the accused.[78] Accordingly, Quijano may not be convicted of frustrated murder in the absence of credible proof that Andong suffered a fatal wound but was saved due to timely medical assistance.

---

75 Id.

76 Id.

77 Id., citing *Moster v. People*, 569 Phil. 616, 628 (2008).

78 Id., id.

Quijano was positively identified as the malefactor. His defenses of denial and alibi are weak and self-serving

In a bleak attempt to overturn his conviction, Quijano attacks the testimonies of the prosecution witnesses as incredible and riddled with inconsistencies.

Contrary to Quijano's allegation, the trial court and the CA regarded the testimonies of the prosecution witnesses as truthful. It is settled that the assessment of the credibility of the witnesses is best undertaken by the trial court because of its unique opportunity to observe them firsthand and to note their demeanor, conduct, and attitude under grueling examination. Indeed, these factors are crucial in evaluating their sincerity and in unearthing the truth. Hence, the trial court's assessment will not be disturbed on appeal unless some facts or circumstances of weight were overlooked or misinterpreted.[79] This exception does not obtain in the instant case.

Besides, the purported inconsistencies pertain to collateral and trivial matters that the witnesses adequately clarified during the trial. In addition, they were subjected to a grueling cross-examination which they sufficiently and convincingly passed. More importantly, they consistently testified on the occurrence of the crime, and the identity of Quijano as the perpetrator.

In this regard, Quijano's defenses of denial and alibi falter against the witnesses' positive identification of him as the perpetrator. It bears stressing that it was not physically impossible for Quijano to have been at the scene of the crime. By his own admission, his house is only within walking distance to Andong's home.

Penalty and pecuniary liability for attempted murder

Article 51 of the RPC states that "[a] penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony."[80] Relatedly, Article 248 of the RPC, as amended by Republic Act No. 7659, prescribes the penalty of *reclusion perpetua* to death for the crime of murder. Thus, the penalty for attempted murder is *prision mayor,* which is two (2) degrees lower from *reclusion perpetua* to death for consummated murder.[81]

---

[79] *People v. Macaspac,* 806 Phil. 285, 290 (2017).

[80] REVISED PENAL CODE, Article 51.

[81] *People v. Bugarin,* supra note 34 at 601-602.

Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower than that prescribed by the RPC.[82] Accordingly, Quijano shall be sentenced to six (6) years of *prision correccional* maximum as minimum, to eight (8) years and one (1) day of *prision mayor* medium, as maximum.

In addition, Quijano shall be liable to pay Andong (i) ₱25,000.00 as civil indemnity; (ii) ₱25,000.00 as moral damages; and (iii) ₱25,000.00 as exemplary damages. The amounts shall earn a legal interest of six percent (6%) *per annum* from the finality of the Court's ruling until full satisfaction.[83]

WHEREFORE, premises considered, the August 27, 2010 Decision of the Court of Appeals in CA-G.R. CEB-CR No. 00494 is **AFFIRMED with MODIFICATION.**

Petitioner Beethoven Quijano is hereby declared **GUILTY** beyond reasonable doubt of attempted murder and is **ORDERED** to suffer the indeterminate penalty of six (6) years of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum.

He is further **ORDERED** to pay the victim Atilano Andong (i) ₱25,000.00 as civil indemnity; (ii) ₱25,000.00 as moral damages; and (iii) ₱25,000.00 as exemplary damages.

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

SO ORDERED.

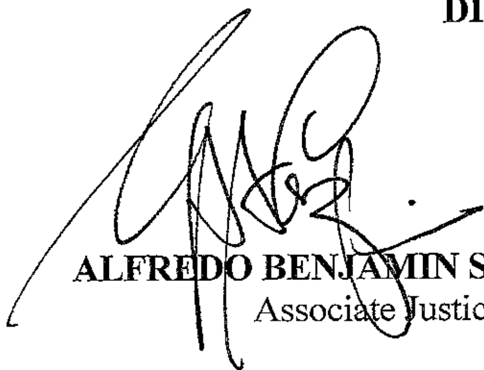
SAMUEL H. GAERLAN
Associate Justice

---

[82] *Fantastico, et al. v. Malicse, Sr., et al.*, 750 Phil. 120, 139-140 (2015).
[83] *People v. Jugueta*, 783 Phil. 806 (2016).

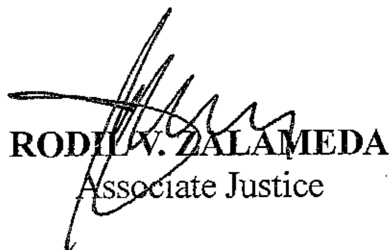
WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
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