



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **18 January 2021** which reads as follows:*

**“G.R. No. 252794 (*Gary Ramos y Delos Santos v. People of the Philippines*).** – The Court resolves to **GRANT** petitioner’s first motion for extension of time to file petition for review on *certiorari*.

Petitioner Gary Ramos y Delos Santos asks the Court to reverse the verdict of conviction for frustrated homicide rendered against him by the Regional Trial Court (RTC)-Branch 27, Santa Cruz, Laguna<sup>1</sup> and affirmed by the Court of Appeals in its assailed Decision<sup>2</sup> dated December 20, 2019.

In the main, he posits that the prosecution failed to establish with certainty the identity of the person who stabbed the victim Ricardo Amonelo (Amonelo). In his testimony, Amonelo himself said that the one who hit him in the head and stabbed him was standing behind him. He, therefore, could not have seen who truly hit and stabbed him. Even if the commission of the crime can be established, there can be no conviction without proof of the identity of the assailant. Notably too, while petitioner claims he too was hit in the head, no evidence was presented to prove the same.<sup>3</sup> More, he cannot be held liable for frustrated homicide because the prosecution merely established that Amonelo got injured, sans proof that there was intent to kill.

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<sup>1</sup> By Judgment dated February 1, 2018 penned by Presiding Judge Cynthia R. Mariño-Ricablanca, *rollo*, pp. 73-81.

<sup>2</sup> Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Louis P. Acosta and Tita Marilyn B. Payoyo-Villordon, *id.* at 32-50.

<sup>3</sup> *Id.* at 20-22.

The petition must fail.

It is a well-settled principle that the assessment of the credibility of a witness is best left to the trial court, most especially when affirmed by the Court of Appeals, as the trial court had the unique opportunity to observe the witness' deportment and demeanor on the witness stand.<sup>4</sup> These findings will not be ordinarily disturbed by an appellate court absent any clear showing that the trial court has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could very well affect the outcome of the case.<sup>5</sup>

Here, we find no reason to overturn the factual findings and legal conclusions of the trial court as affirmed by the Court of Appeals.

### *Identity of the assailant*

Contrary to petitioner's claim, Amonelo testified in open court that he saw the former when the back of his head got hit, *viz.*:

Q: But he was located .... [He had] positioned himself at the back so you did not see him directly, is that correct?

A: **I saw him when I glanced at him when he hit me in my head, sir.**<sup>6</sup>  
(Emphasis supplied)

x x x x

Also, as the trial court keenly noted, while Amonelo gave inconsistent statements regarding the participation of the other accused, *i.e.*, Noel Virrey y Pojeda (Virrey) and Michael Daliva y Acebo (Daliva), he gave straightforward and consistent statements that it was petitioner who hit him in the back of the head and stabbed him. We cite with concurrence the trial court's findings:

Amonelo testified in a direct and consistent manner that during the alleged incident, Ramos went behind him and stabbed him several times. x x x Even while confined [in a] hospital three days after the incident, he still recalled and positively identified Ramos as the one who stabbed him. x x x<sup>7</sup>

x x x x

x x x Unlike his contradictory and inconsistent testimony regarding Virrey and Daliva's alleged involvement in the stabbing incident,

<sup>4</sup> *People v. Ascarraga*, G.R. No. 222337, July 23, 2018.

<sup>5</sup> *People v. Collamat*, G.R. No. 218200, August 15, 2018.

<sup>6</sup> *Rollo*, p. 43.

<sup>7</sup> *Id.* at 77.

Amonelo testified in a direct and consistent manner regarding Ramos' participation. After several instances of cross-examination, he remained steadfast in testifying that it was Ramos who hit him in the head with a bottle and stabbed him several times. x x x<sup>8</sup>

From the very beginning since the incident happened, Amonelo consistently, positively, and categorically pointed to petitioner as the one who hit him in the head and stabbed him. Amonelo stood by his statement even during the rigorous cross-examination he got subjected to.

Likewise, petitioner's co-accused Virrey and Daliva themselves both testified that petitioner was the one who hit Amonelo in the head and stabbed him, to wit:

**Virrey**

Q: You said it was the other accused Gary Ramos who hit Ricardo (Amonelo) with a bottle?

A: Yes, sir.

Q: Why do you know that it was Gary Ramos who hit Ricardo (Amonelo) with a bottle?

A: I was still there near the table, sir.<sup>9</sup>

x x x x

**Daliva**

Q: Mr. Witness, after this commotion, did you see anyone who stabbed the victim Ricardo Amonelo.

A: There was, sir.

Q: Who was that?

A: Gary Ramos, sir.<sup>10</sup>

x x x x

Q: How far were you when you allegedly saw the stabbing incident?

A: Around two (2) meters from the table, sir.<sup>11</sup>

x x x x

More, the defense did not, at all, impute any ill motive against Amonelo or even on Virrey and Daliva for that matter, which could have impelled them to falsely testify against petitioner. Absent any grudge

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<sup>8</sup> *Id.* at 79.

<sup>9</sup> *Id.* at 90.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 90-91.

against petitioner, the testimonies of Amonelo, Virrey, and Daliva are worthy of credence.

As it was, petitioner offered nothing but mere denial. In *People v. Oandasan, Jr.*,<sup>12</sup> the Court reiterated that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who are categorical and consistent and bereft of ill motive towards the accused. Denial, unless substantiated by clear and convincing evidence, is undeserving of weight in law for being negative and self-serving. Moreover, denial and alibi cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. So must it be.

### *Intent to kill*

Intent to kill was manifested by petitioner's use of a weapon which easily cut through a human flesh, as it had indeed easily cut through Amonelo's body, and the number and nature of wounds that Amonelo sustained. As testified to by Dr. Bonifacio Flores (Dr. Flores), Amonelo sustained the following wounds: (1) stab wound with intestinal laceration which caused his intestines to protrude from the upper left side of his body; (2) lacerated wound in the upper side of the arm; (3) three (3) stab wounds at the back near the ribs; and (4) lacerated wound below the right shoulder blade.

Dr. Flores testified that absent timely medical attention, Amonelo could have died from his wounds, especially the one on his abdomen which caused his intestines to protrude.<sup>13</sup> Indeed, the number of stab wounds that Amonelo sustained manifests petitioner's intent to end the former's life. In *Fantastico v. People*,<sup>14</sup> the Court considered the *nature, location, and number of wounds sustained by the victim* as one of the determinants of intent to kill. Inflicting seven (7) stab wounds on the victim, with no regard as to the position of the wound, is truly indicative of intent to kill.

In accordance with Article 6 of the Revised Penal Code (RPC),<sup>15</sup> killing becomes frustrated when the offender performs all the acts of

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<sup>12</sup> 787 Phil. 139, 151 (2016).

<sup>13</sup> *Rollo*, p. 93.

<sup>14</sup> 750 Phil. 120, 132-133 (2015), citing *Rivera v. People*, 515 Phil. 824, 832 (2006).

<sup>15</sup> Article 6. *Consummated, frustrated, and attempted felonies*. — Consummated felonies as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance. (Emphasis supplied)

execution which could have produced the crime but did not produce it for reasons independent of his or her will.<sup>16</sup> *People v. Lababo*<sup>17</sup> is apropos:

As for BBB's case, We agree with the RTC and CA's factual finding that the eight gunshot wounds sustained by BBB, as contained in the *Medico-Legal Certificate*, would have caused his death if he was not given timely medical attention. Furthermore, it does not appear that BBB was armed or was in a position to deflect the attack. As a matter of fact, based on CCC's narration of the events that transpired, the suddenness of the attack upon AAA and BBB cannot be denied. Only that, unlike AAA, BBB survived.

**The act of killing becomes frustrated when an offender performs all the acts of execution which could produce the crime but did not produce it for reasons independent of his or her will.**

Here, taking into consideration the fact that BBB was shot eight times with the use of a firearm and that AAA, who was with him at that time, was killed, convinces Us that the malefactor intended to take EBB's life as well. However, unlike in AAA's case, BBB survived. It was also established that he survived not because the wounds were not fatal, but because timely medical attention was rendered to him. Definitely, EBB's survival was independent of the perpetrator's will. As such, this Court is convinced that the attack upon BBB qualifies as frustrated murder. (Emphasis supplied)

Verily, both the trial court and the Court of Appeals did not err in convicting petitioner for frustrated homicide.

### ***Penalty***

The imposable penalty is one degree lower than that prescribed in homicide or *prision mayor*. There being no modifying circumstance, the maximum imposable penalty is within the range of *prision mayor* in its medium period or eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods.<sup>18</sup> Thus, the trial court and Court of Appeals correctly imposed an indeterminate imprisonment term of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

As for damages, the trial court, too, correctly awarded ₱30,000.00 as civil indemnity and another ₱30,000.00 as moral damages to Amonela in accord with *People v. Juguetta*:<sup>19</sup>

<sup>16</sup> *Cirera v. People*, 739 Phil. 25, 40 (2014).

<sup>17</sup> *People v. Lababo*, G.R. No. 234651, June 06, 2018, 865 SCRA 609, 624-625.

<sup>18</sup> *People v. Aquino*, 829 Phil. 477, 490-491 (2018).

<sup>19</sup> 782 Phil. 806, 852 (2016).

V. In other crimes that result in the death of a victim and the penalty consists of divisible penalties, *i.e.*, Homicide, Death under Tumultuous Affray, Infanticide to conceal the dishonour of the offender, Reckless Imprudence Resulting to Homicide, Duel, Intentional Abortion and Unintentional Abortion, etc.:

x x x x

1.2 Where the crime committed was not consummated, except those crimes where there are no stages, *i.e.*, Reckless Imprudence and Death under tumultuous affray:

a. Frustrated:

- i. Civil indemnity – ₱30,000.00
- ii. Moral damages – ₱30,000.00

x x x x

**WHEREFORE**, the petition is **DENIED**. The Decision dated December 20, 2019 and Resolution dated July 2, 2020 of the Court of Appeals in CA-G.R. CR No. 41430 are **AFFIRMED**.

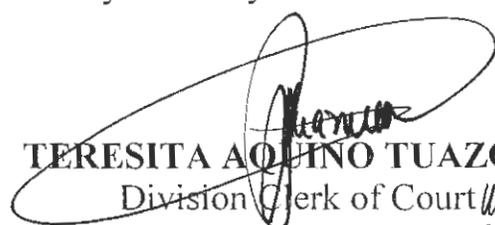
Petitioner Gary Ramos y Delos Santos is found **GUILTY** of **FRUSTRATED HOMICIDE**. He is sentenced to six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is further ordered to **PAY** Ricardo Amonelo the following:

- (a) **₱30,000.00** as civil indemnity; and
- (b) **₱30,000.00** as moral damages; and

These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

**SO ORDERED.**” (Rosario, *J.*, additional member per S.O. No. 2797 dated November 5, 2020; On official leave)

By authority of the Court:

  
**TERESITA AQUINO TUZON**  
Division Clerk of Court  
11 FEB 2021 2/11

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 27  
Santa Cruz, Laguna  
(Crim. Case No. SC-11988)

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