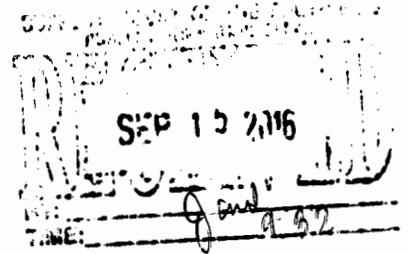




Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

SEP 14 2016



THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 208758

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
BERSAMIN,*
PEREZ, and
REYES, JJ

-versus-

JOVEN GERON Y YEMA,
Accused-Appellant.

Promulgated:

August 24, 2016

Wilfredo V. Lapitan

X-----

DECISION

PEREZ, J.:

For resolution is the appeal from the 25 February 2013 Decision¹ of the Court of Appeals in CA-G.R. CR HC No. 04890 affirming the conviction of appellant Joven Geron y Yema for the crime of murder by the Regional Trial Court (RTC) of Lucena City.

Appellant, together with his brothers Jerry and Juancho Geron were charged with murder and frustrated murder in two separate Informations, which read:

Criminal Case No. 2004-947 for Murder

* Additional Member per Raffle dated 22 August 2016.
¹ Rollo, pp. 2-11; Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon concurring.

[Handwritten mark]

That on or about the 9th day of March 2004, at Barangay Bignay I, in the Municipality of Sariaya, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, conspiring and confederating together and mutually helping with one another, with intent to kill, qualified by treachery, did then and there willfully, unlawfully and feloniously attacked [sic], assault and shot [sic] with the said firearm one WILLY SISON y PADERON, thereby inflicting upon the latter multiple gunshot wounds on his body, which directly caused his death.²

Criminal Case No. 2004-916 for Frustrated Murder

That on or about the 9th day of March 2004, at Barangay Bignay I, in the Municipality of Sariaya, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, conspiring and confederating together and mutually helping with one another, with intent to kill, qualified by treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearm one DIOMEDES SISON Y PADERON, thereby inflicting upon the latter gunshot wounds on vital parts of his body, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said DIOMEDES SISON Y PADERON, which prevented his death.³

Appellant and his co-accused pleaded not guilty to the charges.

The facts, as narrated by the prosecution, follow:

On 9 March 2004, Diomedes Sison (Diomedes) was tending their sari-sari store while his brother, Willy Sison (Willy), was counting their sales when the group of appellant, Jerry Geron and Juancho Geron came on board a motorcycle. Appellant alighted from the motorcycle. He was followed by Juancho while Jerry stayed behind. Appellant suddenly pulled out a gun and shot Willie several times. He then turned to Diomedes and fired three (3) shots. The latter was able to evade the shots and he retreated to the rest room. Thereat, Diomedes heard appellant fire two more shots before the group sped away. Willy was brought to the hospital where he expired. Meanwhile, Diomedes was treated for three (3) abrasions in a separate hospital. Thereafter, Diomedes went straight to the police station to give his statement. He returned on the following day to give another statement.⁴

² Records, pp. 2-3.

³ Id. at 237-238.

⁴ TSN, 3 August 2006, pp. 7-24.

A post-mortem examination was conducted on Willy by Dr. Cecilio R. Macaraeg (Dr. Macaraeg) who found five (5) gunshot wounds in Willy's body. Dr. Macaraeg's findings are encapsulated as follow:

1. Gunshot wound: Entrance is oblong in shape, 3 cm. long, 2 cm. wide, located at the right shoulder at the area of the anterior aspect of the right shoulder joint. Exit is irregular in shape, 2cm. long, 2 cm. wide, located at the area between the right anterior axillary line and right midclavicular line just below the clavicle.
2. Gunshot wound: Entrance is circular in shape, 1.5cm in diameter at the right midclavicular line, just above the clavicle. Exist is 2 cm. long, 2 cm. wide at the area of the lateral angle of the left scapula of the posterior chest.
3. Gunshot wound: Entrance is oblong in shape, 2.5 cm long, 1 cm. wide, located at the lateral aspect of the right elbow of the upper extremity. Exit is none.
4. Entrance is circular I shape, 1 cm. in diameter, located at the lateral aspect, proximal third of the right leg, just below the knee. Exit is irregular in shape, 1.5 cm. long, 1.5 cm. wide at the medical aspect distal third of the right leg.
5. Entrance is circular in shape, 1.5 cm. in diameter at the right posterior superior iliac spine of the pelvis. Exit none.⁵

Appellant, for his defense, alleged that he was driving a tricycle in Mandaluyong City on the date of the alleged killing. Appellant claimed that he only came to know of the charges against him on the following day. Appellant did not surrender but instead chose to stay in Manila.⁶

Emelito Paderon (Paderon), a rebuttal witness, testified that he saw appellant and Gerry at Sitio Aplaya in Sariaya, Quezon on the date of the shooting at around 5:00 p.m.⁷

On 18 August 2010, the RTC rendered a Decision⁸ finding appellant guilty beyond reasonable doubt of murder and attempted homicide. The *fallo* of the Decision reads:

⁵ Exhibit folder (No correct pagination).

⁶ TSN, 11 December 2008, pp. 5-9.

⁷ TSN, 17 September 2009, p. 7.

⁸ Records, pp. 237-247; Presided by Judge Adolfo V. Encomienda.



WHEREFORE, accused **JUANCHO GERON and [J]ERRY GERON** of Sariaya, Quezon, on the ground of reasonable doubt, are hereby **ACQUITTED** of the crime charged in both cases, and accused **JOVEN GERON**, also of Sariaya, Quezon is found **GUILTY** beyond reasonable doubt of the crime of Murder, defined and punished under Article 248 of the Revised Penal Code, in Criminal Case No. 2004-947, and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**, and to pay the heirs of the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P35,000.00 as actual damages.

And in Criminal Case No. 2004-916, Joven Geron is hereby found **GUILTY** beyond reasonable doubt of the crime of Attempted Homicide, and he is sentenced, applying the Indeterminate Sentence Law, to suffer the penalty of **FOUR (4) MONTHS** of arresto mayor as minimum, to **FOUR (4) YEARS AND TWO (2) MONTHS** of prision correccional as maximum, and to pay the victim the amount of P2,000.00 as actual damages and P3,000.00 as moral damages.

Accused Juancho Geron and [J]erry Geron are ordered released from custody, unless they are being detained for any other lawful cause or causes.⁹

The RTC found appellant guilty of murder and attempted homicide. The trial court gave credence to the testimony of Diomedes considering that it jived with the physical evidence presented by the prosecution. The trial court also found the presence of treachery to qualify the crime to murder. The trial court dismissed appellant's alibi as weak in view of Diomedes' positive identification. However, the trial court acquitted co-accused Juancho and Gerry for failure of the prosecution to prove that they conspired to commit the crime.

Appellant elevated the case to the Court of Appeals. The appellate court affirmed *in toto* the ruling of the trial court.

Aggrieved by the appellate court's ruling, appellant filed a Notice of Appeal.¹⁰

Appellant argues that Diomedes is a biased witness because he is a brother of the victim. Appellant also challenges the testimony of Paderon to discredit his alibi. Appellant claims that the rebuttal witness only executed a statement the day before he testified in court. Appellant maintains his alibi and proffers that it was physically impossible for him to be in Mandaluyong

⁹ Id. at 246-247.

¹⁰ *Rollo*, p. 12.



City and Sariaya, Quezon at the same time if time and distance were to be taken into consideration.

The appeal is bereft of merit.

The elements of murder that the prosecution must establish are: (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 Revised Penal Code; and (4) that the killing is not parricide or infanticide.¹¹

The prosecution was able to prove that it was appellant who shot and killed Willy. Diomedes, the lone eyewitness, gave a clear and categorical testimony in identifying appellant as the perpetrator, thus:

Q: Now Mr. Witness, why did you file a complaint against the accused, to wit: [J]erry alias Epong, Joven and Juancho?

A: Because of the frustrated murder for (sic) me and murder for my brother Willy Sison, sir.

Q: Now when did these two incident[s] happened?

A: It happened on March 9, 2004 at about 7:00 o'clock in the evening, sir.

ATTY. TALABONG

Q: Where did it happen?

A: In our store at Bignay I, Sariaya, Quezon, sir.

x x x x

Q: What were you exactly doing at that particular time in front of your house or in your store?

A: I was standing near the door while smoking at the same time and I was also watching my brother who was counting money at that time, sir, because were about to close the store, sir.

x x x x

COURT

Q: What time was it?

A: 7:00 o'clock in the evening, Your Honor.

x x x x

¹¹ *People v. Lagman*, 685 Phil. 733, 743 (2012).

ATTY. TALABONG

Q: Now, while your brother was counting money and as you have stated that you were watching your brother on that particular store, what happened next, Mr. Witness?

A: A motorcycle suddenly arrived and parked in our store with three persons on board, sir.

ATTY. TALABONG

Q: For clarification, how far was the distance between your store and the motorcycle when it was parked?

A: About three arm stretches, sir.

x x x x

ATTY. TALABONG

Q: You stated a while ago that you mentioned that there are three persons on board on such motorcycle, did you recognize [those] persons?

x x x x

Witness

A: Yes, sir.

ATTY. TALABONG

Q: What are the names or identities of these persons?

A: Joven Geron, [J]erry Geron and Juancho Geron, sir.

Q: After that motorcycle parked just in front of your store what happened next?

A: First thing, Joven alighted from the motorcycle and approached our store, sir.

Q: How about the two?

A: Juancho followed Joven and Epong was left on the motorcycle while the engine is still on, sir.

Q: Then what happened next?

A: Joven Geron pulled out his gun and "patraydor na..."

x x x x

Witness

A: "Noong malapit na si Joven sa aking kapatid bigla siyang bumunot ng baril na pistol mabilis po itong pinaputukan ang aking kapatid ng patraydor", sir.

x x x x

ATTY. TALABONG

Q: Now Mr. Witness, when Joven shot your brother, what happened next?

A: When my brother was shot by Joven, Juancho was behind acting as a back-up, sir.

Q: How about you, what happened to you, if any?

A: After my brother was shot. . .

ATTY. ZABALLEA

It is already a narration, Your Honor.

WITNESS

A: . . . pinaputukan po ako ng tatlong beses, sir, by Joven.

ATTY. TALABONG

Q: By the way, you stated a while ago that Joven shot your brother Willy Sison. My question is: what happened to your brother when he was shot by Joven?

A: He was not able to move from the place where he was sitting, sir.

Q: Now you stated that you witnessed when Joven shot your brother Willy what was your brother doing when he was shot by Joven?

A: He was counting the money, sir.

Q: Are you sure of that?

A: Yes, sir.

Q: And you stated that your brother was shot by Joven was he hit?

A: Yes, sir.

Q: And do you know how many times Joven shot your brother Willy?

A: The first one was 3 times, sir.

Q: Now you stated that after Joven shot your brother he also shot you 3 times, am I correct?

Q: And what did you do after you were shot 3 times by Joven also?

A: "Una po umiwas po ako", first, I tried to evade the shot by jumping and going to our house and tried to go to the comfort room, sir.

COURT

Q: Are you telling that you were hit by those three shots of accused Joven?

A: I was hit two times, Your Honor.

COURT

Continue, counsel.

ATTY. TALABONG

Q: Where were you hit?

A: At my stomach and thigh, sir.¹²

The Court of Appeals found that Diomedes' testimony is consistent with his sworn affidavits and the narration he gave during the joint preliminary investigation, thus:

During his direct examination, Diomedes categorically testified that it was accused-appellant who shot at him and his brother at the time of the incident. He was consistent in this declaration as manifested in his first and second affidavits executed before the police investigators who separately interviewed him on the night of the incident and the following day. In his Sinumpaang Salaysay executed on March 9, 2004, he answered thusly to PO3 Enrico Perez:

x x x x

[PO3 Perez]:

T- Kailan at saan kayo binaril.

[Diomedes]:

S- Mga alas siete po ng gabi, ika-9 ng Marso 2004, doon sa aming lugar sa Barangay Bignay I, Sariaya, Quezon.

T- Paano kayo nabaril ng iyong kapatid.

S- Nasa pinto ako ng tindahan naming, bigla na lang my dumating na motorsiklo bumaba ho ang isang sakay si JOVEN GERON, at binunot ang kalibre 45, sa baywang niya, binaril na si Willie Boy, na nasa loob ng tindahan at nagkukuwenta ng pera, nakaupo, tatlong putok sa kanya, tapos ako na ang binaril nito at tinamaan ako sa tiyan daplis at isa ay sa kanang pigi, nakalukso ako, at tumakbo ako sa loob ng aming bahay at nakatago sa kubeta.

x x x x

He reiterated the same narration during the joint preliminary examination on April 14, 2004, to wit:



¹² TSN, 3 August 2006, pp. 7-16.

Q: So, while you were there [in the store], what were you doing at that time, 7:00 o'clock in the evening?

A: I was about to go out and when I was already at the door, the assailant arrived, sir.

Q: Who is that assailant?

A: Joven Geron, sir.

Q: Upon his arrival, what happened?

A: He suddenly drew his gun and shot my brother thrice, sir.

Q: What weapon?

A: Cal. 45, sir.

Q: Then, what did you do?

A: I ran away, sir.

Consistently, he made the same statement during the taking of his testimonial evidence on August 3, 2006, viz:

[ATTY. TALABONG]:

Q: Now, while your brother was counting money and as you have stated that you were watching your brother on that particular store, what happened next, Mr. Witness?

[DIOMEDES]:

A: A motorcycle suddenly arrive and parked in our store with three persons on board, sir.

x x x x

Q: What are the name or identities of these persons?

A: Joven Geron, Gerry Geron and Juancho Geron, sir.

Q: After that motorcycle parked just in front of your store what happened next?

A: First thing, Joven alighted from the motorcycle and approached our store, sir.

Q: How about the two?

A: Juancho followed Joven and Epong was left on the motorcycle while the engine is still on, sir.

Q: Then what happened next?

A: Joven Geron pulled out his gun and patraydor na. . .

x x x x

*A: Noong malapit na si Joven sa aking kapatid bigla siyang bumunot ng baril na pistol mabilis po nitong pinaputukan ang aking kapatid ng patraydor sir.*¹³

Positive identification when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.¹⁴

In this case, Diomedes had no motive to falsely accuse appellant. In fact, he would naturally be interested to find and pinpoint the real perpetrator in order to achieve justice for the death of his brother.

The element of treachery attended the shooting against Willy. Joven suddenly alighted from the motorcycle, pointed his gun at Willy and immediately shot him. The attack was sudden and unexpected. Willy, who was unarmed, had no inkling that he would be shot such that he did not have any real chance to defend himself.

With respect to appellant's alibi, the Court of Appeals correctly disregarded it because of the statement of the rebuttal witness to the contrary, *i.e.*, appellant was in Sitio Aplaya, Sariaya, Quezon on the date and around the time of the commission of the crime.

Under Article 248 of the Revised Penal Code, the crime of murder is punishable by *reclusion perpetua* to death if committed with treachery. As correctly imposed by the trial court and as affirmed by the Court of Appeals, appellant must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.¹⁵ Appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with prevailing jurisprudence.¹⁶ In addition, interest at the rate of six percent

¹³ Rollo, pp. 7-8.

¹⁴ *People v. Gani*, 710 Phil. 466, 474 (2013).

¹⁵ *People v. Jalbonian*, 713 Phil. 93, 106 (2013).

¹⁶ *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

(6%) *per annum* shall be imposed on all monetary awards from date of finality of this Decision until fully paid.

The trial court correctly convicted appellant of attempted homicide of Diomedes. We find the following *ratio decidendi* of the Court of Appeals on this point tenable:

This Court likewise agrees with the trial court in finding accused-appellant guilty of the attempted homicide of Diomedes.

Unlike in the case of his brother, Diomedes was obviously not unable to evade the attacks of accused-appellant since he saw him from the moment he alighted from their motorcycle and was sufficiently warned that he was bearing arms. More importantly, he was actually able to escape the scene by jumping towards their house. Hence, the attendant circumstance which would have qualified the crime charged to murder is not present in his case.

Moreover, by definition, a felony is “attempted” 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. In the present case, shots were fired by accused-appellant towards Diomedes but none of the injuries he sustained, as a result – by testimony of Dr. Catarroja – were fatal. In addition, accused-appellant was prevented from further attacking Diomedes by the simple expedient of the latter’s escape. Ergo, this case is clearly still within the attempted stage of the execution of the crime of homicide.¹⁷

The penalty for attempted homicide is *prision correccional*. It is two degrees lower than *reclusion temporal*, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period. To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. Appellant, therefore, was correctly sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.¹⁸


¹⁷ Rollo, p. 10.

¹⁸ *Cabildo v. People*, 642 Phil. 737, 746-747 (2010).


WHEREFORE, the assailed 25 February 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 04890 finding appellant Joven Geron y Yema guilty beyond reasonable doubt of the crime of murder and attempted homicide is **AFFIRMED** with the following **MODIFICATIONS**:


1. The awards of civil indemnity, moral damages and exemplary damages are increased to ₱100,000.00 each;
2. That appellant is not eligible for parole; and
3. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid.

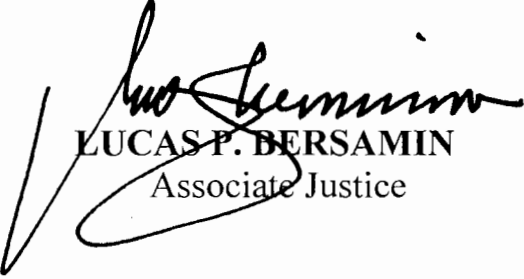
SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
 Associate Justice


ATTESTATION

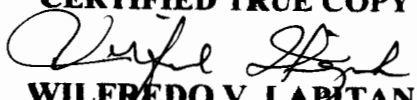
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
 Chief Justice

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 SEP 14 2016