

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 235016

Present:

-versus-

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

NESTOR BENDECIO y VIEJO
ALIAS "TAN",
Accused-Appellant.

Promulgated:

SEP 08 2020

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DECISION

LAZARO-JAVIER, J:

The Case

This appeal assails the Decision¹ dated August 17, 2017 of the Court of Appeals in CA-G.R. CR No. 39046 affirming the verdict of conviction against appellant Nestor Bendecio y Viejo alias "Tan" for the complex crime of attempted murder with murder.

¹ Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Maria Elisa Sempio Diy and Pablito A. Perez concurring; *rollo*, pp. 2-24.

Antecedents

The Charge

Appellant Nestor Bendecio y Viejo alias “Tan” was charged with the complex crime of attempted murder with murder, *viz.*:

That on or about the 24th day of December, 2011, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill armed with a hand gun with treachery suddenly attacked one GERRY MARASIGAN Y CAMPIT, when he did then and there willfully, unlawfully and feloniously fire a shot with his revolver at the latter without warning, which means was consciously adopted by the accused to ensure impunity, thus commencing the commission of the crime of murder, directly by overt acts but nevertheless did not perform all the acts of execution which should have produced the crime of murder by reason of cause or causes other than his own spontaneous desistance, that is, the accused missed his aim and hit instead another victim JONABELLE MARASIGAN a seven (7) year old minor, born on November 1, 2004 whose minority is equivalent to employing treachery on the part of the herein accused, thereby inflicting upon the latter fatal wounds which directly caused her death, to the damage and prejudice of her surviving heirs.

Contrary to law.²

On arraignment, appellant pleaded not guilty.³ Trial ensued.

During the trial, Gerry Marasigan and Princess Marasigan testified for the prosecution. On the other hand, appellant was the lone witness for the defense.

Prosecution’s Version

Gerry Marasigan testified that on December 24, 2011, around midnight, a friend invited him to a drinking spree at the latter’s home. He obliged and joined the drinking spree until his wife came to fetch him. On their way out, he bumped into appellant whom he recognized as his mother’s neighbor. Appellant asked him “*Anong problema?*” He replied: “*Kuya Nestor, asawa ko ‘to, hindi mo na ba ako nakikilala?*” Appellant rebuffed “*Hindi, bastos ka eh.*”

He no longer paid attention to appellant and proceeded to walk home with his wife. Back in their home, he was closing the front door when he noticed appellant standing right outside the doorway. He was a mere arm’s length away from appellant when suddenly, the latter drew a gun, aimed at him, and fired. But it was not he who got hit, instead it was his seven (7)-year-

² *Rollo*, p. 3.

³ *Id.* at 4.

old daughter Jonabel and his sister Princess. Jonabel was fatally hit. He immediately brought Jonabel to the hospital but she died the following day.

He was not a friend, but a mere acquaintance of appellant. They never had any prior altercation.⁴

Princess Marasigan, Gerry's sister, testified that on the day of the incident, she and her niece Jonabel were inside Gerry's house in Alabang, Muntinlupa. Around 11 o'clock in the evening, Gerry and his wife hurriedly went inside their house. She stood up and, to her surprise, saw appellant holding a gun and firing it in Gerry's direction. She clearly saw appellant with a gun in hand because of the light by the front door.

When they heard the shot, she and her niece Jonabel hid inside the bathroom. Only then did she realize that they were both bleeding. Appellant only fired once, albeit the single bullet pierced Jonabel's chest before hitting her in the leg.⁵ She filed a separate criminal case against appellant for her injury.

Defense's Version

Appellant testified that he was in Samat, Samar on the date of the alleged shooting incident. He only knew Gerry because his sister's *paupahan* was next to Gerry's house. He did not know of any reason why Gerry would implicate him in the purported shooting incident involving his daughter.⁶

The Trial Court's Ruling

By Decision dated July 19, 2016, the Regional Trial Court-Branch 207, Muntinlupa City found appellant guilty of the complex crime of attempted murder with homicide, *viz.*:

WHEREFORE, the Court finds accused Nestor Bendecio y Viejo guilty beyond reasonable doubt of the complex crime of attempted murder with homicide and is sentenced to an indeterminate penalty of twelve years of prison mayor in its maximum as the minimum period to twenty years of reclusion temporal in its maximum as the maximum period, and is ordered to pay the heirs of Jonabelle Marasigan the amount of ₱75,000.00 as and for civil indemnity, ₱75,000.00 as and for moral damages, ₱30,000.00 as and for temperate damages, and ₱75,000.00 as and for exemplary damages, all with 6% interest per annum from the finality of this decision.⁷

The trial court gave full credence to the positive testimonies of Gerry and Princess who testified in a straightforward, candid, and convincing

⁴ *Id.* at 4-5.

⁵ *Id.* at 6-7.

⁶ *Id.* at 7-8.

⁷ *Id.* at 113.



manner, leaving no room for doubt that appellant was the perpetrator of the crime. Thus, the trial court rejected appellant's self-serving, nay, uncorroborated defenses of denial and alibi.⁸

Appellant was guilty of a complex crime because his single act of firing a gun at Gerry, though ending up killing Jonabel, emanated from a single criminal intent.⁹ The trial court appreciated treachery as a qualifying circumstance in the attempted killing of Gerry's, but not as to the killing of Jonabel.

The Court of Appeals' Proceedings

In his appeal, appellant faulted the trial court for convicting him of the complex crime of attempted murder with homicide based on the supposedly doubtful testimonies of Gerry and Princess. The trial court should not have given full weight and credence to Gerry's positive identification of him since Gerry admitted in open court that he joined a drinking session prior to the shooting incident. Thus, Gerry's inebriation diminished his ability to clearly identify the man armed with a gun standing by his doorstep that night. As regards Princess, her blood relationship with Gerry cast serious doubt on her credibility.¹⁰

On the other hand, the Office of the Solicitor General (OSG) defended the verdict of conviction. The OSG maintained that the trial court's conclusion on the credibility of the witnesses deserved great respect. The defense lacked evidence to support the allegation that Gerry's level of intoxication impaired his capacity to identify his assailant; intoxication, by itself, does not necessarily prevent a witness from making a positive identification of the perpetrator of the crime. Too, it was immaterial that Princess was Gerry's relative. More so because her testimony was not inherently improbable nor was it shown that she was improperly impelled to falsely incriminate appellant.¹¹

The Court of Appeals' Ruling

Under its assailed Decision dated August 17, 2017, the Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 19 July 2016 of the Regional Trial Court of Muntinlupa City, Branch 207 in *Crim. Case No. 12-305* is **AFFIRMED** with **MODIFICATION** in that accused-appellant Nestor Bendecio y Viejo is hereby found guilty beyond reasonable doubt of the complex crime of attempted murder with murder and sentenced to suffer the penalty of

⁸ CA rollo, p. 53.

⁹ *Id.* at 54.

¹⁰ Rollo, p. 9.

¹¹ *Id.* at 9-10.

reclusion perpetua. Accused-appellant is further ordered to pay the heirs of Jonabel Marasigan ₱75,000.00 each as civil indemnity, moral damages and exemplary damages, and ₱50,000.00 as temperate damages, with interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid to be imposed on said civil indemnity and all awarded damages.

SO ORDERED.¹²

The Court of Appeals upheld the trial court's factual findings on the credibility of the prosecution witnesses since appellant offered no evidence, other than his bare allegations, to show that Gerry's level of intoxication impaired his ability to identify appellant or that Princess had ulterior motive to falsely testify against him.¹³

It affirmed the trial court's factual finding that appellant's intended victim was Gerry though the bullet he fired hit Princess and killed Jonabel instead.¹⁴ Since appellant failed to perform all the acts of execution which would have resulted in Gerry's death, appellant was liable for attempted murder, qualified as it was by treachery.¹⁵

Appellant's poor aim amounted to *aberratio ictus* or mistake in the blow – a circumstance that neither exempted him from nor mitigated his criminal liability. On the contrary, it rendered appellant liable for Jonabel's death under Article 4 of the Revised Penal Code (RPC). For although it may not have been appellant's intention to shoot Jonabel, it is clear that Jonabel's death was the natural and direct consequence of appellant's felonious assault against Gerry.¹⁶

The Court of Appeals further ruled that the killing of Jonabel amounted to murder, not homicide. For Jonabel was a hapless victim who had no opportunity to defend herself or retaliate.¹⁷

In accordance with *People v. Jugueta*,¹⁸ the Court of Appeals increased the award of temperate damages to ₱50,000.¹⁹

The Present Petition

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.

¹² *Id.* at 20.

¹³ *Id.* at 14-15.

¹⁴ *Id.* at 12-13.

¹⁵ *Id.* at 13.

¹⁶ *Id.*

¹⁷ *Id.* at 12.

¹⁸ 783 Phil. 806, 846 (2016).

¹⁹ *Rollo*, p. 20.

In compliance with Resolution dated January 19, 2018 of the Court, the OSG²⁰ and appellant²¹ manifested that in lieu of supplemental briefs, they were adopting their respective briefs submitted before the Court of Appeals.

Issue

Did the Court of Appeals err in convicting appellant of the complex crime of attempted murder with murder?

Ruling

Appellant was charged with the complex crime of murder and attempted murder.

Article 248 of the RPC defines and penalizes murder, thus:

Article 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x

It requires the following elements: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.²²

On the other hand, Article 6 of the RPC²³ states that there is an attempt to commit a felony when the offender directly commences its commission by overt acts but was unable to perform all the acts of execution which should have produced the felony by reason of some cause or accident other than his or her own spontaneous desistance. In *Palaganas v. People*,²⁴ the Court held that attempted murder or attempted homicide is committed when the accused intended to kill the victim, as manifested by the use of a deadly weapon in the assault, and the wound/s sustained by the victim was/were not fatal.

²⁰ *Id.* at 32-33.

²¹ *Id.* at 45-46.


²² *People v. Adriano*, 764 Phil. 144, 154 (2015).

²³ **Art. 6. Consummated, frustrated, and attempted felonies.** – Consummated felonies as well as those which are frustrated and attempted, are punishable.

x x x x

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.

²⁴ 533 Phil. 169, 193 (2006).



Here, records bear the detailed narrations of Gerry and Princess about the shooting incident. Appellant fired at Gerry but instead of hitting the latter, the bullet hit Jonabel in the chest and thereafter, Princess in the leg. Jonabel died as a result.

Although appellant, with intent to kill, fired his gun at Gerry, appellant was not able to consummate the killing for reasons other than his own desistance – he simply missed and ended up wounding Princess and killing Jonabel.

The Court reckons with the third element of the crime of murder, *i.e.*, the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC.

The Information alleged that treachery attended the shooting of Gerry. There is treachery when two (2) elements concur: (1) the employment of means, methods, or manner of execution which would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) such means, method, or manner of execution was deliberately or consciously chosen by the offender.²⁵ The essence of treachery consists of the sudden and unexpected attack on an unguarded and unsuspecting victim without any ounce of provocation on his or her part.²⁶

The case records undeniably prove that Gerry was the intended victim of the shooting. When Gerry went home and tried to close the front door, he noticed appellant standing right outside the doorway. Suddenly, appellant drew a gun, aimed at him, and fired. Appellant, however, missed hitting Gerry and ended up injuring Princess and killing Jonabel.

The qualifying circumstance of treachery attended the attempted killing of Gerry. In *People v. Amora*,²⁷ the Court held that the qualifying circumstance of treachery does not require that the perpetrator attack his or her victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. This is the case for Gerry. As shown, appellant commenced the commission of murder by suddenly firing his gun towards Gerry who was then unarmed and was not in a position to defend himself. Gerry, however, did not die as a result because appellant simply missed.

Evidently, Gerry never saw that what started as a mere accidental bumping that night in the house of a friend would carry on and end in a tragedy inside his own home. He almost got killed while his young innocent child lost her life. Things happened so sudden and fast, he never got the chance to defend himself or his child or even to just run away.

²⁵ *People v. Flora*, 389 Phil. 601, 615 (2000).

²⁶ *People v. Jugueta*, 783 Phil. 806, 819 (2016); citing *People v. Fallorina*, 468 Phil. 816 (2004).

²⁷ 748 Phil. 608, 612 (2014).

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As for Jonabel's death, what happened to this seven (7)-year-old was a clear case of *aberratio ictus* or mistake in the blow. Under the doctrine of *aberratio ictus*, as embodied in Article 4 of the RPC,²⁸ criminal liability is imposed for the acts committed in violation of law and for all the natural and logical consequences resulting therefrom. Thus, while it may not have been appellant's intention to shoot Jonabel, this fact alone will not exculpate him of his criminal liability. Jonabel's death was unquestionably the natural and direct consequence of appellant's felonious deadly assault against Gerry.²⁹

Notably, the qualifying circumstance of treachery attended Jonabel's killing. As pointed out by Justice Mario V. Lopez during the deliberation, although appellant did not intend to kill Jonabel, treachery may still be appreciated in *aberratio ictus*, pursuant to the Court's ruling in *People v. Flora*.³⁰ There, the accused fired his gun at his target, but missed, and hit two (2) other persons. The Court appreciated treachery as a qualifying circumstance and convicted the accused for murder and attempted murder because even if the death and injury of the two (2) other persons resulted from accused's poor aim, accused's act of suddenly firing upon his victims rendered the latter helpless to defend themselves. This is applicable here. Just because Jonabel was not the intended victim does not make appellant's sudden attack any less treacherous.

In another vein, appellant faults the Court of Appeals for affirming the trial court's factual findings on the credibility of the testimonies of Gerry and Princess. Appellant essentially argues that Gerry's testimony should not have been given weight and credence because he was under the influence of alcohol when the purported shooting incident took place and thus, he could not have positively identified that appellant as the perpetrator of the crime. Appellant also asserts that Princess, being Gerry's sister, is a biased witness whose testimony is unworthy of belief.

We are not persuaded.

When the credibility of witnesses is put in issue, the Court will generally not disturb the trial court's factual findings thereon, especially when affirmed by the Court of Appeals, as in this case. Indeed, the trial court was in a better position to decide the question of credibility as it heard the witnesses themselves and observed their deportment and the manner by which they testified during the trial.³¹

Notably, appellant offered no evidence, other than his bare allegations, to show that Gerry's level of intoxication impaired his ability to identify appellant or that Princess had ulterior motive to testify against him.

²⁸ Art. 4. *Criminal liability*. — Criminal liability shall be incurred:

1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.

²⁹ *People v. Adriano*, supra note 22.

³⁰ *People v. Flora*, supra note 25.

³¹ *People v. Mabalo*, G.R. No. 238839, February 27, 2019; *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

Against the testimonies of Gerry and Princess, appellant's denial and alibi must crumble. We have held time and again that denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that it was appellant who committed the crime charged. Hence, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.³²

Article 48 of the RPC states that there is a complex crime when a single act constitutes two (2) or more grave or less grave felonies. Here, appellant's single act of firing his gun constituted the crime of attempted murder, with respect to Gerry, and the crime of murder, as regards Jonabel. Article 48 of the RPC likewise provides that the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Here, the most serious crime is murder. Hence, the imposable penalty is that of murder in its maximum period. Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Due to Republic Act No. 9346³³ (RA 9346), however, the penalty to be imposed is *reclusion perpetua*. More, in accordance with A.M. No. 15-08-02,³⁴ the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for RA 9346.

As for the monetary award, *People v. Jugueta*³⁵ teaches that civil indemnity, moral damages, and exemplary damages must be awarded for each component of the complex crime. Prevailing jurisprudence sets the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages in murder cases where the imposable penalty is death but due to the prohibition to impose the same, the actual penalty imposed is *reclusion perpetua*. An award of ₱50,000.00 as temperate damages is likewise proper. With respect to the crime of attempted murder, an award of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages is fitting.

³² *People v. Batalla*, G.R. No. 234323, January 07, 2019.

³³ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

Sec. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

³⁴ A.M. No. 15-08-02 clarifies:

xxx the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole*" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

³⁵ *People v. Jugueta*, 783 Phil. 806, 846 (2016).

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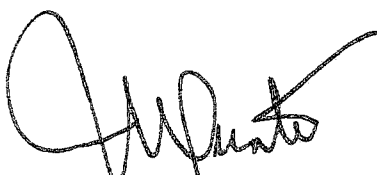
WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated August 17, 2017 of the Court of Appeals in CA-G.R. CR No. 39046 is hereby **AFFIRMED**.

Appellant Nestor Bendecio y Viejo alias "Tan" is guilty of the **COMPLEX CRIME OF MURDER WITH ATTEMPTED MURDER** and sentenced to *reclusion perpetua without eligibility for parole*. He is further ordered to pay Gerry Marasigan ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages and the heirs of Jonabel Marasigan ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.


SO ORDERED.

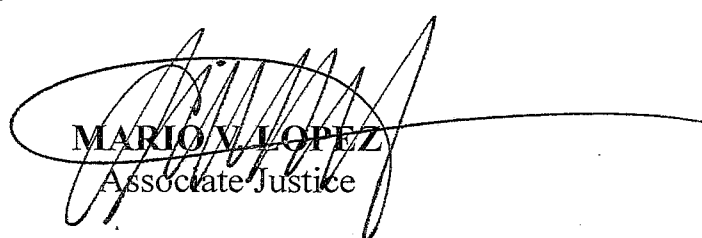

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
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