



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 January 2021** which reads as follows:*

“G.R. No. 250461 (*Crisanto Amerga y Lapuz vs. People of the Philippines*). —

The Court resolves to:

- 1) **GRANT** the Motion for Extension of Time to File Comment (on Petition for Review on *Certiorari*) dated October 27, 2020 filed by the Office of the Solicitor General (OSG); and
- 2) **NOTE** the Comment dated December 21, 2020 of the OSG and **DENY** the Petition for lack of merit.

Petitioner is guilty of Attempted Homicide only.

Anent the first issue, petitioner Crisanto Amerga y Lapuz (petitioner) raised the issue of the so-called defective Information for the first time in the present petition. As a rule, a party which deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change its theory on appeal.¹ Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be

¹ *Bote v. Spouses Veloso*, 700 Phil. 78, 88 (2012).

raised for the first time at such late stage.² A judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.³

In any event, petitioner had already waived his right to challenge the validity of the Information when he entered his plea. *People v. Solar*⁴ is apropos:

To recall, in the present case, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando's conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

So must it be.

Going now to the second issue, the elements of Frustrated Homicide are: 1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; 2) the victim sustained fatal or mortal wound but did not die because of timely medical assistance; and 3) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code, as amended, is present.⁵ Here, petitioner's challenge focuses mainly on the second element – the victim did not sustain mortal wounds.

The prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds.⁶ Here, Dr. Erwin Nierves (Dr. Nierves) did testify that the victim could have bled to death if he was not given medical attention. But, aside from this, the prosecution did not offer evidence on the true extent of the victim's wounds, the nature of treatment received by the victim, and the length of time it took for the victim to recover from his wounds. Yet, on cross, Dr. Nierves stated that the victim could have recovered even without medical intervention, thus:

Atty. Degamo:

Q: Am I right doctor in hearing you that if there no (sic) immediate medical intervention it will cause death of the victim?

A: Yes, at that time.

² *Chinatrust (Phils) Commercial Bank v. Philip Turner*, 812 Phil. 1 (2017), citing *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934 (2003).

³ *Bernas v. Court of Appeals*, 296-A Phil. 90, 104 (1993).

⁴ G.R. No. 225595, August 06, 2019.

⁵ *De Guzman, Jr. v. People*, 748 Phil. 452, 458 (2014).

⁶ *Colinares v. People*, 678 Phil. 482, 494 (2011).

Q: Even if he was not brought to the hospital there is a possibility that he will still live?

A: Yes.⁷

Since there is doubt as to whether the second element of Frustrated Homicide is present in this case, petitioner should be convicted of Attempted Homicide only. *Gemenez v. People*⁸ teaches:

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

At this juncture, the Court deems it fit to emphasize that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence.] 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.

Gemenez further sets the appropriate indeterminate penalty and monetary awards, thus:

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

Applying, however, the Indeterminate Sentence Law, *prision correccional* should only constitute the maximum of the penalty to be imposed by the Court. Considering all the foregoing, the Court thus imposes on Gemenez the indeterminate penalty of four (4) months of *arresto mayor* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

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

⁷ *Rollo*, p. 64.

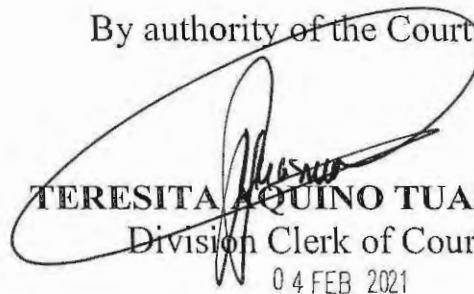
⁸ G.R. No. 241518, March 04, 2020.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated August 31, 2018 and Resolution dated September 19, 2019 of the Court of Appeals in CA-G.R. CR No. 02705 are **AFFIRMED WITH MODIFICATION**. Petitioner **CRISANTO AMERGA y LAPUZ** is found **GUILTY** of **ATTEMPTED HOMICIDE** and sentenced to an indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

He is further required **TO PAY WILLIAM CATA CUTAN y LIBRADILLA** ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages. All monetary awards are subject to six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED." (Rosario, J., on official leave)

By authority of the Court


TERESITA QUINO TUAZON
Division Clerk of Court *Utth*
04 FEB 2021 2/3

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 45
Bais City, Negros Oriental
(Crim. Case No. 07-04-BY)

COURT OF APPEALS (reg)
Visayas Station
Cebu City
CA-G.R. CR No. 02705

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*with copy of CA Decision dated 31 August 2018.
Please notify the Court of any change in your address.
GR250461. 1/20/2021(65 & 157)URES