



REPUBLIC OF THE PHILIPPINES  
 SUPREME COURT  
 Manila  
 SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
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**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 18 February 2015 which reads as follows:*

**G.R. No. 214263: ABEL TAGUD AND ERNESTO TAGUD v. PEOPLE OF THE PHILIPPINES**

X-----X

This court resolves the Petition<sup>1</sup> for Review on Certiorari assailing the Decision<sup>2</sup> of the Court of Appeals Cebu City, affirming the Omnibus Decision<sup>3</sup> of the Regional Trial Court of Bohol. The Municipal Circuit Trial Court found petitioners Ernesto Tagud guilty of attempted homicide and Abel Tagud guilty of grave threats, and sentenced them:

WHEREFORE, PREMISES CONSIDERED the Court finds accused ERNESTO TAGUD guilty beyond reasonable doubt of the crime of ATTEMPTED HOMICIDE and hereby sentences him to an indeterminate penalty of imprisonment of Six (6) Months of Arresto Mayor to Four (4) years Two (2) Months and One (1) Day of Prision Correccional Medium and its accessory penalties. ABEL TAGUD is likewise pronounced guilty beyond reasonable doubt of the crime of GRAVE THREATS and hereby sentences him to imprisonment of FOUR (4) MONTHS OF ARRESTO MAYOR, a fine of P500.00 and its accessory penalties.

Ernesto Tagud shall indemnify the complainant with TWENTY THOUSAND PESOS as moral damages while Abel Tagud shall indemnify the complainant with TEN THOUSAND PESOS also by way of moral damages.

SO ORDERED.<sup>4</sup>

The Regional Trial Court dismissed the appeal and affirmed the ruling of the Municipal Circuit Trial Court on April 24, 2006, with modification:

PREMISES considered, the court hereby resolves to affirm the decision appealed from except the imposition of moral damages on both accused, which is hereby ordered deleted.

<sup>1</sup> Rollo, pp. 9-11.

<sup>2</sup> Id. at 12-26. The Decision, docketed as CA-G.R. CEB CR. NO. 00560 and dated September 30, 2013, was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Pampio A. Abarintos (Chair) and Gabriel T. Ingles of the Eighteenth Division, Court of Appeals, Cebu City.

<sup>3</sup> Id. at 49-50. The Omnibus Decision, docketed as Crim. Case Nos. 0962 and 0963 and dated April 24, 2006, was penned by Executive Presiding Judge Dionisio R. Calibo, Jr. of Branch 50, 7<sup>th</sup> Judicial Region, Regional Trial Court of Bohol.

<sup>4</sup> Id. at 19-20.

- more -

*[Handwritten initials]*

**SO ORDERED.**<sup>5</sup> (Emphasis in the original)

The Court of Appeals dismissed the appeal and affirmed the ruling of the trial court with modification:

**WHEREFORE**, the April 24, 2006 Omnibus Decision of the Regional Trial Court, Branch 50, Loay, Bohol is **AFFIRMED** with **MODIFICATIONS**. In Criminal Case No. 0962 for Grave Threats, the petitioner Abel Tagud is imposed with the indeterminate penalty of two months and one day to four months of *arresto mayor* and fine of Five Hundred Pesos, together with its accessory penalties. The award for moral damages is **REINSTATED**.

**SO ORDERED.**<sup>6</sup> (Emphasis in the original)

According to two (2) Informations filed before the Municipal Circuit Trial Court, on or about December 1, 2001, Ernesto Tagud (Ernesto) willfully, unlawfully, feloniously, and with intent to kill, assaulted and tried to hack Andres Cruzrojas three (3) times with a sharp-pointed *bolo*. Ernesto did not hit the victim. Abel Tagud (Abel) willfully, unlawfully, and feloniously, armed with a Batangas knife, threatened to kill Andres Cruzrojas.<sup>7</sup>

#### **Prosecution's version of events**

The prosecution presented Nila Chavez (Nila), Andres Cruzrojas (Andres), Joel Bellico (Joel), and Fernando Villacorta (Fernando) as its key witnesses.<sup>8</sup>

According to Nila, on December 1, 2001 at around 7:00 p.m., "while she was in her house, . . . she heard a shout."<sup>9</sup> Andres and Fernando sought her help and she allowed them inside her house. Andres had told her that Ernesto and Abel, as well as Ernesto's other son, Jack, were pursuing them. Not long after, Ernesto and Abel started a ruckus outside Nila's house.<sup>10</sup> Abel shouted from her doorstep, "your house is (built of) hardiflex, you are poor, we have money for building a house but we will reserve it for payment for whoever who (sic) will (be) killed now."<sup>11</sup> Nila managed to leave her house to seek help from the police. SPO1 Dodong Hallazgo responded.<sup>12</sup>

<sup>5</sup> Id. at 50.

<sup>6</sup> Id. at 25.

<sup>7</sup> Id. at 13-14.

<sup>8</sup> Id. at 13-16.

<sup>9</sup> Id. at 13-14.

<sup>10</sup> Id. at 14.

<sup>11</sup> Id.

<sup>12</sup> Id.

Andres testified that he was a neighbor of Ernesto and Abel. At around 7:00 p.m. of December 1, 2001, while waiting for Fernando to return with the kerosene he had asked him to buy, a bleeding Fernando arrived at his house.<sup>13</sup> He told Andres that he was mauled by Jack with a “*petsikorno*.”<sup>14</sup> Andres, together with Joel, another neighbor, rushed him to the hospital, but they met Abel along the National Highway of Sitio Asinan, Canmanico, Valencia, Bohol (National Highway).<sup>15</sup> Armed with a Batangas knife, Abel yelled at them, “Do you want to be killed?”<sup>16</sup> Abel tried to stab Andres. Shortly after, Ernesto arrived with a *bolo*. Ernesto struck Andres thrice, but the latter was able to parry the blows. Joel and Fernando told Andres to run. Andres ran towards the house of Nila.<sup>17</sup>

Corroborating Andres’ testimony, Joel testified that he had attempted to escort Fernando to a hospital as the latter’s head was bleeding. Along the National Highway, however, they were stopped by Abel, who thereafter attempted to stab Andres with a hunting knife. Ernesto arrived with a *bolo* and tried to stab Andres. They sought refuge at Nila’s house.<sup>18</sup> With Ernesto and Abel unable to enter, Abel yelled from the outside, “I am going to kill you! You are poor! Your house is made of hardiflex! We have money to build a house but we reserve [sic] it because we will pay whoever will be killed now!”<sup>19</sup>

Fernando testified that the incident started when Jack, the brother of Abel and son of Ernesto, mauled him while he was on his way to buy kerosene. He sought the help of Andres and Joel, but Ernesto and Abel prevented them from going to the hospital. Armed with a *bolo* and a Batangas knife, Ernesto and Abel attempted to stab Andres, but he was able to parry the blows. Fernando further testified that while he and his companions were at Nila’s house, Ernesto and Abel had yelled from outside that they were illiterate, and that while the latter party had the money to have a house built, they were saving it to pay whoever they would manage to kill. It was only when SPO1 Dodong Hallazgo had arrived at the scene that Ernesto and Abel walked away.<sup>20</sup>

#### Defense’s version of events

The defense presented the testimonies of Abel and Ernesto. It also presented Jack Tagud, one Glenda Odarve, and one Richard Gamus.<sup>21</sup>

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<sup>13</sup> Id.  
<sup>14</sup> Id.  
<sup>15</sup> Id.  
<sup>16</sup> Id.  
<sup>17</sup> Id.  
<sup>18</sup> Id. at 15.  
<sup>19</sup> Id.  
<sup>20</sup> Id. at 15–16.  
<sup>21</sup> Id. at 16–18.

According to Abel, on December 1, 2001 at around 7:00 p.m., he went outside their house to buy a cigarette from Francing's store.<sup>22</sup> Along the way, he met Andres who allegedly said, "Here he is, he has returned."<sup>23</sup> Andres and his 14 companions<sup>24</sup> started to beat him up with stones and a piece of wood. Unaware why he was being mauled, Abel picked up a stone to defend himself. One Pablo Trocio, Jr. allegedly brandished his *bolo* at Abel, but Abel managed to escape.<sup>25</sup>

Jack Tagud, on the other hand, testified that on December 1, 2001 at around 7:00 p.m., he and his girlfriend Glenda Odarve were walking along the National Highway when they ran into Fernando.<sup>26</sup> Wanting to avoid trouble, Jack allegedly told Fernando, "Nan, if you make trouble in our place, please don't involve us,"<sup>27</sup> to which Fernando replied, "Jack, don't participate, or else, you can taste my fist from Vinapor."<sup>28</sup> Fernando tried to punch Jack, but the latter evaded the blows and planted punches on Fernando. Fernando ran away. Jack walked his girlfriend home. He testified that he spent the night at her house and went home at 5:00 a.m. the following day.<sup>29</sup> Glenda Odarve, Jack's girlfriend, corroborated his version of the story.<sup>30</sup>

Richard Gamus testified that he saw Ernesto challenge Andres to a fight but that Andres and his companions scampered away. He left the scene upon the arrival of SPO1 Dodong Hallazgo.<sup>31</sup>

As for Ernesto, he testified that when he learned that Jack was mauled by Andres and his companions, he rushed to the site of the incident. However, neither his son nor Andres was there, so he went back home. He denied having tried to stab Andres.<sup>32</sup>

### The Decision of the Court of Appeals

The Court of Appeals dismissed Ernesto and Abel's appeal and affirmed the trial court's Decision. However, it modified the penalty by reinstating the award for moral damages.<sup>33</sup>

<sup>22</sup> Id. at 16.

<sup>23</sup> Id.

<sup>24</sup> Andres' companions were Danilo Chavez, Helvic Cruzrojas, Pablo Trocio, Jr., Estrella Cruzrojas, and 10 others who were unidentified.

<sup>25</sup> *Rollo*, p. 16.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. Vinapor refers to the barangay in Mindanao where Fernando is from.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id. at 17-18.

<sup>32</sup> Id. at 18.

<sup>33</sup> Id. at 25.

In their appeal before the Court of Appeals, Ernesto and Abel alleged that the prosecution failed to prove their guilt beyond reasonable doubt considering that the credibility of the witnesses presented were questionable.<sup>34</sup> In holding that this argument had no merit, the Court of Appeals rationated that:

the trial court did not overlook the significant facts that establish the *corpus delicti* of the crimes charged and the positive identification of Ernesto Tagud by the prosecution eyewitnesses. On appeal, the RTC correctly adhered to the rule that an appellate court normally does not contest the findings of fact by the trial court judge who was able to personally observe the actuations and the demeanor of the witnesses in open court.<sup>35</sup> (Citation omitted)

The Court of Appeals held that the positive identification and credible testimonies of the prosecution's witnesses prevailed over the unsubstantiated defense of denial and alibi of Ernesto and Abel.<sup>36</sup>

### **This court's ruling**

Petitioners bring forth the same arguments raised in their appeal before the Court of Appeals, all of which had been properly settled by that court. This Petition must be denied for lack of merit.

The general rule is that the findings of fact by the lower court will not be disturbed by an appellate court.<sup>37</sup> The exception to this is the clear showing that the trial court misunderstood the facts or circumstances of a case.<sup>38</sup> Petitioners did not show how the findings of facts of the trial court, as affirmed by the Court of Appeals, were contradictory to the evidence on record. The Petition failed to show any reason for this court to carve out an exception in this case. Furthermore, alibi is considered the weakest kind of defense, and jurisprudence has constantly emphasized that it cannot hold water in light of positive identification.<sup>39</sup>

In *People v. Ramos*:<sup>40</sup>

However, *for the defense of alibi to prosper, "the accused must prove (a) that [she] was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for*

<sup>34</sup> Id. at 22.

<sup>35</sup> Id.

<sup>36</sup> Id. at 24–25.

<sup>37</sup> *Spouses Surtida v. Rural Bank of Malinao (Albay), Inc.*, 540 Phil. 502, 510–511 (2006) [Per J. Callejo, Sr., First Division].

<sup>38</sup> Id.

<sup>39</sup> *People v. Lago*, G.R. No. 96090, March 30, 1993, 220 SCRA 578, 582 [Per J. Melo, Third Division].

<sup>40</sup> G.R. No. 190340, July 24, 2013, 702 SCRA 204 [Per J. Del Castillo, Second Division].

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*[her] to be at the scene of the crime” during its commission. “Physical impossibility refers to distance and the facility of access between the [crime scene] and the location of the accused when the crime was committed. [She] must demonstrate that [she] was so far away and could not have been physically present at the [crime scene] and its immediate vicinity when the crime was committed.”*

....

Moreover, Marissa was positively identified by eyewitnesses to be present at the scene of the crime and to have participated in its commission. Time and again, this Court has consistently *ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.*<sup>41</sup> (Emphasis supplied, citations omitted)

It is a well-settled rule that the findings of the trial court regarding the credibility of witnesses are accorded great respect, especially if the findings are affirmed by the Court of Appeals.<sup>42</sup> This is founded upon the recognition that trial courts are able to observe the demeanor of the witnesses as they testify.<sup>43</sup>

After an evaluation of the records of the case, this court resolves to deny this Petition for lack of merit.

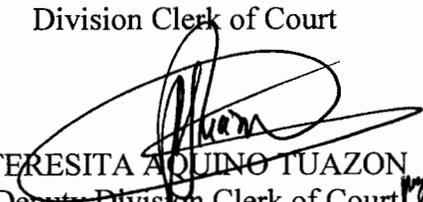
**WHEREFORE**, this court **ADOPTS** the findings of fact and conclusions of law of the Court of Appeals and **AFFIRMS** its Decision dated September 30, 2013 *in toto*. Petitioner Ernesto Tagud is **GUILTY** beyond reasonable doubt of attempted homicide and is sentenced to suffer the penalty of imprisonment of six (6) months of arresto mayor to four (4) years, two (2) months, and one (1) day of prision correccional medium and its accessory penalties. Petitioner Abel Tagud is likewise **GUILTY** beyond reasonable doubt of the crime of grave threats and is sentenced to suffer the penalty of imprisonment of two (2) months and one (1) day to four (4) months of arresto mayor, a fine of ₱500.00, and its accessory penalties. Ernesto Tagud shall indemnify complainant Andres Cruzrojas with ₱20,000.00, while Abel Tagud shall indemnify complainant with ₱10,000.00, both by way of moral damages. Damages shall earn 6% per annum from date of finality of judgment until full payment.

**SO ORDERED.**

Very truly yours,

MA. LOURDES C. PERFECTO  
Division Clerk of Court

By:

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court

<sup>41</sup> Id. at 217-218.

<sup>42</sup> *People v. Hernandez, et al.*, 607 Phil. 617, 635 (2009) [Per J. Chico-Nazario, Third Division].

<sup>43</sup> Id.

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ATTY. ARTEMIO P. CABATOS (reg)  
Counsel for Petitioners  
ABCD Law Clinic  
Loboc, 6316 Bohol

OFFICE OF THE SOLICITOR GENERAL (reg)  
134 Amorsolo Street  
1229 Legaspi Village  
Makati City

VIODOR LAW OFFICE (reg)  
(ATTY. CIRILO N. VIODOR)  
Counsel for Private Respondent  
Peñaflor Street, Booy District  
6300 Tagbilaran City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 50  
Loay, Bohol  
(Crim. Case Nos. 0962 & 0963)

COURT OF APPEALS (reg)  
Visayas Station  
Cebu City  
CA-G.R. CEB-CR No. 00560

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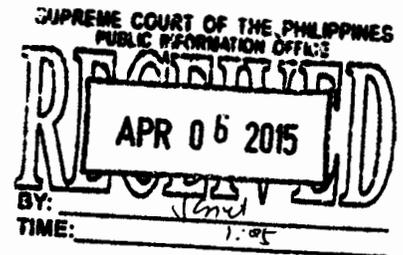
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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 16, 2015** which reads as follows:*

**“G.R. No. 216108 (Fieldman Agricultural Trading Corporation, Hardbuilt Construction and Development Corporation, and Spouses Jaime S. Tio and Tessie Tio v. Bank of the Philippine Islands, represented by its Senior Manager, Jose Martin Sangco and/or its Assistant Manager, Mylene A. Peras; Atty. Rollie Modesto Laigo, and Oscar A. Valdez, the Ex-Officio Sheriff and Sheriff of San Fernando City, La Union). - The petitioners’ motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.**

After a judicious review of the records, the Court resolves to **DENY** the petition and **AFFIRM** the July 25, 2014 Decision<sup>1</sup> and November 25, 2014 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 100418 for failure of Fieldman Agricultural Trading Corporation, Hardbuilt Construction and Development Corporation, and Spouses Jaime S. Tio and Tessie Tio (petitioners) to sufficiently show that the CA committed any reversible error in upholding the dismissal of their complaint for injunction.

For injunction to issue, there must be a confluence of the following requisites: (1) there must be a right to be protected; and (2) the acts against which the injunction is to be directed are violative of said right.<sup>3</sup> As

- over - three (3) pages .....

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<sup>1</sup> *Rollo*, pp. 22-33. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Vicente S.E. Veloso and Nina G. Antonio-Valenzuela, concurring.

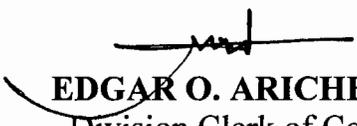
<sup>2</sup> *Id.* at 35-36.

<sup>3</sup> *Philippine Economic Zone Authority v. Carantes*, 635 Phil. 542, 548 (2010); citation omitted.

correctly ruled by the CA, petitioners have failed to establish that they have a clear legal right to be protected and that respondent Bank of the Philippine Islands (BPI) must be enjoined from proceeding with the extra-judicial foreclosure of the mortgaged properties, in the absence of sufficient evidence that they have fully settled their monetary obligations in favor of BPI. The Cancellations of Real Estate Mortgage, which petitioners claim are evidence that they no longer have any monetary obligations in favor of BPI, cannot be given credence in this regard considering that BPI has consistently disputed its validity by maintaining that they were signed by a person bereft of authority to act for and on its behalf, which contention both the CA and the lower court have effectively upheld. Moreover, the matter of the validity of the aforesaid documents is a question of fact and is thus proscribed in a Rule 45 petition.<sup>4</sup>

**SO ORDERED.” SERENO, C.J.**, on official travel; **BRION, J.**, designated acting member per S.O. No. 1947 dated March 12, 2015.

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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GACOD AND MUSICO LAW  
OFFICES  
Counsel for Petitioners  
Guerrero Bldg., Gen. Luna St.  
San Fernando City  
2500 La Union

Court of Appeals (x)  
Manila  
(CA-G.R. CV No. 100418)

LAW FIRM OF TENEFRANCIA  
AND ASSOCIATES  
Counsel for Respondents  
142 Dangwa St., Cresencia Village  
Guisad Valley 2600 Baguio City

- over -

<sup>4</sup> *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, G.R. No. 172551, January 15, 2014.

Atty. Rollie Modesto Laigo  
Ex-Officio Sheriff  
Regional Trial Court  
San Fernando City 2500 La Union

Mr. Oscar A. Valdez  
Sheriff  
Regional Trial Court  
San Fernando City 2500 La Union

The Hon. Presiding Judge  
Regional Trial Court, Br. 66  
San Fernando City 2500 La Union  
(Civil Case No. 6795)

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