

## SECOND DIVISION

[ G.R. No. 189971, August 23, 2010 ]

### FREDDIE CABILDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### D E C I S I O N

##### NACHURA, J.:

This Petition for Review on *Certiorari* assails the January 15, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 30871, finding petitioner Freddie Cabildo (Cabildo) and his co-accused Jesus Palao, Jr. (Palao) and Rodrigo Abian (Abian) guilty of attempted homicide. Likewise assailed is the CA's October 7, 2009 Resolution<sup>[2]</sup> denying the motion for reconsideration.

The CA Decision affirmed with modification the February 5, 2007 decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 47, finding Cabildo and his co-accused guilty of frustrated homicide.

The RTC and the CA similarly arrived at the following factual findings:

On March 19, 1999, at 11:00 p.m., a certain Joy Herrera was driving a tricycle bound for Barangay Rizal, Magsaysay, Palawan. On board were students of St. Joseph Academy who just came from their school's "Seniors' Night." Upon reaching Poblacion, Cuyo in Barangay Tenga-Tenga, petitioner Cabildo, his co-accused Palao and Abian, and another companion, Rene Tamba, blocked their path. After confirming Herrera's identity, petitioner and his group forcibly pulled Herrera from the tricycle and mauled him.<sup>[4]</sup>

Meanwhile, Rocky Daquer passed by the same road on board his own tricycle with passengers John Ryan Macula, Cris Magdayao, and Dary Puno. Daquer noticed the commotion, so he alighted from his tricycle and approached the group to pacify them. Instead, Palao turned his ire to Daquer and threatened: "*Putang-ina mo Rocky, papatayin kita!*" before drawing a fan knife from his waist. This prompted Herrera and Daquer to run away in separate directions.<sup>[5]</sup>

The group pursued Daquer and after covering about 10 meters, petitioner was able to grab Daquer's jacket, causing the latter to fall down on one knee. While petitioner held on to Daquer by his jacket, Palao thrust his knife at the latter but missed. Palao stabbed again and hit Daquer at the lower left side of his back causing him to fall face down on the ground. Petitioner and his group then proceeded to maul Daquer until the police arrived.<sup>[6]</sup>

The responding police officers brought petitioner and his group to the police station. The knife recovered at the crime scene was turned over to the Office of the

Prosecutor. On the other hand, the wounded Daquer was brought to the Cuyo District Hospital where he was treated by Dr. Joselito Vicente.<sup>[7]</sup> Medical findings showed that Daquer sustained an abrasion on his left knee and a stab wound at his left lumbar area which, barring unforeseen complications, would both heal in 15 days.<sup>[8]</sup>

On June 1, 1999, Cabildo, Palao, and Abian were charged with frustrated homicide. The accusatory portion of the Information reads:

That on or about the 19<sup>th</sup> day of March, 1999, more or less 11:00 o' clock in the evening, at Barangay Tenga-Tenga, Municipality of Cuyo, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping each other, while armed with a bladed weapon and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, box and stab with a knife, one ROCKY DAQUER, hitting him in the vital parts of his body and inflicting upon him injuries which would ordinarily cause his death thus performing all the acts of execution which would have produced the crime of Homicide, 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 assistance rendered to said Rocky Daquer, which prevented his death.

CONTRARY TO LAW.<sup>[9]</sup>

When arraigned, petitioner Cabildo and Palao both pleaded not guilty. Their co-accused Abian remained at large.<sup>[10]</sup> Cabildo and Palao denied any complicity in the stabbing of Daquer, and submitted different versions of the story.

Petitioner Cabildo claimed that, on his way home from watching the "Seniors' Night" show, he saw Tamba, Palao and Abian blocking the tricycle of Herrera. He saw Tamba box Herrera, after which Abian boxed Daquer and the latter ran away. After seeing this, he left the scene and went home.<sup>[11]</sup>

According to Palao, he and Abian watched the Seniors' Night together on March 19, 1999. On their way home, they saw their friend Tamba engaged in a fistfight with Herrera. Palao admitted seeing Daquer that night while the latter was being chased by Abian. He further testified that Abian caught up with Daquer and the latter fell down. Thereafter, the two engaged in a fistfight until the police arrived. When the police brought Abian to the police station, Palao allegedly went with him because he wanted to look after his friend.<sup>[12]</sup>

The RTC accorded more weight to the positive testimony of the prosecution witnesses over the denial and inconsistent declarations of the accused. The trial court declared them to have conspired and connived with one another in committing frustrated homicide. The accused were sentenced to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day, which is the medium of *prision correccional*, as the minimum, to eight (8) years, which is the

medium of *prision mayor*, as maximum. They were likewise ordered to jointly and severally pay Daquer P3,190.00 for his medical expenses and P6,000.00 for loss of earnings.<sup>[13]</sup>

On appeal, the CA sustained the trial court's finding of conspiracy but modified the conviction of the accused to attempted homicide, noting that the wounds inflicted on Daquer were not fatal.<sup>[14]</sup>

Consequently, the accused were meted the new sentence of imprisonment of four (4) months of *arresto mayor* medium, as minimum, to four (4) years and two (2) months of *prision correccional* medium, as maximum. The rest of the trial court's disposition was affirmed.<sup>[15]</sup>

Accused-appellants Cabildo and Palao moved for the reconsideration<sup>[16]</sup> of the foregoing decision but the same was denied.<sup>[17]</sup> Hence, the present petition interposed solely by petitioner Cabildo.

We deny the petition.

Petitioner insists on an acquittal by impugning the credibility of prosecution witnesses Macula and Magdayao, who were not consistent in declaring whether Herrera was a passenger or a driver of the tricycle blocked by petitioner and his cohorts. Petitioner also questions the competency of prosecution witness Herrera who admittedly did not witness the stabbing of Daquer, and who proffered contradicting declarations as to the length of the knife he saw on Palao. Petitioner further posits that his guilt was not established by the requisite quantum of evidence.

We do not agree.

First, we emphasize that the findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on the said findings, will not be disturbed on appeal unless it appears that the trial court overlooked or misconstrued cogent facts and circumstances which, if considered, would alter the outcome of the case.<sup>[18]</sup>

In the present case, the inconsistencies pointed out by petitioner are too trivial and immaterial as to considerably affect the trial court's conclusions. Whether Herrera was a driver or a passenger of the blocked tricycle does not relate to the essential elements of the crime committed against Daquer. Meanwhile, the competency of Herrera as a witness to the stabbing incident should have been raised at the most opportune time, that is, during trial and not on appeal.

At any rate, Herrera's testimony was merely intended to establish the fact that a commotion preceded the attack on Daquer and not the stabbing incident itself. Also, Herrera's contradicting estimates of the length of the knife brandished by Palao do not detract from the undisputed fact that a stab wound was inflicted on Daquer.

More importantly, the RTC's conclusions, as affirmed by the CA, were based mainly on the testimony of the victim himself, who clearly and positively identified his assailants and the manner by which they committed the crime. We quote the