

SECOND DIVISION

[G.R. No. 173106, September 30, 2008]

**COSME NACARIO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioner, Cosme Nacario, was charged of Frustrated Murder in an August 27, 1997 Information filed before the Regional Trial Court (RTC) of Iriga City, the accusatory portion of which reads:

That on or about the 29th day of March, 1997 at about 3:05 o'clock in the afternoon at Sto. Domingo, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law and with evident premeditation, did, then and there willfully, unlawfully and feloniously attack and stab with the said [*sic*] weapon, one Medardo M. de Villa, hitting the latter at the left side portion of his stomach, accused thereby have [*sic*] performed all the acts of execution which would have produced the crime of murder, but which nevertheless was not produced by reason of causes independent of the will of the accused, and that is by the timely medical assistance rendered to the aforesaid victim which prevented his death, to his damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.

In the afternoon of March 29, 1997, Medardo de Villa (the victim), while on board a bicycle along a road at Iriga City, met petitioner who was also on board a bicycle coming from the opposite direction.^[1] After both alighted from their respective bicycles, petitioner stabbed the victim with a *balisong* (fan knife)^[2] at the upper left portion of the abdomen.^[3]

The clinical data sheet^[4] of the victim, who was operated on at the Bicol Medical Center, showed the following:

x x x x

FINAL DIAGNOSIS:

Stab wound, 3 cm., subcostal Area, Anterior Axillary Line, **left penetrating the diaphragm, incising the spleen type I**

x x x x (Emphasis and underscoring supplied)

Not long after the incident, petitioner surrendered to the police.

Petitioner admitted having stabbed the victim. He interposed self-defense, however, and gave the following version:

As he and the victim met on the road, the victim whom he had earlier seen "drinking with others" in front of his (the victim's) house blocked his path and, without warning, swung a fan knife toward him but missed him. The victim thereafter again thrice attempted to hit him with the knife but also missed him as he always "sw[ung] his body backward," but on the last attempt, he (petitioner) was able to wrest the knife from the victim. Sensing danger to his person when the victim turned his back to pick up stones and "was poised to strike," he stabbed him once with the knife.^[5]

Q: You also testified that Midardo [*sic*] de Villa attempted . . . to stab [you] by a knife, but it was only on the 4th time that you were able to wrest the [B]atangas knife from him. Now, will you please stand up and demonstrate to the Honorable Court how were you able to evade these three times Midardo de Villa's attempt[ed] to stab you with [a] [B]atangas knife?

A: The first time he stabbed [*sic*] me (witness swinging his right arm from right to left with him evading the blow while swinging his body backward)[.] I did not react instantly because I could hear the people in the waiting shed pacifying him not to continue and the second time was in like manner [*sic*] swinging his right hand towards me from left to right with me evading with blow [*sic*] by the backward [*sic*] and **the third time that he attempted to stab me I decided to wrest the [B]atangas knife. So from him [*sic*] I could sense he really intends to harm me. The 4th time he attempted I really sense [*sic*] that he really determine [*sic*] to stab me. So I parry [*sic*] blow with my left hand and the [B]atanags [*sic*] knife with my right hand. After which he picked up stones and it [*sic*] was in the act of throwing the stones to me that I have [*sic*] chance to stab him. After I stabbed him, he fell down and so I left.**^[6]
(Emphasis and underscoring supplied)

Petitioner added that prior to the incident, there had been several attempts of the victim to stab him, and even the victim's brothers harassed and threatened him.^[7]

By Decision of July 5, 2002,^[8] the Regional Trial Court convicted petitioner of Frustrated Homicide, disposing as follows:

WHEREFORE, finding accused, COSME NACARIO guilty beyond reasonable doubt for the crime of frustrated homicide, he is sentenced to imprisonment of twelve (12) years, ten (10) months and twenty-one (21) days to thirteen (13) years; nine (9) months and ten (10) days, the medium of reclusion temporal, minimum period which is minimum of, to [*sic*] fifteen (15) years, six (6) months and twenty (20) days to sixteen

(16) years, five (5) months and nine (9) days, the medium of reclusion temporal in its medium period which is the maximum period of the indeterminate sentence; to pay an indemnity of P25,000.00; actual damages including attorney [sic] and doctor's fees of P35,000.00 and to pay the cost.

SO ORDERED.

In ruling out self-defense, the trial court held:

Accused could not claim self-defense because, after having wrestled away the knife from complainant, if at all complainant was originally in possession of the knife and tried to stab him [sic], **there was already an interval of time when complainant turned his back from him and picked up a stone.** Assuming without admitting that complainant picked up a stone to throw at him, he could always run away from the fight. After all he was patient enough to ward off complainant's attempts to stab him. This version of the accused is not credible. The court believes that it was accused who was in possession of the knife all the time when they met and he stabbed him.^[9] (Emphasis and underscoring supplied)

By Decision of May 18, 2006,^[10] the Court of Appeals affirmed the findings of the trial court but modified the penalty after considering the mitigating circumstance of voluntary surrender of petitioner. Thus the appellate court disposed:

WHEREFORE, premises considered, the assailed July 5, 2002 Decision of the RTC of Iriga City, Branch 35, in Criminal Case No. IR-4445, which convicted accused-appellant Cosme Nacario of the crime of Frustrated Homicide, is hereby AFFIRMED with MODIFICATION that the penalty should be from two (2) years and four months of prision correccional in its minimum period, as minimum, to six (6) years and one (1) day of prision mayor in its minimum period, as maximum. Moreover, accused-appellant Cosme Nacario is ORDERED to pay the victim, Medardo M. de Villa, in addition to indemnity of P25,000.00, the amounts of P2,261.55 as actual damages and P30,000.00 as moral damages.

SO ORDERED. (Underscoring supplied)

Hence, the present petition for review.

Having interposed self-defense, petitioner had the *onus* of proving its elements, viz: (1) unlawful aggression on the part of the victim; (2) employment of reasonable necessity to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.^[11]

Petitioner maintained that the victim provoked the incident by waylaying him, and that after he wrested the knife from the victim, the latter instantaneously picked up stones, thus making him (petitioner) believe that "an attack was still forthcoming and [he] was still threatened by some evil or injury,"^[12] hence, his stabbing of the victim.