

## FIRST DIVISION

[ G.R. NO. 143487, February 22, 2006 ]

**TOMMY FERRER, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
AND COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on *certiorari* assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 18293 promulgated on January 31, 2000 which affirmed the judgment<sup>[2]</sup> of the Regional Trial Court of Lingayen, Pangasinan, Branch 39 (RTC), finding herein petitioner Tommy Ferrer and his brother, Ramon Ferrer, guilty beyond reasonable doubt of Attempted Homicide in Criminal Case No. L-4302 and Frustrated Homicide in Criminal Case No. L-4303.

In an Amended Information dated June 24, 1991, filed with the RTC of Lingayen, Pangasinan, the 4<sup>th</sup> Assistant Provincial Prosecutor of Pangasinan charged Tommy Ferrer (Tommy) and Ramon Ferrer (Ramon), who are brothers, of the crime of Frustrated Homicide committed as follows:

That on or about the 14<sup>th</sup> day of April, 1990 in the evening at barangay Olo-Cafabrosan, [M]unicipality of Mangatarem, x x x Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, armed with a bladed weapon, with intent to kill, did then and there, willfully, unlawfully and feloniously attack and stab **Ricardo Ferrer**, inflicting upon him the following injuries to wit:

Multiple stab wounds:

- left flank & lower back
- right lower back
- left elbow

the accused having thus performed all the acts of execution which would have produced the crime of homicide as a consequence, but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and that is due to the timely and able medical assistance to the victim which prevented his death, to his damage and prejudice.

Contrary to Art. 249 in relation to Art. 6 of the Revised Penal Code.<sup>[3]</sup>  
(Emphasis supplied).

The case was docketed as Criminal Case No. L-4302.

On even date, another Information was filed with the same trial court charging Ramon, Tommy, Che-Che Ferrer (Che-Che) and Robert Tan with the same crime of Frustrated Homicide. The accusatory portion of the Information reads:

That on or about the 14<sup>th</sup> day of April, 1990 in the evening at barangay Olo-Cafabrosan, [M]unicipality of Mangatarem, province of Pangasinan, x x x Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with bladed weapon, glass and wooden cane and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault, hit and stab **Roque Ferrer**, inflicting upon him the following injuries, to wit:

Multiple stab wounds:

- chest, ant. right 3 cm.,
- right flank
- scalp frontal
- right ear
- right hand

the accused having thus performed 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 and that is due to the timely and able medical assistance to the victim which prevented his death, to his damage and prejudice.

Contrary to Art. 249 in relation to Art. 6 of the Revised Penal Code.<sup>[4]</sup>  
(Emphasis supplied).

The case was docketed as Criminal Case No. L-4303.

On August 12, 1991, Ramon and Tommy were arraigned and pleaded not guilty in Criminal Case No. L-4302.<sup>[5]</sup> On the same day, Ramon, Tommy and Che-Che were also arraigned and pleaded not guilty in Criminal Case No. L-4303.<sup>[6]</sup> Accused Robert Tan remained at large.<sup>[7]</sup> Both cases were subsequently consolidated. Thereafter, trial ensued.

The prosecution's version of the facts of the two criminal cases is as follows: Around 7:00 p.m. of April 14, 1990, brothers Roque Ferrer (Roque) and Ricardo Ferrer (Ricardo) were on their way to the house of their father in Barangay Olo-Cafabrosan, Mangatarem, Pangasinan.<sup>[8]</sup> When they were near the house of their father, they heard someone shout the words, "*Dumating na ang mga mayabang.*"<sup>[9]</sup> They discovered that it was their cousin, Ramon, who uttered said words.<sup>[10]</sup> Ramon was in the yard fronting his father's house which is adjacent to the house of the father of Roque and Ricardo.<sup>[11]</sup> Ramon was then in the middle of a drinking spree with his brother Tommy, the latter's wife Che-Che and two other companions whom Roque and Ricardo did not recognize.<sup>[12]</sup> Upon hearing the words uttered by Ramon, Roque stopped and asked him who he was referring to.<sup>[13]</sup> In the meantime, Ricardo proceeded to the house of their father.<sup>[14]</sup> After asking Ramon and without getting a response from him, Roque followed Ricardo.<sup>[15]</sup> Upon reaching their

father's house, Roque was met at the door by Ricardo and was told by the latter that he is going to ask Ramon why he made those remarks.<sup>[16]</sup> Roque proceeded to enter their father's house but later went out and followed his brother.<sup>[17]</sup> In the meantime, Ricardo was able to confront Ramon. However, Ramon did not answer when Ricardo asked him why he spoke words apparently referring to them as "*mayabang*".<sup>[18]</sup> Since Ramon did not answer his question, Ricardo was about to go away when Roque approached them.<sup>[19]</sup> Without any warning, Ramon stabbed Roque with a kitchen knife hitting his stomach.<sup>[20]</sup> Ricardo immediately held Ramon's right arm to prevent him from further stabbing Roque.<sup>[21]</sup> At that instant, Tommy and Che-Che moved toward them.<sup>[22]</sup> Tommy suddenly stabbed Ricardo's back twice with an ice pick causing him to release his hold on Ramon's arm.<sup>[23]</sup> After stabbing Ricardo, Tommy proceeded to stab Roque twice on his "right side".<sup>[24]</sup> Che-Che then started hitting Roque's back with a bamboo pole.<sup>[25]</sup> Ramon, on the other hand, stabbed Ricardo twice on the right side of his waist.<sup>[26]</sup> After stabbing Ricardo, he resumed attacking Roque and again stabbed him twice on his chest.<sup>[27]</sup> When Ramon, Tommy and Che-Che noticed Roque to be bloody, they ran away.<sup>[28]</sup> It was then that Roque and Ricardo's sister-in-law, Leonila Ferrer (Leonila), summoned them to board the jeepney parked near their father's house in order for them to be brought to the hospital.<sup>[29]</sup> Roque proceeded to board the vehicle but when he was near the jeepney he was hit on the forehead by a drinking glass thrown by Robert Tan.<sup>[30]</sup> Roque was eventually able to get on the jeepney. Ricardo drove the vehicle.<sup>[31]</sup> They were able to reach their uncle's house half a kilometer away.<sup>[32]</sup> From there they were rushed to Mangatarem Hospital where first aid was administered to them.<sup>[33]</sup> They were then brought to Tarlac Provincial Hospital where they were further treated and confined for four days.<sup>[34]</sup> Thereafter, Ricardo was discharged from the hospital while Roque was transferred to the Chinese General Hospital where he stayed for another four days before being released.<sup>[35]</sup>

On the other hand, the following is the account of the defense: Between 7:00 and 8:00 p.m. of April 14, 1990, Ramon and his brother Tommy, together with their wives Lucia and Che-Che, respectively, and a visitor, Tommy Gallano, were gathered in front of the house of Ramon and Tommy's father at Olo-Cafabrosan, Mangatarem, Pangasinan.<sup>[36]</sup> They were in the midst of merrymaking and were being entertained by Tommy's son who was dancing.<sup>[37]</sup> While watching his nephew dance, Ramon remarked, "*Ang yabang talaga ng aking pamangkin.*"<sup>[38]</sup> At that moment, it happened that brothers Roque and Ricardo were passing by.<sup>[39]</sup> They proceeded directly to their house.<sup>[40]</sup> A few minutes later, Roque went out of their house and went towards the group of Ramon and Tommy.<sup>[41]</sup> When Roque was approaching, Tommy stood up and asked him what the problem was.<sup>[42]</sup> Roque did not answer, and instead suddenly boxed Tommy on the face.<sup>[43]</sup> Tommy fell to the ground.<sup>[44]</sup> Thereupon, Roque proceeded to box him further.<sup>[45]</sup> Seeing his brother being mauled, Ramon approached Roque to pacify him.<sup>[46]</sup> However, Roque turned to Ramon and also boxed him on his face.<sup>[47]</sup> Ramon fought back. Thereafter, Ricardo arrived, armed with a jungle bolo.<sup>[48]</sup> Upon seeing that Ricardo was armed, Ramon,

Tommy and Che-Che ran and went inside their father's house.<sup>[49]</sup> Their other companions followed suit. Tommy Gallano and Ricardo's wife closed the main door while Tommy proceeded to the back door to keep watch.<sup>[50]</sup> Meanwhile, Ricardo gave the jungle bolo to Roque who proceeded to follow Ramon and Tommy's group.<sup>[51]</sup> The entrance to the main door is through a stairs which is about five feet high.<sup>[52]</sup> Roque went up the stairs and, despite seeing the main door closed, insisted on entering the house.<sup>[53]</sup> By pushing, he was able to pry the door open and half of his body was able to enter the house.<sup>[54]</sup> At that moment, Ramon went to their kitchen, took a knife and stabbed Roque's stomach.<sup>[55]</sup> Despite being stabbed, Roque still insisted on getting inside the house. Ramon then went out of the house through the back door and proceeded to go to the main door where Roque was.<sup>[56]</sup> When he saw that Roque was still trying to force his way inside the house, he stabbed him, hitting his back.<sup>[57]</sup> When Ramon noticed Ricardo approaching, he also stabbed him.<sup>[58]</sup> After wounding Roque and Ricardo, Ramon went inside his father's house and closed the door.<sup>[59]</sup> Thereafter, they heard that Roque and Ricardo were brought to the hospital.<sup>[60]</sup> Fearing that they might be the victims of retaliation, Ramon and Tommy together with their other companions proceeded to the house of a certain Councilor Sabado and spent the night there.<sup>[61]</sup> The following morning, Tommy went to Manila.<sup>[62]</sup>

After trial, the lower court rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE IN VIEW OF THE FOREGOING CONSIDERATIONS, it is the Judgment of this Court:

In Criminal Case No. L-4302 for Frustrated Homicide, the Court finds the accused Ramon Ferrer and Tommy Ferrer GUILTY beyond reasonable doubt of the crime of Attempted Homicide without the attendance of any aggravating or mitigating circumstances, and applying the provisions of the Indeterminate Sentence Law hereby sentences each of the accused to suffer imprisonment [of] 6 months of *arresto mayor* as minimum to 2 years 4 months and 1 day of *prision correccional* as maximum;

In Criminal Case No. L-4303 for frustrated homicide, the Court finds the accused Ramon Ferrer and Tommy Ferrer GUILTY beyond reasonable doubt of the crime of Frustrated Homicide without the attendance of any aggravating or mitigating circumstances, and applying the provisions of the Indeterminate Sentence Law hereby sentences each of the accused to suffer imprisonment of 2 years 4 months and 1 day of *prision correccional* as minimum to 8 years and 1 day of *prision mayor* as maximum.

The said accused Ramon Ferrer and Tommy Ferrer are ordered to pay solidarily the following amounts:

1. To Roque Ferrer – The sum of P1,809.45 representing medical expenses; P11,979.60 representing unrealized earnings; P5,000.00 as expenses of litigation; and moral damages of P10,000.00 for a

total of P28,789.05;

2. To Ricardo Ferrer – The sum of P2,000.00 as hospitalization and medical expenses; P10,000.00 as unrealized earnings; P5,000.00 as expenses in attending the hearings; and P8,000.00 as moral damages; for [a total of] P25,000.00 without subsidiary liability in case of insolvency and to pay the costs.

With respect to the accused Cheche Ferrer, the Court finds her Not Guilty for lack of evidence.

SO ORDERED.<sup>[63]</sup>

Aggrieved by the trial court's decision, Ramon and Tommy appealed to the CA.

In the presently assailed Decision, the CA affirmed the judgment of the RTC. The CA denied the motion for reconsideration filed by Ramon and Tommy.<sup>[64]</sup>

Hence, the present petition for review on *certiorari* filed by Tommy Ferrer (petitioner) only, raising the following issues:

#### I

WHETHER OR NOT THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE THAT, IF CONSIDERED, WOULD HAVE RESULTED IN THE ACQUITTAL OF THE PETITIONER HEREIN.

#### II

WHETHER OR NOT THE EVIDENCE OF THE PROSECUTION CAN SUSTAIN THE CONVICTION OF THE PETITIONER HEREIN BEYOND REASONABLE DOUBT.<sup>[65]</sup>

As in their appeal filed with the CA, the issues presented by petitioner in the instant petition boil down to the question of credibility of the witnesses. In both issues, petitioner contends that Ricardo and Roque's claim that he (petitioner) stabbed them should not be given credence because their testimonies are devoid of any factual basis. To support his contention, petitioner asserts that there are inconsistencies between the testimonies of Ricardo and Roque, on one hand, and the testimony of Dr. Tañedo, the physician who treated their wounds, on the other. Petitioner cites the separate testimonies of Roque and Ricardo wherein they claimed that petitioner stabbed both of them; and that based on the testimony of Ricardo, petitioner used an ice pick in stabbing them. Petitioner alleges that the testimonies of Ricardo and Roque were directly contradicted by the testimony of Dr. Tañedo when the latter testified that the injuries sustained by Ricardo and Roque were caused by a "sharp instrument" or "sharp bladed instrument." Petitioner argues that an ice pick is neither a "sharp instrument" nor a "sharp bladed instrument." Concluding that a wound caused by an ice pick is a puncture wound, he then cites Dr. Tañedo's testimony that the latter did not see any puncture wounds when he treated Ricardo and Roque. In other words, petitioner makes much of the fact that none of the wounds of Ricardo and Roque were found by the examining physician as