

## SECOND DIVISION

[ G.R. No. 134727, February 19, 2001 ]

**CESAR BARRERA, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**DE LEON, JR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> dated March 25, 1998 in C.A. G.R. CR No. 19650, and its Resolution<sup>[3]</sup> dated July 24, 1998 denying the motion for reconsideration.

The petitioner, Cesar Barrera, and his erstwhile co-accused, Domingo Lazo and Celedonio Itape, were charged with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, in an Information that reads:

That on or about May 24, 1981 in the evening at Brgy. Mayapa, Calamba, Laguna and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and jointly helping with (sic) each other, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and stab one Mario Anacay with a deadly weapon (knife) thereby inflicting upon the latter serious stab wounds at the back which immediately caused his death, to the damage and prejudice of the surviving heirs of the victim Mr. Mario Anacay.

That the crime was committed with the aggravating circumstances of nighttime, evident premeditation and treachery in the commission thereof.

CONTRARY TO LAW.

Upon being arraigned on November 9, 1981, the three accused, assisted by counsel, separately entered the plea of "Not guilty" to the charge in the information. Thereafter, trial on the merits ensued.

It appears from the evidence adduced that the victim, Mario Anacay, and his companion, Jojo Fernandez, were setting up a "beto-beto" stall when they met the group of herein petitioner Cesar Barrera, Domingo Lazo and Celedonio Itape, near the fair ground ("perihan") on the eve of the fiesta in Barangay Mayapa, Calamba, Laguna on May 24, 1981. Barera confronted Anacay about Domingo Lazo's cousin whom Anacay allegedly stabbed in Silang Cavite. As Anacay turned to leave with Fernandez, Barrera suddenly stabbed Anacay once on the back thereby causing the victim to fall on the ground. Afraid that he might also be stabbed, Fernandez ran away to seek help from their other companions.<sup>[4]</sup>

Police officers Cosme Malabanan, Juanito Fajardo and Eugenio Banaag went to the scene of the crime in Barangay Mayapa, Calamba, Laguna after receiving a report of the stabbing incident. Thereafter, they proceeded to the Canlubang Estate Hospital in Laguna where the victim was brought earlier.

At the hospital, police officer Malabanan interrogated the victim, Anacay, who declared that Cesar Dictado, Doming and Dolong were his attackers. The declaration of the victim was put down in writing which he thumbmarked with his own blood. Anacay believed that he was going to die ("Mamatay po ako.") when asked by police officer Malabanan how he felt as a result of his stab wound.<sup>[5]</sup>

Anacay also mentioned to prosecution witness, Lauro Ejeda, the same names of Cesar Dictado, Doming and Dolong as his attackers. Ejeda knew that Anacay was referring to Cesar Barrera, Celedonio Itape and Domingo Lazo whom he had known for a long time because they were engaged in the same business of "beto-beto".

Upon the request of Anacay, Ejeda accompanied the policemen back to Barangay Mayapa in Calamba, Laguna and helped them identify the victim's attackers. Doming (Domingo Lazo) and Dolong (Celedonio Itape) voluntarily surrendered to the policemen while the petitioner attempted to evade arrest but was prevented by Ejeda.<sup>[6]</sup>

Meanwhile, the victim was transferred to the Philippine General Hospital in Manila where he died on May 25, 1981 due to shock secondary to stab wound in the back.<sup>[7]</sup>

Petitioner Cesar Barrera denied that he stabbed Mario Anacay in the evening of May 24, 1981. He claimed that on the said occasion he was busy attending to his "beto-beto" business when a commotion occurred at the fair ground. Nevertheless, he never left his place and that he learned only later what actually happened when people began talking about the stabbing incident.<sup>[8]</sup>

On January 26, 1998, the trial court rendered its decision convicting herein petitioner of the crime of homicide but acquitting his two (2) co-accused of the crime charged in the information. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered-

1. CONVICTING Cesar Barrera but only for homicide, the prosecution having proved his guilt beyond reasonable doubt. He shall be sentenced to an indeterminate jail term of ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. He shall indemnify the heirs of Anacay the amount of P50,000.00 and shall be credited for time spent in jail.
2. ACQUITTING accused Domingo Lazo and Celedonio Itape, the quantum of proof for their conviction not having been met.

SO ORDERED.

Aggrieved by the decision of the trial court, the petitioner appealed to the Court of Appeals. On March 25, 1998, the Court of Appeals rendered its decision affirming the decision of the trial court.

After his motion for reconsideration was denied on July 24, 1998 by the appellate court, the petitioner filed with this Court the instant petition for review on certiorari containing the following assignments of error, to wit:

I

THE HON. COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER'S DENIAL OF THE CRIME CHARGED CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE PROSECUTION WITNESS JOJO FERNANDEZ, DESPITE THE FACT THAT FACTS AND CIRCUMSTANCES EXIST WHICH RENDER THE IDENTIFICATION OF THE PETITIONER AS BOUBTFUL AND CANNOT BE THE BASIS OF HIS CONVICTION.

II

A DOCUMENT CONSISTING OF AN AFFIDAVIT HEREIN SUBMITTED WHICH ACCOMPANIES THE INSTANT PETITION IF ADMITTED WILL CERTAINLY EXCULPATE THE ACCUSED-PETITIONER OF THE CRIME CHARGED.

III

THE HON. COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR WHEN IT ACCORDED CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS JOJO FERNANDEZ DESPITE THE FACT THAT HIS TESTIMONY IS FULL OF CONTRADICTIONS AND INCONSISTENCIES WHICH CLEARLY IMPAIR HIS CREDIBILITY.

IV

THE HON. COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT ACQUITTING THE ACCUSED-PETITIONER OF THE CRIME CHARGED, ESPECIALLY CONSIDERING THAT HIS CO-ACCUSED, DOMINGO LAZO AND CELEDONIO ITAPE, WERE ACQUITTED BY THE TRIAL COURT, THEIR GUILT NOT HAVING BEEN PROVED BEYOND REASONABLE DOUBT, AND THE ABOVE-MENTIONED AFFIDAVIT EXCULPATING THE ACCUSED OF THE CRIME CHARGED.

In substance, the petitioner contends that there is doubt as to his identity as the perpetrator of the crime inasmuch as the victim, Mario Anacay, himself identified his attackers as "Cesar Dictado, Doming and Dolong." The said dying declaration of the victim was confirmed by a prosecution witness, police officer Cosme Malabanan who investigated the victim in the hospital where he was brought after the stabbing incident.

Petitioner's contention is not impressed with merit. Prosecution eyewitness Jojo Fernandez positively identified the petitioner, Cesar Barrera, as the same person