

FIFTH DIVISION

[CA-G.R. CR NO. 24741, September 13, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND CADANGAN Y OANDASAN ACCUSED-APPELLANT.**

D E C I S I O N

DIMAAMPAO, J.:

Brought before Us for review is the *Decision*¹ dated 29 September 2000 of the Regional Trial Court (RTC), Second Judicial Region, Luna, Apayao, Branch 26, finding accused-appellant Ferdinand Cadangan y Oandasan ("FERDINAND") guilty beyond reasonable doubt of the crime of frustrated murder and ordering him to pay civil indemnity.

FERDINAND was charged with frustrated murder in an Information² dated 13 March 1998, the accusatory portion of which reads as follows:

"That on or about the evening of January 11, 1998 at Sipa, Sta. Marcela, Apayao within the jurisdiction of this Honorable Court, the above-named accused armed with a short firearm (unrecovered) with intent to kill and with the attendance of treachery, did then and there willfully, unlawfully and feloniously assault, attack and shot one GABRIEL SADAKEN y PADILLA inflicting upon the latter multiple gun shot injuries thus performing all the acts of execution which would have produced the crime of Murder but which did not, by reason of causes independent of the will of the perpetrator, that is the timely medical attendance given the victim.

Contrary to Law."

On 13 April 1998,³ FERDINAND, assisted by counsel *de parte*, was arraigned and entered a plea of not guilty. At the pre-trial, the prosecution and defense entered into a stipulation on (1) the identity of FERDINAND as the one charged (and therefore, the accused) in the Information but not as the assailant; and (2) the existence of a medical certificate issued by Dr. Emily Estaris of the Baguio General Hospital. Trial on the merits forthwith ensued.⁴

The prosecution presented seven (7) witnesses, namely, Gabriel Sadaken, SPO1 Felizardo Castillo, Records Officer Erlinda Danao, Jessie Pinera, Dr. Emily Estaris, Dr. Roderick Ramirez and rebuttal witness Cresencio Padilla.

The version of the prosecution is as follows:

FERDINAND and the victim, GABRIEL SADAKEN ("GABRIEL") have known each other since childhood. On 11 January 1998 at about 5:00 o'clock in the afternoon, after a

day's work of planting rice on the farm owned by Allan Castillo in Imelda, Sta. Marcela, Apayao, GABRIEL, together with his fellow farmers, William Lozano, Rico dela Cruz, Jessie Pinera, Reynaldo Guillermo, Carter Zuniga and Rogelio Sadaken, decided to go to the house of Mars Zuniga. At the open porch of the said house, they drank gin, divided their earnings from planting *palay*, sang and joked with each other until 8:00 o'clock in the evening. At about 9:00 o'clock in the evening, FERDINAND and his wife, Gloria went in front of Mars Zuniga's porch where GABRIEL's group was drinking and asked them to stop drinking because they were noisy and she could not sleep. GABRIEL told her "Excuse us *Manang* because we are noisy." Suddenly, someone from the southwest threw a stone at them. The stone hit the side of the house of Mars Zuniga. FERDINAND, who was all the time sitting under a mango tree about 2 meters away from where the group was drinking, ran towards his house which was just across the house of Mars Zuniga. Some of GABRIEL's companions went inside the house of Mars Zuniga while GABRIEL, Jessie Pinera, Rogelio Zuniga and Reynaldo Guillermo were left in the porch. FERDINAND came back and pointed a short firearm at them. GABRIEL tried to run but he was hit on his left shoulder. FERDINAND fired two successive shots, the second of which hit GABRIEL on his jaw. His left jaw and right gums were broken and injured, respectively. Feeling weak, GABRIEL fell on his side. The incident caused shock among the other members of GABRIEL's group. FERDINAND ran away while Rogelio, GABRIEL's brother, brought him to the Medicare Hospital in Sta. Marcela, Apayao on board a tricycle. GABRIEL was eventually brought to the Cagayan Valley Regional Hospital (CVRH) in Tuguegarao, Cagayan where he was confined for 18 days. He was told that his broken teeth and lower jaw could no longer be treated. He was later transferred to the Baguio General Hospital where his confinement took two (2) months and for which he spent about Thirty Thousand Pesos (P30,000.00) for medicines and Nine Thousand Pesos (P9,000.00) for other expenses. GABRIEL's brothers, Bonifacio and Rogelio Sadaken, paid for his medical expenses.⁵

The barangay officials of Imelda, Sta. Marcela, Apayao informed the police station about the incident. SPO1 Felizardo Castillo investigated the incident by inviting to the police station witnesses, namely: Reynaldo Guillermo, Jessie Pinera and Rico dela Cruz. Two days after the incident, SPO1 Castillo went to CVRH to take down the dying declaration of GABRIEL written by himself. SPO1 Castillo saw the injury sustained by GABRIEL on his shoulder.⁶

DR. RODERICK RAMIREZ, a surgeon connected with the CVRH, testified that he treated GABRIEL for "*fracture type 3 over the left mandible and gunshot wound over the left shoulder.*" At the time GABRIEL was brought to the hospital, his blood pressure was going down below normal, he was hypodermic and bleeding resulting from the gunshot wound he sustained and he suffered considerable loss of bone tissues. According to Dr. Ramirez, had GABRIEL not been brought to the hospital, he could have died. A medical description of the injuries sustained by GABRIEL was issued by the junior resident physician of Dr. Ramirez stating the diagnosis⁷ of "*Open Fracture type III, mandible, left with bone loss 2 " to GSW GSW L shoulder.*"⁸

DR. EMILY ESTARIS, the attending physician of GABRIEL at the Baguio General Hospital, testified that she treated the latter seventeen days after admission at the CVRH for a "comminuted fracture" of the left mandible which meant that GABRIEL sustained "multiple different fragments with complete separation". She related that the fracture was allegedly caused by the entry of a bullet from the left angle of the

left body to the right mandible. A reinforcement metal plate was attached to treat GABRIEL's mandible which costed around Twenty Thousand Pesos (P20,000.00)⁹. Dr. Estaris, thereafter, issued a medical certificate¹⁰ stating that GABRIEL was confined at the Baguio General Hospital for *"Gunshot wound, POEnt-left mandible, POExit-none w/ fracture, mandible, angle, open left, body right comminuted."*

On the other hand, the defense presented a different version. Through the testimonies of witnesses Silvestre Bello, Florante Bello, Gloria Cadangan and FERDINAND Cadangan, the defense countered the prosecution theory, as follows:

In the morning of 11 January 1998, Silvestre Bello was with Armando Cadangan and Florante Bello in Barangay Bayog, Sta. Marcela, Apayao to repair old shoes and broken umbrellas. At about 5:30 or 6:00 o'clock in the evening, they left Barangay Bayog using a different route because it was nearer to an exit road which would lead them to the place where they could wait for their ride back to Flora, Apayao. While waiting for their ride, they ate supper at FERDINAND's home after which they stayed near the gate of the latter's house. FERDINAND and his wife Gloria were also with the three men outside the gate waiting when they saw a light emanating from the north. Thinking it was the ride going back to Flora, Apayao, Gloria volunteered to flag down the vehicle but as she went near the edge of the road, GABRIEL and Reynaldo Guillermo passed by, with the latter holding two (2) bottles of Ginebra San Miguel bought from a store about 90 meters south from Mars Zuniga's house. Gloria advised the two men to stop drinking as they were already drunk and noisy; however, GABRIEL answered her, *"I know you are gathering something to report to the Barangay Captain, we are not afraid; even now we will talk over the matter in front of the Barangay Captain."* Gloria retorted, *"Awan Kaniak dayta ading."* Then Bonifacio Sadaken came and told Gloria, *"Your husband is only making something wherein he is afraid of (sic)"*, and picked up a 3-inch stone throwing it towards Gloria. The stone did not hit Gloria but landed beside her foot. When Gloria told Bonifacio, *"You are intoxicated"*, the latter immediately rushed towards her and pulled her hair with his left hand. FERDINAND, who, like his brother Armando and the group were waiting for the ride, merely watched everything that had transpired. Eventually, FERDINAND ran towards Gloria and Bonifacio saying, *"Pagbabartekamyon met dataon."* (You are making a fool out of her because you are already drunk). While holding Gloria's hair with his left hand, Bonifacio then drew a gun from his right hand but FERDINAND immediately took hold of said hand and pushed it forward. Thereafter, the gun pulled off. Gloria ran as Bonifacio's grip on Gloria's hair loosened. GABRIEL, who was in the act of picking up a stone uttered, *"I am hit."* FERDINAND, Gloria and their visitors ran inside their house where they stayed the whole night while GABRIEL's group continuously threw stones thereat.¹¹

Two (2) days after the incident, GABRIEL's mother went and asked FERDINAND to help defray the expenses incurred by their family for the treatment of GABRIEL.¹²

After trial, the court *a quo* rendered judgment on 29 September 2000 convicting FERDINAND for the crime of frustrated murder, the dispositive portion of which is quoted as follows:

"WHEREFORE, finding accused FERDINAND CADANGAN y Oandasan guilty beyond reasonable doubt of the crime of Frustrated Murder with the aggravating circumstance of the use of an illegally possessed firearm

with no mitigating circumstance and after applying the indeterminate sentence law herein accused is hereby sentenced to suffer the penalty of imprisonment of EIGHT (8) YEARS and TWENTY ONE (21) DAYS as minimum to FOURTEEN (14) YEARS and TEN (10) MONTHS as maximum.

The accused is further ordered to pay the victim, Gabriel Sadaken, the amount of THIRTY NINE THOUSAND PESOS (P39,000.00) as medical expenses plus TWENTY THOUSAND PESOS (P20,000.00) as moral damages and costs of the suit.

Whatever preventive imprisonment the accused have (sic) undergone in this case shall be credited in his favor.

SO ORDERED."¹³

Aggrieved, FERDINAND, now appellant, seasonably inter-posed the instant appeal raising the following errors:

I

THE TRIAL COURT ERRED IN FINDING THAT THE SHOOTING OF THE COMPLAINING WITNESS IS ATTENDED BY THE QUALIFYING CIRCUMSTANCE OF TREACHER(Y).

II

THE TRIAL COURT ERRED IN APPRECIATING THE USE OF AN ILLEGALLY POSSESSED FIRE-ARM AS AN AGGRAVATING CIRCUMSTANCE.

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE SHOOTING OF THE COMPLAINING WITNESS IS PURELY ACCIDENTAL.

IV

THE TRIAL COURT ERRED IN NOT ACQUITTING THE AP(P)ELLANT.

Appellant contends the fact that his return to the porch where the victim was, and the absence of proof that the victim was taken by surprise of the attack, negate the presence of the aggravating circumstance of treachery.

Appellant asserts that the prosecution failed to proffer evidence that the firearm used in the shooting was an unlicensed firearm or that appellant had no license to possess the same. In the absence of such proof like a certification from the proper government agency, the aggravating circumstance of the "use of an unlicensed firearm" or that appellant had no license to possess the same cannot be appreciated against him.

Appellant maintains that the testimony of the victim as to his position at the time of the attack contradicts the findings of witness Dr. Ramirez regarding the physical evidence and location of the victim's wounds. Asserting that the shooting was accidental and that it was caused by Bonifacio, the victim's brother, appellant assails the court *a quo's* finding of conviction.

The Appeal lacks merit.

The third and fourth assigned errors having delved on the court *a quo's* assessment on the credibility of the witnesses, We shall first discuss the same.

After a judicious evaluation of the two different versions unveiled by the prosecution and defense, We sustain the court *a quo's* assessment on the credibility of the witnesses for the prosecution and likewise give them full faith and credence. Settled is the rule that the factual findings of the court *a quo*, especially on the credibility of witnesses, are accorded great weight and respect and cannot be disturbed on appeal. This is so because the court *a quo* has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply, of the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.¹⁴

We find the following testimony of GABRIEL to be truthful, sincere and straightforward:

“q When you already arrived with your companions in the house of Mars Zuniga, what happened if any? or what did you do?

a We sent somebody to buy 2 bottles of gin and our purpose was to buy because of our labor, Sir.

q Were you able to secure some drinks?

a Yes, Sir.

q What did you observed (sic) among yourselves while you were drinking liquor?

a We were singing and joking with each other, Sir.

q Up to what time did you enjoy singing and drinking and joking?

a Around 8:00 o'clock in the evening, Sir.

q Were you still drinking up to 9:00 in the evening, do you remember if there was any thing that happened if any?

a There was, Sir.

q What was that incident that happened?

a The wife of Ferdinand Cadangan came over, Sir.

q Where did Mrs. Cadangan go?

a To the place where we were drinking, Sir.

q Where were you drinking then that time?

a Infront (sic) of the house of Mars Zuniga, Sir.

q Who was the companion of Mrs. Cadangan when she went there if she had a companion?

a They were two, Sir, he was with Ferdinand Cadangan.