

## THIRD DIVISION

[ G.R. No. 175023, July 05, 2010 ]

**GIOVANI SERRANO Y CERVANTES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**BRION, J.:**

We review in this petition for review on *certiorari*<sup>[1]</sup> the decision<sup>[2]</sup> dated July 20, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 29090, entitled "*People of the Philippines v. Giovanni Serrano y Cervantes*." The CA modified the decision dated October 25, 2004<sup>[3]</sup> of the Regional Trial Court<sup>[4]</sup> (RTC), Branch 83, Quezon City, and found petitioner Giovanni Serrano y Cervantes (*petitioner*) guilty beyond reasonable doubt of attempted homicide, instead of frustrated homicide.

### THE FACTS

The case stemmed from a brawl involving 15 to 18 members of two (2) rival groups that occurred at the University of the Philippines, Diliman, Quezon City (UP) on the evening of March 8, 1999. The incident resulted in the stabbing of Anthony Galang (*victim*). Pinpointed as the victim's assailant, the petitioner was charged on March 11, 1999,<sup>[5]</sup> with frustrated homicide in an Information that reads:

That on or about the 8<sup>th</sup> day of March 1999, in Quezon City, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ANTHONY GALANG Y LAGUNSAD, by then and there stabbing him on the stomach with a bladed weapon, thus performing all the acts of execution which should have produced the crime of homicide, as a consequence but which nevertheless did not produce it, by reason of some causes independent of the will of the accused; that is the timely and able medical assistance rendered to said ANTHONY GALANG Y LAGUNSAD which prevented his death, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.<sup>[6]</sup>

On March 20, 2000, the petitioner pleaded not guilty. During the pre-trial, the prosecution and the defense agreed to dispense with the testimonies of SPO2 Isagani dela Paz and the records custodian of East Avenue Medical Center on the basis of the following stipulations: (1) SPO2 dela Paz was the one who conducted the investigation; (2) SPO2 dela Paz took the statement of the victim at the East Avenue Medical Center; (3) the victim was able to narrate the story of the incident

to SPO2 dela Paz before he underwent surgery; (4) SPO2 dela Paz prepared a referral-letter to the city prosecutor; (5) SPO2 dela Paz had no personal knowledge of the incident; and (6) the victim was confined for treatment at the East Avenue Medical Center from March 8, 1999, and the documents referring to his confinement and treatment were duly executed and authenticated.<sup>[7]</sup> After these stipulations, trial on the merits immediately followed.

### ***The Prosecution's Evidence***

The prosecution presented the victim, Arlo Angelo Arceo, Sgt. Rolando Zoletto, and SPO2 Roderick Dalit.

These witnesses testified that, at around 9:30 p.m. of March 8, 1999, the victim and his two friends, Arceo and Richard Tan, were on their way to Fatima II in Pook Dagohoy, UP Campus when they came across Gener Serrano, the petitioner's brother, who was with his group of friends. The victim, Arceo and Tan approached Gener and his friends to settle a previous quarrel between Gener and Roberto Comia. While the victim and Gener were talking, Comia suddenly appeared and hurled invectives at Gener. Irked, Gener challenged Comia to a fistfight to settle their quarrel once and for all; Comia rose to the challenge.

It was at this point that the petitioner appeared with other members of his group. He was a guest at a party nearby, and was informed that a fight was about to take place between his brother and Comia. Members of the victim's group also started to show up.

The petitioner watched Gener fight Comia. When Gener lost the fight, the petitioner sought to get back at the victim and his friends. Thus, the one-on-one escalated into a rumble between the members of the two groups. During the rumble, and with the aid of the light emanating from two Meralco posts, the victim and Arceo saw that the petitioner had a knife and used it to chase away the members of their group. The petitioner also chased Arceo away, leaving the victim alone; the petitioner's group ganged up on him.

The petitioner went to where the victim was being beaten by Gener and one Obet Orieta. It was then that the victim was stabbed. The petitioner stabbed the left side of his stomach while he was standing, with Gener and Orieta holding his arms. The petitioner, Gener and Orieta thereafter continued to beat and stone the victim until he fell into a nearby creek. The petitioner and his group left him there.

From his fallen position, the victim inspected his stab wound and saw that a portion of his intestines showed. On foot, he went to find help. The victim was initially taken to the UP Infirmary, but was referred to the East Avenue Medical Center where he underwent surgery. The victim stayed at the hospital for a week, and thereafter stayed home for one month to recuperate.

In the investigation that immediately followed, the victim identified the petitioner as the person who stabbed him. In court, the victim likewise positively identified the petitioner as his assailant.

### ***THE DEFENSE'S EVIDENCE***

The defense presented the testimonies of the petitioner, Gener, and George Hipolito.

The petitioner denied that he stabbed the victim. While he admitted that he was present during the fistfight between Gener and Comia, he claimed that he and Gener left as soon as the rumble started. The petitioner testified that as he and Gener were running away from the scene (to get back to the party), bottles and stones were being thrown at them.

Hipolito, a participant in the rumble and a member of the petitioner's group, narrated that the rumble happened fast and he was too busy defending himself to take note of everything that happened. He testified that he did not see the petitioner and Gener during the fight. He also testified that the place where the rumble took place was near a steel manufacturing shop which provided some light to the area. He further testified that the victim was left alone at the scene and he alone faced the rival group.

### **The RTC Ruling**

After considering the evidence, the trial court found the petitioner guilty beyond reasonable doubt of frustrated homicide. It held, thus:

The bare statement of Giovanni Serrano that he did not stab Anthony and he really does not know who might have stabbed Anthony is outweighed by the positive identification by Anthony that Giovanni stabbed him frontally while they faced each other and also the circumstantial evidence pointing to him as the wielder of the knife. Naturally, Giovanni Serrano would feign ignorance as to who stabbed Anthony but there is no way that he can avoid said direct and circumstantial evidences.<sup>[8]</sup>

Accordingly, the RTC decision disposed:

WHEREFORE, the prosecution having established the guilt of accused GIOVANI SERRANO Y CERVANTES of the offense of FRUSTRATED HOMICIDE beyond reasonable doubt, this Court finds him GUILTY thereof and hereby sentences him to undergo imprisonment of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* as minimum to TEN (10) YEARS of *prision mayor* as maximum.

Accused Giovanni Serrano is hereby ordered to reimburse to complainant Anthony Galang the medical expenses incurred by the latter in his hospitalization and treatment of his injuries in the amount of FIFTEEN THOUSAND PESOS (P15,000.00) and loss of income for one (1) month in the amount of FOUR THOUSAND PESOS (P4,000.00) or the total amount of NINETEEN THOUSAND PESOS (P19,000.00).

Costs against the accused.

**SO ORDERED.**<sup>[9]</sup>

The petitioner appealed to the CA. He claimed that the inconsistencies in the victim's testimony rendered it incredible, but the RTC disregarded the claim. The RTC also disregarded the evidence that the dimness of the light in the crime scene made it impossible for the victim to identify his assailant.

### THE CA RULING

In its decision, the CA agreed with the RTC that the petitioner had been positively identified as the victim's assailant. The CA, however, ruled that the crime committed was attempted homicide, not frustrated homicide. The CA ruled that the prosecution evidence failed to conclusively show that the victim's single stab wound was sufficient to cause death without timely medical intervention. In support of its conclusion, the CA said that:

Thus, in ***Paddayuman v. People*** (G.R. No. 120344, 23 January 2002), appellant's conviction for attempted homicide was upheld because there was **no evidence that the wounds suffered by the victim were fatal enough as to cause her demise**. Thus:

x x x petitioner stabbed the victim twice on the chest, which is indicative of an intent to kill. x x x This can be gleaned from the testimony of Dr. Pintucan who did not categorically state whether or not the wounds were fatal. x x x (I)n *People v. Pilonos*, this Court held that even if the victim was wounded but the injury was not fatal and could not cause his death, the crime would only be attempted.

Similarly, in the case of ***People v. Costales*** (G.R. No. 141154, 15 January 2002), where the offense charged was frustrated murder, the trial court rendered a verdict of guilty for **attempted** murder because the prosecution failed to present a medical certificate or competent testimonial evidence which will prove that the victim would have died from her wound without medical intervention. Citing ***People v. De La Cruz***, the Supreme Court sustained the trial court and stressed that:

x x x the crime committed for the shooting of the victim was **attempted** murder and **not frustrated** murder **for the reason that "his injuries, though no doubt serious, were not proved fatal** such that without timely medical intervention, they would have caused his death.<sup>[10]</sup>

Thus, the CA modified the RTC decision. The dispositive portion of the CA decision reads:

**WHEREFORE**, with the **MODIFICATIONS** that:

1) Appellant is found **GUILTY** beyond reasonable doubt of the crime of **ATTEMPTED HOMICIDE** and sentenced to suffer the indeterminate penalty of imprisonment of **SIX (6) MONTHS** of *arresto mayor* as minimum to **FOUR (4) YEARS** and **TWO (2) MONTHS** of *prision correccional*, as maximum;

2) The actual damages is **REDUCED** to **P3,858.50**; and

3) The award of loss earnings is **DELETED**,

The appealed decision is **AFFIRMED** in all other respects.

**SO ORDERED.**<sup>[11]</sup>

Undaunted, the petitioner filed this present petition.

### **THE ISSUES**

The petitioner raises the following issues for the Court's consideration:

#### **A**

**THE COURT OF APPEALS ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.**

#### **B**

**THE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION, WHICH WERE BASED ON MERE SPECULATION AND CONJECTURE.**

#### **C**

**THE COURT OF APPEALS GRAVELY ERRED IN OVERLOOKING THE FACT THAT THE STABBING INCIDENT OCCURRED IN THE MIDDLE OF A STREET BRAWL, WHERE ANYBODY OF THE NUMEROUS PARTICIPANTS COULD HAVE BEEN THE ASSAILANT.**

#### **D**

**THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.**<sup>[12]</sup>

The petitioner claims that the lower courts' decisions were erroneous based on two-pronged arguments - *first*, he cannot be convicted because he was not positively identified by a credible testimony; and *second*, if he is criminally culpable, he can only be convicted of serious physical injuries as the intent to kill the victim was not