

THIRD DIVISION

[G.R. No. 161902, September 11, 2009]

**EDGAR MERCADO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision^[1] of the Court of Appeals (CA) dated December 23, 2003, be reversed and set aside.

Petitioner was charged under the following Amended Informations in Criminal Case No. 97-18386 with Frustrated Homicide and Criminal Case No. 97-18387 with Homicide.

The Amended Information for Criminal Case No. 97-18386 reads as follows:

The undersigned Assistant City Prosecutor accuses ROMULO CABLES and EDGAR MERCADO alias "TOMING" of the crime of FRUSTRATED HOMICIDE (Under Article 249, in relation to Article 6 of the Revised Penal Code), committed as follows:

That on or about the 24th day of December 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and acting in concert, without any justifiable cause or motive, being then armed and provided with a bladed weapon (knife), with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with said weapon one JOHN B. GONZALES, thereby inflicting upon his person the following injuries, to wit:

- Incised Wound 3 cm., Base of Thumb, Left
- with Transection of Extensor Pollices Longus & Brevis Tendons;
- Incised Wound, 6 cm., Wrist, Right;
- Incised Wound 7 cm., Forehead
- Incised Wound 5 cm., Axilla, Left

Operation/Procedure Done: Tendon Repair;
Ligation of Bleeders & Suturing of Wounds

thus performing all the acts of execution which could have produced the crime of homicide, as a consequence directly by overt acts, but nevertheless, did not produce it by reason of cause independent of the

will of the perpetrators, that is, due to the timely and able medical assistance which saved the life of the victim.

Act contrary to law.^[2]

The Amended Information for Criminal Case No. 97-18387 reads, thus:

The undersigned Assistant City Prosecutor accuses ROMULO CABLES and EDGAR MERCADO alias "TOMING" of the crime of HOMICIDE (Under Article 249 of the Revised Penal Code), committed as follows:

That on or about the 24th day of December 1996, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and acting in concert, without any justifiable cause or motive, being then armed and provided with an ice pick, with intent to kill, did, then and there wilfully, unlawfully and feloniously assault, attack and stab with said weapon one NELSON DOCTO, thereby inflicting upon the person of the latter wounds, which directly caused his death, to wit:

- Wound, stab, .02 cm. in diameter, 7 inches deep at the 5th intercost space directed medially downward hitting the right lung and liver.
- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the left lower hypochoric region directed medially forward rupturing the abdominal aorta.
- Wound, stab, 0.2 cm in diameter, 7 inches at the upper left buttock directed forward medially involving the intestines.
- Wound, stab, 0.3 cm. in diameter, 7 inches deep at the lower left buttock involving the intestines.

Cause of Death: Cardio-respiratory arrest, hypovolemic shock ruptured abdominal aorta due to multiple stab wounds.

Act contrary to law.^[3]

Petitioner pleaded not guilty to the Amended Informations and the cases were tried jointly.

The prosecution evidence presents the following scenario:

Around 9 o'clock in the evening of December 23, 1996, brothers Nelson and Agaton Docto, together with John Gonzales, were drinking beer in front of the sari-sari store owned by Sheila Realista located at St. Francis Subdivision, Taculing, Bacolod City. Also drinking beer at the store was another group comprised of Morito Piansay, Jose Ramos, and a certain Jesse and Monding. After a while, an altercation broke out between Nelson Docto and Morito Piansay when the former belittled the latter's "magic" card tricks. Irked, Piansay left in a huff saying, "You just wait for

me here, I cannot fight back because I am old." Piansay's companions also left with him. Nelson and Agaton Docto, as well as John Gonzales, remained at the store and continued drinking.

Around 12 o'clock midnight of December 24, 1996, Nelson Docto sang "Bayang Magiliw." Soon thereafter, Romulo Cabiles alias "Small" arrived at the store to buy beer. Sheila Realista initially refused to sell beer to Cabiles but relented upon the insistence of Nelson Docto. After getting his beer, Cabiles stood near the barbecue stand about one-and-a-half arms length away from Agaton Docto. Agaton Docto [should be Nelson Docto] and John Gonzales continued their conversation while Nelson Docto [should be Agaton Docto], who was by then heavily drunk, was almost dozing.

At this point, petitioner Edgar Mercado alias "Taming" arrived and also bought a bottle of beer. Petitioner sat on the stool near John Gonzales. Engaging petitioner in a conversation, Gonzales asked the former where he was from. Petitioner replied that he was from Barangay 29. Petitioner then asked for his bill and paid it. After receiving his change, petitioner suddenly broke the beer bottle he was holding in front of Realista, who cried out "Linti!" in surprise. Almost simultaneously, Cabiles struck Agaton Docto with a wooden stool. At the time, Agaton Docto was almost asleep and sitting with his head bowed. He slumped down on the table, unconscious, after being hit.

Cabiles then turned his attention to John Gonzales and repeatedly stabbed him with a stainless knife. Gonzales tried to defend himself but was nevertheless hit on his forehead, hands and left armpit. When Cabiles stabbed Gonzales in the armpit, Cabiles was sitting on top of Gonzales who was lying supine on the ground. Witnessing the attack, Realista threw a stone at Cabiles in an effort to stop him. The stone hit Cabiles on the neck, momentarily stunning him and affording Gonzales a chance to escape. Cabiles, however, soon recovered and pursued the fleeing Gonzales.

While Gonzales was being attacked by Cabiles, petitioner, after breaking the beer bottle, pulled out a weapon called "tres cantos" and repeatedly stabbed Nelson Docto. Petitioner then joined Cabiles in pursuing the fleeing Gonzales. Realista followed, but was unable to catch up with the group.

John Gonzales and Nelson Docto were rushed to the Bacolod Sanitarium Hospital. Dr. Alan Nodal, the attending physician, treated John Gonzales for the following injuries:

Incised wound 3 cm. base of thumb, left with Transection of Exterior Pollices Longus and Brevis Tendons;

Incised wound, 6 cm., wrist, right;
Incised wound, 7 cm., forehead;
Incised wound, 5 cm., maxilla, left.

Nelson Docto died as a result of the injuries he sustained. His Certificate of Death states the cause of his death as "Cardiopulmonary Arrest, Hypovolemic Shock due to multiple stab wounds on the abdomen and chest."

The autopsy on the cadaver of Nelson Docto conducted by Dr. Johnnie V. Raito, Jr., City Health Officer of Bacolod City, showed the following Post Mortem findings:

1. Wound, stab 0.2 cm. in diameter, 7 inches deep at the intercostal space, directed medially downward hitting the right lung and liver;
2. Wound, stab, 0.3 cm. in diameter, 7 inches deep at the left lower hypochoric region directed medially forward rupturing the abdominal aorta;
3. Wound, stab, 0.3 cm. in diameter, 7 inches at the upper left buttocks directed forward medially involving the intestines;
4. Wound, stab, 0.3 cm. in diameter, 7 inches deep at the lower left buttock involving the intestines.^[4]

On the other hand, petitioner maintains that he could not have been the malefactor because he resides in Iloilo and only arrived in Bacolod between 7 and 8 o'clock in the morning of December 24, 1996. Petitioner presented his testimony and those of his aunt Milagros Vasquez, his sister-in-law Catherine Mercado and his friend Rey Diorama. They all testified that petitioner, who resides in Iloilo, only arrived in Bacolod City on the morning of December 24, 1996. Petitioner said he, together with his wife and child, and a secretary of his wife, left Iloilo at 5:30 in the morning of December 24, 1996 and they arrived at Banago wharf at around 7 o'clock in the morning of the same day. It was already 8 o'clock in the morning of that day when they arrived in Bacolod. Catherine Mercado stated that petitioner's party arrived at their house in Bacolod between 7 and 8 o'clock in the morning of December 24, 1996; and that the ferry trip from Iloilo to Bacolod only takes one hour. Rey Diorama testified that he only saw petitioner in Bacolod around 9 o'clock in the morning of that day. Milagros Vasquez also said that at around 8:30 to 9 o'clock in the morning of December 24, 1996, petitioner called her on the phone, informing her that they had just arrived in Bacolod and they were bringing salad to the family reunion. Witness for the accused SPO4 Ismail Tan only stated that he accompanied SPO3 Amador Versos to the Bacolod Sanitarium and Hospital. It was the latter who interviewed the victim John Gonzales and the available witnesses, so he could not say with certainty whether Versos asked questions about the identity of the assailants. He, however, identified the Police Blotter Report where it was stated that the attackers were "2 unidentified persons."

After the parties rested their case, the Regional Trial Court (RTC) of Bacolod City, Branch 52 promulgated its Joint Decision^[5] on May 30, 2000. The dispositive portion thereof reads, thus:

WHEREFORE, in view of all the foregoing premises, the Court hereby finds both accused EDGAR MERCADO alias "TOMING" and ROMULO

CABILES alias "SMALL" GUILTY beyond reasonable doubt:

1. In Criminal Case No. 97-18387 for Homicide, and hereby sentences each accused to suffer the indeterminate penalty of eight (8) years and seven (7) months of *prison mayor*, as minimum, to sixteen (16) years of *reclusion temporal*, as maximum; to jointly and severally pay the amount of P50,000.00 for the death of Nelson Docto, Jr. and to pay the cost of suit; and

2. In Criminal Case No. 97-18386 for Frustrated Homicide, each accused is hereby sentenced to suffer the indeterminate penalty of two (2) years and six (6) months of *prison correctional*, as minimum, to eight (8) years and six (6) months of *prison mayor*, as maximum, and also to pay for the cost of suit.

The two accused are entitled to the full credit of their preventive detention.

SO ORDERED.^[6]

On appeal with the CA, said conviction was affirmed *in toto*.

Only petitioner Edgar Mercado availed of the remedy of the present petition for review on *certiorari* under Rule 45 of the Rules of Court, hence, as to Romulo Cabiles, the CA Decision has become final and executory.

In the present petition, petitioner alleges that:

A. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE DECISION OF THE LOWER COURT SUSTAINING THE FINDINGS OF CONVICTION OF THE ACCUSED BASED ON THE ALLEGED POSITIVE IDENTIFICATION BY THE PROSECUTORS' TWO WITNESSES, NAMELY: JOHN GONZALES AND SHEILA REALISTA;

B. THE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE FACTUAL FINDINGS OF THE LOWER COURT ON THE TESTIMONY OF THE TWO PROSECUTION WITNESSES, NOTWITHSTANDING THE FACT THAT IT OVERLOOKED CERTAIN MATERIAL FACTS LIKE THE CONFLICTING AND MATERIAL DISCREPANCIES IN THE TESTIMONIES OF THE TWO (2) WITNESSES WHICH IF DULY CONSIDERED WOULD AFFECT THE RESULT OF THE JUDGMENT;

C. THE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE DEFENSE OF ALIBI BY THE ACCUSED NOTWITHSTANDING THE DOUBTFUL AND UNRELIABLE IDENTIFICATION OF THE ACCUSED BY THE TWO (2) PROSECUTION WITNESSES.^[7]

The meat of petitioner's argument is that the identification of petitioner made by prosecution witnesses John Gonzales and Sheila Realista is fraught with defects,