

## SECOND DIVISION

[ G.R. No. 150122, February 06, 2004 ]

**ANTONIO PASCUAL FABRIGAR, PETITIONER, VS. THE PEOPLE OF  
THE PHILIPPINES, RESPONDENT.**

### R E S O L U T I O N

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Resolution<sup>[1]</sup> of the Court of Appeals dismissing the petition for review of petitioner Antonio Pascual Fabrigar in CA-G.R. CR No. 24539 for failure to serve a copy thereof on the Office of the Solicitor General, and of the Resolution of the CA denying his motion for reconsideration of the said resolution.

#### **The Antecedents**

On September 4, 1996, the petitioner along with two others, was charged with attempted homicide in an Information<sup>[2]</sup> filed in the Metropolitan Trial Court of Pasig City. The petitioner was arraigned, with the assistance of counsel, and entered a plea of not guilty. The other accused remained at large. On March 21, 2000, the trial court rendered judgment convicting the petitioner of attempted homicide.

As summarized by the trial court, the case for the prosecution is as follows:

On June 6, 1996 at around 7:00 a.m., he (Cedo) was walking in the alley in Gumamela St., Purok 6, Kalawaan, Pasig City, on his way to his sister-in-law's house to borrow a shovel. He saw accused Antonio Pascual Fabrigar at the side of the alley holding a fighting cock and staring at him (*masama ang tingin*). He asked accused why but the latter did not respond and instead, let go of the cock and rushed to him and boxed him on the face. He was not hit because he parried the blow. He was forced to defend himself and they exchanged blows. They were pacified by one Leo.

Antonio Puyoc Fabrigar came from his house and gave an opened fan knife to the accused. [The] accused rushed to him (Cedo) and stabbed him on the chest, which he parried with his left hand. [The] accused continued stabbing him while he was moving backwards and he fell into the canal face up.

[The] accused went on top of him and continued stabbing him. He was hit on his left leg. He kept on parrying the stab thrusts until he boxed the accused on the jaw by reason of which, the accused lost hold of the knife. Edwin Facal approached the accused and handed to the latter a .38 cal. gun. [The] accused then poked the gun at him (Cedo) and

squeezed the trigger but the gun did not fire. Then the accused ran away. He tried to run after the accused but he was not able to catch up with him because of the injury on his leg.<sup>[3]</sup>

The petitioner's version of the incident is as follows:

On June 6, 1996, he was in the yard of his house feeding his fighting cocks. Complainant Cedo went in front (sic) of his gate, stared at him and asked "*bakit?*" It was because of the case he filed against Cedo and the latter's wife at the Regional Trial Court (Exh. 1 to 1-C).

They exchanged words and he turned his back on Cedo. Cedo entered the yard and repeatedly boxed him. He fought back, picked up a piece of wood (because Cedo is bigger than him) and repeatedly hit Cedo with it because Cedo brought out a fan knife. Cedo was hit several times on his body but he (the accused) does not know where. He got hold of the knife and Cedo ran out of the yard and fell on the canal. If he was not holding a piece of wood, Cedo would have stabbed him. Cedo brought out the knife only when he (the accused) was able to get the piece of wood. The incident happened fast.

He was pacified by his relatives and he returned the knife to Cedo's relative, Rex Saldaxia. Cedo got possession of the knife but he (the accused) did not know how. Then Cedo shouted "*putang ina mo Fabrigar, hindi pa tayo tapos.*"

He went to the barangay to report and he was advised by the Tanod to have a medical check-up so he proceeded to the Rizal Medical Center (Exh. 3, 4). He filed a counter-charge against Cedo at the Fiscal's Office of Pasig City and a Resolution was handed down (Exh. G to G-3).<sup>[4]</sup>

Calibrating the conflicting evidence of the prosecution on the one hand, and that of the petitioner on the other, the trial court ruled that the witnesses of the prosecution were credible and their testimonies entitled to full probative weight.

Considering therefore the conflicting versions given of one and the same incident, the issue in this case is credibility. Said issue is resolved in the Prosecution's favor.

The injuries sustained by complainant Cedo are consistent with the alleged manner of infliction thereof. The injuries were sustained when Cedo was parrying the stab thrusts of the accused with the use of the knife. This is more logical than the accused's account. With the use of a piece of wood, as the accused alleged, and repeatedly at that, multiple contusions and abrasions would have normally been caused, not lacerations. Moreover, the injuries would have been more serious. The fact remains that in the instant case, the injuries reflected in Cedo's medical certificate, although caused by stab thrusts, were light as they were sustained when Cedo parried the stab thrusts. Besides, Cedo's injuries could not have been sustained by reason and/or in the course of a mere exchange of blows or fistfight between Cedo and the accused. A weapon was necessarily used.

Observably moreover, while the Prosecution witnesses were consistent in their narration of the circumstances of the subject incident, the Defense witnesses were not. While the accused allegedly having repeatedly struck Cedo with a piece of wood, such fact was not even mentioned by his witness, Hector L. Orquiola, who in fact alleged that he did not see any weapon except the knife held by Cedo.

Orquiola's further testimony that Cedo tripped and fell on the open canal with GI sheets on the sides (TSN, p. 7, July 22/99) is belied by the photograph of the canal offered in evidence by the Prosecution (Exh. H).

Notably further, the accused and Cedo already had an exchange of blows before the stabbing incident. [The] accused's subsequent repeated stab thrusts with the use of a knife at Cedo, particularly those made when Cedo was already down and at a disadvantageous position, are logical and convincing indicia of intent to kill and not a mere indiscriminate employment of violence.

The injuries inflicted on Cedo having been of a light nature, and there being a finding of intent to kill attendant in the infliction thereof, as afore-discussed, the crime committed was Attempted Homicide.<sup>[5]</sup>

On March 21, 2000, the trial court rendered judgment convicting the petitioner of the crime charged, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding herein accused Antonio Pascual Fabrigar guilty beyond reasonable doubt of the crime of Attempted Homicide as defined and penalized under Art. 249 in relation to Art. 6 of the Revised Penal Code, and sentencing him to suffer imprisonment of One (1) year of *prision correccional*, to indemnify herein complaining witness Lamberto S. Cedo in the amount of P5,000.00 as moral damages, and to pay the costs of suit.

As against accused Antonio Fabrigar y Puyoc and Edwin Facal who have both remained at large, let this case be, in the meantime, sent to the Archives without prejudice to its reinstatement upon the apprehension of the said accused.

SO ORDERED.<sup>[6]</sup>

On appeal with the Regional Trial Court, the petitioner alleged that he acted in self-defense. The RTC issued an Order on July 28, 2000, affirming the decision of the trial court with modification. The award of moral damages was deleted. The RTC overruled the petitioner's plea of self-defense.

The petitioner filed a petition for review with the Court of Appeals, serving copies thereof on the City Prosecutor and the RTC. The petitioner alleged therein that he did not intend to kill the victim, and, as such, is guilty only of physical injuries. On November 17, 2000, the Court of Appeals issued a Resolution dismissing the petition for the petitioner's failure to serve a copy of his petition on the Office of the Solicitor General as mandated by Section 1, Rule 42 of the Rules of Court, as amended. The