

## SECOND DIVISION

**[ G.R. No. 121802, September 07, 2000 ]**

**GIL MACALINO, JR., PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.**

### DECISION

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

Before us is a petition for review on certiorari seeking reversal of the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> dated August 31, 1995, in CA-G.R. CR No. 14513, convicting petitioner Gil Macalino, Jr. of the crime of Frustrated Homicide.

The record shows that on January 5, 1987, Provincial Fiscal Victoriano L. Tizon filed with the Regional Trial Court of Siquijor an Information charging Gil Macalino, Jr. with frustrated homicide, defined and penalized under Article 249 in relation to Article 250 of the Revised Penal Code, which was allegedly committed as follows:

That at about 8:00 o'clock in the evening of March 23, 1986, at the wharf area of Larena, Siquijor, situated at North Poblacion, Larena, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, the accused with intent to kill, did then and there willfully, unlawfully, and feloniously stabbed one Fely "Pono" Garcia, using a bladed weapon, hitting the victim at the mid clavicular line, subcostal area (1) left; which injury would have caused the death of the victim had not been due to a timely and expert medical attendance extended to him and not by virtue of the assailants spontaneous desistance.

Contrary to the Provisions of the RPC.<sup>[3]</sup>

Arraigned on September 7, 1989, petitioner Gil Macalino, Jr., assisted by his counsel, pleaded "Not Guilty".<sup>[4]</sup>

The pertinent facts are the following:

Victim Fely Garcia testified that on March 23, 1986, at around 8:00 o'clock in the evening, he was in front of Virgie's Store at the wharf area of Larena, Siquijor with his friends, Salvador Rocamora and June Uzarraga, to have a drinking spree.<sup>[5]</sup> While waiting for their companions, Gil Macalino, Jr., along with his father and two other brothers, Manny and Ogie, arrived on board a jeep at Nicarter Mahusay Eatery, which was located beside Virgie's Store.<sup>[6]</sup> Fely Garcia approached the Macalinos to talk about the incident that happened between them on March 17, 1986 and to ask for forgiveness.<sup>[7]</sup> The March 17, 1986 incident involved a fistfight between the two younger brothers of Macalino, Jr. and the group of Fely Garcia, which resulted in the filing of a case against the group of Fely Garcia before the

Metropolitan Trial Court. Macalino, Jr. did not reciprocate his plea for forgiveness and told Fely Garcia that he had another purpose, after which Fely Garcia went back to Virgie's Store.<sup>[8]</sup>

A few minutes later, Fely Garcia saw the Macalino brothers advancing towards him at Virgie's Store. Santos "Junjun" Garcia, a brother of Fely Garcia, went near his brother, Fely Garcia, but the latter shoved him away. Upon reaching Fely Garcia, Macalino, Jr. suddenly stabbed Fely Garcia.<sup>[9]</sup> The knife used was a rambo knife about 9 ½ inches long with a jagged edge.<sup>[10]</sup> After Fely Garcia was hit on the stomach, he ran for a distance of about 30 meters towards the wharf, and then fell down. Fely Garcia was brought to Siquijor Provincial Hospital where he was treated for one (1) month. For the said medical treatment, Fely Garcia spent P9,000.00.<sup>[11]</sup>

Salvador Rocamora, Jr. corroborated the testimony of Fely Garcia on all material points. He further testified that Macalino, Jr. attempted to incite trouble in front of Virgie's Store which drew the ire of Santos Garcia. Santos tried to assault Macalino, Jr. but Salvador and Fely Garcia pushed him away. Turning to his right, after pushing Santos Garcia, Salvador saw Macalino, Jr. pulling back the hunting knife from the body of Fely Garcia.<sup>[12]</sup>

Dr. Timoteo J. Badoy, Jr., physician at Siquijor Provincial Hospital testified that on March 23, 1986, he treated a certain Fely Garcia for a stab wound on the stomach.<sup>[13]</sup> He issued a certification that contains the following findings:

Stab wound, mid-clavicular line, subcostal area (L) with:

1. Perforated penetrated jejunum
2. Hemoperitoneum
3. Hypovolemia<sup>[14]</sup>

Dr. Timoteo Badoy, Jr. likewise declared that the injury sustained by Fely Garcia was fatal and that he might have died if he had not been given medical attention. Dr. Badoy opined that a pointed and sharp-edge instrument caused the wound.<sup>[15]</sup>

Patrolman Fortunato S. Ates, member of the Siquijor Integrated National Police, was at the Larena wharf on the evening of March 23, 1986. While waiting for the departure of the boat, he heard someone shouting, "*Help, there is a stabbing incident, Pano is stabbed.*"<sup>[16]</sup> Ates immediately rushed to the scene of the crime and saw Macalino, Jr. still holding the bladed weapon. Ates introduced himself as a policeman and asked Macalino, Jr. to drop his weapon. Macalino, Jr. did not resist the arrest by Ates who later turned Macalino, Jr. over to a certain Lt. Balimbingan.

The defense gave a different version of the incident.

Gil Macalino, Sr., father of the accused, testified that at about 3:00 o'clock in the afternoon of March 23, 1986, he and some employees of the Department of Agriculture were having a "despedida" party in Tugawe Beach in Cang-alwang, Siquijor.<sup>[17]</sup> Suddenly, Alex Bonachita appeared in a motorcycle, and challenged the

group asking "*Who is brave among you?*"<sup>[18]</sup> Before leaving, Alex Bonachita told them that he would be waiting for them at Larena.<sup>[19]</sup> Threatened, Macalino, Sr. sought assistance from the PC headquarters at Caipilan and was provided with security by Lt. Balimbingan.

Macalino, Sr. met Lt. Balimbingan at the Larena wharf that same evening and upon seeing him, the latter just nodded at him.

While Macalino, Sr. was waiting for his co-employees to board the ferryboat at the Larena wharf, Fely Garcia approached him and asked in a provocative manner, "*What now sir?*" Taken by surprise, Macalino, Sr. answered "*Why?*"<sup>[20]</sup> After such brief exchange of words, the boat signaled for departure so Macalino, Sr. returned to the restaurant.<sup>[21]</sup> However, before he could get out of the restaurant, a commotion occurred at the wharf which was about 2 to 3 meters away from the restaurant.<sup>[22]</sup> Later on, he learned of the stabbing incident and that his son, Macalino, Jr., was involved. The authorities brought Macalino, Jr. to the PC headquarters at Caipilan. While in jail, his son complained of some pain. Macalino Sr. accompanied his son to Lazi Medicare and Community Hospital in Siquijor where he was confined for more than two weeks.<sup>[23]</sup>

Dr. Magdalena Tan-Lim, physician of Lazi Medicare and Community Hospital treated Macalino, Jr. on March 24, 1986.<sup>[24]</sup> Macalino, Jr. was admitted in the hospital from March 24 to April 2, 1986. The medical certificate indicated the following injuries suffered by Macalino, Jr.: "hematoma on the left cheek and traumatic injury hypogastric region."<sup>[25]</sup>

Vice-Mayor Soledado Lomosad, a resident of Larena, Siquijor for more than 62 years testified on the reputation and character of the Garcia brothers. He stated that the Garcias were troublemakers and, in fact, several criminal cases had been filed against them.

Petitioner Gil Macalino, Jr. testified that at around 8:00 o'clock in the evening of March 23, 1986, he was fetched at the instance of his father from his house in Bontod, Larena. He was asked to drive a vehicle taken by his father's companion.<sup>[26]</sup> Upon reaching the vehicle parked on the side of Nicarter Mahusay Eatery, his father came out of the restaurant and told him to stay. While sitting on the driver's seat, Lt. Balimbingan approached him and asked where his father was. Macalino, Jr. called his father who was then inside the Nicarter Mahusay Eatery, and thereafter, Macalino, Sr. and Lt. Balimbingan had a conversation.<sup>[27]</sup>

Lt. Balimbingan approached Macalino, Jr. for the second time and told him to settle his differences with the Garcias. At that instance, Macalino, Jr. alighted from the jeep and walked with Lt. Balimbingan toward Virgie's Store. After Lt. Balimbingan left, Fely Garcia and Santos Garcia arrived and approached him. He noticed that something was bulging on the right side of Santos Garcia's waist. Santos Garcia asked him, "*What now, do you wish to fight?*" and immediately after, Santos Garcia kicked him. Macalino, Jr. was thus forced to bend down and before he could straighten up, Fely Garcia boxed him on the left side of his face causing him to reeled around. After that, he heard a shout saying "*Watch out from behind Jun.*" Macalino, Jr. then immediately faced the Garcia brothers. At that time, he noticed

that Santos was holding a knife in his right hand. He immediately held Santos' hand and took hold of the knife, all in a span of one minute. Upon seeing Fely Garcia, together with his companions,<sup>[28]</sup> rushing towards him, he drew the knife from the scabbard and stabbed Fely Garcia.<sup>[29]</sup> While still holding the knife, a certain man in civilian clothes approached Macalino, Jr. The man identified himself as Patrolman Ates and ordered him to drop his weapon. Macalino, Jr. willingly complied with the order.<sup>[30]</sup>

On November 9, 1992, the trial court rendered its decision convicting petitioner Gil Macalino, Jr., the dispositive portion of which reads:

WHEREFORE, the Court finds, and so holds, that Gil Macalino, Jr. is guilty beyond reasonable doubt of the crime of Frustrated Homicide defined and penalized in Art. 249 in relation to Art. 250 in the Revised Penal Code and judgment is hereby rendered sentencing the accused Gil Macalino, Jr., applying the Indeterminate Sentence Law, to an imprisonment of Two (2) years, Four (4) months and One (1) day of Prision Correccional as minimum to Ten (10) years of Prision Mayor as maximum together with all the accessory penalties prescribed by law, to pay the amount of NINE THOUSAND PESOS (P9,000.00) for actual damages, THREE THOUSAND PESOS (P3,000.00) for compensatory damages and FIFTEEN THOUSAND PESOS (P15,000.00) for moral damages and to pay the costs.

SO ORDERED.<sup>[31]</sup>

On December 14, 1992, Macalino, Jr. filed a Motion for Reconsideration<sup>[32]</sup> but, the same was denied for lack of merit.<sup>[33]</sup>

Dissatisfied, petitioner appealed the decision of the trial court to the Court of Appeals. Except for the deletion of the awards for actual and moral damages, the Court of Appeals affirmed the decision of the trial court, thus:

WHEREFORE, except for the deletion of the awards for actual and moral damages, the appealed judgment is hereby AFFIRMED, in all other respects. No pronouncement as to costs.

Hence, petitioner filed this appeal and interposed two (2) assigned errors, to wit:

## I

THE KNIFE IN QUESTION IS OWNED BY THE BROTHER OF [sic] SANTOS GARCIA, WRENCHED SAID KNIFE INTENDED TO HARM THE ACCUSED-PETITIONER AND USED BY PETITIONER IN STABBING ONCE FELY GARCIA WHILE ATTACKING THE ACCUSED-PETITIONER WITH COMPANIONS OF SAID VICTIM; TO DISABLE THE SUPERIOR STRENGTH THAT WILL HARM THE ACCUSED; SAID EVIDENCE UNCONTRADICTED AND UNREBUTTED BY THE PROSECUTION, THEREFORE, THE SELF-DEFENSE OF ACCUSED UNREBUTTED.

## II

THE CONVICTION CONCLUDED BY THE REGIONAL TRIAL COURT AND

APPROVED BY THE COURT OF APPEALS IS BASED ON PROBABILITIES, SURMISES, CONJECTURES AND SUPPOSITION, INSTEAD OF THE EVIDENCE ON RECORD, THAT THE COURT OF APPEALS HAS NO AUTHORITY OR EXCEEDED ITS AUTHORITY, AMOUNTING TO GRAVE ABUSE OF DISCRETION.<sup>[34]</sup>

Thus, petitioner's grievances deal with issues of facts, which, in turn, eventually hinge upon the credibility of the witnesses.

In weighing the version of the prosecution as well as of the defense, the trial court found the testimonies of the prosecution witnesses more credible. It is a settled doctrine that, as a general rule, this Court will not interfere with the judgment of the trial court in the appreciation of evidence and credibility of witnesses for it is only the trial court that had the opportunity to observe, weigh and assess these matters. Only when it is evident in the records that some facts or circumstances of weight and influence have been overlooked by the trial court which, if considered, would affect the result, will this Court act otherwise.<sup>[35]</sup> In the present case, no cogent reason justifies our departure from the aforecited rule. Fely Garcia accurately narrated the manner of how Macalino, Jr. stabbed him, thus:

PROSECUTOR DOMINGUEZ:

While you were already back at the store of Virgie Gomez, did you know what these Macalino brothers do?

A They approached towards us.

Q And when they approached you, were you still standing with your companions Salvador Rocamora and June Uzarraga?

A Yes.

xxx

xxx

xxx

Q What happened when they were already in front or near you, can you recall what happened?

A Yes.

Q What happened.

A I was stabbed.

Q Who stabbed you?

A Gil Macalino, Jr.

Q Do you know Gil Macalino, Jr. personally?

A Yes.

Q If he is in the courtroom this morning, can you point to him?

A Yes.

Q Will you please point to him?

A That one (witness pointed to a man who answered when asked that his name is Gil Macalino, Jr.).