

TOMMY FERRER, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND COURT OF APPEALS, RESPONDENTS.

G.R. NO. 143487. February 22, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 18293 promulgated on January 31, 2000 which affirmed the judgment[2] of the Regional Trial Court of Lingayen, Pangasinan, Branch 39 (RTC), finding herein petitioner Tommy Ferrer and his brother, Ramon Ferrer, guilty beyond reasonable doubt of Attempted Homicide in Criminal Case No. L-4302 and Frustrated Homicide in Criminal Case No. L-4303.

In an Amended Information dated June 24, 1991, filed with the RTC of Lingayen, Pangasinan, the 4[th] Assistant Provincial Prosecutor of Pangasinan charged Tommy Ferrer (Tommy) and Ramon Ferrer (Ramon), who are brothers, of the crime of Frustrated Homicide committed as follows:

That on or about the 14[th] day of April, 1990 in the evening at barangay Olo-Cafabrosan, [M]unicipality of Mangatarem, x x x Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, armed with a bladed weapon, with intent to kill, did then and there, willfully, unlawfully and feloniously attack and stab Ricardo Ferrer, inflicting upon him the following injuries to wit:

Multiple stab wounds:

- left flank & lower back
- right lower back
- left elbow

the accused having thus performed all the acts of execution which would have produced the crime of homicide as a consequence, but, which nevertheless, did not produce it by reason of causes independent of the will of the accused and that is due to the timely and able medical assistance to the victim which prevented his death, to his damage and prejudice.

Contrary to Art. 249 in relation to Art. 6 of the Revised Penal Code.[3] (Emphasis supplied).

The case was docketed as Criminal Case No. L-4302.

On even date, another Information was filed with the same trial court charging Ramon, Tommy, Che-Che Ferrer (Che-Che) and Robert Tan with the same crime of Frustrated Homicide. The accusatory portion of the Information reads:

That on or about the 14[th] day of April, 1990 in the evening at barangay Olo-Cafabrosan, [M]unicipality of Mangatarem, province of Pangasinan, x x x Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with bladed weapon, glass and wooden cane and with intent to kill, did then and there, willfully,

unlawfully and feloniously attack, assault, hit and stab Roque Ferrer, inflicting upon him the following injuries, to wit:

Multiple stab wounds:

- chest, ant. right 3 cm.,
- right flank
- scalp frontal
- right ear
- right hand

the accused having thus performed all the acts of execution which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused and that is due to the timely and able medical assistance to the victim which prevented his death, to his damage and prejudice.

Contrary to Art. 249 in relation to Art. 6 of the Revised Penal Code.[4] (Emphasis supplied).

The case was docketed as Criminal Case No. L-4303.

On August 12, 1991, Ramon and Tommy were arraigned and pleaded not guilty in Criminal Case No. L-4302.[5] On the same day, Ramon, Tommy and Che-Che were also arraigned and pleaded not guilty in Criminal Case No. L-4303.[6] Accused Robert Tan remained at large.[7] Both cases were subsequently consolidated. Thereafter, trial ensued.

The prosecution's version of the facts of the two criminal cases is as follows: Around 7:00 p.m. of April 14, 1990, brothers Roque Ferrer (Roque) and Ricardo Ferrer (Ricardo) were on their way to the house of their father in Barangay Olo-Cafabrosan, Mangatarem, Pangasinan.[8] When they were near the house of their father, they heard someone shout the words, "Dumating na ang mga mayabang." [9] They discovered that it was their cousin, Ramon, who uttered said words.[10] Ramon was in the yard fronting his father's house which is adjacent to the house of the father of Roque and Ricardo.[11] Ramon was then in the middle of a drinking spree with his brother Tommy, the latter's wife Che-Che and two other companions whom Roque and Ricardo did not recognize.[12] Upon hearing the words uttered by Ramon, Roque stopped and asked him who he was referring to.[13] In the meantime, Ricardo proceeded to the house of their father.[14] After asking Ramon and without getting a response from him, Roque followed Ricardo.[15] Upon reaching their father's house, Roque was met at the door by Ricardo and was told by the latter that he is going to ask Ramon why he made those remarks.[16] Roque proceeded to enter their father's house but later went out and followed his brother.[17] In the meantime, Ricardo was able to confront Ramon. However, Ramon did not answer when Ricardo asked him why he spoke words apparently referring to them as "mayabang".[18] Since Ramon did not answer his question, Ricardo was about to go away when Roque approached them.[19] Without any warning, Ramon stabbed Roque with a kitchen knife hitting his stomach.[20] Ricardo immediately held Ramon's right arm to prevent him from further stabbing Roque.[21] At that instant, Tommy and Che-Che moved toward them.[22] Tommy suddenly stabbed Ricardo's back twice with an ice pick causing him to release his hold on Ramon's arm.[23] After stabbing Ricardo, Tommy proceeded to stab Roque twice on his "right side".[24] Che-Che then started hitting Roque's back with a bamboo pole.[25] Ramon, on the other hand, stabbed Ricardo twice on the right side of his waist.[26] After stabbing Ricardo, he resumed attacking Roque and again stabbed him twice on his chest.[27] When Ramon, Tommy and Che-Che noticed Roque to be bloody, they ran away.[28] It was then that Roque and Ricardo's sister-in-law, Leonila Ferrer (Leonila), summoned them to board the jeepney parked near their father's house in order for them to be brought to the hospital.[29] Roque proceeded to board the vehicle but when he was near the jeepney he was hit on the forehead by a drinking glass thrown by Robert Tan.[30] Roque was eventually able to get on the jeepney. Ricardo drove the vehicle.[31] They were able to reach their uncle's house half a kilometer away.[32] From there they were rushed to

Mangatarem Hospital where first aid was administered to them.[33] They were then brought to Tarlac Provincial Hospital where they were further treated and confined for four days.[34] Thereafter, Ricardo was discharged from the hospital while Roque was transferred to the Chinese General Hospital where he stayed for another four days before being released.[35]

On the other hand, the following is the account of the defense: Between 7:00 and 8:00 p.m. of April 14, 1990, Ramon and his brother Tommy, together with their wives Lucia and Che-Che, respectively, and a visitor, Tommy Gallano, were gathered in front of the house of Ramon and Tommy's father at Olo-Cafabrosan, Mangatarem, Pangasinan.[36] They were in the midst of merrymaking and were being entertained by Tommy's son who was dancing.[37] While watching his nephew dance, Ramon remarked, "Ang yabang talaga ng aking pamangkin." [38] At that moment, it happened that brothers Roque and Ricardo were passing by.[39] They proceeded directly to their house.[40] A few minutes later, Roque went out of their house and went towards the group of Ramon and Tommy.[41] When Roque was approaching, Tommy stood up and asked him what the problem was.[42] Roque did not answer, and instead suddenly boxed Tommy on the face.[43] Tommy fell to the ground.[44] Thereupon, Roque proceeded to box him further.[45] Seeing his brother being mauled, Ramon approached Roque to pacify him.[46] However, Roque turned to Ramon and also boxed him on his face.[47] Ramon fought back. Thereafter, Ricardo arrived, armed with a jungle bolo.[48] Upon seeing that Ricardo was armed, Ramon, Tommy and Che-Che ran and went inside their father's house.[49] Their other companions followed suit. Tommy Gallano and Ricardo's wife closed the main door while Tommy proceeded to the back door to keep watch.[50] Meanwhile, Ricardo gave the jungle bolo to Roque who proceeded to follow Ramon and Tommy's group.[51] The entrance to the main door is through a stairs which is about five feet high.[52] Roque went up the stairs and, despite seeing the main door closed, insisted on entering the house.[53] By pushing, he was able to pry the door open and half of his body was able to enter the house.[54] At that moment, Ramon went to their kitchen, took a knife and stabbed Roque's stomach.[55] Despite being stabbed, Roque still insisted on getting inside the house. Ramon then went out of the house through the back door and proceeded to go to the main door where Roque was.[56] When he saw that Roque was still trying to force his way inside the house, he stabbed him, hitting his back.[57] When Ramon noticed Ricardo approaching, he also stabbed him.[58] After wounding Roque and Ricardo, Ramon went inside his father's house and closed the door.[59] Thereafter, they heard that Roque and Ricardo were brought to the hospital.[60] Fearing that they might be the victims of retaliation, Ramon and Tommy together with their other companions proceeded to the house of a certain Councilor Sabado and spent the night there.[61] The following morning, Tommy went to Manila.[62]

After trial, the lower court rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE IN VIEW OF THE FOREGOING CONSIDERATIONS, it is the Judgment of this Court:

In Criminal Case No. L-4302 for Frustrated Homicide, the Court finds the accused Ramon Ferrer and Tommy Ferrer GUILTY beyond reasonable doubt of the crime of Attempted Homicide without the attendance of any aggravating or mitigating circumstances, and applying the provisions of the Indeterminate Sentence Law hereby sentences each of the accused to suffer imprisonment [of] 6 months of *arresto mayor* as minimum to 2 years 4 months and 1 day of *prision correccional* as maximum;

In Criminal Case No. L-4303 for frustrated homicide, the Court finds the accused Ramon Ferrer and Tommy Ferrer GUILTY beyond reasonable doubt of the crime of Frustrated Homicide without the attendance of any aggravating or mitigating circumstances, and applying the provisions of the Indeterminate Sentence Law hereby sentences each of the accused to suffer imprisonment of 2 years 4 months and 1 day of *prision correccional* as minimum to 8 years and 1 day of *prision mayor* as maximum.

The said accused Ramon Ferrer and Tommy Ferrer are ordered to pay solidarily the following amounts:

- To Roque Ferrer – The sum of P1,809.45 representing medical expenses; P11,979.60 representing unrealized earnings; P5,000.00 as expenses of litigation; and moral damages of P10,000.00 for a total of P28,789.05;

- To Ricardo Ferrer – The sum of P2,000.00 as hospitalization and medical expenses; P10,000.00 as unrealized earnings; P5,000.00 as expenses in attending the hearings; and P8,000.00 as moral damages; for [a total of] P25,000.00 without subsidiary liability in case of insolvency and to pay the costs.

With respect to the accused Cheche Ferrer, the Court finds her Not Guilty for lack of evidence.

SO ORDERED.[63]

Aggrieved by the trial court's decision, Ramon and Tommy appealed to the CA.

In the presently assailed Decision, the CA affirmed the judgment of the RTC. The CA denied the motion for reconsideration filed by Ramon and Tommy.[64]

Hence, the present petition for review on certiorari filed by Tommy Ferrer (petitioner) only, raising the following issues:

I

WHETHER OR NOT THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE THAT, IF CONSIDERED, WOULD HAVE RESULTED IN THE ACQUITTAL OF THE PETITIONER HEREIN.

II

WHETHER OR NOT THE EVIDENCE OF THE PROSECUTION CAN SUSTAIN THE CONVICTION OF THE PETITIONER HEREIN BEYOND REASONABLE DOUBT.[65]

As in their appeal filed with the CA, the issues presented by petitioner in the instant petition boil down to the question of credibility of the witnesses. In both issues, petitioner contends that Ricardo and Roque's claim that he (petitioner) stabbed them should not be given credence because their testimonies are devoid of any factual basis. To support his contention, petitioner asserts that there are inconsistencies between the testimonies of Ricardo and Roque, on one hand, and the testimony of Dr. Tañedo, the physician who treated their wounds, on the other. Petitioner cites the separate testimonies of Roque and Ricardo wherein they claimed that petitioner stabbed both of them; and that based on the testimony of Ricardo, petitioner used an ice pick in stabbing them. Petitioner alleges that the testimonies of Ricardo and Roque were directly contradicted by the testimony of Dr. Tañedo when the latter testified that the injuries sustained by Ricardo and Roque were caused by a "sharp instrument" or "sharp bladed instrument." Petitioner argues that an ice pick is neither a "sharp instrument" nor a "sharp bladed instrument." Concluding that a wound caused by an ice pick is a puncture wound, he then cites Dr. Tañedo's testimony that the latter did not see any puncture wounds when he treated Ricardo and Roque. In other words, petitioner makes much of the fact that none of the wounds of Ricardo and Roque were found by the examining physician as puncture wounds vis-à-vis Ricardo's testimony that petitioner used an ice pick in stabbing him. Petitioner also reasons out that the trial court did not give credence to the testimony of Roque Ferrer that he was hit on his right ear with a bamboo pole by Che-Che Ferrer; instead it (the trial court) relied on the testimony of Dr. Tañedo that the injury on the right ear of Roque is a stab wound caused by a sharp instrument; consequently, it exonerated Che-Che for lack of evidence to prove her liability. Based on this premise, petitioner proceeds to argue that since Dr. Tañedo testified that none of the injuries sustained by Ricardo and Roque is a puncture wound, the claims of the latter that petitioner stabbed them with an ice pick should not also be given credence and, thus, petitioner should also be acquitted.

We are not persuaded.

First, while Ricardo testified that the weapon used by petitioner is an ice pick, Roque did not claim that petitioner used an ice pick in stabbing him or his brother, Ricardo. In fact, Roque testified that he did not notice the weapon used by petitioner when the latter stabbed Ricardo.[66]

Second, Dr. Tañedo testified that the injuries sustained by Ricardo and Roque were probably caused by a "sharp instrument", contrary to petitioner's claim that the wounds were caused by a "sharp-bladed instrument." While Dr. Tañedo admits that a knife could produce the kinds of wounds sustained by Ricardo and Roque there is nothing in the testimony of the doctor which discounts the possibility that said injuries could have also been caused by other weapons such as an ice pick. In fact, the testimony of Dr. Tañedo is consistent with the definition cited by petitioner and his brother in their appeal brief filed with the CA, which, however, is omitted in their present petition, that "an ice pick is a sharp, pointed kitchen or bar implement for cracking ice." [67] Moreover, Dr. Tañedo did not testify nor did the defense present any evidence to prove that an ice pick could only cause a puncture wound.

Third, we cannot give credit to petitioner's reliance on the case of *People v. Mozar*, [68] wherein this Court held that the nature of the injuries sustained by the deceased demolishes the credibility of the prosecution witness' story that he saw the other accused hack the deceased because it was found out later that the victim did not sustain any hack wound. In the present case, there is no dispute that Ricardo and Roque sustained multiple stab wounds. Together with prosecution witness Leonila, they unanimously identified Ramon and Tommy as their assailants.

Granting that Ricardo erred in claiming that Tommy used an ice pick in stabbing him and Roque, it is a settled rule that witnesses are not expected to remember every single detail of an incident with perfect or total recall. [69] Even if the offended party may have erred in some aspects of his testimony, the same does not necessarily impair his testimony nor corrode his credibility. [70] Where a part of the testimony of a witness runs counter to the medical evidence submitted, it is within the sound discretion of the court to determine which portions of the testimony to reject as false and which to consider worthy of belief. [71] In the case of *People v. Lucena*, [72] we held that:

Modern trend in jurisprudence favors more flexibility when the testimony of a witness may be partly believed and partly disbelieved depending on the corroborative evidence presented at the trial. Thus, where the challenged testimony is sufficiently corroborated in its material points, or where the mistakes arise from innocent lapses and not from an apparent desire to pervert the truth, the rule may be relaxed. It is a rule that is neither absolute nor mandatory and binding upon the court, which may accept or reject portions of the witness' testimony based on its inherent credibility or on the corroborative evidence in the case. [73] (Emphasis supplied).

In the present case, Ricardo's testimony – that it was Tommy and Ramon who assaulted him and Roque and that they sustained various injuries by reason of such attack – is corroborated in its material points by the testimonies of the other prosecution witnesses. Roque testified as follows:

FISCAL ABELON

xxx

Q

With whom was your brother talk (sic) in front of the house of Delfin Ferrer?

A

Ramon Ferrer, maam.

Q

When you saw your brother Ricardo Ferrer and Ramon Ferrer talking, what did you do?

A

I went near them, maam.

Q

What happened next when you went near them?

A

Upon getting near them, Ramon Ferrer immediately stab (sic) me, maam or suddenly stabbed me.

Q

What part of your body was stabbed by Ramon Ferrer?

A

I was first stabbed or hit in the stomach, maam. On the belly.

Q

Will you show to the court what part of your belly was first stabbed by Ramon Ferrer?

A

Here, sir. (witness showing scar measuring 2 inches on his belly)

Q

What was used by accused Ramon Ferrer in stabbing you?

A

Kitchen knife, the way I look (sic) at it is a kitchen knife.

Q

Can you tell the Court how long was that kitchen knife?

A

I cannot tell how long because after stabbing me that's the time I saw it to be bloody.

Q

What did you do, if you did anything after Ramon Ferrer stabbed you?

A

I moved back and hold (sic) my wound, maam.

Q

What happened next?

A

My brother Ricardo suddenly held Ramon Ferrer in order to stop him, maam.

Q

You said your brother Ricardo Ferrer held Ramon in order to stop him, stop him from what?

A

To stop him from further stabbing me again, maam.

Q

In what way did your brother Ricardo hold Ramon?

A

Ricardo hold (sic) the right arm of Ramon his upper right arm, maam.

Q

What next transpired?

A

Tommy Ferrer and Che-Che Ferrer got near, maam.

Q

And what happened when Che-Che and Tommy Ferrer went near?

A

Tommy Ferrer suddenly stabbed Ricardo Ferrer at his back, maam.

Q

Can you tell the Court what part of the back of Ricardo Ferrer was stabbed by Tommy Ferrer?

A

I don't know what part of his back was hit because at the time Tommy Ferrer stabbed Ricardo at the back Ricardo's back was towards Tommy Ferrer.

Q

Can you tell the Court what was used by Tommy Ferrer in stabbing your brother Ricardo Ferrer at his back?

A

I did not notice what kind of weapon did he used (sic) in stabbing, maam because I was also holding my wound.

Q

After Ricardo was stabbed on the back by Tommy Ferrer what next transpired?

A

Tommy Ferrer suddenly got near me and stabbed me here (witness pointing to his right side)

Q

How many times did Tommy Ferrer stabbed (sic) you on your right side?

A

Two times, maam.

Q

What happened to you when you were stabbed for two times again by Tommy Ferrer?

A

After Tommy Ferrer had stabbed me twice I was made to move back and at such instance I feel (sic) as if somebody was clubbing me on the back, maam.

Q

What part of your back was being clubbed by somebody?

A

Here at the upper back and on my waist line at the back.

Q

And who was that somebody clubbing you at the back?

A

I have to look back in order to see but suddenly clubbed me here hitting my right ear, here above the right ear.

Q

And who was that who was clubbing you on your back and on your back waist and upper right ear?

A

Che-Che Ferrer (witness pointing to accused Che-Che Ferrer).

Q

What else transpired?

A

When I was clubbed at the right ear I was made to move forward at such instance I saw Ramon Ferrer lunged (sic) at me, maam, in order to stab me again.

Q

What did you do when you saw Ramon Ferrer getting near you in order to stab you again?

A

When he got near me and stabbed me, I moved back. When he is getting near me I moved back but still stabbed and hit my breast, maam.

Q

What next transpired after you were stabbed on the breast?

A

He stabbed me again and hit me here (witness pointing to a scar below his left nipple)

Q

What next transpired after you were stabbed below your left nipple?

A

When they noticed me to be bloody they ran away, sir (sic).

Q

Who ran away?

A

Ramon, Che-Che, Tommy, maam.[74] (Underscoring supplied).

Leonila testified thus:

FISCAL ABELON

Q

What were Ramon and Ricardo doing, if any, when Roque Jr. went near the place where they (Ramon and Ricardo) were?

A

Ramon and Ricardo were talking and then while they were talking Titok or Roque Ferrer Jr. approached and while Titok was approaching them Ramon Ferrer got near Titok and immediately stabbed him.

Q

Did you notice what part of the body of Titok was stabbed by Ramon?

A

I did not notice what part of the body of Titok was hit because after Ramon stabbed Titok Ricardo Ferrer held the arms of Ramon and at such instance Tommy Ferrer got near and stabbed Ricardo here (witness pointing to her arm).

xxx

FISCAL ABELON

Q

Did you notice how many times Tommy stabbed Ricardo?

A

Once.

Q

Did you notice what weapon was used by Tommy in stabbing Ricardo?

A

No, sir (sic), I did not notice. I just saw him stabbed (sic).

Q

After Tommy stabbed Ricardo at the back ... at the place where you indicated, what next did Tommy do?

A

Then he turned at Roque Ferrer Jr. Titok, and stabbed him.

Q

Did you notice what part of the body did Tommy stabbed (sic) Roque – Titok?

ATTY. BAUTISTA

There is no basis yet, Your Honor.

COURT

Q

When you said Tommy stabbed Roque or Titok, did you see if Titok was hit?

A

Yes, sir. (witness indicating part of the body on the right side just above the waist line).

xxx

FISCAL ABELON

Q

Did you notice how many times did Tommy stabbed (sic) Roque or Titok at the place which you indicated?

A

I did not notice how many times but I saw him stabbed (sic).

Q

After that what next transpired?

A

After Tommy Ferrer stabbed Titok or Roque Ferrer Jr., Ramon Ferrer stabbed Titok.

Q

What part of the body of Roque or Titok was stabbed by Ramon?

A

On the breast. (witness pointing to her (sic) breast).

Q

Did you notice how many times?

A

I don't know how many times.

Q

After Ramon stabbed Roque or Titok at the breast, what next transpired?

A

Chichi (sic) with the use of bamboo clubbed (sic)...

xxx

COURT

Q

How long is that piece of bamboo?

A

I did not notice how long was it (sic) but I just saw her clubbed (sic)

Q

But it is not an entire piece of bamboo, about 10 meters long?

A

No, sir.

Q

Will you estimate more or less the length?

A

Like this (parties agreed to be about 2 feet).

FISCAL ABELON

Q

After Chichi (sic) was clubbing the back of Roque/Titok, what next happened or transpired?

A

While Chichi (sic) was clubbing Titok or Roque Jr. at the back Ramon also at the same time was stabbing Titok on the belly.

xxx

Q

What next transpired if any? If there was nothing the witness can say "no".

A

There was.

Q

What is that?

A

Then they ran.

Q

You said "they", who ran?

A

'Ramon, Tommy, Chichi (sic).[75](Underscoring supplied).

The trial court gave credence to the testimonies of the prosecution witnesses. Verily, we reiterate the jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[76] In the present case, we find no cogent reason to depart from the findings of the trial court. Besides, Ricardo and Roque's testimonies as to the location and number of wounds they sustained by reason of petitioner and his brother's assault on them are materially consistent with the findings of the physician who examined and treated them.

Moreover, there is nothing in the records to show that Ricardo, Roque and Leonila were ill-motivated in pointing the finger at petitioner and his brother, Ramon. In fact, in his testimony, Ricardo remained clueless as to why petitioner and his brother stabbed them considering that they never had any quarrel prior to the stabbing incident.[77] Roque also testified that he could not remember any instance where they quarreled with petitioner and his brother.[78] On the other hand, he claims that their relationship with one another is amiable.[79] It is not expected that a witness would prevaricate and aid in the criminal conviction of one who did not bring him any harm or injury.[80] Prosecution witness Leonila's relationship to the victims Ricardo and Roque as their sister-in-law would even render her testimony more credible because it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody else other than the real culprit.[81]

Fourth, we agree with the trial court that there is reasonable doubt as to the liability of Che-Che in view of the conflicting testimony of Roque that he was hit on the right ear by Che-Che with a bamboo pole and the finding of Dr. Tañedo that the injury he found on the right ear of Roque was a stab wound caused by a sharp instrument. As testified upon by Dr. Tañedo, the injuries that can be produced when a person is repeatedly hit with a blunt instrument such as a piece of wood are contusions.[82] Since a bamboo pole is a blunt instrument, it is expected that the injuries that can be sustained when one is beaten by this object are contusions. The wound on the right ear of Roque was found to be a stab wound caused by a sharp instrument. In short, the nature of the wound found on the right ear of Roque is not consistent with the kind of weapon alleged to have been used by Che-Che in inflicting said wound. However, we cannot use the same line of reasoning to exonerate petitioner. Dr. Tañedo testified that all the injuries sustained by Roque and Ricardo were stab wounds caused by a sharp instrument. This finding is not negated by Ricardo's testimony that the weapon used by petitioner in stabbing him was an ice pick. Rather, this finding is consistent with the positive statements of Roque and Leonila that petitioner stabbed Ricardo and Roque. In other words, insofar as the criminal liability of petitioner is concerned, we find nothing inconsistent between the testimonies of the prosecution witnesses, on one hand, and the medical findings of Dr. Tañedo, on the other.

Against the positive identification of Ricardo, Roque and Leonila, all that petitioner could interpose as defense is denial, which, under settled jurisprudence, could not prevail over the positive testimony of witnesses.[83] Denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[84] To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters.[85] Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably

deserve more credence and evidentiary weight.[86]

Petitioner insists that his defense does not consist of bare denial. He claims that his testimony is corroborated by the testimonies of prosecution witness Dr. Tañedo and of his (petitioner's) brother, Ramon.

We do not agree.

The testimony of Dr. Tañedo does not corroborate petitioner's defense of denial because, as we have earlier discussed, it does not disregard the possibility that the stab wounds sustained by Ricardo and Roque were caused by an ice pick. There is nothing in the testimony of Dr. Tañedo that an ice pick can only produce a puncture wound. It is only petitioner's assumption and conclusion that an ice pick can only cause a puncture wound.

Ramon attempted to corroborate petitioner's denial by testifying that he (Ramon) alone stabbed Ricardo and Roque and that he inflicted two wounds on Roque and only one wound on Ricardo.[87] However, the same does not inspire belief. The physical evidence does not support Ramon's testimony because the medical certificates issued by Dr. Tañedo showed that Roque sustained six stab wounds[88]while Ricardo had four stab wounds.[89] It follows that someone else must have inflicted the other wounds of Roque and Ricardo. Based on the testimonies of prosecution witnesses Roque, Ricardo and Leonila, both petitioner and Ramon stabbed Roque and Ricardo. The physical evidence taken together with the testimonies of Ramon, Roque, Ricardo and Leonila point to the inevitable conclusion that petitioner inflicted stab wounds on Roque and Ricardo.

In other words, the prosecution sufficiently established the fact that petitioner was seen stabbing Ricardo and Roque with a weapon and that they sustained stab wounds by reason of such attack.

Moreover, as to the location of the wounds, it must be noted that most of the stab wounds sustained by Roque (on the right and left sides of his chest and on the right side of his abdomen) and Ricardo (on the left side of the abdomen and on the left and right lower back) are located either at the thoracic or abdominal areas, which are delicate portions of the body. It is in these areas that vital organs such as the heart, lungs, stomach, liver, intestines, kidneys, gall bladder, spleen, and pancreas are located.[90] A penetrating wound in any of these spots may cause grave injuries that can lead to death.[91]

In the case of Ricardo, while Dr. Tañedo testified that the wounds sustained by the former are classified as minor injuries and that these wounds would not normally cause death, he also declared that it is possible that complications which could be fatal would have arisen if no medical intervention was made.[92] The nature of the weapons used as well as the nature and location of the wounds inflicted upon Ricardo and Roque undoubtedly established petitioner's and Ramon's intent to kill the victims. Thus, the CA did not err in finding petitioner and Ramon guilty of Attempted Homicide in Criminal Case No. L-4302 and Frustrated Homicide in Criminal Case No. L-4303.

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.[93]

Based on the evidence adduced, we find that the lower courts erred in awarding some of the damages in favor of the victims, insofar as herein petitioner is concerned.

First, we find the award of P10,000.00 in favor of Roque and P10,000.00 in favor of Ricardo, as compensation for unrealized earnings, improper for lack of evidence to prove the same. Compensation for lost income is in the nature of damages and requires due proof of the amount of the damage suffered.[94] In the present case, aside from the self-serving testimony of Ricardo, the prosecution failed to present any other proof to substantiate his

claim of lost earnings.

Second, the award of P2,000.00 in favor of Ricardo, representing hospitalization and medical expenses is likewise improper for lack of proof to substantiate the same. As correctly held by the trial court, Ricardo failed to present receipts of payment when he claimed the amount of P2,000.00 as his expenses for hospitalization.[95] On the other hand, Roque was able to present receipts to prove his medical expenses.

Third, the award of P8,000.00 as moral damages in favor of Ricardo is also unsubstantiated and, therefore, should be deleted, as he did not testify on any emotional distress, mental anguish or even physical suffering which he suffered as a result of the crime. While no proof of pecuniary loss is necessary, it is essential that the claimant should satisfactorily provide factual basis for the alleged moral injury.[96] Nonetheless, we find the award of moral damages in favor of Roque to be in order since he testified that he suffered pain even at the time that he was being discharged from the hospital.[97]

Fourth, we find the award of P5,000.00, as "expenses of litigation" and "expenses in attending the hearings" in favor of Roque and Ricardo, respectively, to be without basis. Article 2208 of the Civil Code provides, among others, that attorney's fees and expenses of litigation, other than judicial costs, may be recovered in cases where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. However, considering that the grant of attorney's fees and litigation expenses under this provision of law is in the concept of actual and compensatory damages, it is necessary for the court to make findings of fact and law and give good reasons in granting such an award. Thus, in *People v. Colonia*,[98] we disallowed the award of litigation expenses and ruled as follows:

Regarding the attorney's fees and litigation expenses, Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in any event, it must be reasonable, just and equitable. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the rule. As such, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of such award. Aside from the dispositive portion, nothing was ever said by the trial court in the body of the decision to justify the award of attorney's fees and litigation expenses. Hence, we disallow them.[99]

In the instant case, a perusal of the trial court's decision shows that the trial court did not make any findings or discussions to justify the award of litigation expenses. Moreover, a review of the records indicates that while Roque testified that he and his brother spent money in attending the hearings before the trial court,[100] no documentary evidence was presented to prove the actual expenses that they incurred.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 18293 is AFFIRMED WITH MODIFICATION that the award of P11,979.60 for unrealized earnings and P5,000.00 as expenses of litigation in favor of Roque Ferrer; and the award of P10,000.00 for unrealized earnings, P2,000.00 for hospitalization and medical expenses, P5,000.00 as expenses in attending hearings, and P8,000.00 for moral damages, in favor of Ricardo Ferrer, are DELETED.

SO ORDERED.

Panganiban, C.J., (Chairperson) Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1]Penned by Justice Angelina Sandoval-Gutierrez (now Associate Justice of this Court) and concurred in by Justices Salvador J. Valdez, Jr. and Andres B. Reyes, Jr.

[2]Penned by Judge Eugenio G. Ramos.

- [3]Records, Volume I, p. 123.
- [4] Records, Vol. II, pp. 87-88.
- [5]RTC Order, records, Vol. I, p. 133.
- [6]RTC Order, records, Vol. II, p. 92.
- [7]Id.
- [8]TSN, September 24, 1991, p. 4; TSN, October 7, 1991, p. 3.
- [9]Id., p. 5; Id.
- [10]TSN, September 24, 1991, p. 5; TSN, October 7, 1991, p. 10.
- [11]September 24 1991, supra.
- [12]TSN, October 7, 1991, p. 3.
- [13]TSN, September 24, 1991, supra.
- [14]Id.
- [15]Id.
- [16] Id.
- [17]Id., p. 6.
- [18] TSN, October 7, 1991, p. 4.
- [19] Id.
- [20]Id; TSN, September 24, 1991, p. 6.
- [21] TSN, October 7, 1991, p. 5; TSN, September 24, 1991, p. 6.
- [22]TSN, September 24, 1991, p. 7.
- [23]TSN, October 7, 1991, p. 5.
- [24] TSN, September 24, 1991, p. 7.
- [25] TSN, October 7, 1991, p. 6.
- [26] Id., p. 5.
- [27]TSN, September 24, 1991, p. 8.
- [28]Id.
- [29]TSN, October 7, 1991, p. 5; TSN, September 24, 1991, p. 9.
- [30]TSN, September 24, 1991, p. 9.
- [31]TSN, October 7, 1991, p. 7.
- [32]Id.
- [33] Id.
- [34]Id., TSN, September 24, 1991, pp. 9-10.

[35] TSN, September 24, 1991, p. 10; TSN, October 7, 1991, p. 7.

[36] TSN, October 13, 1992, p. 3; TSN, November 4, 1992, p. 2.

[37] Id., p. 3.

[38] Id., p. 4; TSN, October 13, 1992, p. 4.

[39] TSN, November 4, 1992, supra.

[40] Id.

[41] Id; TSN, October 13, 1992, supra.

[42] TSN, October 13, 1992, p. 4; TSN November 4, 1992, supra.

[43] Id; TSN, October 13, 1992, supra.

[44] TSN, November 4, 1992, supra.

[45] TSN, October 13, 1992, supra.

[46] TSN, November 4, 1992, pp. 4-5.

[47] Id., p. 5.

[48] Id; TSN, October 13, 1992, supra.

[49] Id., p. 5; TSN, November 4, 1992, supra.

[50] Id; TSN, October 13, 1992, p. 5.

[51] TSN, November 4, 1992, supra.

[52] Id., p. 7.

[53] Id., p. 6; TSN, October 13, 1992, supra.

[54] TSN, November 4, 1992, supra.

[55] Id.

[56] Id., pp. 6-7.

[57] Id., p. 7.

[58] Id.

[59] Id.

[60] Id; TSN, October 13, 1992, p. 6.

[61] Id.

[62] Id.

[63] Records, Vol. I, pp. 221-222.

[64] Rollo, p. 54.

[65] Petitioner's Memorandum, rollo, p. 221.

[66] TSN, September 24, 1991, p. 7.

- [67] Brief for Accused-Appellants, CA rollo, p. 67; emphasis and underscoring ours.
- [68] 215 Phil. 501, 509-510 (1984).
- [69] *People v. Rios*, 389 Phil. 338, 348 (2000).
- [70] *People v. Mahinay*, G.R. No. 139609, November 24, 2003, 416 SCRA 402, 415.
- [71] *People v. Cantuba*, 428 Phil. 817, 828 (2002).
- [72] G.R. No. 137281, April 3, 2001, 356 SCRA 90, 99, citing *People v. Torio*, 376 Phil. 453, 462-463 (1999).
- [73] *Id.*, p. 99.
- [74] TSN, September 24, 1991, pp. 6-8.
- [75] TSN, October 10, 1991, pp. 8-13.
- [76] *People v. Gaspar*, 376 Phil. 762, 785 (1999).
- [77] TSN, October 9, 1991, p. 3.
- [78] TSN, September 24, 1991, p. 21.
- [79] *Id.*
- [80] *People v. Garigadi*, 375 Phil. 830, 852 (1999).
- [81] *People v. Salvame*, 337 Phil. 440, 446 (1997).
- [82] TSN, November 14, 1991, p. 23.
- [83] *People v. Macalaba*, 443 Phil. 565, 578 (2003).
- [84] *People v. Alagon*, 382 Phil. 179, 192 (2000).
- [85] *People v. Matore*, 436 Phil. 421, 430 (2002).
- [86] *Id.*
- [87] TSN, November 4, 1992, pp. 18-19.
- [88] Records, Vol. I, p. 9.
- [89] Records, Vol. II, p. 9.
- [90] Bernard S. Maloy, M.D., *Legal Anatomy and Surgery (Illustrated)*, 1930, pp. 107 and 501.
- [91] *Id.*, pp. 119 and 504.
- [92] TSN, November 14, 1991, p. 11.
- [93] *Aradillos v. Court of Appeals*, G.R. No. 135619, January 15, 2004, 419 SCRA 514, 519.
- [94] *People v. Esponilla*, 452 Phil. 517, 541 (2003).
- [95] RTC Decision, records, Vol. II, p. 144.
- [96] *People v. Villamor*, 348 Phil. 202, 218 (1998).
- [97] TSN, September 24, 1991, p. 40.
- [98] 451 Phil. 856 (2003).
- [99] *Id.*, pp. 867-868.

[100]TSN, September 24, 1991, p. 19.

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