FREDDIE CABILDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 189971. August 23, 2010

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-189971/

NACHURA, J.:

This Petition for Review on Certiorari assails the January 15, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 30871, finding petitioner Freddie Cabildo (Cabildo) and his co-accused Jesus Palao, Jr. (Palao) and Rodrigo Abian (Abian) guilty of attempted homicide. Likewise assailed is the CA's October 7, 2009 Resolution[2] denying the motion for reconsideration.

The CA Decision affirmed with modification the February 5, 2007 decision[3] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 47, finding Cabildo and his co-accused guilty of frustrated homicide.

The RTC and the CA similarly arrived at the following factual findings:

On March 19, 1999, at 11:00 p.m., a certain Joy Herrera was driving a tricycle bound for Barangay Rizal, Magsaysay, Palawan. On board were students of St. Joseph Academy who just came from their school's "Seniors' Night." Upon reaching Poblacion, Cuyo in Barangay Tenga-Tenga, petitioner Cabildo, his co-accused Palao and Abian, and another companion, Rene Tamba, blocked their path. After confirming Herrera's identity, petitioner and his group forcibly pulled Herrera from the tricycle and mauled him.[4]

Meanwhile, Rocky Daquer passed by the same road on board his own tricycle with passengers John Ryan Macula, Cris Magdayao, and Dary Puno. Daquer noticed the commotion, so he alighted from his tricycle and approached the group to pacify them. Instead, Palao turned his ire to Daquer and threatened: "Putang-ina mo Rocky, papatayin kita!" before drawing a fan knife from his waist. This prompted Herrera and Daquer to run away in separate directions.[5]

The group pursued Daquer and after covering about 10 meters, petitioner was able to grab Daquer's jacket, causing the latter to fall down on one knee. While petitioner held on to Daquer by his jacket, Palao thrust his knife at the latter but missed. Palao stabbed again and hit Daquer at the lower left side of his back causing him to fall face down on the ground. Petitioner and his group then proceeded to maul Daquer until the police arrived.[6]

The responding police officers brought petitioner and his group to the police station. The knife recovered at the crime scene was turned over to the Office of the Prosecutor. On the other hand, the wounded Daquer was brought to the Cuyo District Hospital where he was treated by Dr. Joselito Vicente.[7] Medical findings showed that Daquer sustained an abrasion on his left knee and a stab wound at his left lumbar area which, barring unforeseen complications, would both heal in 15 days.[8]

On June 1, 1999, Cabildo, Palao, and Abian were charged with frustrated homicide. The accusatory portion of the Information reads:

> That on or about the 19[th] day of March, 1999, more or less 11:00 o' clock in the evening, at Barangay Tenga-Tenga, Municipality of Cuyo, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping each other, while armed with a bladed weapon and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, box and stab with a knife, one ROCKY DAQUER, hitting him in the vital parts of his body and inflicting upon him injuries which would ordinarily cause his death thus performing 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, that is, by the timely and able medical assistance rendered to said Rocky Daquer, which prevented his death.
>
> CONTRARY TO LAW.[9]

When arraigned, petitioner Cabildo and Palao both pleaded not guilty. Their co-accused Abian remained at large.[10] Cabildo and Palao denied any complicity in the stabbing of Daquer, and submitted different versions of the story.

Petitioner Cabildo claimed that, on his way home from watching the "Seniors' Night" show, he saw Tamba, Palao and Abian blocking the tricycle of Herrera. He saw Tamba box Herrera, after which Abian boxed Daquer and the latter ran away. After seeing this, he left the scene and went home.[11]

According to Palao, he and Abian watched the Seniors' Night together on March 19, 1999. On their way home, they saw their friend Tamba engaged in a fistfight with Herrera. Palao admitted seeing Daquer that night while the latter was being chased by Abian. He further testified that Abian caught up with Daquer and the latter fell down. Thereafter, the two engaged in a fistfight until the police arrived. When the police brought Abian to the police station, Palao allegedly went with him because he wanted to look after his friend.[12]

The RTC accorded more weight to the positive testimony of the prosecution witnesses over the denial and inconsistent declarations of the accused. The trial court declared them to have conspired and connived with one another in committing frustrated homicide. The accused were sentenced to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day, which is the medium of prision correccional, as the minimum, to eight (8) years, which is the medium of prision mayor, as maximum. They were likewise ordered to jointly and severally pay Daquer P3,190.00 for his medical expenses and P6,000.00 for loss of earnings.[13]

On appeal, the CA sustained the trial court's finding of conspiracy but modified the conviction of the accused to attempted homicide, noting that the wounds inflicted on Daquer were not fatal.[14]

Consequently, the accused were meted the new sentence of imprisonment of four (4) months of arresto mayor medium, as minimum, to four (4) years and two (2) months of prision correccional medium, as maximum. The rest of the trial court's disposition was affirmed.[15]

Accused-appellants Cabildo and Palao moved for the reconsideration[16] of the foregoing decision but the same was denied.[17] Hence, the present petition interposed solely by petitioner Cabildo.

We deny the petition.

Petitioner insists on an acquittal by impugning the credibility of prosecution witnesses Macula and Magdayao, who were not consistent in declaring whether Herrera was a passenger or a driver of the tricycle blocked by petitioner and his cohorts. Petitioner also questions the competency of prosecution witness Herrera who admittedly did not witness the stabbing of Daquer, and who proffered contradicting declarations as to the length of the knife he saw on Palao. Petitioner further posits that his guilt was not established by the requisite quantum of evidence.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

We do not agree.

First, we emphasize that the findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on the said findings, will not be disturbed on appeal unless it appears that the trial court overlooked or misconstrued cogent facts and circumstances which, if considered, would alter the outcome of the case.[18]

In the present case, the inconsistencies pointed out by petitioner are too trivial and immaterial as to considerably affect the trial court's conclusions. Whether Herrera was a driver or a passenger of the blocked tricycle does not relate to the essential elements of the crime committed against Daquer. Meanwhile, the competency of Herrera as a witness to the stabbing incident should have been raised at the most opportune time, that is, during trial and not on appeal.

At any rate, Herrera's testimony was merely intended to establish the fact that a commotion preceded the attack on Daquer and not the stabbing incident itself. Also, Herrera's contradicting estimates of the length of the knife brandished by Palao do not detract from the undisputed fact that a stab wound was inflicted on Daquer.

More importantly, the RTC's conclusions, as affirmed by the CA, were based mainly on the testimony of the victim himself, who clearly and positively identified his assailants and the manner by which they committed the crime. We quote the pertinent testimony of Daquer as summarized by the RTC:

> Daquer saw accused Abian, Palao and Cabildo flag down the tricycle of Herrera. Since Daquer could not drive on, he alighted from his tricycle and approached the group of Palao and he saw that the accused were mauling Herrera. Daquer tried to stop Palao and his group from hurting Herrera, but instead of stopping, the accused turned to Daquer and Palao threatened to stab Daquer. Daquer stepped back when accused Palao and Abian faced him. Then Daquer ran away but Palao and Abian chased him. After running a distance of about ten (10) meters accused Cabildo held on to his jacket so he fell down on one knee. While Cabildo was holding Daquer, he (Daquer) looked back and saw Palao thrust a twenty-two (22) inch fan knife at him but missed. Then Palao stabbed him again and this time Daquer was hit on the lower left side of his back and he fell face down on the sand. While on the ground all the accused still boxed Daquer until the police arrived.[19]

It is settled that the testimony of a single yet credible and trustworthy witness suffices to support a conviction.[20] This principle finds more compelling application when the lone witness is the victim himself whose direct and positive identification of his assailants is almost always regarded with indubitable credibility, owing to the natural tendency of victims to seek justice, and thus strive to remember the faces of their malefactors and the manner in which they committed the crime. [21]

Petitioner tenaciously argues that conspiracy was not established sufficiently, as the CA merely inferred the same from the hollow threat made by Palao to Daquer. Petitioner further claims that the attack on Daquer was a spontaneous outburst of violence when the latter unexpectedly intervened in the skirmish between petitioner, his cohorts and their original target, Herrera. As such, there was no opportunity for the assailants to conspire and hatch a deliberate plan to attack or even attempt to kill Daquer.

We disagree.

First, the threat uttered by Palao to Daquer was not at all empty or, as petitioner puts it, a mere angry remark. Records show that after throwing invectives at and threatening to kill Daquer, Palao almost simultaneously pulled out the fan knife tucked in the waistband of his pants. Palao clearly intended to make good his threat; and if he merely wanted to warn Daquer not to meddle in the commotion, he would not have chased the latter, who ran away upon seeing the knife. Cabildo and Abian agreed with Palao when they assisted him in carrying out his illicit purpose - Abian in chasing Daquer, and herein petitioner Cabildo in holding Daquer by his jacket, thus

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

depriving him the chance to parry the knife and emboldening Palao to execute his devious plan with ease.

True, if taken alone, the words "Putang-ina mo Rocky, papatayin kita!" would hardly lend support to a finding of criminal intent or common criminal design among the accused. But the acts they performed simultaneous with and subsequent to such utterance spell the difference between a harmless outburst of anger and an injurious retaliation.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[22] The agreement need not be proven by direct evidence;[23] it may be inferred from the conduct of the parties before, during, and after the commission of the offense,[24] pointing to a joint purpose and design, concerted action, and community of interest.[25] Complicity of the accused in the criminal design may be determined by their concerted action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the wound.[26]

Here, the CA correctly affirmed the RTC's finding that conspiracy can be deduced from the concerted acts of petitioner Cabildo, Palao, and Abian towards the realization of their common unlawful goal of stabbing Daquer, viz.:

> Palao unequivocally announced his intention to kill Daquer and immediately drew his batangas knife and ran after the latter, while Cabildo and Abian readily agreed with this desire by pursuing Daquer and actually catching up with him. Cabidlo's act of grabbing Daquer's jacket and pulling him to the ground provided the opportunity for Palao to stab him twice. After getting hit on the second try Cabildo and Abian readily proceeded to maul him together with Palao.[27]

We likewise agree with the CA that the crime committed was attempted homicide and not frustrated homicide. The stab wound sustained by Daquer was considerably superficial, hence, not life-threatening. This is clear from the medical certificate issued by Dr. Vicente stating that the stab wound was only 2 centimeters long and 5 centimeters deep. The doctor also testified that no vital organ of Daquer was hit.

The CA imposed the correct penalty. The imposable penalty for attempted homicide is prision correccional, which is two degrees lower than reclusion temporal, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of prision correccional, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period (Art. 64, Revised Penal Code). To determine the minimum of the indeterminate penalty, the penalty of prision correccional has to be reduced by one degree, which is arresto mayor. The minimum of the indeterminate penalty shall be taken from the full range of arresto mayor in any of its periods. Hence, petitioner was correctly sentenced to suffer an indeterminate penalty from four (4) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.

WHEREFORE, foregoing considered, the Petition is DENIED. The January 15, 2009 Decision and the October 7, 2009 Resolution of the Court of Appeals are hereby AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

---

[1]Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring; rollo, pp. 45-55.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Japar B. Dimaampao and Sixto C.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

Marella, Jr., concurring; id. at 60-61.

[3] Penned by Presiding Judge Jocelyn Sundiang Dilig; id. at 86-99.

[4] Id. at 46, citing TSN, September 20, 2001, p. 8.

[5] Id. at 87-88, citing the testimony of Joy Herrera, TSN, September 20, 2001.

[6] Id., citing the testimony of Rocky Daquer, TSN, July 3, 2003.

[7]Id.

[8]Id. at 89.

[9]Id. at 86.

[10] Id. at 87.

[11] Id. at 92.

[12] Id.

[13] Id. at 98.

[14] Id. at 54.

[15] Id.

[16] Id. at 63-76.

[17] Id. at 60-61.

[18] People v. Amazan, et al., 402 Phil. 247-271 (2001), citing People v. Perez, 372 Phil. 425 (1999); People v. Tan, 373 Phil. 990, 991 (1999); People v. Accion, 371 Phil. 176, 177 (1999); People v. Pulusan, 352 Phil. 953, 954 (1998).

[19] Rollo, p. 88, citing the testimony of Rocky Daquer, TSN, July 9, 2003.

[20] Ureta, et al. v. People, 436 Phil. 148, 163 (2002), citing People v. Hinault, 427 Phil. 486, 498 (2002); People v. Toyco, Sr., G.R. No. 138609, January 17, 2001, 349 SCRA 385; People v. Pascual, 387 Phil. 266, 268 (2000); People v. Pirame, 384 Phil. 286, 289 (2000).

[21] People v. Hamton, et al., 443 Phil. 198, 200 (2003); People v. Bacungay, 428 Phil. 798, 799 (2002); People v. Garcia, 424 Phil. 158, 164-165 (2002); People v. Lieterio, 390 Phil. 337 (2000); People v. Aquino, 385 Phil. 887-888 (2000); People v. Candelario, 370 Phil. 506, 515 & 523 (1999); People v. Teves, 321 Phil. 837 (1995); People v. Teehankee, G.R. No. 111206-08, October 6, 1995, 249 SCRA 54.

[22] REVISED PENAL CODE, Art. 8.

[23] People v. Tejero, 431 Phil. 91 (2002); People v. Pacificador, 426 Phil. 563, 565 (2002); People v. Garcia, supra note 21; Erquiaga v. Court of Appeals, 419 Phil. 641, 647 (2001).

[24] People v. Matic, 427 Phil. 564, 573 (2002); People v. Bejo, 427 Phil. 143, 160 (2002); People v. Macabales, 400 Phil. 1221, 1223 (2000); People v. Gungon, G.R. No. 119574, March 19, 1998, 287 SCRA 618, 619; People v. Lumiwan, 356 Phil. 521, 524 (1998); People v. Quitlong, 354 Phil. 372, 390 (1998); People v. Alas, G.R. No. 118335-36, June 19, 1997; 274 SCRA 310.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[25] People v. Licayan, 415 Phil. 459, 475 (2001); People v. Domasian, G.R. No. 95322, March 1, 1993, 219 SCRA 245, 247.

[26] Li v. People, 471 Phil. 129, 148 (2004), citing People v. Mozar, et al., 215 Phil. 501, 511 (1984).

[27] Rollo, p. 52.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.