

SECOND DIVISION

[G.R. No. 110031, November 17, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO D. CARPIO, ACCUSED-APPELLANT.
D E C I S I O N**

MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court of Pampanga, Branch 52, at Guagua, Pampanga, finding accused-appellant Alberto Carpio guilty of murder, qualified by treachery, and sentencing him to suffer reclusion perpetua. In addition, accused-appellant was ordered to pay the heirs of the deceased Federico A. Cunanan the sum of P50,000.00, as indemnity for death, P10,000.00, as funeral expenses, P25,000.00, as attorney's fees, and P100,000.00, as moral damages, and to pay the costs.

The information against accused-appellant alleged ³/₄

That on or about the 24th day of September 1989, in Barangay De la Paz, municipality of Lubao, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Alberto D. Carpio, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation attack, assault and shoot from behind Federico A. Cunanan with a homemade automatic .22 caliber pistol, hitting him on the different parts of his body, thereby inflicting upon said victim mortal wound which were the direct and immediate cause of his death thereafter.

Contrary to law.

The prosecution presented evidence showing the following:

On September 24, 1989, between 11:00 and 11:30 in the morning, the deceased Federico A. Cunanan and several others, namely, Carlito Mangalindan, Eduardo Cunanan, Renato Reyes, Rodrigo Mangalindan, Fortunato Castro and Claro Mangalindan were talking in front of the basketball court in De la Paz, Lubao, Pampanga. Nearby was accused-appellant Alberto Carpio who was also talking with other persons.

After a while, Federico Cunanan and his group broke up and left. Federico Cunanan left with Eduardo Cunanan and Carlito Mangalindan. Accused-appellant Alberto D. Carpio, accompanied by Rodrigo Mangalindan and another person, followed. They walked behind Cunanan's group. Upon reaching his house, Carpio went inside and took his gun. Then he overtook Cunanan's group, and once near them, shot Cunanan three times. Cunanan staggered and fell to the ground, face down. Cunanan's companions were stunned but, after recovering their composure, they took him to the Escolastica Romero District Hospital where he told Sgt. Dominador

L. Lacanlale that he had been shot by "Berto." Cunanan was later transferred to the Central Luzon Regional Hospital in San Fernando, Pampanga where he died.

Accused-appellant, who had fled, was caught in Floridablanca, another town, and was turned over to the custody of the Lubao police. He admitted to P/Cpl. Carlos Guintu that he had shot the deceased. He led the police to the backyard of a certain Erning Dabu in San Pablo I, Lubao, where the fatal gun, a .22 caliber homemade pistol, was recovered. Carpio was taken to Police Sgt. Lacanlale for investigation. He admitted he had shot the victim, but he refused to give any statement. Sgt. Lacanlale took the statements of Eduardo Cunanan and Carlito Mangalindan and later submitted a report.

Accused-appellant admitted the killing but invoked self-defense. He claimed that a week before the incident, he and the victim had a dispute over some ducks belonging to Cunanan which had been lost in a flood and later found in the possession of accused-appellant. Carpio claimed that he had saved the ducks from the water; that upon demand of Cunanan he readily gave back the latter's ducks; and in fact the victim took some ducks belonging to him (Carpio). However, each time Cunanan saw Carpio, the former allegedly accused him of stealing his ducks ("mapanako itik").

Carpio claimed that he killed Cunanan on September 29, 1989 because the latter demanded some more ducks to replace those which Cunanan claimed Carpio had stolen. Cunanan allegedly threatened to kill him by pulling a gun and pointing it at Carpio. Carpio said he tried to wrest the gun from Cunanan but, in the process, the gun went off. Carpio said he heard a shot and then saw the victim fall to the ground. He was scared so he ran away.

The trial court found the prosecution version to be more credible than that of the defense. It noted many houses and stores in the place where the shooting occurred and yet no one testified for accused-appellant. More importantly, the trial court noted that the affidavit executed by the accused-appellant on October 10, 1989 before Notary Public Emiliano Mahit contained statements which were "diametrically opposed" to his testimony in court. Accused-appellant, who had the burden of proving that he had acted in self-defense, thus failed to do so by clear, sufficient and convincing evidence.

The trial court found the killing to have been attended by treachery as the deceased was shot when his back was turned to accused-appellant. The mode of attack was chosen to insure the execution of the crime without risk to accused-appellant.

Accused-appellant contends that the trial court erred first, in not appreciating his claim of self-defense and, second, in finding him guilty of murder qualified by treachery.

First. Carpio argues that the testimony of Dr. Corazon Dabu, municipal health officer of Sta. Cruz, Lubao, Pampanga, and the post-mortem examination of the dead victim support his claim of self-defense because they show that the victim was shot while he and accused-appellant were facing each other.

This contention has no merit. Dr. Corazon Dabu categorically stated that the points

of entry of the wounds were on the back of the deceased. Thus, testifying on the post-mortem examination conducted by her, Dr. Dabu said:^[1]

Atty. Bermas [Private prosecutor]

Q There is another wound no. 2 finding wound measuring 1 cm. x 0.5 at the right upper quadrant, mid-clavicular level, tell us in layman's language the location of this wound?

A Right breast about 2 or 3 inches above the right nipple, sir.

Q Tell us the point of entry of this wound?

A In the middle of the right scapula at the back, sir.

Q So, the point of entry at the back and the point of exit is at the right chest, 3 in. above the nipple?

A Yes, sir.

Q There is a finding back wound measuring 1 cm. x 0.5 cm. at level right mid-scapula, please tell us in layman language the specific part of the body where that wound is located?

A The scapula is located here. The wound is at the right mid-scapula, the bone wing in our back, sir.

Q Is this the point of entry?

A Yes, sir.

Q Is this wound fatal?

A Yes, sir.

Q Another finding, wound measuring 1 cm. x 0.5 cm. please tell us in layman's language the location of that wound?

A This is located at the middle of the back, sir.

Q Is this wound fatal?

A Yes, sir.

The defense counsel tried to show that because the cause of death was "multiple gunshot wounds [on the] chest and neck" the points of entry were in front. But, as Dr. Dabu explained:^[2]

Atty. Bermas

Q When you said herein your findings cause of death, below the entry internal hemorrhage reading and which I quote: "multiple gunshot wounds chest and neck", we get it right from you that these wounds are at the front portion of the body of the victim?

Court Are you referring to the point of entry?

Atty. Maninang [Defense counsel] It is written here, multiple gunshot wounds chest and neck which indicates that the point of entry are at

front, your Honor.

Witness

A I am not very specific on that I did not pinpoint all my diagnosis that these are the points of entry or exit, sir.

Q In the same manner, in the death certificate, you also made your entry here opposite the term under the phrase cause of death multiple gunshot wounds chest, which is an indication that the point of entry is in front?

A I made this diagnosis, I did not base my diagnosis on the entrance of the wound because when we made this report, sometimes we are pressured to write it after the autopsy . . . because we made it in the cemetery and in the municipal hall sometimes, sir.

Atty. Maninang

Q That notwithstanding as reflected in your autopsy report and in the death certificate that the cause of the death of the victim are the multiple gunshot wounds appearing on the chest and neck and nothing was mentioned of the wounds sustained at the back that caused the death?

A When I write the diagnosis in the death certificate, we do not go very specific, sir.

Court

Q You do not go into details?

A Yes, your Honor.

Indeed, there is nothing in the post-mortem examination to show that the points of entry of the wounds were all in front. This fact, plus the positive and clear testimony of the prosecution witnesses that accused-appellant three times shot the victim from behind and only once in front, make the contention of accused-appellant untenable. The testimonies of the prosecution witnesses, particularly Eduardo Cunanan, Carlito Mangalindan and Rodrigo Mangalindan, as to how accused-appellant shot the victim, dovetail with each other in material points.

Thus, Eduardo Cunanan testified:^[3]

Atty. Bermas:

Q You said you heard three successive shots, now, what did you do, if any, when you heard those three successive gunshots?

A I saw Federico Cunanan falling down to the ground facing our backs, sir.

Atty. Bermas

Q You said that you were stunned because of those three successive shots and you saw Federico Cunanan was falling down, after that, what happened?