

## FIRST DIVISION

[ G.R. No. 167454, September 24, 2014 ]

**EMERITU C. BARUT, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**BERSAMIN, J.:**

Petitioner Emeritu C. Barut, a guard of the Philippine National Construction Corporation (PNCC), was tried for and found guilty of homicide by the Regional Trial Court, Branch 276, in Muntinlupa City under the judgment rendered on December 11, 2000, whereby he was sentenced to suffer the indeterminate penalty of imprisonment for 10 years and one day of *prision mayor*, as the minimum, to 17 years and eight months of *reclusion temporal*, as the maximum, and to indemnify the heirs of Vincent Ucag in the total amount of P250,000.00, inclusive of the actual and moral damages.<sup>[1]</sup> On appeal, the Court of Appeals (CA) affirmed the conviction of Barut through its decision promulgated on March 17, 2005.<sup>[2]</sup>

Hence, Barut now seeks the review of his conviction by petition for review on *certiorari*.

#### Antecedents

It appears that at around 6:00 o'clock in the afternoon of September 24, 1995 SPO4 Vicente Ucag was coming from a picnic in Laguna and returning home to Taguig, Metro Manila on board a passenger jeepney driven by his brother Rolando on the South Luzon Expressway. Ucag's wife and 16 year-old son Vincent were then riding an owner-type jeep driven by Rico Villas on the same route. When the latter vehicle exited at the Sucat Interchange ahead of Ucag's passenger jeepney, PNCC guards Conrado Ancheta and Barut stopped Villas and directed him to park his vehicle at the road side. After informing Villas that his vehicle had no headlights, Ancheta asked for his driving license, but it took a while before Villas produced the same apparently waiting for his companions in the passenger jeepney to arrive. Nonetheless, Villas ultimately surrendered his driving license, and Ancheta issued to him a traffic violation report (TVR) ticket. Right about then, the passenger jeepney carrying Ucag stopped where Villas' jeep had parked. Ucag and Danilo Fabiano, a co-passenger, alighted and approached Ancheta and Barut to inquire what the matter was. Apprised of the reason for the stoppage of Villas' jeep, Ucag requested the return of Villas' driving license. But Ancheta refused because he had already issued the TVR ticket. Ucag argued with Ancheta and Barut. Later on, however, Ucag turned around in order to avoid further argument, and simply told Villas to return for his driving license the next day. This apparently irked Ancheta, who dared Ucag to finish the issue right there and then. Ancheta suddenly pulled out his .38 caliber revolver and fired it several times, hitting Ucag on both thighs. Ucag fired back and hit Ancheta. Fabiano and Villas witnessed the exchange of gunshots between Ucag

and Ancheta.<sup>[3]</sup>

Upon seeing the exchange of gunshots, Vincent Ucag rushed towards his father to go to his succor. Before Vincent could reach his father, however, Barut fired at Vincent in the chest. Vincent, badly bleeding, tried to go back to the owner-type jeep where his mother was, but fell to the ground before reaching the jeep. Vincent was rushed to the Parañaque Medical Center, where he expired while undergoing emergency surgery. His father was brought to the Camp Panopio Hospital in Quezon City for treatment and medical attendance.<sup>[4]</sup>

### **Issues**

In his petition for review on *certiorari*, Barut submits that:

- (a) The CA misapprehended, overlooked or neglected facts that were favorable to him; and
- (b) The finding on the supposed consistency of the testimonies of the State's witnesses constituted a sweeping conclusion.

### **Ruling**

We find no reversible error committed by the CA.

To start with, the CA held that it could not find from its review of the records any compelling reason to set aside the factual findings of the trial court. It ruled that Villas and Fabiano had clearly and consistently testified that Barut had been the person who had shot Vincent; and that Barut's bare denial of firing at Vincent did not prevail over their positive and categorical identification of him as the perpetrator.

Although the record of the trial is laid bare and open during every appeal in a criminal case, the credibility of witnesses is a factual issue that the Court cannot disturb in this appeal.<sup>[5]</sup> We reiterate that the findings of fact by the trial court are accorded great respect especially when affirmed on appeal by the CA.<sup>[6]</sup> This great respect for such findings rests mainly on the trial judge's access to the witnesses while they testify in her presence, giving the trial judge the personal and direct observation of their manner and decorum during intensive grilling by the counsel for the accused, thereby enabling her to see if the witnesses were fidgeting and prevaricating, or were sincere and trustworthy.

Secondly, Barut adverts to the extra-judicial sworn statement that Villas gave at about 1:00 o'clock in the afternoon of September 25, 1995 – barely a day following the fatal shooting of Vincent – in which he declared not having seen Barut fire a gun. Barut contends that this declaration definitely contradicted Villas' court testimony on June 10, 1996, and manifested that he was "not clear and convincing because he never pointed out who [had] really shot Vincent Ucag."<sup>[7]</sup> Citing Villas' answer of "*Maybe he was hit*" to the question on direct examination: "*What was the reason if you know why he [referring to Vincent Ucag] was weak?*"<sup>[8]</sup> Barut insists that Villas was thereby ambiguous and gave rise to the doubt as "to who [had] really shot and killed the victim," whether it was Ancheta (who had traded shots

with the victim's father), or himself.<sup>[9]</sup>

Noting that neither Ucag nor Ancheta had shot Vincent, the RTC explained that the former could not anymore fire his gun at Vincent not only because Vincent was his own son but also because he himself had already been lying on the ground after being hit in his lower extremities; and that Ancheta could not have fired at Vincent at all because he, too, had been already wounded and lying on the ground and profusely bleeding from his own gunshot wounds. The RTC further noted that the slug extracted from the body of Vincent had come from a .38 caliber revolver, not from Ucag's .45 caliber firearm.

Barut's contention did not itself go unnoticed by the CA, which observed that the RTC could not take the declaration of Villas into consideration because Villas' extra-judicial sworn statement containing the declaration had not been offered and admitted as evidence by either side. The CA stressed that only evidence that was formally offered and made part of the records could be considered; and that in any event, the supposed contradiction between the extra-judicial sworn statement and the court testimony should be resolved in favor of the latter.

The CA's negative treatment of the declaration contained in Villas' extra-judicial sworn statement was in accord with prevailing rules and jurisprudence. Pursuant to Section 34, Rule 132 of the Rules of Court, the RTC as the trial court could consider only the evidence that had been formally offered; towards that end, the offering party must specify the purpose for which the evidence was being offered. The rule would ensure the right of the adverse party to due process of law, for, otherwise, the adverse party would not be put in the position to timely object to the evidence, as well as to properly counter the impact of evidence not formally offered.<sup>[10]</sup> As stated in *Candido v. Court of Appeals*:<sup>[11]</sup>

It is settled that courts will only consider as evidence that which has been formally offered. x x x

A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it. A formal offer is necessary since judges are required to base their findings of fact and judgment only—and strictly—upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility. The appellate court will have difficulty reviewing documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.

The rule that only evidence formally offered before the trial court can be considered is relaxed where two requisites concur, namely: *one*, the evidence was duly