

THIRD DIVISION

[G.R. No. 176981, December 24, 2008]

EDGAR GERASTA Y LAPUS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision^[1] dated 9 November 2005 of the Court of Appeals in CA-G.R. CR No. 21549 which affirmed *in toto* the Decision^[2] of the Regional Trial Court (RTC) of Cebu, Branch 11, finding petitioner Edgar L. Gerasta (Edgar) guilty of the crime of homicide.

On 31 March 1981, Edgar was charged before the RTC with the crime of Homicide under Article 249 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

That on the 9th day of March 1980 at 6:30 o'clock in the evening, more or less, in the Municipality of San Fernando, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and shoot DEOGRACIAS RENDAL, a barangay police, with the use of a firearm, thereby inflicting upon the latter mortal wounds which caused his death shortly thereafter.^[3]

It appeared from the same set of facts Edgar was also separately charged with the crime of Illegal Possession of Firearms and Ammunitions. Since the homicide and the illegal possession cases arose from the same alleged incident, the RTC ordered the consolidation of these two cases.

During the arraignment on 28 July 1981, Edgar, with the assistance of counsel *de parte*, pleaded not guilty.^[4] A joint trial on the merits ensued thereafter.

Six witnesses for the prosecution took the witness stand, namely: (1) Alberto Loquez (Alberto), brother-in-law of the victim Deogracias Rendal (Deogracias), who allegedly witnessed the shooting incident involving the purported assailant Edgar and the victim; (2) Teresita Rendal (Teresita), the wife of the late Deogracias, who also testified that she saw the victim fire at by Edgar who was by the window of his house pointing a gun at Deogracias on the road below; (3) Modesto Reyes (Modesto), who testified that he heard a gunshot that prompted him to look out of the window; (4) Patrolman Isidro Duterte (Patrolman Duterte), one of the responding police officers; (5) Patrolman Adriano Empacis (Patrolman Empacis), the other responding officer; and (6) Dr. Arturo Llenes (Dr. Llenes), a physician of

Southern Island Hospital, Cebu City, who conducted the autopsy on the corpse of the victim.

The following exhibits were formally offered by the prosecution: (1) Exhibit "A" - Affidavit of Alberto dated 19 March 1980; (2) Exhibit "B" - Order issued by the Assistant Provincial Fiscal for the conduct of the Preliminary Investigation; (3) Exhibit "C" - Joint Affidavit of Patrolmen Duterte and Empacis; (4) Exhibit "D" - the revolver allegedly used in killing the victim; (5) Exhibit "E" - Autopsy Report issued by Dr. Llenes; (6) Exhibit "F" - Death Certificate of Deogracias; (6) Exhibit "G" - a photograph of the crime scene; (7) Exhibit "H" - another photograph of the vicinity of the crime scene; (8) Exhibit "I" - three live bullets taken from the revolver; (9) Exhibit "J" - Sketch of the staircase of the house of Edgar drawn by patrolman Duterte, in which the victim was found by the responding police officers; and (10) Exhibit "K" - a copy of the Police Blotter of the incident.

Taken together, the evidence offered by the prosecution shows that at around 6:30 in the evening of 9 March 1980, Alberto, brother-in-law of Deogracias, was in the *sala* of his house when he heard a gunshot.^[5] The same sound was heard by Teresita, who was standing beside the road facing the house of Edgar and Modesto, at a nearby store buying cigarettes.^[6] After hearing the shot, Alberto immediately went to the window of his house and saw Edgar across the road, by the window of his house pointing a gun at Deogracias, who was lying beside the road. With the gun pointed at Deogracias, Edgar fired for the second time.^[7] Simultaneously, Teresita looked at the direction of the gunshot and saw Edgar aiming his gun at Deogracias and shooting the latter.^[8] For his part, Modesto went out of the store following the second shot, and saw Deogracias's body lying face down.^[9] Both Alberto and Modesto spotted Quirino Gerasta (Quirino), Edgar's brother, emerge from the dark and approach the victim. Edgar asked his brother, "*Brod, unsa buhi pa na?*" (Brother, is he still alive?) to which Quirino answered in the affirmative.^[10] Edgar went down towards the victim. As the gunshots attracted several people from the neighborhood, Edgar, with his gun in his hands, shouted at them: "Who will complain, I will shoot him next."^[11] Then, the two brothers brought the body to the balcony of Edgar's house and dropped the same at the stairs.^[12] The body fell at the foot of the staircase.^[13]

Having received a report of the incident, Patrolman Duterte and Patrolman Empacis hastily proceeded to the house of Edgar where they saw the wounded victim at the foot of the staircase, still breathing but unable to talk.^[14] Edgar approached Patrolman Duterte and surrendered his gun saying, "This is the gun I used in shooting [Deogracias]."^[15] The policemen also observed bloodstain on the road near the house of Edgar.^[16]

The victim was brought to Southern Islands Hospital in Cebu City where he succumbed to the gunshot wounds he sustained.

The following day, Dr. Llenes conducted an autopsy on the corpse of Deogracias, in which she found two gunshot wounds, one in the left thigh and the other in the head.^[17] He observed that the wound in the head was fatal, as it severed the brain tissues.^[18] He then concluded that the ultimate cause of the victim's death was the

destruction of the brain secondary to a gunshot wound.^[19] The certificate of death prepared and signed by Dr. Llenes states:

CAUSE OF DEATH x x x.

Cardio pulmonary arrest due to
Intracranial Injury due to Gunshot Wound, Head, penetrating,
perforating.^[20]

The defense, on the other hand, advanced the theory that the death of Deogracias was not through the fault of Edgar, since the former pointed a gun at the latter, and the two grappled for possession of the gun when it accidentally fired, hitting the victim in the process. The defense put up self-defense. To buttress this theory, the defense presented Edgar, Quirino and the following witnesses: (1) Miriam Gerasta, the wife of the alleged assailant, who corroborated her husband's testimony that the death of the victim was purely an accident; (2) Ismael Barredo, an alleged eyewitness to the incident; (3) Dr. Tomas Refe, senior medico-legal officer, National Bureau of Investigation, Visayas Regional Office, Cebu City. He testified that based on the trajectory of the wounds of the victim, the assailant was at the right side and obliquely in front of the victim.

On the witness stand, Edgar testified that at around 6:30 p.m. of 9 March 1980, while he was in the *sala* of his house, together with his wife, he heard Deogracias by the roadside challenging him to a fight.^[21] Initially, Edgar did not mind it. But when Deogracias got near his house and was about to go up, Edgar allegedly approached him. There, Deogracias purportedly pointed a gun at Edgar. Edgar parried Deogracias' hand which held the gun. The two wrestled for possession of the gun. In the course thereof, the gun fired twice. Following the second burst of gunfire, Deogracias fell on the stairs. Edgar ran inside the house. At once, his brother Quirino arrived. Quirino asked Edgar why Deogracias challenged him to a fight. Edgar answered he did not know the reason for Deogracias's actuations. He also asked Quirino to call the police authorities. Patrolmen Duterte and Empacis arrived. Edgar handed over the gun to patrolman Duterte and told him it was the gun which he had taken from Deogracias, and that the same fired when they wrestled for its control.^[22]

Witness Miriam Gerasta confirmed what Edgar testified to. She added that at one point, Edgar embraced Deogracias to gain control of the gun.

On his part, Ismael Barredo (Ismael) testified that while he was on his way home from the cockpit, he met Deogracias who was drunk and challenging everybody to a fight. Ismael allegedly advised Deogracias to go home but the latter, instead of heeding his advice, threatened the former with a revolver. As Deogracias was walking, Ismael kept an eye on him. When Deogracias reached the place of Edgar, he challenged the latter to a duel. Deogracias went up the stairs and reached the porch, where the two battled for the control of the revolver. He heard two bursts of gunfire and saw Deogracias fall on the stairs.

Quirino testified that on the evening in question, someone informed him that Deogracias was daring his brother Edgar to a fight. Upon hearing this, he allegedly ran the 150-meter distance that separated his house from that of Edgar. As he was nearing, he saw his brother and Deogracias wrestling at the porch. Two gunshots

were fired. Deogracias fell down the stairs. He asked his brother why Deogracias was shot. Edgar answered he shot Deogracias because he came upstairs with a gun.^[23]

On the witness stand, Dr. Thomas Refe gave his opinion on the result of the autopsy on the victim made by Dr. Llenes. He opined that the gunshot wounds could be inflicted within the span of two seconds if the contesting parties would be grappling for the possession of the gun. As to the relative position of the victim and the assailant, he also said that the gunshot wound in the head could have been inflicted by an assailant firing the gun at the right side and at the back of Deogracias.

Dr. Llenes was again presented by the prosecution on rebuttal. He testified that from the trajectory of the bullet as shown by the gunshot wound in the head, it was possible that the assailant could have been on an elevated place with the victim below when fired at.^[24]

In a decision dated 8 November 1996, the RTC found Edgar guilty beyond reasonable doubt of the crime of homicide. He was, however, acquitted of the charge of illegal possession.

The dispositive portion of the RTC decision convicting Edgar reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court x x x finding the accused GUILTY beyond reasonable doubt of the crime of homicide and, taking into account the rules on mitigating and aggravating circumstances and applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of prision mayor, as the minimum of it, to fourteen (14) years and eight (8) months of reclusion temporal, as the maximum thereof. The accused is hereby given full credit for the preventive imprisonment that he may have suffered. The accused is also hereby ordered by the Court to indemnify the heirs of Deogracias Rendal in the sum of Fifty Thousand Pesos (P50,000.00) as death indemnity and the sum of Twenty Thousand Pesos (P20,000.00) as reimbursement of the funeral expenses defrayed by them.^[25]

Edgar appealed the RTC decision to the Court of Appeals. In a decision dated 9 November 2005, the Court of Appeals affirmed *in toto* the decision of the RTC. The judgment provides:

WHEREFORE, the instant appeal is **DENIED** for lack of merit. The decision of the Regional Trial Court of Cebu City, Branch 11, in Criminal Case No. CU-9248 is **AFFIRMED in toto**.^[26]

Hence, the instant case.

Edgar assails the RTC's and the Court of Appeal's findings which gave weight and credence to the accounts of the incident given by prosecution witnesses Alberto and Teresita. Edgar contends that said prosecution witnesses never made unequivocal declarations that they actually witnessed him hitting the victim with a revolver. He points out that the same witnesses did not categorically state what happened prior

to the first burst of gunfire, thereby creating doubt on his involvement in the slaughter of Deogracias. He also insists that the lower courts should not have accorded belief to the testimonies of Alberto and Teresita, since they were closely related to the victim. Furthermore, Edgar questions Alberto's belated act of coming forward as a witness.

The elemental question in this case is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.^[27] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.^[28] The RTC and the Court of Appeals did not overlook any significant facts in the case.

In no uncertain terms, the prosecution's eyewitnesses, Alberto and Teresita, were in unison in pointing to Edgar as the person who gunned down the victim. They were able to identify Edgar as the perpetrator, since the crime scene was illuminated by an electric bulb perched on an electric post. Teresita testified as follows:

Q: And you remember that your attention was focused on the residence of the accused in this case?

A: At first I did not give attention to the house of the accused because my purpose of going out was to get the scattered firewood, but upon hearing the explosion that was the time I focused my attention to the house of the accused

Q: When your attention was invited by the sudden explosion that you heard at that time, who was the first person you have seen in the direction where the explosion was?

A: After hearing the explosion, I look back toward the house of the accused and I saw Edgar Gerasta holding a gun pointing the said gun to my husband who was wounded in front of his house, that was after the first explosion.

Q: You therefore agree with me that you have witnessed the particular moment that the accused of these cases had shot your husband. I am referring to the first explosion that you made mention?

A: I saw the accused fired the gun to my husband because the accused was in the window of his house, because upon hearing the explosion, I look back to the house of the accused, so I saw the accused holding and pointing the gun to my husband.

Q After hearing the explosion, how many seconds did you