

## FIRST DIVISION

[ G.R. No. 137671, April 18, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CRISTOBAL GALLARDE, ACCUSED-APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

The new year of 1996 never dawned on Melchor Decosto, Jr. as his life was snuffed by alone bullet a few minutes before midnight of December 31, 1995.

On January 22, 1996, an Information was filed before the Regional Trial Court of Barili, Cebu, Branch 60, charging Cristobal Gallarde, alias "Tobal", with the crime of Murder, committed as follows:

That on or about the 31<sup>st</sup> day of December 1995, at 11:50 o'clock in the evening, more or less, at Barangay Poblacion, Municipality of Moalboal, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, armed with a firearm of unknown caliber, with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, without any provocation, ATTACK, ASSAULT AND SHOOT one MELCHOR DECOSTO, JR., hitting the latter on the head, thereby causing his death shortly thereafter.

CONTRARY TO LAW.<sup>[1]</sup>

On July 23, 1996, Gallarde pleaded not guilty to the crime charged.<sup>[2]</sup> Trial ensued thereafter.

On December 31, 1995, at around 11:50 p.m., Edilfredo Decosto, his cousin Melchor Decosto, Jr., and several others were wandering around the wharf in Moalboal, Cebu, waiting for the New Year's Eve mass.<sup>[3]</sup> Cristobal Gallarde suddenly appeared and shot Melchor at close range at the back of the neck.<sup>[4]</sup> Melchor instantly fell to the ground and died. Gallarde quickly ran away without saying a word. Edilfredo asked one of their companions to inform Melchor's parents and the police of the shooting incident.

Dr. Necitas Navarro, Municipal Health Officer of Moalboal, Cebu, who conducted the post-mortem examination of the deceased,<sup>[5]</sup> found the cause of death as cardiorespiratory arrest and hemorrhage due to the bullet wound on the head.<sup>[6]</sup>

In his defense, accused-appellant Cristobal Gallarde averred that around 11:50 p.m. on the eve of December 3 1995, he met Melchor Decosto, Jr: and his companions

who were having a drinking spree. The group invited accused-appellant to drink. He initially refused, but finally acceded. Melchor jokingly pointed a gun at accused-appellant and asked him why he had earlier refused to drink with the group.<sup>[7]</sup> Accused-appellant wrestled the pistol from Melchor. At that point, the other companions of Melchor kicked accused-appellant on the back. A struggle to gain possession of the gun ensued, in the course of which the gun went off and hit Melchor.<sup>[8]</sup> Accused-appellant claims that the shooting was accidental and that it was Melchor who pulled the trigger.<sup>[9]</sup> After that, accused-appellant got the gun and ran away. He threw the gun into the sea.<sup>[10]</sup>

Armando Caramonte corroborated accused-appellant's version of the events. He testified that on the date and time in question, he was waiting for his girlfriend in front of the Municipal Building of Moalboal. He saw several people on the wharf and overheard an altercation concerning an invitation to drink liquor.<sup>[11]</sup> Thereafter, the two persons involved in the altercation began wrestling with each other. Soon, he heard a gunshot and saw several people scamper away.<sup>[12]</sup>

The defense also presented Genovevo Gallarde, father of accused-appellant. Genovevo testified that at around 11:50 p.m. of December 31, 1995, his son came home and told him that he met an accident with Melchor Decosto, Jr.<sup>[13]</sup> Upon hearing his son's story, Genovevo decided to talk to the deceased's parents in an attempt to have an amicable settlement of the controversy, inasmuch as the shooting was an accident. He alleged that Melchor's parents agreed to settle the case for twenty thousand pesos.<sup>[14]</sup> However, Genovevo Gallarde was only able to raise fifteen thousand pesos and tendered the same as partial payment, but the Decosto family refused to accept it.<sup>[15]</sup> Thus, the case was filed against accused-appellant.

On July 9, 1998, the trial court rendered the appealed decision,<sup>[16]</sup> the decretal portion of which reads:

Judgment is therefore rendered finding accused Cristobal Gallarde GUILTY of the crime of MURDER and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

He is further ordered to indemnify the heirs of the victim the sum of FIFTY THOUSAND PESOS (P50,000.00).

SO ORDERED.<sup>[17]</sup>

In this appeal, accused-appellant assigns the following errors:

I.

THE COURT A QUO COMMITTED REVERSIBLE ERROR IN CONVICTING THE ACCUSED APPELLANT OF THE CRIME OF MURDER NOT WITHSTANDING THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT, AND THE INCULPATORY FACTS CAN BE EXPLAINED IN SUCH A MANNER WHICH IS CONSISTENT WITH THE

## INNOCENCE OF THE ACCUSED-APPELLANT.

### II.

THE COURT A QUO ERRED IN NOT ACCORDING WEIGHT AND CREDENCE TO THE CONTENTION OF THE ACCUSED-APPELLANT THAT THE DEATH OF THE VICTIM WAS PURELY ACCIDENTAL ALTHOUGH THE SAME IS CORROBORATED.

### III.

THE COURT A QUO LIKEWISE ERRED IN FINDING THE TESTIMONY OF PROSECUTION WITNESS EDILFREDO DE COSTO CREDIBLE DESPITE THE FACT THAT IT IS PREGNANT WITH FLAWS AND IS BIASED.

### IV.

FINALLY, THE COURT A QUO ALSO ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING ALTHOUGH NO CREDIBLE AND COMPETENT EVIDENCE ON RECORD ESTABLISHES THIS.<sup>[18]</sup>

We are not persuaded.

In convicting accused-appellant, the trial court lent credence to the prosecution's evidence over that of the defense. Once more, we reiterate that we will generally not interfere with the judgment of the trial court in passing upon the credibility of witnesses unless there appears on record some fact or circumstance of weight and influence which have been overlooked and if considered would affect the outcome of the case.<sup>[19]</sup> After all, trial courts are in a better position to gauge the reliability and trustworthiness of witnesses on the stand by numerous manifestations no longer capable of being revealed by mute case records elevated to an appellate court.

Accused-appellant's theory that the gun accidentally fired during the struggle does not inspire belief. In this connection, we share the observation of the Solicitor General, thus:

Based on the post-mortem examination conducted by Dr. Navarro, Rural Health Officer of Moalboal, Cebu, it was ascertained that Melchor suffered a gunshot wound with entry point at the left occipital region of the head. When he testified in court, Dr. Navarro demonstrated that the "left occipital region" pertains to the left dorsal portion of the skull.

The above finding contradicts the claim of appellant that the gun went off while he was grappling possession thereof with Melchor.

Proceeding from appellant's version of the incident, appellant and Melchor must have been facing each other while struggling for control of the gun. In the ordinary course of things, the frontal portions of their bodies must have been the ones exposed to the barrel of the gun during the struggle. It is, therefore, inconceivable how the muzzle of the gun found its direction at the left dorsal part of the head of Melchor.<sup>[20]</sup>

Moreover, the records show that accused-appellant's narration itself is replete with material inconsistencies which render his testimony unreliable. Initially, he averred that it was the victim's younger brother, Toto, who pointed a gun at him, thus:

Q: When you were strolling at the bridge on December 31, 1995 at 11:50 o'clock p.m. and seeing the presence of the victim and his barkadas, could you recall what were these people doing during that time?

A: They had a drinking session.

Q: When you saw them having a drinking session, what happened?

A: **I was invited to drink for four times and for the fifth time I was called again and Toto leveled his gun at me.**

Q: **By Toto, whom are you referring to?**

A: **I am referring to his younger brother.**

Q: **Younger brother of whom?**

A: **Of Melchor Decosto, Jr.** (Emphasis ours)<sup>[21]</sup>

Yet, later during the same direct examination, accused-appellant seems to have changed his mind and asserted that Toto was in fact Melchor Decosto, Jr., not his brother:

Q: Who is bigger, yourself or the victim?

A: Toto is bigger than me.

Q: Are you referring to Toto who was in possession of the gun?

A: Yes, sir.

Q: **Are you referring to Toto as the one who was hit by the bullet of the gun?**

A: **Yes, sir.**

Q: **Are you referring to Toto as Melchor Decosto, Jr.?**

A: **Yes, sir.** (Emphasis ours)<sup>[22]</sup>

The prosecution, on the other hand, presented categorical evidence that accused-appellant approached Melchor from behind and shot him pointblank at the back of the neck. The witness who testified, Edilfredo Decosto, could not have been mistaken for he knew accused-appellant since they were children.<sup>[23]</sup> Moreover, Edilfredo was standing only a meter or less away from accused-appellant when he shot Melchor.<sup>[24]</sup> The postmortem examination results support Edilfredo's testimony.

Accused-appellant also faults the trial court for not finding that the victim's death