

SECOND DIVISION

[G.R. Nos. 138306-07, December 21, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1
EDUARDO ANCHETA Y RODIGOL, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

This is an appeal from the Decision of the Regional Trial Court Caloocan City finding SPO1 accused-appellant SPO1 Eduardo Ancheta y Rodigol guilty of *Murder* in *Crim. Case No. C-44939* and of *Frustrated Murder* in *Crim. Case No. 44940*.^[1]

SPO1 Eduardo Ancheta y Rodigol^[2] was originally charged with *Homicide* in *Crim. Case No. C-44939* and *Frustrated Homicide* in *Crim. Case No. C-44940*. However, upon motion of private complainant, a reinvestigation was conducted and the Informations were amended to charge the accused with *Murder* in *Crim. Case No. C-44939* and *Frustrated Murder* in *Crim Case No. C-44940*.

In the amended *Information* for *Murder*, it was alleged that the accused "with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one Julian Ancheta y Rodigol on the left temple, thereby inflicting upon the latter serious physical injuries, which injuries caused the victim's death."^[3] On the other hand, in the amended *Information* for *Frustrated Murder* it was alleged that the accused "with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot with a gun one Jonathan Aromin y Cardinez on the right cheek, thus performing all the acts of execution which would constitute the crime of *Murder* as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the herein accused, that is, due to timely, able and efficient medical attendance rendered to the victim."^[4]

During trial, the main witness for the prosecution, Jonathan Aromin, testified that on the night of 2 September 1993 he and his neighbor Julian Ancheta went to the house of the accused who lived just across them.^[5] Julian told Jonathan to knock on the door first but when no one answered Julian did the knocking himself.^[6] When the accused opened the door, Jonathan immediately noticed that SPO1 Ancheta was armed with a gun. Intimidated, Jonathan began to move away.^[7] As he left the house of the accused, Jonathan suddenly heard two (2) shots which prompted him to hide behind the nearest wall. But when he looked back the accused SPO1 Ancheta was already aiming his revolver directly at his face and without hesitation shot him at close range.^[8] Stunned by the gunshot wound, Jonathan momentarily blacked out but soon regained consciousness when his neighbor, Leonila Lopez, came to his aid and rushed him to the Jose Reyes Memorial Medical Center.^[9] At the hospital, the slug that pierced his right cheek was removed from his left shoulder and was

subsequently released on 7 September 1993.^[10]

Leonila Lopez narrated that her house was right across the house of the accused, separated only by a narrow alley.^[11] At around 8:00 o'clock in the evening of 2 September 1993 while she was preparing dinner, she was startled by the sound of two (2) gunshots coming from the house of the accused. She immediately told her children to go inside and as she was about to close her windows she saw Jonathan Aromin running towards her house, followed by the accused. She then saw the accused shoot Jonathan Aromin on the right cheek. After the accused left, she helped the hapless victim and brought him to the hospital.^[12] She was approximately a meter away when she witnessed the shooting.^[13]

Virginia Ancheta, wife of Julian Ancheta, testified that she and her deceased husband had two (2) children and that she incurred P54,200.00 as funeral expenses for his burial.^[14]

Dr. Roberto Garcia, a Medico-Legal Officer of the NBI, testified that he autopsied the body of Julian Ancheta on 3 September 1993. Julian sustained three (3) gunshot wounds. One (1) bullet pierced the the back of his left forearm and exited in front thereof, another entered the rear left portion of the neck and exited through the right rear portion thereof, while the fatal bullet pierced the front portion of the left ear without an exit wound.^[15] However, although Dr. Garcia concluded that three (3) bullets hit the deceased, he did not discount the possibility that the three (3) wounds could have been caused by only two (2) bullets as the left arm, being a movable part of the body, might have been in the way when the bullet exited through the neck of the victim.^[16]

Police Officer 3 Feliciano Almojuela of the Intelligence and Investigation Division, PNP Station, Caloocan City, claimed that in the early morning of 3 September 1993 he received a report of a shooting incident at Block 36, Phase 3-F-1 Dagat-dagatan, Caloocan City.^[17] Upon reaching the crime scene he was informed that the slain victim was S/Sgt. Julian Ancheta of the Philippine Air Force and the suspect was the deceased's brother SPO1 Eduardo Ancheta. When he learned that another victim was confined at the Jose Reyes Memorial Medical Center he went there and found Jonathan Aromin in critical condition. Thinking that the victim might not survive he immediately interviewed him and took an "ante-mortem" statement.^[18] In the afternoon of the same day, the accused voluntarily surrendered himself as well as his service firearm at the PNP Station in Caloocan City.^[19] At around 11:00 p.m., PO3 Almojuela brought the accused to the hospital where the latter was positively identified by Jonathan Aromin as the assailant.^[20]

Dr. Abraham Gonzales, the resident physician at the Jose Reyes Memorial Medical Center, testified that he was on duty on 2 September 1993 when Jonathan Aromin was admitted. Upon examination he observed that the victim sustained a gunshot wound on the right portion of his jaw and no exit wound was visible.^[21] During treatment, the lead slug was recovered from the left side of the neck or from the "trapicious muscle."^[22] He added that were it not for the timely medical intervention Jonathan Aromin would have died.^[23]

In his defense, the accused claimed that on the night of 2 September 1993 he was sleeping at home with his wife and son when he was awakened by the sound of someone banging on his door.^[24] After a brief silence he heard him say: "*Pare buksan mo ito.*" Sensing danger, the accused took his gun from under his pillow and ordered the person to identify himself. But the stranger just kept on banging the door and insisted that it be opened.^[25] When he finally opened the door, he saw his brother Julian Ancheta and his neighbor Jonathan Aromin. Upon seeing them, he inquired as to why his brother addressed him as "*pare*" but instead of answering, Julian Ancheta angrily asked him why he was holding a gun.^[26] To appease his brother, the accused lowered his pistol and explained that the gun was only for protection as he had no idea who was banging his door in the middle of the night. He then invited them into the house, but when he turned around his brother suddenly grabbed his hand from behind to disarm him.^[27] As they grappled, the gun accidentally fired twice and the next thing he saw was his brother sprawled on the ground and Jonathan Aromin was nowhere to be found. He never knew what actually happened to Jonathan Aromin as his back was turned against him when the gun went off.^[28]

Confused by the startling events, the accused just took his family to the house of his wife's cousin. His wife then convinced him to spend the night with them and postpone his surrender until the next day.^[29] At around 6:00 o'clock p.m.^[30] of 3 September 1993 he surrendered at the PNP Station in Caloocan City. After being taken into custody, PO3 Almojuela brought him to the Jose Reyes Memorial Hospital where Jonathan Aromin identified him as the perpetrator.^[31]

On 26 March 1999 the trial court, giving credence to the prosecution witnesses, found the accused guilty of both charges.^[32] In *Crim. Case No. C- 44939*, the accused was found guilty of *Murder* and sentenced to *reclusion perpetua*. He was also ordered to pay the heirs of the victim P50,000.00 as death indemnity, P54,200.00 as actual and compensatory damages and the costs. In *Crim. Case No. C-44940* the accused was found guilty of *Frustrated Murder* and was sentenced to ten (10) years of *prision mayor* as minimum to fourteen (14) years and eight (8) months of *reclusion temporal* as maximum. He was also ordered to pay Jonathan Aromin P30,000.00 as moral damages and the costs.^[33]

Accused-appellant, in his brief, raises two (2) points: *First*, his guilt was not proved beyond reasonable doubt as the circumstantial evidence presented by the prosecution failed to establish that he intended to kill Julian Ancheta and Jonathan Aromin. *Second*, the court *a quo* gravely erred in convicting him of murder and frustrated murder since there was no proof that the killing was attended by evident premeditation or treachery.^[34]

The defense of accused-appellant is that the death of Julian Ancheta and the injury of Jonathan Aromin were caused by the accidental gunshots which occurred when he and the deceased grappled for the gun. Thus, absent any intent to kill the victims, he could not be convicted of homicide or murder.

However, the evidence presented proves otherwise.

The autopsy of Julian Ancheta reveals that he sustained three (3) bullet wounds:

one (1) in the rear of the left forearm, another on the left rear portion of his neck and the most fatal one, on the front portion of his left temple.

On the other hand, Jonathan Aromin sustained a gunshot wound on his right cheek which would have caused his death had it not been for the timely medical attention. Based on the number of bullet wounds and the location of the injuries sustained by the victims it is quite impossible to believe that such wounds were caused by two (2) accidental gunshots which ensued while the accused and the deceased wrestled for the gun. On the contrary, the location of the injuries proves that accused-appellant intentionally shot his own brother to death and thereafter shot the eyewitness at point blank to permanently silence him.

Further, Jonathan Aromin categorically and positively identified accused-appellant as the person who pursued and shot him at close range. This Court has no reason to doubt his testimony for even accused-appellant admitted that he and the witness were in good terms prior to the incident.^[35] Neither does this Court have any ground to question the veracity of Leonila Lopez's testimony that she saw accused-appellant shoot Jonathan Aromin as there was no proved ill motive on her part. Thus, where there is no evidence to show any dubious reason or improper motive why prosecution witnesses should testify falsely against the accused or falsely implicate him in a heinous crime, such testimonies are worthy of full faith and credit.^[36] Besides, it has been an established rule that unless the trial judge overlooked certain facts of substance and value, which if considered might affect the result of the case, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses.^[37] We find no reason to deviate from this well-entrenched principle.

But although we affirm the factual findings of the trial court on the presence of "intent to kill," we believe that the killing of Julian Ancheta and the shooting of Jonathan Aromin were not qualified by treachery.

While it was established that accused-appellant intentionally shot his brother Julian, the witnesses never saw how the killing started. Treachery cannot be considered where the witnesses did not see the commencement of the assault and the importance of such testimonies cannot be overemphasized considering that treachery cannot be presumed nor established from mere suppositions.^[38] And where no particulars are shown as to the manner by which the aggression was commenced or how the act which resulted in the death of the victim began and developed, treachery can in no way be established.^[39] Hence, without the existence of treachery accused-appellant can only be convicted of homicide in *Crim. Case No. C-44939*.

Neither was treachery established in the shooting of Jonathan Aromin. Two (2) conditions must concur for treachery to exist, namely: (a) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and, (b) the means or method of execution was deliberately or consciously adopted.^[40] Both these circumstances must be proved as indubitably as the crime itself.^[41]

In the case at bar, however, there is no sufficient proof to establish with certainty