PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERSON FLORAGUE Y ESTALILLA, CHRISTOPHER FLORAGUE, AND LEONARDO ALCANTARA, ACCUSED,

G.R. No. 134779. July 06, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated April 30, 1998, of the Regional Trial Court, Branch 67, Bauang, La Union, insofar as it finds accused-appellant Herson Florague y Estalilla guilty of murder and sentences him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Egilberto Estalilla, in the amount of P400,000.00.

Accused-appellant, together with accused Christopher Florague and Leonardo Alcantara, was charged with the crime of murder under the following information--

> That on or about the 13th day of August 1995, at Brgy. Gana, Municipality of Caba, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating, and mutually helping one another, with deliberate intent to kill, with treachery and abuse of superior strength did then and there wilfully, unlawfully and feloniously attack, assault and shoot one EGILBERTO ESTALILLA with the use of caliber.38 handgun inflicting upon him gunshot wounds which directly caused his death, to the damage and prejudice of the heirs of the victim.
>
> CONTRARY TO LAW.[2]

When arraigned on February 6, 1996, he and the other accused pleaded not guilty to the crime charged[3] whereupon trial proceeded.

In support of the allegations of the information, the prosecution presented six witnesses: Villie Alajari, Johnny Cartas, Jr., Dominic Tabafunda, Rodolfo Dulay, Dr. Arturo G. Llavore, and Agripina Estalilla, whose testimonies are as follows:

Villie Alajari, testified that Egilberto Estalilla was in her house in Barangay San Benito, Norte, Aringay, La Union on August 13, 1995. Estalilla and his companions, namely, Danilo Picardo and accused-appellant Herson Florague, drank gin from 2 to 3 o'clock in the afternoon. Afterward Danilo Picardo and accused-appellant went home. Egilberto Estalilla stayed on. Villie said accused-appellant came back and she saw blood on his hands. Accused-appellant wanted Egilberto, who was his uncle, to help in surrendering to the authorities in Caba, La Union because he had just hacked his brother, Christopher Florague. Egilberto told accused-appellant to sit down and asked him why he hacked his brother. Accused-appellant explained that he and his brother had a fight. At the time of the conversation, Villie said she was around three arm's lengths away from accused-appellant and Egilberto. After 10 minutes, accused-appelant went to his house, which was about 100 meters from Villie's house. Egilberto followed accused-appellant to the latter's house in Gana, Caba, La Union. Fifteen minutes after Egilberto had left her house, Villie learned from her aunt, Adelina Apolinar, that Egilberto had been killed.

Villie also said she had a child by Egilberto.[4] She executed an affidavit, dated August 20, 1995, attesting to what she knew of the manner in which Egilberto Estalilla died.[5]

Dominic Tabafunda, 15 years of age, a resident of Barangay Gana, Caba, La Union, gave a different account of the events leading to the death of Egilberto Estalilla. He said that at around 3 o'clock in the afternoon of August 13, 1995, he went to the house of his Auntie Ligaya, located south of the house of Vice-Mayor Agripina Estalilla. He then walked back to his house to feed the chickens. On the way home, he saw Gilbert Estalilla and accused-appellant Herson Florague between the houses of Leonardo Alcantara, whom he called Apong Narding, and a certain Apong Usting. Accused-appellant and Egilberto wrestled for possession of a gun. Dominic was around 40 meters away from them. Afraid that he might get hit, Dominic ran to his house and there heard two gunshots coming from the place where accused-appellant and the victim were struggling. After 10 minutes, Dominic went out of the house to see what had happened. He saw Gilbert Estalilla lying face down on the ground in front of accused-appellant's house. Accused-appellant was no longer around. Dominic Tabafunda said he later came to know that Egilberto Estalilla died of gunshot wounds. He identified accused-appellant Herson Florague and accused Leonardo Alcantara in open court.[6]

Dominic gave a statement to the police, marked as Exhibit C,[7] which he also identified on the witness stand.[8] He affirmed the statement in his affidavit that while he was walking on the road, he heard several gunshots, although he did not see any person in the immediate vicinity.[9] On cross-examination, Dominic testified that accused-appellant and Egilberto Estalilla were the only ones at the place of the incident. He was inside the house when he heard the gunshots. He did not know where the gunshots came from nor what had actually caused the explosion.[10]

Another witness to the killing of Egilberto Estalilla was Rodolfo Dulay, 41 years old and a resident of Barangay Juan Cartas, Caba, La Union. According to him, at around 4 o'clock in the afternoon of August 13, 1995, he went to the Alcantara furniture shop, located east of the national highway, to buy a chair. He was standing in front of the shop when he heard two gunshots coming from west of the national highway. When he looked towards the direction of the gunshots, he saw Christopher Florague and Leonardo Alcantara running after Egilberto Estalilla. Accused-appellant Herson Florague was also following them. The two were able to overtake Estalilla. Christopher Florague stabbed the victim on the left side of neck below the left jaw with a knife, while Leonardo Alcantara struck him with a piece of wood on the right side of his back. As a result, Egilberto Estalilla fell down. Then the accused-appellant arrive with a gun. Dulay said the accused and their victim were on the other side of the road from where he was. Afraid of what was happening, he and other bystanders hid themselves from view. Dulay then heard two shots ring from the direction of the place where Egilberto Estalilla was. Dulay said he later saw Egilberto Estalilla lying on the ground bloodied as accused-appellant and his companions, Christopher Florague and Leonardo Alcantara, fled westward.[11]

Rodolfo Dulay stated that he was close to the family of Egilberto Estalilla, whose mother was the Vice-Mayor of Caba, La Union. He explained that he was not able to report the matter to the police because he was from another barrio, Barangay Juan Cartas, which is three to four kilometers from Barangay Gana. During the funeral of Egilberto Estalilla, he was told by the victim's mother that nobody wanted to testify, and so he told her that he was willing to testify.[12]

Dr. Arturo G. Llavore, Medico-Legal Officer of the National Bureau of Investigation, Ilocos Regional Office, San Fernando, La Union, conducted an autopsy of the victim's body. His findings were contained in a report, which stated in pertinent parts:

> Cadaver, preserved by embalming.

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Abrasions: Temple, left, 0.9 x 0.3 cm.; Forearm, right, middle third, anterior aspect, 3.0 x 1.7 cm.; 5th Finger (small), left, dorsal surface, 5.0 x 1.8 cm.; Hand, left, dorsal surface, two (2) in number, measuring 1.5 x 0.5 cm. and 0.9 x 0.7 cm., respectively; Base of the Thumb, left, dorsal surface, 0.5 x 0.2 cm.; Wrist, left, two (2) in number measuring 1.8 x 0.8 cm., and 1.2 x 0.9 cm. (multiple), respectively; Chest, anterior, left side, 1.0 x 0.3 cm.; Knee, left, upper portion, anterior aspect, multiple, with an area approximately 6.5 x 3.0 cms. in size; Ankle, right, medial aspect, 2.0 x 1.8 cms.; Foot, left, dorsal surface, 1.2 x 2.0 cm.

Contusions: Mandibular area, right, below the right Ear, 3.0 x 1.7 cms.; Cardiac portion, Lung, left, upper lobe.

Contused Abrasions: Zygomatic area, left, 4.0 x 2.3 cms.; Upper Lip, left side, 2.0 x 0.8 cm.

Wound Lacerated: Upper Lip, left side, 0.3 cm. long and lower Lip, left side, 0.3 cm. long.

Wound, Incised: Neck, base, right side, 9.0 cms. long, involving the skin only; Arm, left, lower third, lateral aspect, 3.0 cms. long, involving the skin and underlying soft tissues only.

Wounds, GUNSHOT.

1.1 ENTRANCE, Chest, right side, posterior aspect, 7.0 cms. to the right of the posterior median line and 135.0 cms. from the right heel; measuring approximately 0.9 x 0.8 cm. in size, ovaloid, edges inverted, oriented medially and slightly downward, with an abraded collar widest at its superolateral margin; directed forward, slightly downward and from right to left; involving the skin and its underlying soft tissues, the bullet entering the chest cavity by fracturing the 4th Rib, right, along the paravertebral line, crossing the midline and lacerating the right ventricle of the Heart and its right auricle, the Pulmonary artery and vein, lacerating also the right Lung, lower lobe, medial aspect, then the bullet leaving the Chest cavity, left side anterior aspect, through the 7th Intercostal space and fracturing the upper border of the 8th Rib, left, along the midclavicular line and producing a wound of EXIT at the Chest, anterior, left side, just above the nipple 9.5 cms. to the left of the anterior median line and 129.5 cms. from the left heel; measuring approximately 1.2 x 0.6 cm. in size, slit-like, edges everted;

1.2 ENTRANCE, Gluteal region (buttocks), right, upper, medial quadrant, 10.3 cms. to the right of the posterior median line and 94.0 cms. from the right heel; measuring 0.9 x 0.8 cm. in size, ovaloid, edges inverted, oriented upward and medially, with an abraded collar widest at its inferolateral margin; directed forward, medially and upward; involving the skin and its underlying soft tissues, the bullet taking an intramuscular route towards the Searum where a slightly deformed copper-jacketed bullet was partially IMBEDDED and RECOVERED; injured tissues had minimal vital reactions;

1.3 ENTRANCE, Gluteal Region (buttocks), right, lower, medial quadrant 5.0 cms. to the right of the posterior median line and 86.0 cms. from the right heel; measuring 1.0 x 0.8 cm. in size, ovaloid, edges inverted, oriented upward and medially, with an abraded collar widest at its infero-lateral margin; directed forward, acutely upward and from right to left; involving the skin and its underlying soft tissues, the bullet taking an intramuscular route medially and upward, fracturing the Sacrum, right side and entering the floor of the Pelvis, lacerating muscles, entering the abdominal cavity where it perforated loops of Small intestine, piercing the Omentum then leaving the abdominal cavity by producing a Wound of EXIT at the anterior Abdominal wall, left side, lower quadrant, 3.5 cms. to the left of the anterior median line and 102.0 cms. from the left heel; measuring 1.0 x 0.6 cm. in size, slit-like and its edges overted.

Hematoma, Scalp, Interstitial: Mid-frontal region, 3.5 x 2.3 cms., mild; Parietal region, left side, 3.8 x 1.7 cm., mild.

Hemothorax, right, approximately 300 ml. of clotted blood.

Hemoperitoneum, approximately 150.0 ml. of clotted blood.

Hemopericardium, massive, approximately 250 ml. of clotted blood.

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> Brain and other internal visceral organs, pale.
>
> Stomach, one third full of partially digested meat, onions, and other food particles.
>
> CAUSE OF DEATH: CARDIAC TAMPONADE SECONDARY TO GUNSHOT WOUND, CHEST, POSTERIOR ASPECT, RIGHT SIDE[13]

Dr. Llavore testified that he conducted an autopsy on the body of the victim, Egilberto Estalilla, on August 15, 1995 at the instance of Police Senior Inspector Isidro Hernando Agbayani, the officer-in-charge of the Caba Police Station. Dr. Llavore found abrasions on the left temple, the right forearm, the small finger on the left hand, the dorsal surface at the side of the hand, the thumb, the wrist, left side of the face, left side of the chest, anterior aspect of the left knee, and the right and left ankles of the victim. According to Dr. Llavore, these abrasions were caused by the rubbing of a rough surface against the skin. He also found contusions below the right ear of the victim and on the cardiac portion of the left lung. These contusions were caused by the violent impact of a hard object on the body without producing an erosion or removal of the skin. The contusion on the right ear of the victim could have been caused by a violent contact of a hard object, either a closed fist or the smooth surface of a piece of wood. On the other hand, the contusion on the left lung was caused by the bullet which passed through the different parts of the victim's body. Contused abrasions were also found in the zygomatic area, left side of the face, and the left side of the upper lip of the victim. These contused abrasions were caused by a combination of friction of a rough surface and a strong blow which produced injuries beneath the skin. Dr. Llavore opined that a fist blow could have caused such an injury if the blow was very strong. It was also possible that these contused abrasions were caused by the impact of an object on the body of the victim. In addition, the victim also suffered lacerated wounds on the left side of the upper and lower lips. The lacerations could have been caused by a blow which pressed the soft tissues of the lips against a hard object, such as the teeth. A fist blow could also have caused this type of injury. There were also incised wounds found on the base of the neck on the right side, measuring 0.9 cm., and on the left arm, 0.3 cm. in length, both of which were superficial. Incised wounds could only be caused by a sharp-edged instrument, such as a knife, a splinter of glass, or even a bolo. The sharp edge of the knife or glass pressed against the surface of the skin would produce a clean cut wound.

Dr. Llavore also found gunshot wounds on the body of the victim. Gunshot wound no. 1 had its point of entry at the back portion of the victim's chest on the right side, measuring 0.9 x 0.8 cm. in size, while the exit wound was located on the left anterior aspect of the chest. In other words, the entrance wound was at the back of the victim and the bullet exited in front of the left portion of the chest. Dr. Llavore said that the bullet entered at the back, fractured the fourth rib at the back, to the right of the posterior median line, and crossed the midline, hitting the right lung and the right side of the auricle of the victim's heart. The bullet then went through the seventh intercostal space on the left side, fracturing the upper border of the eighth rib, before it exited the victim's body. Gunshot wound no. 1 produced a massive bleeding of the heart within its cavity and on the right side of the chest as a result of the laceration of the right lung. The direction of the bullet from the entry to the exit wound was forward, from back to front, slightly downward and from the right to the left. Gunshot wound no. 1 was fatal as it hit the right auricle and the right ventricle of the heart and a portion of the right lung. In terms of the relative positions of the victim and his assailant, the victim may have been upright at the time he was shot and the gun was fired from behind and slightly to his right because the direction of the bullet was from the right side to the left. Since the direction of the bullet was slightly downward, the muzzle of the gun was at a higher level than the entrance wound. However, Dr. Llavore could not say with certainty whether the victim was standing up or sitting down when he was shot because the angle was slight. The entrance wound was 129.5 cms. from the right heel while the exit wound was 135 cms. from the same, leaving only a difference of 5.5 centimeters, or an almost horizontal level. The distance between the victim and his assailant was "more than 24 inches."

Gunshot wound no. 2 was located at the buttocks on the right side of the victim's body. The entry wound was at the back of the victim and the bullet passed through an intramuscular route, although not through the internal organs. There was no exit wound on gunshot wound no. 2 as the bullet was recovered just behind the lower portion of the back, or the sacrum.

Although he was not a ballistician, Dr. Llavore stated that the bullet may have come from a.38 caliber or a 9MM gun. Dr. Llavore's team recovered the slug and a small fragment thereof from the body of the victim and sent it to the Ballistics Section in Manila, whose report stated that the bullet came from a 9MM pistol.

Gunshot wound no. 3 was also found on the right side of the buttocks below gunshot wound no. 2. It hit the sacrum or the pelvic bone at the back, which was fractured, and the small intestines. The exit wound was at the left lower quadrant of the abdomen. In gunshot wound nos. 2 and 3, the trajectory of the bullets was upwards. Since the entrance wounds in gunshot wound nos. 2 and 3 were at the back and the trajectory came from behind, Dr. Llavore deduced that the muzzle of the gun was at a lower position, assuming that the victim was standing upright. Assuming that the body was face down or in a prone position, the muzzle of the gun would have been positioned above and towards the feet, slightly to the right.

The upward trajectory in gunshot wound no. 3, however, was more acute. As gunshot wound nos. 2 and 3 have a similar trajectory and were almost in the same area on the right buttocks, Dr. Llavore concluded that the shots were fired in succession. Dr. Llavore theorized that gunshot wound no. 1 was fired first and gunshot wound nos. 2 and 3 were fired successively afterwards, when the victim was already falling down. According to Dr. Llavore, it would be difficult to determine whether the abrasions and contusions were inflicted before the gunshot wounds. Nor could he tell from the injuries the number of assailants of the victim. The injuries suffered by the victim could have been inflicted by one or several assailants. The height of the victim was 175 cms., or more or less five feet and eight inches.[14]

Dr. Llavore identified in open court his autopsy report[15] as well as several pictures of the victim[16] showing the location of the wounds sustained by him.[17] Some of the pictures were taken by Dr. Llavore, while the others were taken under his direct supervision by other persons. The immediate cause of the victim's death was cardiac tamponade secondary to the gunshot wounds, a condition where the heart cavity was filled with so much blood that the heart muscle could no longer pump blood. Gunshot wound no. 1 was the cause of the cardiac tamponade. Thus, even in the absence of gunshot wound nos. 2 and 3, gunshot wound no. 1 was sufficient to cause the victim's death.[18]

On cross-examination, Dr. Llavore stated that the abrasions, contusions, lacerations, and incised wounds sustained by the victim could have been inflicted whether the victim was standing, sitting, or lying down while grappling with somebody. Grappling for a gun could not have caused an incised wound. It was possible, however, that these injuries could have been caused by the victim coming in contact with the rough surface of the ground. It was also possible that the incised wounds, which involved only the surface of the skin, were caused by an object lying on the ground, so long as the same had a sharp edge, such as a glass fragment or a bamboo. Dr. Llavore clarified that there could be no relation between the superficiality of the wound and whether or not it was intentionally inflicted. Dr. Llavore maintained that gunshot wound no. 1 was inflicted prior to gunshot wound nos. 2 and 3. He explained that there was minimal vital reaction of the tissues in gunshot wound no. 2. Vital reactions are the reaction of live soft tissues to stimulus. The stimulus in a gunshot wound would be the laceration caused by the bullet. Gunshot wounds inflicted initially have very clear vital reactions. In gunshot wound nos. 2 and 3, there was minimal vital reaction which showed that there was already a weakening of the heart at the time. Gunshot wound no. 1 would have caused the victim to fall down.[19]

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The last witness to testify for the prosecution was Agripina Estalilla, the victim's mother and Vice-Mayor of Caba, La Union, who was presented to prove the civil liability of the accused in connection with the killing of her son. She testified that she was engaged in several businesses, including buying and selling tobacco and rice. Her son, Egilberto[20] Estalilla, was killed on August 13, 1995 by the three accused. Her son was 39 years old, married to Librada Torres, and had four children by the latter. She testified that her son worked as their family driver, earning a monthly salary of P6,000.00. She stated that she spent P15,000.00 for her son's tomb and P100,000.00 for the wake and funeral. She said that she could not avoid these expenses as she was a politician and plenty of people came to her son's wake. Among Egilberto's four children, the eldest was a college student living in Manila while the second one was in high school, and the remaining two were in elementary school. She was the one who supported Egilberto's children as his wife was working in Japan. Egilberto's wife did not go to the wake and funeral as she had just left for Japan and Agripina no longer allowed her to come home. Agripina Estalilla identified the three accused in open court.

On cross-examination, Agripina Estalilla denied that her son was separated from his wife. She did not know whether Egilberto was staying with another woman because he stayed in her house. She said that he was supporting his children as he was earning money then. She denied that she filed a criminal case against her son for shooting her and that one of her sons, Noel, stabbed Egilberto when they were fighting. The only case she knew of was that in which a search warrant was issued against her son although nothing was found to incriminate him. Agripina Estalilla stated that she knew of the identity of her son's killers the same day he died, but she encountered some difficulty because, despite the fact that many witnessed her son's killing, nobody was willing to testify. She denied that she scouted for possible witnesses and testified that there were those who volunteered to be witnesses, such as Dominic Tabafunda, Johnny Cartas, and Rodolfo Dulay. At first, Agripina stated that she could not remember who first told her that the accused were responsible for the death of her son. On further questioning, however, she said that it was Dominic Tabafunda who told her on the evening of August 13, 1995 that it was the accused who killed her son. She did not see Rodolfo Dulay on the day her son was killed, but the latter went to her son's house before the burial. As regards the civil aspect of the case, Agripina Estalilla stated that Egilberto Estalilla was not included in the payroll even though he had been their family driver for almost a year prior to his death. Agripina Estalilla also testified that she knew of Villie Alajari, but denied any knowledge of her son having a child by her. She said that she was the one who decided against Egilberto's wife returning from Japan because the latter had not yet finished her contract.[21]

The defense presented as its witnesses Ramona Alcantara, accused Christopher Florague, Nicanor Tirado, accused-appellant Herson Florague, accused Leonardo Alcantara, Flordeliza Florague, and Nida Rodriguera. Accused-appellant's defense was that Egilberto Estalilla was accidentally shot as they grappled for possession of Estalilla's gun. Their testimonies were as follows:

Ramona Alcantara, wife of accused Leonardo Alcantara, testified that she and her husband came to La Union in 1964, but the latter went to Davao in January of 1972 to look for a job and returned to Caba only on July 19, 1995. Ramona testified that at around 3 o'clock in the afternoon of August 13, 1995, while she and her husband were in the house of her father-in-law in Barangay Gana, they heard a shot coming from the west. Her husband was then cleaning the table in the kitchen, while she was in the sala. After hearing the shot, they closed the windows. Ramona said that she heard two men outside her house struggling with each other. She did not see them, but it seemed to her they were running. Later, when she opened the window, she saw Egilberto Estalilla lying dead on the road in front of the house of the Floragues. After the commotion, two policemen arrived and asked her if she saw the incident, to which she replied in the negative because they had already closed the windows by then. She said that her husband did not go out at that time but stayed in the kitchen.[22]

One of the accused, Christopher Florague, 23 years old, testified that on August 13, 1995, he had drinks with Nick Tirado, Gerardo Tirado, and a certain Ildefonso Garcia, near the house of Nick Tirado[23] along the national road in Barangay Gana, Caba, La Union. They started drinking from 9 o'clock in the morning and finished at 2 o'clock in the afternoon. Afterwards, Christopher's companions went home, while he went to sleep in front of the house because he was drunk. When he went home at around 6 o'clock in the evening, he found his sisters, Josephine, Flordeliza, Cristeta, and his mother, Caridad, watching television. He was told by them that his Uncle Gilbert had been shot and that his brother, accused-appellant Herson Florague, was the suspect. Christopher said he then went to his room and slept. He woke up at 10 o'clock in the morning of the following day. He claimed he had never met Rodolfo Dulay and only knew the latter by name. Christopher said that Rodolfo Dulay was known in their barrio as someone who worked as a hired witness.[24]

According to Christopher, he did not attend the wake for his uncle, because his brother was a suspect in the killing and the people there might vent their ire on him. Nor did he attend the burial of his uncle.[25]

Nicanor Tirado corroborated Christopher Florague's alibi that the latter was sleeping at the time Egilberto Estalilla was killed and that he woke up only at 6 o'clock in the evening of the same day.[26]

Accused-appellant Herson Florague testified in his own defense. He said that in the morning of August 13, 1995, he went to the mountain to get bamboo for use in making chairs. He went home to Gana, Caba, La Union at 8:30 in the morning. He met the victim, who asked him to buy some snacks (pulutan), and the two joined Nick Tirado and his group, who were drinking at a place around 50 to 70 meters away from the house of Nick. This was between 10 to 11 o'clock in the morning. Their drinking lasted until 2:30 in the afternoon. At one point, Danny Picardo tried to cause trouble by pushing a motorcycle, but victim pacified him. Danny Picardo also went to the yard of a certain Anno Bacalzo and began shouting at the people there. Several policemen arrived at the scene. The group continued drinking during which the victim turned over his gun to Nick Tirado for safekeeping. At 2:30 to 3 o'clock in the afternoon, the victim and accused-appellant left together and went home. Accused-appellant claimed that he was later told that the victim wanted to see him, he went to the victim's house. He claimed the victim handed to him a gun and told him to shoot one Isagani Mino. Accused-appellant said he refused, and the victim got angry and slapped him several times and threw gin at his face. Accused-appellant said he then went home, but the victim followed him. The victim came and shot him twice but missed him each time. He said the victim chased him as he ran away and caught up with him between the house of Anacleto and Leonardo Alcantara. The victim pressed his gun against accused-Appellant's forehead, but, accused-appellant said that with his left hand, he was able to grab the victim's hand holding the gun, and with his right hand boxed the victim in an area where he had had an operation. The two men wrestled each other and fought for possession of the gun. As they fell to the ground, accused-appellant then went on top of the victim, who was lying on the ground with his face down, and twisted the latter's hands towards his back. At that moment, the gun went off and hit the victim. Accused-appellant then fled to the woods and stayed there until nighttime. He then went to Barangay Sandoy, Alaminos, where his live-in-partner, Luz Corpuz, was living. Accused-appellant said that he ran away because he was afraid of the victim's family, especially his brothers, who were ruthless and used to fire their guns indiscriminately when drunk. He returned home on September 1995 and surrendered to a Maj. Chan at Camp Diego Silang.[27]

When asked by the court, accused-appellant demonstrated how, as the victim was lying on the ground face down, he used his right hand and twisted the victim's hand and in the process the gun went off.[28]

Leonardo Alcantara, 66 years old, also testified in his defense. He stated that in January 1972, he left Gana, Caba, La Union, for Davao where he worked as a banana plantation worker for 16 and a half years. He returned home only on July 19, 1995. When questioned about his limp, Leonardo explained that it was caused by a stroke he

suffered in Davao. He only came to know Herson and Christopher Florague after he returned from Davao as both had not been born yet when he left La Union. He knew Agripina Estalilla, the Vice-Mayor of Caba, La Union, and her son, Egilberto Estalilla, because he had once been hired to harvest in their farm. On August 13, 1995, he was cleaning the kitchen in the house of his father, Anacleto, while his wife was cleaning the sala when they heard gunshots coming from the direction of the house of the Floragues. Frightened, he and his wife closed the windows and tried to seek cover. Leonardo Alcantara said that he did not go out of the house at the time of the incident. He stated that the police arrived at around 5 o'clock in the afternoon and came to his father's house to inspect the table but left after a few minutes. The brothers of the victim also came to the house and told him that Egilberto had been shot. He said that he did not see Herson or Christopher Florague that afternoon. He also said that Agripina Estalilla talked to him and told him that he was implicated in the crime because he refused to testify. He did not know Rodolfo Dulay. He denied Dulay's claim regarding his alleged participation in the killing of Egilberto Estalilla, that he chased the latter, or that he used a piece of wood to strike him. He said that he could not have run after the victim since he had a limp. On cross-examination, he said that he stayed in Davao for 23 years until 1995, but only worked for 16 and a half years because he suffered from anemia, which the doctors said could worsen to leukemia, and a stroke, which paralyzed half of his body. He was still undergoing physical therapy on account of his illness.[29]

Flordeliza Florague, accused Christopher and Herson Florague's sister, testified that at around 4 o'clock in the afternoon of August 13, 1995, she was inside their house in Gana, Caba, La Union, watching television, when she heard two gunshots. When she looked out of the window, She saw Egilberto Estalilla holding a gun. According to Flordeliza, she later saw her elder brother, Herson, and the victim grappling for possession of a gun. She went out crying and shouting, "It's my brother, my brother!" She saw Dominic Tabafunda, her neighbor, going to his house. Flordeliza said she proceeded to the house of her Lola Monding, around 40 to 50 meters from their house, and there heard two gunshots fired. She stayed there for about half an hour as she was afraid and then went out of the house after policemen had arrived. Flordeliza said she saw Egilberto Estalilla holding a gun but did not know who fired the gunshots.[30]

The last witness for the defense was Nida Rodriguera, Clerk of Court, Branch 33, Regional Trial Court. She testified that Rodolfo Dulay was presented as a defense witness in two criminal cases for homicide, Criminal Case Nos. 1386 and 1387 entitled People v. Rodolfo Dulay, resulting in the acquittal of the accused.[31] She did not say whether prosecution witness Rodolfo Dulay was the same person as the accused in the two cases.

Based on the evidence presented, the trial court rendered a decision on June 26, 1998, the dispositive portion of which stated:

> WHEREFORE, judgment is hereby rendered:
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> a) Finding the accused, HERSON FLORAGUE y ESTALILLA guilty of the crime of MURDER beyond reasonable doubt and hereby sentences him to suffer the penalty of RECLUSION PERPETUA;
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> b) Ordering HERSON FLORAGUE y ESTALILLA to indemnify the heirs of Egilberto Estalilla in the sum of P400,000.00, without subsidiary imprisonment in case of insolvency.
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> c) Acquitting accused Christopher Florague and Leonardo Alcantara their guilt not having been proven beyond reasonable doubt.
>
> d) Ordering the release from custody [of] accused Christopher Florague and Leonardo Alcantara unless they are being held for any other lawful cause.
>
> SO ORDERED.[32]

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Hence this appeal. In his lone assignment of error, accused-appellant contends that "The lower court erred in convicting the accused based on flimsy circumstantial evidence."[33]

First. Accused-appellant admitted that he was responsible for the shooting of Egilberto Estalilla, but claimed that the gun went off and hit the victim as he and the latter grappled for possession of the firearm which allegedly belonged to accused-appellant. As accused-appellant thus invokes self-defense, the burden of proof is on him to show by clear and convincing evidence (1) that he was not the unlawful aggressor; (2) that there was lack of sufficient provocation on his part; and (3) that he employed reasonable means to prevent or repel the aggression. Proof of unlawful aggression on the part of the victim is indispensable since the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the aggression.[34]

In this case, there is doubt that the victim was the aggressor inasmuch as no reliable evidence was presented by the defense to prove that the victim's gun was returned to him after he turned over the same to Nick Tirado.

On the other hand, we have time and again held that appellate courts accord the highest respect to the assessment made by the trial court on the credibility of witnesses because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. In this case, the trial court found:

> Summing up the testimony of accused Herson Florague, the Court gathers that he tried to establish self-defense without directly admitting that he caused the eventual death of the victim after a brief altercation. However, he failed to satisfy this Court of his defense.
>
> The Supreme Court has time and again enunciated that for self-defense to prosper, the evidence must be persuasive (People v. Eduarte, 187 SCRA 291). Likewise, it must be positively shown that there was a previous unlawful and unprovoked attack on the person of the accused that placed him in danger, thereby forcing him to repel the attack and to inflict more or less severe wounds upon his assailant employing reasonable means therefor to resist the same (People v. Madali, 188 SCRA 69). Although he claims that the victim went to his house and immediately shot at him two (2) times but did not hit him, there is an indication that the victim did not intend to shoot him to death. This is evidenced by the fact that the victim had a chance to kill Herson when he poked the gun at Herson's forehead but he did not do so. This may be due to the fact that the victim only wanted to scare the accused but had no real intention to kill the latter. Likewise, witness for the defense Flordeliza Florague, sister of the accused, stated that when she saw Gilbert holding his gun, it was pointed downward. This Court is not convinced by the testimony of the witness that the gun went off during the scuffle after Herson managed to twist the victim's arm towards his back and then he ran away. This does not explain the three (3) gunshot wounds suffered by the victim all inflicted on his back and the fact that the victim was found sprawled in the west shoulder of the National Highway, some meters away from the place where the scuffle took place. Moreover, as testified by the doctor who conducted the autopsy, the victim could have fallen down immediately after the first shot was fired because it would have mortally wounded the victim. In addition, the accused immediately took flight indicating that he is guilty of the offense charged. His act of surrendering to the police authorities after he found out about the criminal charge only has the effect of reducing the imposable penalty.[35]

It is settled 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.[36] We see no reason to depart from the general rule in this case.

To begin with, self-defense and accidental shooting cannot both be raised by the accused as a defense. If accused-appellant was acting in self-defense, then he could only have deliberately used the gun to repel the alleged aggression. Then the gun could not have been fired accidentally. On the other hand, if the shooting was accidental, then it was immaterial whether accused-appellant employed reasonable means to repel the alleged

aggression.[37] Be that as it may, let it be assumed that what accused-appellant meant is that he engaged the victim in combat to defend himself against the latter's aggression and that, in the course thereof, the gun which the latter was holding accidentally went off and hit him. The evidence, however, falls short of that required to discharge the burden of proof on accused-appellant. Accused-appellant's allegation is belied by the physical evidence.

First, accused-appellant testified that the gun accidentally fired only once.[38] The medical report, shows however, that Egilberto Estalilla sustained three gunshot wounds, one of which was fatal.

Second, accused-appellant claimed that the victim was with lying face down on the ground and his hand twisted behind his back when the gun, which was pointed downwards when the gun went off.[39] This is contradicted by the findings of Dr. Llavore, who found that gunshot wound no. 1 was located on the chest of the victim with the exit wound being on the left anterior aspect of the chest.[40] This belies accused-appellant's testimony that the gun was pointed downwards at the back of the victim when it went off. Moreover, if the gun was pointed downwards, then the trajectory of the bullet would have been at an acute angle going downwards. But Dr. Llavore testified that the angle of the bullet was almost horizontal,[41] while the trajectory of the bullets on gunshot wound nos. 2 and 3 was upwards.[42] The gun could not, therefore, have been pointed downwards.

Third, Dr. Llavore testified that the distance between the victim and his assailant was beyond 24 inches.[43] It is thus clear that the gunshot wounds sustained by the victim were not inflicted at close range, as accused-appellant would lead this Court to believe. The possibility is that the gun although belonging to the victim, had been held by accused-appellant even from the beginning. It will be recalled that, according to Nick Tirado, a witness for accused appellant, the victim gave his gun to him (Nick Tirado) although Nick claims the victim later got back the gun from him. The probability is that the victim did not really get back his gun and that accused-appellant somehow got it and used it against the victim. Hence the finding of Dr. Llavore that the victim was shot from a distance of more than 24 inches.

As accused-appellant failed to establish his defense by clear and convincing evidence, he was correctly held criminally liable for the killing of Egilberto Estalilla.

Second. We do not agree with the trial court, however, that treachery attended the commission of the crime and that accused-appellant must be convicted of the crime of murder. For treachery to exist, the following must be established: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[44] It cannot be denied that the victim in this case sustained several gunshot wounds at the back. However, proof that the fatal wounds were located at the back of the deceased does not, sufficient to justify itself, compel a finding of treachery.[45] There must be a clear showing that the mode of attack was employed to reduce, if not eliminate, the danger arising from the defense that the victim might offer. Absent any particulars on the manner in which the aggression was commenced, treachery cannot be reasonably appreciated to qualify the killing in this case to murder.[46] The manner of attack not having been proven in this case, accused-appellant should be given the benefit of the doubt and the crime committed should be considered only as homicide under Art. 249 of the Revised Penal Code.[47]

In addition, accused-appellant must be credited with the mitigating circumstance of voluntary surrender. Although a warrant of arrest had in fact been issued against him, accused-appellant had not been arrested when he surrendered to the group of Police Chief Inspector Marlou Cortez Chan (Exhs. 2, 2-A, and 2-B).[48]

Accordingly, the penalty to be imposed should be reduced to reclusion temporal as provided by Art. 249 of the Revised Penal Code. Considering the mitigating circumstance of voluntary surrender appreciated in favor of

accused-appellant, the penalty to be imposed shall be in its minimum period in accordance with Art. 64(2) of the Revised Penal Code, or in the case of reclusion temporal, from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed shall be the penalty next lower in degree, or prision mayor in any of its periods.[49]

As regards the question of damages, however, we find the trial court's award of P400,000.00 as indemnity, in accordance with our rulings[50] on this question, to be excessive. Accused-appellant should only be made to pay the amount of P50,000.00 for civil indemnity and P50,000.00 for moral damages.

WHEREFORE, the decision, dated June 26, 1998, of the Regional Trial Court, Branch 67, Bauang, La Union is AFFIRMED with the MODIFICATION that accused-appellant is found guilty of homicide and is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, and to pay the heirs of Egilberto Estalilla the sum of P50,000.00 as civil indemnity and a further sum of P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Buena, and De Leon, Jr., JJ., concur.
Quisumbing, J., abroad on official business.

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[1] Per Judge Jose G. Paneda.

[2] Records, p. 98.

[3] Id., p.113.

[4] TSN, pp. 5-12, May 8, 1996.

[5] Exh. A; Records, p. 9.

[6] TSN, pp. 5-15, May 21, 1996.

[7] Records, p. 6.

[8] TSN, pp. 15 - 16, May 21, 1996.

[9] Id., pp. 17 - 18.

[10] Id., pp. 23 - 24.

[11] Id., pp. 4-17.

[12] Id., pp. 32-33, 41-42.

[13] Exh. G; Records, p. 209.

[14] TSN, pp. 4-32, June 11, 1996.

[15] Exh. G; Records, p. 209.

[16] Exhs. H-1-H-7; Id., pp. 210-211.

[17] TSN, pp. 31-37, June 11, 1996.

[18] Id., p. 38.

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[19] Id., pp. 40-44.

[20] Referred to as Edilberto in the transcript of stenographic notes.

[21] TSN, pp. 4-53, Sept. 24, 1996.

[22] TSN, pp. 6-7, 10-11, 14, 16-21, 30, Dec. 4, 1996.

[23] Referred to as Terrano or Terrado in the transcript of stenographic notes.

[24] TSN, pp. 4-9, 11, Jan. 21, 1997.

[25] Id., p. 21.

[26] TSN, p.15, Feb. 19, 1997.

[27] TSN, pp. 3-12, 19, 22, 23, March 5, 1997.

[28] Id., pp. 26-27.

[29] TSN, pp. 6-29, June 25, 1997.

[30] TSN, pp. 4-12, 16, 19-20, Sept. 3, 1997.

[31] TSN, pp. 3-6, Oct. 28, 1997.

[32] Decision, pp. 27-28; Records, pp. 337-338.

[33] Brief for the Accused-Appellant, p. 2; Rollo, p. 56.

[34] People v. Caber, G.R. No. 129252, Nov. 28, 2000.

[35] Decision, pp. 15-16; Records, pp. 325-326.

[36] People v. Gonzales, G.R. No. 122769, Aug. 3, 2000.

[37] See People v. Tapeno, 164 SCRA 696 (1988).

[38] TSN, p. 11, March 5, 1997.

[39] Id., p. 27.

[40] TSN, p. 11, June 11, 1996.

[41] Id., p. 20.

[42] Id., p. 24.

[43] Id., p. 20.

[44] People v. Albacin, G.R. No. 133918, Sept. 13, 2000.

[45] People v. Belga, 258 SCRA 583 (1996).

[46] See People v. Llanes, 324 SCRA 727 (2000).

[47] Id.

[48] Records, p. 298.

[49] People v. Antonio, G.R. No. 128900, July 14, 2000.

[50] People v. Ronas, G.R. Nos. 128088 & 146639, Jan. 31, 2001; People v. De la Cruz, G.R. No. 128362, Jan. 16, 2001; People v. Mendoza, G.R. No. 134004, Dec. 15, 2000.

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