

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

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

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-137671/>

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[st] 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.[1]

On July 23, 1996, Gallarde pleaded not guilty to the crime charged.[2] 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.[3] Cristobal Gallarde suddenly appeared and shot Melchor at close range at the back of the neck.[4] 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,[5] found the cause of death as cardiorespiratory arrest and hemorrhage due to the bullet wound on the head.[6]

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.[7] 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.[8] Accused-appellant claims that the shooting was accidental and that it was Melchor who pulled the trigger.[9] After that, accused-appellant got the gun and ran away. He threw the gun into the sea.[10]

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.[11] Thereafter, the two persons involved in the altercation began wrestling with each other. Soon, he heard a gunshot and saw several people scamper away.[12]

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.[13] 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.[14] 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.[15] Thus, the case was filed against accused-appellant.

On July 9, 1998, the trial court rendered the appealed decision,[16] 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.[17]

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 DECOSTO 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.[18]

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.[19] 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.[20]

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)[21]

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)[22]

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.[23] Moreover, Edifredo was standing only a meter or less away from accused-appellant when he shot Melchor.[24] The postmortem examination results support Edilfredo's testimony.

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

The issue of the veracity of accused-appellant's claim that the shooting was accidental boils down to a question of credibility of the witnesses. As we have stated, we find no reason to differ with the trial court's factual findings. More specifically, it is not true that accused-appellant's version of the incident was corroborated by Armando Caramonte. A careful reading of Caramonte's testimony, however, reveals that he did not see the person who

actually pulled the trigger nor witnessed how the trigger was accidentally pulled. In fact, Caramonte testified that he was not even sure who originally held the gun.[25]

In the third assignment of error, accused-appellant claims that the testimony of Edilfredo Decosto was flawed and biased. Accused-appellant refers to Edilfredo's admission that he was talking to a companion named Jun-Jun when he saw the former point a gun at the victim. Thus, accused-appellant postulates that Edilfredo could not have witnessed what transpired prior to the shooting as he was then distracted and engaged in a conversation which renders his testimony unworthy of belief.

We disagree. Edilfredo Decosto, clearly narrated that he was standing behind Melchor when suddenly accused-appellant approached the latter from behind,[26] brushed aside Edilfredo's hand,[27] and shot Melchor on the head.

Accused-appellant also ascribes bias on Edilfredo because he and the victim's were first cousins.[28] As it has been consistently held, mere relationship of a witness to a party, without more, cannot impair the witness' credibility.[29] On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit.[30] It is settled that in the absence of a showing of improper motive on the part of the witnesses, their testimonies are not affected by their relationship with the victim and must be accorded full faith and credit.[31] Hence, accused-appellant's imputation of bias against prosecution witness Edilfredo Decosto must fail.

Finally, accused-appellant contends that there was no treachery involved in the killing because the victim turned his head and saw him coming prior to the shooting.

The argument is specious.

Contrary to the contention of accused-appellant, the records show that the victim never turned his head to look at him before the shooting took place. Rather, Edilfredo testified that the victim was about to turn and take a seat shortly before he was shot to death, thus:

Q:

And while you were talking, standing, facing to the sea, waiting for the mass, what happened next?

A:

Suddenly, Cristobal appeared and shot Decosto, Jr.

Q:

How many times did Gallarde shoot the victim, Decosto, Jr.?

A:

Once.

Q:

What was the position of Melchor when shot by Gallarde?

A:

He was about to turn sir, because he was about to sit down.

(Emphasis ours)[32]

It is clear from the aforementioned excerpt of Edilfredo's testimony that the victim did not see accused-appellant approach him from behind as he was just about to turn and sit down at the instant that he was shot.

The manner of attack indicates that accused-appellant employed treachery in killing Melchor. For treachery to be appreciated, it must be proved that at the time of the attack, the victim was not in a position to defend himself and the offender consciously adopted the particular means, methods or form of attack employed by him.[33] The elements of treachery are therefore: (1) that the malefactor employed means of execution that affords the person attacked no opportunity to defend himself or retaliate; and (2) the said means of execution was deliberately and consciously adopted.[34]

The evidence --- both testimonial and physical --- unequivocally shows that accused-appellant suddenly came from behind and shot the deceased pointblank at the back of the neck. The victim, at the time of the attack, was evidently oblivious to the impending danger as he had no reason whatsoever to expect any untoward incident. The victim was, after all, merely waiting for New Year's Eve mass and enjoying the sea breeze on the wharf with his cousins. The assailant, in view of the position he took and the suddenness of his attack, afforded the victim no opportunity to defend himself or retaliate. The use of a deadly weapon - that of gun, and the location of the bullet wound - at the back of the neck, showed deliberate intent to kill the victim. Hence, the circumstance of treachery was evident, qualifying the crime to Murder:

As regards the civil aspect of the case at bar, accused-appellant should be made to pay, in line with current jurisprudence, moral damages in the amount of P50,000.00,[35] in addition to the civil indemnity of P50,000.00 already awarded by the trial court.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Barili, Cebu City, Branch 60, finding accused-appellant Cristobal Gallarde beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of Reclusion Perpetua is hereby **AFFIRMED** with the **MODIFICATION** that he is ordered to pay moral damages in the amount of P50,000.00 in addition to civil indemnity in the amount of P50,000.00 awarded by the trial court.

SO ORDERED.

Puno, and Sandoval-Gutierrez, (Special Member), JJ., concur.

Davide, Jr., C.J., (Chairman), Kapunan, and Austria-Martinez, JJ., on official leave.

[1] Records, p. 1.

[2] Ibid., p.2.

[3] TSN, October 31, 1996, pp. 2-3.

[4] Ibid., pp. 4 and 6.

[5] TSN, October 15, 1998, p. 2.

- [6] Records, Exhibit B-2, p. 92.
- [7] TSN, March 17, 1998, p. 4 and 10.
- [8] Ibid., pp. 5-6.
- [9] Ibid., pp. 5 and 12.
- [10] Ibid., p. 12.
- [11] TSN, April 14, 1998, p.3.
- [12] Ibid., p. 4.
- [13] TSN, May 21, 1998, p. 2.
- [14] Ibid., p. 3.
- [15] Ibid., p.4.
- [16] Rollo, pp. 55-61.
- [17] Ibid., p. 25: penned by Judge Ildefonso B. Suerte.
- [18] Accused-appellant's Brief, pp. 49-50.
- [19] People v. Tahop, 315 SCRA 465, 473 (1999).
- [20] Rollo, Brief for the Appellee, p. 84.
- [21] TSN, March 17, 1998, p. 4.
- [22] Ibid., p. 6.
- [23] TSN, October 31, 1996, p. 5.
- [24] Ibid., p. 4.
- [25] TSN, April 14, 1998, p. 4.
- [26] TSN, April 2, 1997, pp. 6-7.
- [27] Records, Sworn Statement of Edilfredo Decosto, p. 12.
- [28] TSN, October 31, 1996, p. 2.
- [29] People v. Antonio, 303 SCRA 414, 424 (1999).
- [30] People v. Villanueva, 302 SCRA 380, 398 (1999).
- [31] People v. Guillermo, 302 SCRA 257, 271 (1999).
- [32] TSN, October 31, 1996, p. 4.
- [33] People v. Raquiño, 315 SCRA 670, 683 (1999).
- [34] People v. Barellano, 319 SCRA 567, 588 (1999).
- [35] People v. Dizon, G.R. No. 129236, October 17, 2001.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.