# NESTOR SULLON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

*G.R. NO. 139369. June 27, 2005*

Ponente: CORONA, J.

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**CORONA, J.:**

This is a petition for review of the decision of the Court of Appeals[1] affirming the decision,[2] dated July 5, 1995, of the Regional Trial Court (RTC) of South Cotabato in Criminal Case No. 1484-B. The trial court convicted petitioner of murder. Petitioner's co-accused, Ulyssess Evangelista, was acquitted for lack of evidence.

In an information dated February 3, 1994, petitioner was accused of murder allegedly committed as follows:

> That on or about the 26th day of September, 1993, at about 5:00 o'clock in the afternoon thereof, at Sitio Solomon, Barangay Rizal, (Poblacion), Municipality of Banga, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously with intent to kill and treachery, shoot EDILBERTO MONDEJAR in the following manner to wit: while said Edilberto Mondejar was sound asleep on a bamboo bench placed inside/near the billiard hall managed and operated by accused Nestor Sullon and located in said locality, accused Ulyssess Evangelista, who was then armed with an UNLICENSED handgun of still undetermined make and caliber, drew and pulled out said handgun from his waist, gave it to his co-accused Nestor Sullon and with it accused Nestor Sullon shot Edilberto Mondejar hitting and inflicting upon him a gunshot wound on his head which directly caused the instantaneous death of said victim.
>
> CONTRARY TO LAW.[3]

On arraignment, petitioner entered a plea of not guilty. After trial on the merits, the trial court found petitioner guilty of the crime charged:

> WHEREFORE, the Court finds the accused Nestor Sullon guilty beyond reasonable doubt of the murder of Edilberto Mondejar, and hereby sentences him to suffer an indeterminate penalty of an imprisonment ranging from 10 years and 1 day of prision mayor in its maximum period as its minimum to 17 years, 4 months and 1 day of reclusion temporal in its maximum period as its maximum, and to indemnify the heirs of the victim Edilberto Mondejar the sum of P50,000.00 for the death of said victim and P34,678.25 for actual expenses in the wake and burial of said victim.[4]

Petitioner appealed his conviction to the Court of Appeals (CA) which affirmed in toto the decision of the court a quo:

> WHEREFORE, the appealed Decision in Criminal Case No. 1484-B of Branch 26 of the Regional Trial Court of Surallah, South Cotabato is hereby AFFIRMED in toto.
>
> Costs against the accused.[5]

Petitioner moved for a reconsideration of the CA decision but the appellate court found petitioner's motion for reconsideration bereft of merit as the arguments raised were already passed upon in its decision. Hence, this petition for review under Rule 45 of the Rules of Court.

In assailing the decisions of the trial court and the Court of Appeals, petitioner posits that:

**A**

> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR AND DECIDED QUESTIONS OF SUBSTANCE CONTRARY TO LAW, EVIDENCE AND JURISPRUDENCE WHEN IT FOUND ACCUSED NESTOR SULLON GUILTY OF THE CRIME OF MURDER.
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> B
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> THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED NESTOR SULLON BEYOND REASONABLE DOUBT.[6]

This petition is anchored on the alleged gross misappreciation and disregard by the appellate court of facts of essential value and importance which might dramatically change the outcome.

First, Sullon claimed that the sole, uncorroborated testimony of prosecution witness Rolando Barcenal failed to stand the test of reason;[7] there were testimonies that Barcenal was not present in the crime scene.[8]

Second, he argued that the credence lent to the testimony of Dr. Ellen Quidilla that there was no sign of struggle when the victim was shot was misplaced, the scope of her testimony being only (1) to prove the conduct of a post-mortem examination and cause of death and (2) to identify the certificate of death.[9]

Third, he considered the testimony of Jose Dizon fabricated and incredulous because it allegedly projected a glaringly different version.[10]

Finally, petitioner asserted that the defense was able to prove that he acted in self-defense and therefore his acquittal is warranted.[11]

In essence, petitioner wants this Court to weigh the credibility of the prosecution witnesses against that of the defense witnesses to bolster his contention that his acquittal is justified. It has often been said, however, that credibility of witnesses is a matter best examined by and left to the trial courts. When the factual findings of the trial court are affirmed by the appellate court, the general rule applies. This Court will not consider factual issues and evidentiary matters already passed upon. The petitioner raises the same issues he brought before the appellate court which gave credence to the findings and decision of the trial court.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.[12] The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[13]

Petitioner presented the same evidence and the same arguments in the trial and appellate courts. We are not convinced that there was a misappreciation of facts by the courts a quo which were uniform in their reliance on the prosecution's version:

> At about 5 o'clock in the afternoon of September 26, 1993, Edilberto Mondejar was sleeping on a bamboo bench in the billiard hall owned by appellant located in Sitio Solomon, Barangay Rizal, Banga, South Cotabato. Appellant approached the sleeping Mondejar and shot him with a short firearm, hitting the latter on


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> his left forehead.
>
> Jose Dizon heard the gunshot as he was passing by the house of Flordeliza Sullon Evangelista (appellant's sister) which is located beside the billiard hall. He looked over the fence and saw Mondejar lying on the bench bathe[d] in his blood. Flordeliza came out of the house and motioned toward Dizon. Reynaldo Sullon (appellant's brother) also came out and[,] pointing a gun at Dizon, warned the latter to stay away as it was not his business.
>
> The post mortem examination conducted by Banga Municipal Health Officer, Dr. Ellen Diamante Quidilla, on the victim's body revealed that he sustained a gunshot wound on the left lateral area of the forehead, which gunshot wound has no exit and has a downward trajectory and that the cause of his death was attributed to "fibro vascular injury secondary to gunshot wound on left forehead." No sign of struggle was evident. (Citation omitted)
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> Right after the shooting, appellant ran away and went into hiding. He surrendered on December 7, 1993. [14] (Citation omitted)

A careful review and evaluation of the testimonies of the witnesses for the prosecution as well as for the defense yielded no cogent or compelling reason for the Court of Appeals to alter the findings of fact of the trial court.[15] There is no reason for us to disturb the same.

Self-defense, as espoused by petitioner, can be so readily claimed by an accused even if false. It is normally asserted with promptness if true so that the failure to do so upon surrendering to the police is inconsistent with the claim of self-defense.[16] The records clearly show that petitioner gave no indication that he acted in self-defense when he surrendered to the police more than two months after the killing.[17] And before they testified in court, neither his wife nor sister-in-law ever mentioned that Sullon acted in self-defense.[18] Nestor Sullon by his own testimony also disclosed that he fled to Mlang, North Cotabato and stayed there for two months and eleven days from the time of the commission of the offense until his voluntary surrender on December 7, 1993.[19] His act of fleeing from the scene of the crime instead of reporting the incident to the police authorities is contrary to his proclaimed innocence.[20] Self-defense is not credible in the face of the flight of petitioner-accused from the crime scene and his failure to inform the authorities about the incident.[21]

By raising self-defense, Sullon in effect admitted that he killed Mondejar and thereby assumed the burden of proof to establish the elements of self-defense by credible, clear and convincing evidence.[22] But instead of presenting clear and convincing evidence to satisfy the requirements of self-defense as a justifying circumstance to absolve Sullon from criminal liability, all the defense did was to concentrate on trying to debunk the testimony of Barcenal by showing that he was allegedly not in the scene of the crime.

Under the law, to successfully discharge the burden of proving self-defense, the defense must credibly substantiate that there was:

> First. Unlawful aggression;
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> Second. Reasonable necessity of the means employed to prevent or repel it;
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> Third. Lack of sufficient provocation on the part of the person defending himself. xxx xxx xxx[23] (emphasis ours)

In this regard, Sullon undoubtedly failed. Petitioner gave an incredible version of Mondejar's alleged actuations prior to the killing. Petitioner alleged that the victim came looking for a fight. When nobody took on the challenge, Mondejar pointed his gun at Sullon. While the two of them were grappling for the weapon, the gun went off, hitting Mondejar.

Petitioner's version does not inspire belief as to the existence of the first and most important element of self-defense — unlawful aggression.

> In order to consider that unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of justification on the ground that it was committed in self-defense.[24] (emphasis ours)

Petitioner Sullon failed to prove that the alleged threatening attitude of Mondejar was offensive and positively strong to show the wrongful intent of the aggressor to cause injury. He claimed that he even admonished Mondejar when the latter was challenging the people present to a fight. And that Mondejar's finger was on the trigger when the gun went off.[25] Yet he could not even produce or give a plausible explanation for failing to produce the alleged weapon used by the victim to threaten him.

Prosecution witness Barcenal, on the other hand, gave a simple and straightforward account of the incident he witnessed.[26] The trial and appellate courts upheld the credibility of his testimony and ruled that the elements of murder had been successfully proven:

- That a person was killed.

- That the accused killed him.

- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.

- The killing is not parricide or infanticide.[27]

First, the death certificate of Edilberto Mondejar as identified by his father, Marcelino Mondejar, proved that there was a killing.[28] Second, not having successfully discharged the burden of proving self-defense, Sullon himself admitted that he killed Mondejar; he was in fact positively identified by Barcenal.[29] Third, both the trial and the appellate courts sustained the existence of treachery — Mondejar was shot while asleep.

Treachery has been alleged in the information qualifying the offense to murder.

> The victim was asleep lying on a bench when shot. His limbs and hands were stretched showing he died in his sleep and according to the doctor, there was no evidence that the victim struggled before dying. It was also testified by Rolly Barcenal that the accused Nestor Sullon shot the victim who was sleeping. Thus, the victim had no chance to defend himself or repel the assault against him. He had not awaken from his sleep.[30] (emphasis ours)

Moreover, the facts constituting treachery are irreconcilable with the claim of self-defense. As to the last element of murder, it is undisputed that the killing did not constitute parricide[31] or infanticide.[32]

Barcenal's presence at the scene of the crime was affirmed by Jose Dizon.[33] It was not shown that Barcenal and Dizon were motivated by ill will when they implicated Sullon in the murder of Mondejar. The witnesses of Sullon, on the other hand, were not independent and convincing.[34]

Under the law in effect at the time the crime was committed, murder was punishable by reclusion temporal in its maximum period to death.[35] In view of the Indeterminate Sentence Law, the maximum term of the penalty shall be that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code.[36] In this case, considering the mitigating circumstance of voluntary surrender, the maximum term of the penalty is reclusion temporal in its maximum period (17 years, 4 months and 1 day to 20 years).[37] The minimum is within the range of the penalty next lower to that prescribed by the Code for the offense[38] without

considering any modifying circumstance attendant to the commission of the crime:[39] prision mayor in its maximum period to reclusion temporal in its medium period (10 years and 1 day to 17 years and 4 months). Petitioner was therefore rightly sentenced to an indeterminate sentence ranging from 10 years and 1 day of prision mayor in its maximum period, as minimum, to 17 years, 4 months and 1 day of reclusion temporal in its maximum period, as maximum.

Petitioner was ordered to indemnify the heirs of the victim Edilberto Mondejar the sum of P50,000 for the death of the victim and P34,678.25 for actual wake and burial expenses, as proven by receipts. There was no proof as to the earning capacity lost or an obligation to give support[40] by the deceased, if any. Payment of moral damages for the mental anguish caused to the family of the deceased[41] is also in order.

WHEREFORE, the petition is hereby DENIED and the judgment of conviction AFFIRMED. The award of damages is modified only insofar as P50,000 shall be the amount to be paid as moral damages, in addition to the indemnity for the death of Edilberto Mondejar plus actual expenses as adjudged by the trial court.

**SO ORDERED.**

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

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[1] Penned by then Associate Justice Presbitero J. Velasco Jr. (now Court Administrator) and concurred in by Associate Justices Consuelo Ynares-Santiago (now an Associate Justice of this Court) and B.A. Adefuin-de la Cruz (now retired), of the Eighth Division, Rollo, pp. 46-64.

[2] Penned by Presiding Judge Cristeto D. Dinopol of Branch 26; Rollo, pp. 69-79.

[3] Information, Criminal Case No. 1484-B, CA Rollo, pp. 23-24.

[4] Decision, Criminal Case No. 1484-B, Rollo, p. 79.

[5] CA Decision, Rollo, p. 63.

[6] Petition for Review, Rollo, p. 15.

[7] Petition for Review, Rollo, pp. 34-36; TSN of November 29, 1994, pp. 7-9.

[8] Id., Rollo, pp. 19-26; TSN of February 23, 1995, pp. 20-2; TSN of February 23, 1993, pp. 5-16; TSN of March 15, 1995, pp. 9-13; TSN of November 29, 1994, p. 5; TSN of March 15, 1995, pp. 4-6.

[9] Id., Rollo, pp. 26-29; Appellant’s Brief, CA Rollo, p. 61.

[10] Id., Rollo, pp. 31-32.

[11] Id., Rollo, pp. 32-34.

[12] People v. Norrudin, 425 Phil. 453, 467 (2002).

[13] People v. Pansensoy, 437 Phil. 499, 512 (2002).

[14] CA Decision, Rollo, p. 48.

[15] Id., Rollo, p. 51.

[16] Florenz D. Regalado, Criminal Law Conspectus 44 (2000) citing People v. Manansala, G.R. No. L-23514, Feb. 17, 1970.


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[17] CA Decision, Rollo, p. 59.

[18] Id.

[19] Id., Rollo, p. 58.

[20] People v. Pansensoy, 437 Phil. 499, 518 (2002) citing People v. Macuha, 369 Phil. 257 (1999).

[21] People v. Atadero, 435 Phil. 888, 904 (2002).

[22] People v. Jabian, G.R. Nos. 139213-14, 4 April 2001, 356 SCRA 348.

[23] Revised Penal Code, Art. 11 (1).

[24] Luis B. Reyes, The Revised Penal Code: Criminal Law Book One, pp. 169-170 (2001).

[25] RTC Decision, Rollo, p. 77.

[26] CA Decision, Rollo, pp. 52-53.

[27] Luis B. Reyes, The Revised Penal Code: Criminal Law Book One, p. 463 (2001).

[28] RTC Decision, Rollo, p. 69.

[29] CA Decision, Rollo, p. 61.

[30] Id.; RTC Decision, Rollo, p. 78 citing People v. Caringal, G.R. No. 75368, 11 August 1989, 176 SCRA 404.

[31] Revised Penal Code, Art. 246.

[32] Revised Penal Code, Art. 255.

[33] Id., Rollo, pp. 54-55.

[34] Defense witnesses: Rosalinda Sullon, wife of accused; Flordeliza Evangelista, sister of accused; Jonathan Sullon, son of accused; Juvy Sullon, daughter of accused (6 years old at the time the crime was committed); Ruby Guntang, student, not related to accused; Reynaldo Caporal, policeman who identified alias warrant of arrest against accused; Ranulfo Garde Palima, policeman who identified the entry in the police blotter, CA Rollo, pp. 28-33.

[35] Revised Penal Code [before the amendments effected by RA 7659 (approved on Dec. 31, 1993)], Art. 248.

[36] Indeterminate Sentence Law, Sec. 1.

[37] Revised Penal Code, Art. 64.

[38] Indeterminate Sentence Law, Sec. 1.

[39] Luis B. Reyes, The Revised Penal Code: Criminal Law Book One, p. 773 (2001) citing People v. Gabres, 335 Phil. 242 (1997).

[40] New Civil Code, Articles 291 and 2206.

[41] Id., Articles 2206 and 2219.


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