

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO CUETO Y CUETO, ACCUSED-APPELLANT.

*G.R. No. 147764. January 16, 2003*

Ponente: YNARES-SANTIAGO, J.

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### YNARES-SANTIAGO, J.:

Accused-appellant Danilo Cueto y Cueto was charged with murder in an information[1] which reads:

That on or about July 16, 1997, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault, and use personal violence upon one EDUARDO ANDAL y MARTINEZ by then and there shooting the latter with a handgun hitting him on the lower portion of his stomach, thereby inflicting upon the said EDUARDO ANDAL y MARTINEZ a mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Accused-appellant pleaded “not guilty” when arraigned. Trial on the merits then ensued.

Accused-appellant and the victim Eduardo Andal were neighbors on Madre Peria Street, San Andres Bukid, Manila, their houses being only ten (10) meters apart. A few days prior to the incident, a certain Boy Zapanta filed a complaint against accused-appellant for alleged gun-toting. Eduardo Andal was tasked to serve the summons on accused-appellant, which the latter resented.

At around 10:00 in the evening of July 16, 1997, an ambulance passed by and accused-appellant was allegedly heard shouting at the ambulance driver, “Maghintay ka diyan, may isasakay ako diyan.” At about the same time, Eduardo went out of his house to see if the flooded street was passable considering that it rained hard that night. Eduardo and his family planned to have a late dinner with their house guest, whose car was parked inside their garage.

Upon reaching the corner of Madre Peria and Marmol Streets, accused-appellant accosted Eduardo from behind and angrily uttered, “Putang ina mo, wala kang kwentang tao.” Before Eduardo could react, accused-appellant shot him on the upper left thigh. Eduardo’s son tried to confront accused-appellant but stopped on his tracks when the latter pointed his gun at him and said, “Isa ka pa.” Accused-appellant then casually walked away.

Eduardo died in the hospital. Dr. Jaime Rodrigo L. Leal, PNP Medico-Legal Officer, conducted the autopsy and found that the cause of death was “hemorrhage as a result of gunshot wound, trunk.”[2]

Accused-appellant went into hiding for two years. On September 28, 1999, Eduardo’s widow, Teresita, accidentally saw accused-appellant in a sing-along club somewhere in Manila and immediately caused his arrest.

Accused-appellant interposed self-defense. He averred that while he was inside his house at 11:00 in the evening of July 16, 1997, an allegedly drunk Eduardo loudly knocked at the door and shouted invectives at him. He went out of his house and confronted the victim. A heated argument ensued and they cursed each other. At this point, Eduardo drew a gun from the right side of his waist. Accused-appellant grappled for possession of the gun and, in

the ensuing struggle, the gun accidentally fired hitting the lower portion of Eduardo's stomach.

Fearful that Eduardo's relatives might exact revenge, accused-appellant moved his family to his parent's residence in Singalong, Manila, while he hid in different houses of his friends.

The trial court lent credence to the prosecution's version of the incident and rendered a decision,[3] the dispositive portion of which reads:

Wherefore, accused Danilo Cueto y Cueto is hereby convicted of the crime of murder without any aggravating and/or mitigating circumstances, and sentenced to suffer reclusion perpetua with all the accessory penalties provided by law and to pay the costs. The accused is further ordered to pay the legal heirs of the victim actual and moral damages in the respective sums of P10,500.00 and P400,000.00 and compensation for the loss of the life of the victim in the sum of P50,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.

Aggrieved, accused-appellant interposed the instant appeal, raising the following errors:

- The trial court erred in totally discarding the claim of legitimate self-defense interposed by the accused;
- The trial court overlooked or misappreciated certain documents, facts and circumstances which, if considered, would have altered the outcome of the case;
- Flight as an admission of guilt if reasonably explained should not be taken against the accused;
- Prosecution eyewitnesses were not at the scene of the incident when the complained act was committed;
- The trial court exhibited manifest bias and hostility against the accused by acting as the judge, prosecutor and executioner at the same time in a despotic and arbitrary manner;
- Arbitrary and capricious order of the court compelling the newly appointed counsels de officio to cross-examine the prosecution witnesses on short notice grossly violated the right of the accused to due process; and
- Prosecution witnesses incurred serious contradictions and manifestly false assertions which pose a grave challenge on their credibility.[4]

Accused-appellant assails the trial court for giving credence to the prosecution's evidence and disregarding his claim of self-defense.

Where the accused owns up to killing the victim in self-defense, the burden of evidence shifts to him. He must show by clear and convincing evidence that he indeed acted in self-defense. To prove self-defense, the accused must show with clear and convincing evidence, that: (1) he is not the unlawful aggressor; (2) there was lack of sufficient provocation on his part; and (3) he employed reasonable means to prevent or repel the aggression. Self-defense, like alibi, is a defense which can easily be concocted. It is well-settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence.[5]

In stressing his plea of self-defense, accused-appellant reiterates the following points:

- That the victim was drunk at the time of the commission of the complained act as evidenced by the medico-legal report (Exhibit "1" or "K");
- That the downward trajectory of the bullet which hit the upper thigh of the victim is consistent with the theory of the defense that there was a scuffle for the possession of the gun before it accidentally went off;

- That the incident happened in front of the house of the accused at an unholy hour of 11:30 in the evening;
- That the victim was the holder of a license to possess a .357 cal. Rossi revolver (Exhibit “3”);
- That the victim had a permit to carry the said firearm outside of his residence and said permit has not yet expired when the shooting incident occurred (Exhibit “4”); and
- That the accused is not the holder of any license to possess firearm (Exhibits “5” and “I”).

We are not convinced that Eduardo is the unlawful aggressor just because he was drunk at the time of the incident. The mere fact that Eduardo was drunk cannot constitute proof that he committed unlawful aggression against accused-appellant.

For one to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other. In the case at bar, the testimonies of the prosecution witnesses belied any act of aggression on the part of the victim. It was established that at the time of the incident, the victim was unarmed and clearly had no idea of the impending attack on his person.

In the same vein, the trajectory of the bullet which hit the upper thigh of the victim is not proof that the protagonists initially grappled for possession of the weapon before it went off. At any rate, even if indeed the parties initially engaged in a scuffle prior to the shooting, standing alone, such fact does not prove that Eduardo was the unlawful aggressor.

Likewise, accused-appellant’s contention that he could not have been the aggressor because the incident happened in front of his house does not prove that it was Eduardo who was the aggressor. On the contrary, the same is also consistent with the theory that it was accused-appellant who accosted Eduardo in front of his house when the latter passed by.

Neither can it be said that since Eduardo was licensed to possess and had a permit to carry a gun, it follows that he was the unlawful aggressor. It must be considered that in this case, the ownership of the weapon used in the shooting was not established as Eduardo’s or even that of accused-appellant. All that was established was that a gun was used to kill Eduardo.

The proliferation of unlicensed firearms has become pervasive and it is of judicial notice that most firearms used in the commission of crimes are usually unlicensed.

All in all, accused-appellant failed to establish the element of unlawful aggression. In self-defense, unlawful aggression is an indispensable element. Without unlawful aggression, there is no need to discuss the rest of the elements.

Admittedly, there were contradictions between Teresita Andal’s and Ephraim Andal’s testimonies in open court and their statements before the police officers. Nevertheless, contradictions between a witness’ affidavit and his testimony in open court are not unusual because an affidavit, being taken ex parte, is often incomplete and inaccurate, sometimes from partial suggestions and inquiries. An affidavit is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him.[6] In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence.[7] Unlike written statements, there is flexibility on the part of the questioner to adapt his questions to elicit the desired answer in order to ferret out the truth. In addition, the credibility of the testimony as well as of the one testifying is better assessed by the trial court.

As to who between the prosecution and the defense witnesses are to be believed, the trial court’s assessment enjoys a badge of respect for the reason that the trial court has the advantage of observing the demeanor of the

witnesses as they testify, unless found to be clearly arbitrary or unfounded. The rationale for this doctrine, as explained in *People v. Cayabyab*, is that “the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal records by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.”[8]

Hence, well-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses’ deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness’ honesty and sincerity. The trial court’s findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[9]

Accused-appellant implies that the trial court might have overlooked or misappreciated some circumstances which might cast doubt on the credibility of prosecution witnesses. He claims that the prosecution eyewitnesses were not at the scene of the incident at the time of the shooting. Accused-appellant further argues that if Eduardo’s reason for going out of the house was to check whether the streets were passable to motor vehicles, then they could have simply peeped out of the window. Finally, accused-appellant submits that if he were to assassinate someone in a treacherous manner, he would not shoot the man frontally and in front of his house.

Notwithstanding the foregoing, accused-appellant still has to rely on the strength of his own evidence, and not on the weakness of the prosecution for even if it were weak, it could not be disbelieved after the accused admitted the killing.[10] Precisely because he has to rely on the strength of his evidence, accused-appellant’s admission that he shot Eduardo would render immaterial his submission that the prosecution eyewitnesses were not at the scene of the incident when it happened.

Nevertheless, even if the points raised by accused-appellant are considered, they can hardly affect the credibility of the prosecution eyewitnesses especially since the trial court assessed the testimonies of Teresita and Ephraim, the main eyewitnesses, as “positive, straightforward and plausible – both of whom positively identified the accused as the one who gunned down the victim.”[11]

Accused-appellant’s contention that the trial judge exhibited manifest bias and hostility against him is likewise without basis. A reading of the stenographic notes reveals that the trial judge was only trying to clarify certain matters relative to the testimony of Gio Carlo Cueto, accused-appellant’s son. In so doing, the trial judge was also testing Gio Carlo’s credibility. In fact, he focused his questions on what Gio Carlo supposedly witnessed and on his knowledge of accused-appellant’s whereabouts when he was supposedly in hiding. Regardless, the questions asked were not necessarily favorable to the prosecution, contrary to accused-appellant’s contention, as Gio Carlo was consistent in his testimony that he witnessed the incident and that accused-appellant went into hiding because of perceived danger to his person and his family.

Likewise, there is nothing arbitrary or capricious when the trial court ordered counsel de oficio to cross-examine Teresita and Ephraim immediately after their respective direct examinations. A reading of the transcripts of

stenographic notes shows that the questions propounded by counsel de oficio during the cross-examination were sufficiently effective, meaning, they were reasonable under the circumstances.[12] In the case of Teresita's cross-examination, the counsel de oficio even manifested his observation that there was an inconsistency between her testimony and her sworn statement.[13] Nonetheless, the cross-examination conducted on Ephraim more than made up for whatever perceived deficiency there might have been in Teresita's cross-examination.[14] If accused-appellant, through his counsel of record, felt prejudiced by the order of the trial judge for counsel de oficio to cross-examine Teresita and Ephraim in the absence of the counsel of record, then he could have asked the trial court to recall Teresita and Ephraim for further cross-examination.

The trial court held that accused-appellant's flight was the most telling indication of his guilt. Thus, it brushed aside accused-appellant's claim of self-defense when it stated, thus:

The accused's claim of self-defense is unworthy of serious consideration and credence. If his assertion were true it would have been natural for him to voluntarily surrender and turn over the victim's gun to the police instead of fleeing and hiding for almost two years since the shooting incident. The flight of the accused is significative of his guilt.[15]

In criminal law, flight means the act of evading the course of justice by voluntarily withdrawing oneself to avoid arrest or detention or the institution or continuance of criminal proceedings. Flight, in jurisprudence, has always been a strong indication of guilt, betraying a desire to evade responsibility.[16]

In the matter of damages, we affirm the award of civil indemnity in the amount of P50,000.00. As regards the actual damages, it appears that the trial court only awarded P10,500.00 when the prosecution was able to substantiate with receipts the amount of P40,000.00 representing funeral services and P10,500.00 as interment fee. The award for actual damages is therefore increased to P50,500.00. However, the award of P400,000.00 as moral damages is deemed excessive and not in accord with prevailing jurisprudence. The amount of P50,000.00 is deemed reasonable. It must be stressed that the purpose of the award of moral damages is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings.[17]

WHEREFORE, the decision dated March 16, 2000 of the Regional Trial Court of Manila, Branch 18 in Criminal Case No. 98-165422 finding accused-appellant guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is **ORDERED** to pay the heirs of Eduardo Andal the sums of P50,000.00 as civil indemnity, P50,500.00 as actual damages and P50,000.00 as moral damages.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

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[1] Rollo, p. 6.

[2] Exhibit "K", Records, p. 40.

[3] Penned by Judge Perfecto A.S. Laguio Jr. of the Regional Trial Court of Manila, Branch 18.

[4] Rollo, pp. 33-34.

[5] *People v. Belbes*, 334 SCRA 161 [2000].

[6] *Sumalpong v. Court of Appeals*, 268 SCRA 764 [1997].

- [7] People v. Mangat, 310 SCRA 101 [1999].
- [8] People v. Andarme, G.R. No. 140426, July 30, 2002.
- [9] People v. Andarme, supra.
- [10] People v. Villegas, G.R. No. 138782, September 27, 2002.
- [11] Decision, Records, p. 92.
- [12] People v. Liwanag, G.R. No. 120468, August 15, 2001.
- [13] TSN, April 6, 2000, p. 33.
- [14] TSN, April 13, 2000, pp. 20-25.
- [15] Decision, Rollo, p. 16.
- [16] People v. Andarme, supra.
- [17] People v. Galvez, G.R. No. 130397, January 17, 2002.

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