

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO MEDINA ALIAS “EDDIE BOY FLUID,” APPELLANT.

*G.R. No. 155256. July 30, 2004*

Ponente: DAVIDE JR., CJ.

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### DAVIDE JR., CJ.:

What started as a day of revelry ended as a day of tragedy for Nelson Caubalejo (hereinafter, Nelson) and his family on Christmas day of the year 2000. At around 7:30 p.m. of 25 December 2000, Nelson was shot several times in his neighborhood at Lipa City. He sustained gunshot wounds on his left chest and right thigh which caused severe loss of blood leading to his death.[1]

For the death of Nelson, appellant Eduardo Medina (hereinafter, Eduardo) was charged with and tried for the crime of murder before the Regional Trial Court of Lipa City, Branch 12, in Criminal Case No. 0053-2001. The accusatory portion of the Information reads as follows:

That on or about the 25[th] day of December 2000, at around 7:30 o'clock in the evening at Interior, Kapitan Simeon Luz Street, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused then armed with an unlicensed caliber .45 with intent to kill, and without any justifiable cause, with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously shoot with the use of said firearm suddenly and without warning one Nelson Caubalejo, thereby inflicting upon the latter gunshot wounds on the chest and thigh, which directly caused his death.[2]

Upon arraignment on 20 June 2001, Eduardo entered a plea of not guilty.[3] During the pre-trial that followed on 25 July 2001, the parties agreed on the following stipulations and admissions:

- That this court has jurisdiction over the person of the accused and the subject matter of this case;
- That the accused admits the authenticity and due execution of the Death Certificate issued by Dr. Nemesio K. Villa, Jr.;
- That the accused admits the fact and cause of the death of Nelson Caubalejo as stated in his Death Certificate;
- That the accused admits that Nelson Caubalejo died due to severe hemorrhage due to gunshot wound; and
- That the accused admits that he is the same Eduardo Medina alias “Eddie Boy Fluid” charged for murder in this case.[4]

In view of the above stipulations and admissions, the prosecution dispensed with the testimony of Dr. Nemesio K. Villa, Jr., the physician who examined Nestor and issued the latter’s death certificate. At the trial, the prosecution presented as witnesses Nelson’s sister Nilda Caubalejo-Samontañez and Nelson’s and Eduardo’s neighbor and childhood friend Henry Aniversario.

Nilda Caubalejo-Samontañez testified that on the evening of 25 December 2000, while she was watching television in the living room of her family’s residence together with her husband Rodel Samontañez, their three

children – Jing, Crizalyn and Donna, her sister, her brother, their aunt Lilia Caubalejo and Nelson’s common-law wife Angelina Hermoso, her brother Nelson suddenly appeared at the door around three (3) meters away from where she was seated. Nelson appeared to be injured as his left chest was bloody and he was weak and stammering. In this condition, Nelson said Nilda, dalhin mo ako sa ospital. Nadali ako ni Eddie Boy Fluid. May kinalaman si Gerry Conti dahil kanya ang baril. (Nilda, bring me to the hospital. Eddie Boy Fluid got me. Gerry Conti has something to do with it as he owns the gun.) Nelson then slumped to the ground and was taken to the N.L. Villa Memorial Medical Center where he expired shortly thereafter.[5]

Henry Aniversario testified that at around 7:30 p.m. of 25 December 2000, while on a drinking spree with Nelson, Rodel Tapay and Celso Perez at the latter’s house located at Calye Pogi, Interior Malvar St., Nelson excused himself and went outside to urinate. As soon as Nelson stepped out of the house, Henry and his companions heard three consecutive gun shots, prompting them to peep through the window to the alley. Nelson was seen running towards the direction of the latter’s house, which was about one hundred (100) meters away from where they were. To get a better view of the commotion, Henry went to the door to look further out to the alley. He saw Eduardo chasing the fleeing Nelson with a .45 caliber gun and firing three (3) more shots at Nelson who was merely ten (10) meters ahead of Eduardo. Upon being fired at by Eduardo, Nelson fell down. But Nelson, evidently having survival in mind, got up and continued running, albeit slowly, away from Eduardo and towards his house to seek refuge. Eduardo then turned his back, desisted from further pursuing Nelson and proceeded to the direction of his house. At this point, Henry had the opportunity to clearly see Eduardo carrying a firearm, which appeared to be a .45 caliber pistol, on his right hand with the nozzle pointed downwards. Henry was able to do so because of the illumination provided by the electric lamp posts and the lights on the houses in the alley, which were all turned on since it was Christmas day. As soon as Eduardo disappeared in the corner, Henry followed Nelson to determine the latter’s condition. He found Nelson holding his bloody chest and being aided by the latter’s brother to be brought to the hospital. Henry immediately assisted Nelson. They boarded a tricycle to go to the hospital. On the way to the hospital, Nelson was muttering inaudible words which Henry could not understand. After bringing Nelson to the hospital, Henry went home and later found out that Nelson expired thirty (30) minutes after being brought to the hospital.[6]

The defense presented Eduardo and Gerardo Conti, also known as Gerry.

Eduardo denied any involvement in the killing of Nelson, whom he described as his drinking buddy. He narrated that on 25 December 2000, he was on a drinking spree with Gerardo Conti, Alex Kasilag and the latter’s brother-in-law at the house of Alex Kasilag at Padre Garcia, which was thirty minutes away from the town proper of Lipa City via public transportation. The drinking spree lasted until 8:30 p.m. Thereafter, Eduardo went straight home to Interior Malvar St. where he arrived at 9:30 p.m. to retire for the night. He was not yet deep in slumber when he was roused awake by his sister who informed him that he was being sought by the police in connection with the killing of Nelson. Having developed a trauma from the police who have the habit of implicating him in any crime that was committed in their area, he immediately left his house and went to the house of his neighbor Jojo Laquian to hide. When confronted with Henry Aniversario’s testimony, Eduardo imputed evil motive on Henry Aniversario for testifying against him. He alleged that Henry Aniversario has a grudge against him because he had quarreled with Henry Aniversario in the past and once defrauded the latter by selling and delivering tawas or alum instead of shabu worth P11,000. As regards the testimony of Nilda with respect to Nelson’s dying declaration identifying a certain Eddie Boy Fluid as the assailant, Eduardo claimed that he was not the Eddie Boy Fluid referred to by Nelson, notwithstanding that he has been known in their neighborhood as Eddie Boy Fluid for ten (10) years and had been closely associated with Gerardo Conti for more than two (2) years prior to the death of Nelson, as there is another person who is also known as Eddie Boy Fluid in their neighborhood. This other person is Eduardo Viñas who is a resident of an adjoining barangay near Interior Malvar St.[7]

To corroborate Eduardo's testimony, Gerardo Conti testified that he was at the same drinking spree which Eduardo attended on 25 December 2000 at the house of Alex Kasilag. The last time he saw Eduardo on that fateful day was at 6:00 p.m. when he left the group to head home on board his motorcycle. On cross-examination, Gerardo Conti admitted that after he left the house of Alex Kasilag at 6:00 p.m., he was later arrested by the police for illegal possession of ammunitions – a magazine of a .45 caliber gun with eleven (11) bullets – at the Total Gas Station in Antipolo del Norte. Gerardo Conti also admitted that Eduardo and Nelson were his close friends.[8]

On 28 August 2002, the Regional Trial Court of Lipa City, Branch 12 promulgated the assailed Decision[9] dated 16 July 2002, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused, EDUARDO MEDINA alias EDDIE BOY FLUID, guilty beyond reasonable doubt, as principal by direct participation, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, without any generic modifying circumstance and sentences him to suffer the penalty of RECLUSION PERPETUA and to pay the costs.

The accused is also ordered to pay to the heirs of Nelson Caubalejo the sum of Ps50,000.00, as indemnification for his death, the sum of Ps50,000.00, as actual damages and the sum of Ps20,000.00, as moral damages[10]

Eduardo seasonably appealed from the decision. In his Appellant's Brief, Eduardo asserts that the trial court

... GRAVELY ERRED IN NOT FINDING THAT THE TESTIMONIES OF NILDA CAUBALEJO AND HENRY ANIVERSARIO ARE TAINTED WITH MATERIAL FALSEHOODS AND IMPROBABILITIES.

... LIKEWISE ERRED IN DISREGARDING ACCUSED-APPELLANT'S ALIBI AND DENIAL WHICH IS MORE CREDIBLE.[11]

Eduardo contends that the trial court erred in giving credence to the testimony of Henry Aniversario since the latter has a grudge against him and a motive in implicating him in the crime. He adds that the testimony of Henry Aniversario that Nelson ran towards the direction of the latter's house after being shot is highly implausible, since the house of Celso Perez, where Nelson and his companions were having a drinking spree, was more proximate and Nelson could have easily sought assistance from them. Eduardo stresses that the fact that Henry Aniversario failed to draw a sketch of the scene of the crime when asked to do so during cross-examination casts doubt on the veracity of Henry's testimony that he indeed saw Eduardo shoot Nelson. Eduardo also maintains that he is not the Eddie Boy Fluid identified in Nelson's dying declaration to Nilda Caubalejo-Samontañez as there is another person in their neighborhood who is also known as Eddie Boy Fluid. In sum, Eduardo imputes perjury against the prosecution witnesses, claiming that their testimonies were rehearsed to inculcate him. Considering the weak testimonies of the prosecution witnesses, Eduardo insists that his alibi and denial must be given importance as he was able to amply explain and account his whereabouts at the time of the crime.[12]

In the Appellee's Brief, the Office of Solicitor General (OSG) maintains that alibi does not and cannot prevail over the positive identification of Eduardo in this case. It asserts that it was not physically impossible for Eduardo to be at the scene of the crime and the positive declaration of Henry Aniversario deserves more credence than Eduardo's negative statements. It further cites Eduardo's immediate flight as evidence of guilt. The OSG also recognizes the admissibility of Nelson's dying declaration against Eduardo. Finally, the OSG affirms the trial court's finding that treachery attended the killing of Nelson which qualifies it to murder.[13]

Essentially, the core issue to be determined in this case is whether the testimonies of the witnesses for the prosecution are credible and offer sufficient proof beyond reasonable doubt that Eduardo is indeed guilty of the crime charged.

We have consistently ruled that the factual findings of the trial court especially on the credibility of witnesses are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness and falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, or the carriage and mien. This rule, however, admits of exceptions, as where there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the court, or where the trial court has acted arbitrarily in its appreciation of the facts.[14]

After a careful scrutiny of the records of this case and evaluation of the evidence adduced, we find none of the exceptions which would prompt us to depart from the general rule.

Henry Aniversario positively identified Eduardo as the one responsible for the killing of Nelson. Even absent any sketch, Henry Aniversario substantially narrated how the events took place and how he witnessed the unlawful assault on Nestor. Based on his testimony, Calye Pogi, where the crime took place, is perpendicular to the alleys where the houses of Eduardo and Nelson are located. The alley where Eduardo's house is located is on the left side and nearer to the house of Celso Perez, while the alley where Nelson's house is located is on the right side and farther than Eduardo's house from Celso Perez's house. Thus, it is not unbelievable that Henry Aniversario witnessed the chase by Eduardo of Nelson since, as he narrated, Nelson was already near his residence when the second set of shots were fired at him, causing him to fall. It was after the firing of the second set of shots that Eduardo turned around and proceeded to the direction of his house. At this point, any doubt on Eduardo's identity would have been erased by Henry Aniversario's positive identification of Eduardo with the aid of the ample lighting in the area, as Eduardo faced the direction where Henry Aniversario was situated. Certainly, the attendant circumstances at that time would enable Henry Aniversario to determine the identity of the assailant, especially in light of the fact that Eduardo, Nelson and himself were long time acquaintances who were residing in the same area.

Thus, Eduardo's defense of alibi must fail in view of the positive identification by Henry Aniversario. As held in the case *People v. Deang*,[15] "[a]libi is the weakest of all defenses for it is easy to fabricate and difficult to disprove. For this reason, it cannot prevail over the positive identification of the accused by witnesses. For alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission." By Eduardo's own testimony, Padre Garcia was only thirty (30) minutes away by ordinary public transportation from the town proper of Lipa City where Calye Pogi is located. Even the testimony of Gerardo Conti does not aid Eduardo's defense. Gerardo Conti testified that on 25 December 2000, he last saw Eduardo at 6:00 p.m. Since the killing occurred at 7:30 p.m., Eduardo's presence in Padre Garcia at 6:00 p.m. does not totally negate the possibility that he could have left Padre Garcia immediately after Gerardo Conti left as it was physically possible to travel from Padre Garcia to Calye Pogi in thirty (30) minutes.

Eduardo's imputation of ill-motive on the part of Henry Aniversario deserves scant consideration. Assuming arguendo that there is truth to Eduardo's allegation that he defrauded Henry Aniversario in the past, such does not automatically render Henry Aniversario's testimony bereft of credibility. The existence of such grudge does not automatically render the testimony of a witness to be false and unreliable.[16] The trial court even found the testimony of Henry as "clear, simple, easy to believe, positive and jibes with human nature and the ordinary course of human experience."[17]

Henry Aniversario's positive identification of Eduardo was further corroborated by Nelson's dying declaration, as relayed to Nilda, identifying Eduardo as the person responsible for the crime. As testified by Nilda, his brother Nelson identified Eduardo as his assailant. Nelson's declaration, uttered after he was shot and at the point of death, constituted a dying declaration. While, generally, a witness can testify only to those facts which are derived from his own perception, a recognized exception thereto is the reportage in open court of the declaration of a dying person made under the consciousness of an impending death where that person's death is the subject of inquiry in the case. To be admissible, a dying declaration must (1) refer to the cause and circumstances surrounding the declarant's death; (2) be made under the consciousness of an impending death; (3) be made freely and voluntarily without coercion or suggestions of improper influence; (4) be offered in a criminal case in which the death of the declarant is the subject of inquiry; and (5) the declarant must have been competent to testify as a witness had he been called upon to testify.[18] These requisites were sufficiently met in this case. Nelson, having been shot and hit on the chest and thigh, was already weak when he reached the doorstep of their house. Upon reaching their doorstep, Nelson wasted no time in uttering to his sister, Nilda, *dalhin mo ako sa ospital. Nadali ako ni Eddie Boy Fluid. May kinalaman si Gerry Conti dahil kanya ang baril.* (Nilda, bring me to a hospital. Eddie Boy Fluid got me. Gerry Conti has something to do with it as he owns the gun.) Feeling the weariness caused by his wounds and loss of blood, he uttered those words to his sister Nilda, asking to be brought to the hospital and informing her as to who is responsible for the crime at the same time. His consciousness of the seriousness of his condition was shown by his desire to be given immediate medical attention and his statement on the identity of the perpetrator of the crime, evidently out of fear that failing to do so could be too late. Indeed, Nelson shortly expired thereafter, thirty (30) minutes from arriving at the hospital due to exsanguination or severe loss of blood.

Moreover, Eduardo did not repudiate the testimony of Nilda regarding Nelson's dying declaration but merely alleged that he could not have been the Eddie Boy Fluid referred to by Nelson. While he admitted that he is known as Eddie Boy Fluid, Eduardo alleged that Eduardo Viñas, another neighbor, is also known by that name. Both the prosecution and the defense witnesses acknowledged that there is another person known as Eddie Boy Fluid in their neighborhood. However, the victim's dying declaration not only identified Eddie Boy Fluid as the assailant but also indicated that the same Eddie Boy Fluid is associated with Gerardo Conti. Eduardo's close association with Gerardo Conti was affirmed by both himself and Gerardo Conti. While there appears to be no basis for the victim's declaration of Gerardo Conti's involvement in the crime, Eddie Boy Fluid's association to Gerardo Conti supports the conclusion that the Eddie Boy Fluid referred to by Nelson was no other than Eduardo.

Eduardo's admission that he immediately left his house and hid after he was informed by his sister that the police were looking for him is, likewise, not consistent with his plea of innocence of the crime charged. Truly, the wicked man flees though no man pursueth, but the righteous are as bold as a lion.[19] It is of no moment that Eduardo, as he claims, had been the subject of arrest by the police in the past. If he truly believed that he is innocent, he would have no cause for alarm if the police were looking for him. Having knowledge that the police sought to question him about the killing of Nelson, Eduardo ought to have been more willing to report to the authorities in order to clear his name. However, based on the records, a warrant of arrest was issued against Eduardo on 12 February 2001[20] but he was arrested only on 23 April 2001 at his residence, notwithstanding the fact that he knew as early as the day of the killing that he was being implicated in the said crime.

The trial court was, therefore, correct in finding that Eduardo killed Nelson. However, we cannot affirm the trial court's finding that treachery attended the killing. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly to insure its execution, without risk to himself arising from the defense which the offended party might make. For treachery to be appreciated, two conditions must concur: (1) the employment of means of execution that gives the

person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[21] Note that Henry did not witness the commencement of the attack against the victim. We have held that for treachery to be considered, it must be present and seen by the witness right at the inception of the attack. Where no particulars are known as to how the killing began, the perpetration with treachery cannot be supposed.[22] Treachery cannot be presumed, it must be proved as clearly and convincingly as the killing itself. Any doubt as to the existence of treachery must be resolved in favor of the accused.[23]

Without treachery and without any evidence to appreciate the aggravating circumstances of evident premeditation and the use of an unlicensed firearm in the killing as alleged in the Information, Eduardo could only be held liable as principal for the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code. The penalty for homicide is reclusion temporal. There being no modifying circumstances proven in this case, it may be imposed in its medium period pursuant to Article 64(1) of the Revised Penal Code. Eduardo is entitled to the benefits of the Indeterminate Sentence Law; hence, an indeterminate penalty the minimum of which shall be within the range of the penalty next lower in degree, i.e., prision mayor and the maximum within reclusion temporal medium.

With regard to the award for damages, we find the award for actual damages proper, the expenses incurred by the heirs of the deceased having been duly proven by receipts. However, we reduce the same to P48,175 from P50,000, the amount which had been substantiated by official receipts for hospitalization and funeral expenses.[24] Only expenses supported by receipts and which appear to have actually been expended in connection with the death of the victim should be allowed for actual damages.[25] The award for civil indemnity at P50,000 is also proper, as no other proof is necessary other than the fact of death of the victim and the culpability of the appellant.

WHEREFORE, the assailed decision of the Regional Trial Court of Lipa City, Branch 12, in Criminal Case No. 0053-2001 is hereby MODIFIED. As modified, appellant EDUARDO MEDINA is hereby declared guilty beyond reasonable doubt as principal for the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code, and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum, with the accessories of the said penalty, and to pay the heirs of the victim Nelson Caubalejo the amount of P48,175 as actual damages and P50,000 as civil indemnity.

Costs de officio.

**SO ORDERED.**

Quisumbing, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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[1] Exhibit "A," Original Record (OR), 42.

**[2] OR, 1-2.**

[3] Id., 13.

[4] Id., 21-22.

[5] TSN, 27 August 2001, 5-11.

[6] TSN, 26 September 2001, 6-23.

[7] TSN, 20 February 2002, 5-13; TSN, 29 April 2002, 3-36.

[8] TSN, 10 July 2002, 2-13.

[9] Rollo, 14-19. Per Judge Vicente F. Landicho.

[10] Rollo, 19.

[11] Id., 33.

[12] Rollo, 31-43.

[13] Id., 54-67.

[14] People v. Invencion, G.R. No. 131636, 5 March 2003, 398 SCRA 592, 599.

[15] G.R. No. 128045, 24 August 2000, 338 SCRA 657, 674.

[16] People v. Abella, G.R. No. 127803, 28 August 2000, 339 SCRA 129, 145-146.

**[17] OR, 94.**

[18] People v. Leonor, 364 Phil. 766, 781 (1999).

[19] People v. Wad-as, G.R. No. 146103, 21 November 2002, 392 SCRA 387, 399.

**[20] OR, 6.**

[21] People v. Enriquez, G.R. No. 138264, 20 April 2001, 357 SCRA 269, 287.

[22] People v. Opuran, G.R. No. 147674-75, 17 March 2004.

[23] People v. Eribal, G.R. No. 127662, 25 March 1999, 305 SCRA 341, 351.

[24] Exhibit "B-1" to "B-6," OR. 43-44.

[25] People v. Mallari, G.R. No. 145993, 17 June 2003.

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