

ROMEO I. SUERTE-FELIPE, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 170974. March 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari praying for the reversal of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 26162 dated 29 December 2005 affirming with modification the Decision[2] of the Regional Trial Court of Pasay City, Branch 117, in Criminal Case No. 00-0182, convicting petitioner Romeo I. Suerte-Felipe of the crime of homicide for the death of one Godofredo Ariate.

The Information filed against petitioner dated 15 November 1999 charged him with homicide:

The undersigned Asst. City Prosecutor accuses ROMEO SUERTE I. FELIPE of the crime of HOMICIDE committed as follows:

That on or about July 11, 1999, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill, did, then and there willfully, unlawfully and feloniously shot by means of a firearm one GODOFREDO ARIATE, thereby, inflicting upon the latter gunshot wounds which caused his death.[3]

The prosecution's version of the 11 July 1999 incident is as follows:

Prosecution witness Rodolfo Alumbres testified that he was in Bgy. 180, Maricaban, Pasay City at around 7:30 that night. Around four-arms length from him were petitioner Suerte-Felipe and the deceased Godofredo Ariate, who were arguing over something. Petitioner was accompanied by PO3 Edison Madriago and PO3 Eduardo Jimeno.[4] Petitioner was armed with a .45 caliber firearm, while Madriago and Jimeno were each armed with a 9mm firearm. All of a sudden, petitioner fired around four shots at Godofredo. Seeing Godofredo fall down, Alumbres rushed to his aid and attempted to bring the latter to the hospital, but petitioner shot him twice and hit him once on the right leg. Fearing that he might be shot again, Alumbres pretended to be dead.

Godofredo's son, William Ariate, and Barangay Chairman Pio Arce witnessed the incident. Arce, upon arriving at the scene of the crime, attempted to appease petitioner by shouting, "Romy, ayusin na lang natin 'to.'" Petitioner did not heed Arce's appeal and instead fired at Arce. Arce used his .38 caliber revolver to defend himself against petitioner who was then more than six meters from him. Arce took cover and exchanged fire with petitioner. Petitioner's companions, Madriago and Jimeno, also fired at Arce.

Godofredo was declared dead on arrival at the Pasay City General Hospital. Edgardo Ariate, another son of Godofredo, identified the body and requested an autopsy examination. Dr. Ludovino J. Lagat, Jr. conducted the autopsy, which showed that Godofredo sustained three gunshot wounds which caused his death. The first wound was located at the outer portion of his right arm. The second wound was at the right flank and the third wound was at the epigastric area, both affecting the intestines and the liver. Armando Mancera, photographer of the

Medico-Legal Division of the NBI, took pictures of the body.

Ballistics examination of the slug revealed that the slug was fired from a .45 caliber pistol. Bonifacia Casiñas Ariate presented a marriage contract to prove that she was Godofredo's lawful wife. She also presented receipts amounting to P21,800.00 representing the expenses during Godofredo's funeral.

Petitioner had a different version of the events of that night.

Petitioner testified that it was the deceased, Godofredo Ariate, and his six to seven companions, which included Pio Arce and William Ariate, who were the unlawful aggressors that night. Godofredo was irked when petitioner chided him for cursing and slapping a retarded boy in the streets. Godofredo and his companions attacked and repeatedly stabbed petitioner. Madriago and Jimeno were also attacked by Godofredo's group. Arce fired at petitioner, Jimeno and Madriago using a .38 caliber revolver. At this point, petitioner drew his .45 caliber firearm in self-defense and accidentally fired it in an upward direction.

Danilo Villa, a street vendor, came out for the first time to narrate what he allegedly witnessed on the night of the incident. Villa practically backed up petitioner's testimony. He said that he did not report what he saw to the police, nor did he tell his wife or any of his relatives about it.

The defense would have also presented as witness Dr. Roger Archangel, the doctor who performed surgeries on petitioner, but his testimony was dispensed with as explained in the trial court's 20 September 2001 Order:

(T)he formal taking of the testimony of Dr. Archangel was dispensed with after the prosecution agreed that: (1) Dr. Archangel was the one who attended and treated the accused for the injuries he sustained as reflected in the Medical Records as marked in Exhibits "1", "1-a", "1-b", "1-c", "1-d", "1-e", "1-f", "1-g" and "1-h". By reason of this stipulation, the testimony of Archangel is dispensed with and the fact, among others, that the accused sustained injuries as shown in the aforesaid exhibits, now form part of the record of this case as evidence for the accused.[5]

On 8 November 2001, the Regional Trial Court found petitioner guilty as charged, to wit:

WHEREFORE, accused ROMEO I. SUERTE FELIPE is hereby found GUILTY beyond reasonable doubt of the crime of HOMICIDE.

Accordingly, said accused is hereby sentenced to suffer an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prision mayor as minimum, to SEVENTEEN (17) YEARS of reclusion temporal, as maximum.

Moreover, said accused is hereby ordered to pay the heirs of Godofredo Ariate the sum of P50,000.00 as indemnity for the death of Godofredo Ariate, P21,800.00 as actual damages, and to pay the costs.[6]

Petitioner appealed to the Court of Appeals assigning the following as errors:

- THE TRIAL COURT ERRED IN CONCLUDING THAT IT WAS GODOFREDO ARIATE'S BODY THAT WAS AUTOPSIED BY DR. LUDOVINO LAGAT;
- THE TRIAL COURT ERRED IN CONCLUDING THAT THE SLUG RECOVERED BY DR. LUDOVINO LAGAT CAME FROM THE FATAL WOUND THAT KILLED GODOFREDO ARIATE;
- THE TRIAL COURT ERRED IN CONCLUDING THAT THE SLUG RECOVERED BY DR. LUDOVINO LAGAT CAME FROM THE .45 FIREARM OF THE APPELLANT;
- THE TRIAL COURT ERRED IN DISMISSING THE TESTIMONY OF APPELLANT AS CONFUSED AND UNBELIEVABLE, AND THAT OF DANILLO VILLA AS THAT OF A PLANTED WITNESS; AND

- THE LOWER COURT ERRED IN RELYING HEAVILY ON THE TESTIMONIES OF RODOLFO ALUMBRES AND PIO ARCE NOTWITHSTANDING THEIR LACK OF CREDIBILITY.[7]

On 29 December 2005, the Court of Appeals rendered the assailed Decision, disposing of the case as follows:

WHEREFORE, the assailed decision of the Regional Trial Court of Pasay city, Branch 117, in Criminal Case No. 00-0182, convicting appellant Romeo I. Suerte-Felipe of homicide is hereby AFFIRMED with the MODIFICATION that an additional amount of Fifty Thousand Pesos (P50,000.00) is awarded to the heirs of the victim Godofredo Ariate as moral damages. No pronouncement as to costs.[8]

Petitioner filed the instant Petition for Review on Certiorari, raising the following arguments:

- THERE IS REASONABLE DOUBT AS TO THE GUILT OF PETITIONER THERE BEING NO CLEAR EVIDENCE TO SUPPORT THE CONCLUSION THAT IT WAS GODOFREDO ARIATE'S BODY THAT WAS AUTOPSIED BY DR. LUDOVINO LAGAT.

- ASSUMING ARGUENDO THAT THE AUTOPSIED BODY WAS THAT OF GODOFREDO ARIATE, STILL THERE IS REASONABLE DOUBT THAT PETITIONER IS GUILTY THERE BEING NO CLEAR EVIDENCE THAT THE SLUG IN QUESTION WAS RECOVERED FROM ANY FATAL WOUND THAT CAUSED HIS DEATH.

- ASSUMING ARGUENDO THAT THE SLUG IN QUESTION WAS RECOVERED IN ANY FATAL WOUND, STILL THERE IS REASONABLE DOUBT AS TO PETITIONER'S GUILT THERE BEING NO CLEAR EVIDENCE THAT THE SAME SLUG CAME FROM THE .45 FIREARM OF PETITIONER

- THERE IS REASONABLE DOUBT THAT PETITIONER IS GUILTY SINCE THE CONCLUSION THAT HIS TESTIMONY IS AS "CONFUSED AS IT IS UNBELIEVABLE", AND THAT OF HIS WITNESS DANILO VILLA AS THAT OF A "PLANTED WITNESS" IS CONTRARY TO ESTABLISHED FACTS AND APPLICABLE DECISIONS OF THIS HONORABLE COURT

- THERE IS REASONABLE DOUBT AS TO PETITIONER'S GUILT, HIS CONVICTION BEING BASED ON THE TESTIMONIES OF RODOLFO ALUMBRES AND PIO ARCE NOTWITHSTANDING THEIR LACK OF CREDIBILITY AS THE TRIAL COURT ITSELF EXPRESSLY ACKNOWLEDGED[9]

The arguments presented by both sides concerning the guilt or innocence of petitioner can be divided into two sets: those concerning physical evidence, and those concerning testimonial evidence. We are going to tackle these sets of evidence seriatim.

Physical Evidence

Petitioner unleashed a three-pronged attack against the physical evidence presented by respondent. Firstly, petitioner claims that there is no clear evidence to support the conclusion of the Court of Appeals that it was Godofredo Ariate's body that was autopsied by Dr. Ludovino Lagat. Secondly, petitioner claims that assuming arguendo that the autopsied body was that of Godofredo Ariate, there is no clear evidence that the slug in question was recovered from a fatal wound that caused Godofredo Ariate's death. Lastly, petitioner argues that assuming arguendo that the slug in question was recovered from a fatal wound, there is no clear evidence that the same slug came from the .45 firearm of petitioner.

At the outset, we must stress that while physical evidence ranks very high in our hierarchy of trustworthy evidence and can be relied upon principally to ascertain the truth,[10] presentation thereof is not absolutely indispensable to sustain a conviction. Petitioner's stance that the insufficiency of physical evidence inevitably leads to acquittal is flawed, as we have, on several occasions, sustained convictions based on purely testimonial

evidence. In the same manner, guilt beyond reasonable doubt may be produced by the amalgamation of certain physical and testimonial evidence which, when taken separately, would have been insufficient to sustain a conviction.

Whether the autopsied body was that of Godofredo Ariate

Petitioner claims that a most sedulous reading of Dr. Lagat's testimony engenders reasonable doubt since it shows that he himself was uncertain and incompetent to prove that the body he autopsied was that of Godofredo Ariate. He allegedly admitted that he had no personal knowledge of who signed the Request for Autopsy[11] and the Certificate of Identification of Dead Body,[12] and that no relative of Godofredo was around to identify the body during autopsy.

Petitioner further argues that the following facts on record engender reasonable doubt that it was Godofredo Ariate's body that was autopsied:

- Dr. Lagat testified that apart from him, only the embalmer was around during the autopsy. But there was no showing whatsoever that the said embalmer knew Godofredo Ariate personally;
- The prosecution rested its case without presenting any representative of the funeral parlor and/or any friend or relative of Godofredo Ariate, including Godofredo's son, William Ariate, to properly identify on the said Request for Autopsy and Certificate of Identification of Dead Body.

The pertinent portions of Dr. Lagat's testimony, cited by petitioner, are as follows:

Q When you do conducted medico legal examinations they are always predicated on written request either by the police agency or any particular person interested, isn't it?

A Yes, sir.

Q And that request is always in writing?

A Yes, sir.

Q Among that, precisely, is your Exhibit "A" where it appears that a certain Eduardo Ariate signed. I'm showing to you.

A This is the request I received.

x x x x

Q And of course, since you did not prepare this it was only referred to you, you do not know actually the signature

appearing there?

A Yes, Sir.

Q You did not see him signed (sic)?

A Yes, sir.

Q And of course, too, the specimen submitted, since you did not prepare it, you merely rely [on] what appears here?

A Yes, sir.

Q In fact, even the date and place of the alleged incident you don't have personal knowledge, of course?

A Yes, sir.

Q With respect to Certificate of Identification of Dead Body, do counsel understand that this is also prepared by Veronica Funeral Parlor?

A Yes, sir.

Q So like Exhibit "B", this could properly be testified to and authenticated by the personnel of Veronica Funeral Parlor?

A Yes, sir.

Q Again, there's nothing here which indicate that this is officially numbered or marked by your office?

A Yes, Sir.

Q Is it not a fact that documents of this, I'm sure have serial number?

A For the request and the Certificate of Identification of Dead Body that was prepared by the funeral parlor accredited by the NBI, we don't usually put any identified number.

Q You again rely on everything stated here, in fact, you cannot tell whose signature appears here?

A Yes, sir.

Q You did not, like Exhibits "A" and "B", authenticate these after your examination, in other words, you did not initialed (sic)?

A Yes, Sir.

X X X X

Q And of course, at the time you initially conducted whatever examination you are required under the law, nobody, not even the person who allegedly identified the body was there, to identify it to you?

A I was not aware if the person identified is another one.

Q And you did not required who identified?

A It was relayed to me that it was the son.

Q According to whom?

A The agent of the funeral parlor. That is according to the request and Certificate of Dead Body.

Q And that agent of the funeral parlor, may we know, if you come to know the name?

A I cannot remember the funeral agent during that time.

Q Even up to now you did not try to verify?

A Yes, sir.[13]

According to the Court of Appeals, the records clearly show that the body autopsied and referred to in the autopsy report of Dr. Ludovino Lagat of the NBI was no other than that of Godofredo Ariate. The body submitted for autopsy was identified by Godofredo's son, Edgardo.[14] Pictures of Godofredo's body, taken by Armando Mancera during the autopsy, likewise establish the identity of the victim. Moreover, the entries found in the assailed Autopsy Report should be deemed prima facie evidence of the facts stated therein, as there had been no proof of any intent on the part of Dr. Lagat to falsely testify on the identity of the victim's body.[15]

We do not find any convincing reason to depart from the findings of the Court of Appeals. The presentation in evidence of the Certificate of Identification of Dead Body,[16] the latter being a public record made in the performance of a duty of officers in the Medico-Legal Office of the National Bureau of Investigation, is governed by Rule 132, Sections 19 and 23 of the Rules of Court, which provides:

SEC. 19. Classes of documents.—For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

x x x x

SEC. 23. Public documents as evidence.—Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Thus, entries in the Certificate of Identification of Dead Body are deemed prima facie evidence of the facts stated therein, i.e., that a body has been properly identified as that of Godofredo Ariate. This prima facie evidence of identification cannot be rebutted by an extremely meticulous fault-finding inquiry into the chain of custody of the body of the victim, as such body cannot be easily replaced or substituted by ill-minded persons. What petitioner is asking of us is not to be sedulous anymore, but to be paranoid and unreasonably mistrustful of the persons whom our very rules require us to trust. Petitioner's criticism of the identification of the body of the victim miserably fails to inject any reasonable doubt in our minds, not when petitioner is even loath to say that the body autopsied was not that of Godofredo Ariate but that of some other person.

We must stress at this point that there was no indication of any impropriety or irregularity committed by the medico-legal officer in this case with respect to the autopsy on the body of the late Godofredo Ariate. Dr. Lagat's duty was to perform the autopsy and not to obsessively investigate the authenticity of the signature appearing on all requests presented to him. Thus, Dr. Lagat, as a medico-legal officer, enjoys the presumption of regularity in the performance of his duties.

Whether petitioner fired the bullet that caused the death of Godofredo Ariate

On petitioner's argument that the slug recovered from the victim's body did not come from the second but from

the third wound of Godofredo, the Court of Appeals presented its observation that both the second and the third wounds sustained by Godofredo were fatal, as both involved vital organs such as the intestines and the liver.[17] Either wound, thus, could have caused the death of the victim.

Petitioner argues that this is “pure and simple speculation,” for “there is nothing on record that wound number three, despite affecting the intestines and liver, could have caused death.”[18] Petitioner also presented the following related testimonies:

(1) Dr. Lagat admitted uncertainty on the following:

- Which of the 3 wounds was inflicted first and which caused [the] death;
- Whether said wounds were caused by 3 weapons, or just by the same gun; and
- The caliber of the gun[s] that may have been used; these cannot be determined based solely on the appearance or nature of said wounds;

(2) SPO3 Danico Unico’s testimony that the Scene of the Crime Operatives (SOCO) also recovered another slug at the scene of the crime, which was brought to the SPD headquarters for ballistic examination, but he was never informed of the test result;

(3) Rodolfo Alumbres’ written statement that he saw not only petitioner, but also Eduardo Jimeno and Edison Madriago, shooting at Godofredo; and

(4) The following testimony of NBI Ballistician Rodolfo Bilgera, to wit:

- The [ballisticians] could not determine what particular .45 gun the slug in question came from until said gun is examined and compared with the slug.
- Whether they were caused by three weapons, or by the same gun;
- The caliber of the guns used, which cannot be determined based solely on the appearance or nature of the wounds.[19]

On the issue of whether the slug that was recovered from the victim’s body came from the .45 caliber firearm of petitioner, the Court of Appeals reiterated the observation of the RTC that the ballistics examination of the subject slug revealed a diameter and a set of riflings which were peculiar to a .45 caliber pistol.[20] Petitioner was admittedly the only one holding a .45 caliber gun at the time of the incident. His two companions, Madriago and Jimeno, were each armed with a 9mm firearm, while Arce was holding a .38 caliber revolver. Furthermore, Godofredo had a heated argument before Godofredo was shot. Thus, it was petitioner who had the motive to kill Godofredo.

Petitioner notes that Dr. Lagat himself refused to confirm that the slug he recovered was the same slug submitted for examination. His testimony reads:

Atty. Ferancullo

Q You stated doctor, that you referred the slug to the Ballistics Division of the NBI and you handed and identified Exhibit “G,” (later changed to Exh. “Y”), my question Doctor is that, do you know whose signature above the name Ludovino Lagat?

A It was signed for, by Mr. Mansera, in my behalf.

Q Can you explain to us why it was signed for and in your behalf by Mr. Mancera?

A Because I instructed him to submit the slug to the ballistician.

Q Since you were not the one who signed the request, do you affirm and confirm the veracity of the contents of the letter, now you handed to this representation?

Atty. Llamas:

He will be incompetent, Your Honor, because he was not the one who even signed the indorsement.

Court:

What's the question again?

Sten:

(Reading back question)

Court:

Witness may answer.

Witness:

I cannot tell whether this slug submitted was taken from the cadaver, Mr. Mansera can testify more on that.

X X X X

Atty. Llamas to the witness:

Q You sated very categorically that this transmittal of the slug was made by Man[c]era and that you cannot be sure whether the slug referred to herein is the same slug taken from the cadaver, do you re-affirm that answer of yours?

A Yes, Sir.[21]

According to petitioner, Mansera expressed similar incompetence and uncertainty in the following testimony:

Q This letter, Mr. witness, refers to one (1) slug, extracted from the body of one, Godofredo Ariate, what did you do to that slug?

A What I did Sir, was I put the slug in the plastic bag and then put the number in the plastic bag and then brought it to the Firearm Division, Sir.

Q

If that plastic bag containing the case number that you placed will be shown to you, will you be able to recognize it Mr. Witness?

A Yes, Sir.

Q How about the bullet you placed inside the plastic bag, will you be able to recognize the same?

A No sir, only if it still contained in the plastic bag, Sir.[22]

Petitioner argues that the private prosecutor negligently ended his examination of Mansera without even trying to show and ask him to identify the slug inside or outside the plastic bag referred to. As a result, there was no testimonial confirmation that the slug recovered during the autopsy was the same slug that was examined and determined to be the .45 bullet. Without such confirmation under oath, it was utterly baseless to conclude that the slug in question came from petitioner's gun, since it was that of a .45 caliber firearm, which only the accused has.

Petitioner also argues that the attribution solely to petitioner of the motive to kill was uncalled for. Even though Eduardo Jimeno and Edison Madriago had no previous quarrel with Godofredo Ariate, prosecution witness Alumbres himself allegedly stated in his written statement that he had seen not only petitioner, but also Jimeno and Madriago, firing at Godofredo Ariate. The probability that Jimeno and Madriago were the actual killers could not be diminished by the fact that their guns were 9mm Berretas, since no slug was recovered from the fatal

wound number two.

The Court of Appeals ruled that the family of the victim, William Ariate in particular who witnessed the shooting, could not have allowed a situation where the wrong man was being made to answer for the death of his father. Petitioner counters that prosecution witness Pio Arce testified that William, after the shooting, attacked and stabbed, not petitioner, but one of the policemen who was with petitioner at that time, notwithstanding that said policemen had no quarrel with his father.[23]

In determining the sufficiency of the physical evidence to prove that petitioner fired a fatal bullet which killed Godofredo Ariate, an examination of the following findings of Dr. Lagat in Autopsy Report No. N-99-832 is in order:

POSTMORTEM FINDINGS

Postmortem rigidity, complete, generalized.

Pallor, generalized.

Gunshot Wounds.

1.) ENTRANCE 2.0 x 1.4 cm; oval; inverted edges; abrasions collar widest at the inferior border; located at the outer portion of the right arm; 16.0 cm. below the elbow; directed upward medially; involving the skin and underlying soft tissues; fracturing the ulna and radius; then making an EXIT 2.0 x 1.5 cm.; irregular in shape; everted edges; located at the inner aspect of the same arm; 7.0 cm. below the elbow.

2.) ENTRANCE 1.0 x 1.1 cm.; oval; inverted edges; abrasion collar widest at the inferior border; inverted edges; located at the right flank (posterior axillary line); 25.0 cm. of the anterior median line and 108.0 cm. from the right heel; directed forward, upward and medially; involving the skin and underlying soft tissues; entering the peritoneal cavity; involving the intestines and liver; then making an EXIT 2.0 x 2.0 cm.; irregular in shape; everted edges; located at the left upper quadrant of the abdomen; 15.0 cm. from the anterior median line and 117.0 cm. above the left heel.

3.) 0.9 x 1.1 cm.; oval inverted edges; abrasion collar at the upper portion, located at the epigastric area, 105.50 cm. from the right heel; directed backward, downward and to the right; involving the skin and soft tissues; involving the stomach, liver and intestines, then the slug lodged at the right gluteal region; 85.0 cm. from the right heel.

Visceral organs – pale.

Hemoperitoneum – 1,200 c.c.

Stomach ½ full of partially digested food particles.

CAUSE OF DEATH:

GUNSHOT WOUNDS, BODY.

REMARKS: One (1) slug recovered and submitted to Firearms and Investigation Division for Ballistics examination.[24]

Indeed, Dr. Lagat testified that he recovered a slug in wound number three[25] and not in wound number two as stated in the RTC Decision. However, despite the error committed by the trial court in describing the location where the slug was recovered, there is no factual basis for petitioner's contention that wound number three is not a fatal wound. As shown above, wound number three involves the stomach, liver and intestines.[26] While Dr. Lagat did not testify that wound number three (or wounds number one and two for that matter) was fatal, we

believe that it is safe to conclude that wounds number two and three were probably fatal, involving as they did vital parts of the body. This is an example of a circumstantial evidence, which is distinguished from direct evidence as follows:

Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption; (Lack County vs. Neilon, 44 Or. 14, 21, 74 P. 212) while circumstantial evidence is the proof of fact or facts from which, taken either singly or collectively, the existence of a particular fact in dispute may be inferred as a necessary or probable consequence (State vs. Avery, 113 Mo. 475, 494, 21 S.W. 193; Reynolds Trial Ev., Sec. 4, p. 8)[27]

While we therefore agree with petitioner that the above physical evidence does not conclusively prove that petitioner fired the bullet which killed Godofredo Ariate, we should find out whether the above circumstantial evidence presented by the prosecution can prove the controverted fact beyond reasonable doubt if considered together with other evidence presented. Thus, Section 4, Rule 133 of the Rules of Court provides:

SEC. 4. Circumstantial evidence, when sufficient.—Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While we shall deal with the credibility of the witnesses later, it is important to note at this point that Alumbres testified that it was petitioner who fired first. According to Alumbres, he was four-arms length away from Godofredo Ariate who was then face to face with petitioner. Alumbres saw Godofredo Ariate arguing with petitioner, when suddenly, petitioner cocked his gun and shot Godofredo at pointblank range.[28]

Connecting this testimony to the autopsy report, we observe that it was wound number three that was inflicted frontally. The entry point of gunshot wound number three is the area midway along the lower portion of the chest and the upper area of the stomach directed downwards. On the other hand, wound number two entered into the right flank (posterior auxiliary line) and exited at the left upper quadrant of the abdomen. The prosecution posits that this may have been the next shot that hit Godofredo, and the impact must have occurred while body twisted toward the left after receiving wound number three. The prosecution thinks that wound number one may have been the third gunshot wound. It is the one located at the outer portion of the right arm below the elbow and may have been inflicted while Godofredo was falling face down because the entry wound was 16 centimeters below the elbow and it exited higher at only seven centimeters below the elbow. While the trajectory of the bullet was upward from the lower portion of the arm below the elbow, it could have been fired downward while the arm below the elbow was raised in a defensive position.

While there is some doubt as to which between wounds number one and two was the second wound inflicted and which of them was the third, the position (the area midway along the lower portion of the chest and the upper area of the stomach directed downwards) of wound number three (where the .45 bullet was found) is perfectly compatible with Alumbres' testimony on petitioner's first shot against Godofredo Ariate, which first shot was fired at pointblank range. It also makes the version of petitioner (that he accidentally fired the gun upwards) very unlikely.

The uncertainty of Dr. Lagat as to whether the above wounds were caused by three weapons or by just one weapon and as to the caliber of the firearms used does not in any way make us doubt his statements. Dr. Lagat is not competent to answer questions on such area, as his expertise is in the field of medical ballistics which Dr. Lagat stated "pertains to the injury sustained by the victim." [29] Dr. Lagat further explained that it is the job of

the ballistics to determine the nature and caliber of the firearm and ammunition used in the shooting.[30]

Likewise unavailing is petitioner's anticipation that reasonable doubt would come from the statement of SPO3 Danilo Unico (that there was another slug recovered at the crime scene which was brought to the Southern Police District Headquarters for ballistic examination, the results of which was allegedly never revealed to him). SPO3 Unico is to be blamed for the fact that the results were never revealed to him. This is shown by the following lapses that SPO3 Unico committed: (1) the investigation report dated 12 August 1999 that he prepared, signed and thereafter submitted to the Chief of Police of the Pasay City Police Office[31] never mentioned the fact that he had allegedly recovered evidence at the crime scene and submitted the same for ballistic examination; (2) SPO3 Unico never showed in court any document purporting that he recovered any bullet slug; (3) SPO3 Unico did not present in court any written request for ballistic examination; (4) despite being a seasoned investigator, SPO3 Unico did not even bother to follow up the results of the alleged ballistic examination:

Q Was a ballistic examination conducted?

A Yes, your honor.

Q What was the result?

A It is not yet –

Q You did not bother to get a result before turning over your case to the prosecution? Or filing a referral letter to the prosecutor's office? You think you have completely turn over your case to the prosecutor's office?

A: Since nobody told me to prepare a report. Anyway, I can get a result, your Honor.

Q: You should have done that before filing a letter of referral to the prosecutor's office. Because the prosecutor can only be as good as the possessors of evidence turned over to him. He cannot more foolish than the – he cannot add more ingredients of what was turned over to him. The prosecutor is only make good of what is turned over to him. If the police submit to him a handwash then he have a handwash to a case x x x.[32]

Petitioner stresses that Alumbres had testified that he saw petitioner, PO3 Jimeno and PO3 Madriaga shooting at the victim. However, during the same cross-examination, Alumbres categorically stated that the first shot came from petitioner as he fired at Godofredo Ariate at pointblank range. Hence, he testified:

Q And since the firing was so sudden, you cannot tell whose gun or whose shot fired first at Ariate?

A The first shot came from Romeo Suerte's gun.

Q That is how you surmised it?

A That's what I know, sir.[33]

Petitioner claims that the trial court erred in holding that the slug came from petitioner's gun in light of the purported testimony of Rodolfo Bilgera that he cannot determine that the particular .45 slug came from petitioner's gun. However, the records are clear that the reason why Bilgera was never able to compare the slug in question is that petitioner never turned over his gun to the NBI's Firearms and Investigation Division (FID). Thus, Rodolfo Bilgera testified that the gun was never submitted to the FID for ballistic examination. Bilgera had to compare the rifling of the .45 caliber slug recovered from the body of Godofredo Ariate with the rifling that petitioner's .45 caliber handgun makes.[34] Without petitioner's gun, the ballisticians cannot make such a comparison. The ballisticians can only determine the caliber of the firearm used based on rifling of the recovered bullet slug.[35] Bilgera cannot determine that the slug recovered came from appellant's handgun.

Petitioner claims that his failure to produce the gun was not an excuse, as Bilgera could have looked into the FID's records for comparison purposes, but did not make any effort to look into their office records for any .45 caliber slug that would match the .45 caliber slug recovered from Godofredo Ariate's body. However, Bilgera testified that he cannot definitely rely on such records. A ballisticians can make a definite conclusion only after the firearm is submitted for the ballistic examinations.[36]

As regards the loss of the petitioner's gun, petitioner explains the same in the part of the testimony where he also admits that his gun was a .45 caliber pistol:

ATTY. FERANCULLO

Q: For clarification, the gun that you had at that time when the incident occur is a .45 caliber pistol, is that correct?

A: Yes, sir.

x x x x

Q: This .45 caliber handgun of yours, if this license to your name, Mr. Witness?

A: Yes, sir.

Q: The Serial Number of this .45 caliber is 91139 and this is a .45 caliber Nurinco?

A: Yes, sir.

Q: Did you bring it with you now that .45 caliber, Mr. Witness?

A: No, sir.

Q: Why did you not bring it now, Mr. Witness?

A: The gun was missing when I fell down and lost my consciousness.

Q:

Are you certain, Mr. Witness, with your answer that the firearm, that the .45 caliber gun of yours is missing and that you did not sell it?

A: I cannot recall anything when I fell down I do not know what happened so, I do not know whether it was missing or it was sold.

Q: You did not sell it?

A: No sir, I did not sell it because it was missing.

Q: Did you execute an Affidavit of Loss to the effect that your gun was missing?

A: No, sir, because I was in the hospital that's why I have no time to declare the loss of my firearm, what I know is that its missing.

Q: So up to now, you have not executed an Affidavit of Loss, have it forwarded to the Firearms and Explosives Division of the PNP?

A:

No, not yet.[37]

While Bilgera could not determine that the particular .45 slug came from petitioner's gun, Bilgera was certain that the slug recovered and examined was a slug coming from a .45 caliber gun. This is shown in Bilgera's testimony:

ATTY. FERANCULLO

Q: Mr. Witness, Mr. Flores stated in this report, marked as Exhibit “W”, Findings/Conclusion which I quote: “Examination made on the bullet marked as “GA”, revealed that it is a caliber .45 copper coated with bullet and was fired through the barrel of a caliber .45 firearm which rifling inclining to the left.” How did your group, five ballisticians of the NBI, arrived at the conclusion that the bullet referred to FID for examination by Dr. Lagat was fired from a caliber .45 firearm?

A:

Because this bullet was designed from a .45 caliber firearm.[38]

Petitioner himself admitted owning a .45 caliber pistol that was allegedly lost at the time of the shooting. At the time of the shooting, only petitioner was observed carrying a loaded .45 caliber pistol.

Finally, just as petitioner questioned the chain of custody of the body of Godofredo Ariate, petitioner also claims that there is no convincing evidence that shows that the slug recovered from wound number three by Dr. Lagat and thereafter submitted for ballistic test was the same slug submitted to and examined by Bilgera.

As stated above, it is not the task of the medico-legal officer to determine the caliber of the weapon used in the shooting; it is the job of the ballisticians based on the slug that was recovered from the body of the victim. After Dr. Lagat recovered the slug while performing the autopsy of the late Godofredo Ariate, he instructed Armando Mancera to place the recovered slug inside a plastic sachet and to mark the sachet. Armando Mancera followed Dr. Lagat’s instructions by placing the slug inside the sachet and marking said plastic sachet with the initials N-99-832.[39] Mancera and Dr. Lagat thereafter prepared the letter-request dated 12 July 1999 for the recovered slug to be submitted to the FID of the NBI to undergo a ballistic examination.[40] The contents of said letter are as follows:

TO: F.I.D.

Respectfully submitted the ff: (1) one slug extracted from the body of one GODOFREDO ARIARTE y de Ocampo, 57 yrs., married, carpenter, Res. # 39 Bo. Bayanihan Onex St., Maricaban, Pasay City.

CASE NO: N-99-832

Alleged Case: Shooting

For analysis and/or test as follows:

For ballistic examination.

Mancera later on testified regarding the circumstances surrounding the recovery and marking of the recovered slug:

ATTY. FERRANCULO

Q: Mr. Witness, when Dr. Ludovino Lagat testified before this Honorable Court, he identified [a] letter dated July

12, 1999, addressed to the FID of the NBI and inform the Court that the signature appearing above his name Ludovino Lagat is your initial. Will you please examine the document and tell the Honorable Court whether you will be able to identify the initial atop the name Ludovino Lagat?

A: My signature, Sir.

Q: And how about the signature beside the name Ludovino Lagat and atop the name Armando Mancera, do you know whose signature is that?

A: My signature, Sir.

Q:

Mr. Witness, please explain to the Honorable Court the reason why instead of Dr. Lagat affixing his signature atop his name, your initial is the one now appearing atop his name?

A: Because after the conducted autopsy Sir, Dr. Lagat left Sir, so I was the one who initialed them sir.

Q: And who prepared this letter, Mr. Witness?

A: Me, Sir.

Q: And who instructed you to prepare this letter?

A: Dr. Lagat, Sir.

x x x x

Q: This letter, Mr. Witness, refers to one (1) slug, extracted from the body of one, Godofredo Ariate, what did you do to that slug?

A: What I did sir, was I put the slug in the plastic bag and then put the number in the plastic bag and then brought it to the Firearm Division, Sir.

Q: If that plastic bag containing the case number that you placed will be shown to you, will you be able to recognize it, Mr. Witness?

A: Yes, sir.

Q: How about the bullet you placed inside the plastic bag, will you be able to recognize the same again?

A: No sir, only if it still contained in the plastic bag, Sir.

Q: Mr. Witness, I'm showing to you a plastic bag containing markings N-99-832 previously marked in evidence as Exhibit "X-1", will you please examine this plastic bag and tell the Honorable Court the relationship of this plastic bag you said you placed the markings, the case number?

A: This is the one, Sir.

X X X X

Q: Mr. Witness, this letter you typed is addressed to FID, what is your proof that this letter was received by the FID?

A: There is a stamp received, Sir.[41]

The above clearly shows that per instruction of Dr. Lagat, Armando Mancera placed an identifying mark (N-99-832) on the sachet where the slug was placed before he sent the slug to the FID of the National Bureau of Investigation (NBI) for ballistic examination. Through said marking, Mancera positively identified during the trial that the slug he had brought to the NBI for ballistic examination was the same slug that was recovered by Dr. Lagat from the body of Godofredo Ariarte.

Testimonial Evidence

The Court of Appeals observed that the remaining assigned errors boiled down to the issue of credibility of the witnesses presented in court. The Court of Appeals applied the settled rule that 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 inasmuch as the matter of assigning values to the testimonies of witnesses is a function best performed by the trial court, which can weigh said testimony in the light of the witness' demeanor, conduct and attitude during the trial.

Petitioner challenges said ruling by claiming that this case falls under at least one of the exceptions where a review of the factual findings of the trial court is warranted.

The trial court's evaluation of the testimonies of the defense witnesses is as follows:

For his defense, the accused cannot seem to make up whether to interpose self-defense, or to altogether deny any participation in the shooting to death of Godofredo Ariate. He is loath to say that he shot Ariate accidentally, yet, his testimony is also abundant with overtures that if he did shot Ariate, it was purely accidental. Consequently, the testimony of the accused is as confused as it is unbelievable.

Accused alleges that Godofredo Ariate and Rodolfo Alumbres together with about eight people walked up to him and repeatedly stabbed him on his back; Pio Arce followed by shooting him. Armed with a 45 cal. pistol as he was, accused admitted having drawn it from his waistline. Having thus drawn the gun, one reasonably expects that accused will fire his gun at his supposed attackers in legitimate retaliation and self-preservation. But that is not so. After being stabbed and shot, he would have this court believe that he drew his gun and fired it – not at anybody – but only as a warning shot.

For this court, that act of the accused is unbelievable. But the accused has an altogether different concern. He thought the act of deliberately firing his gun under this life-and-death situation that he has conjured would place him in bad light. So, he made an abrupt turn-around and say things that he hoped would place him in good light. Thus, he alleges that he merely “accidentally pulled the trigger and fired his gun upwards”; he had “no intention of firing it”, “there was no instance that he pointed his gun at any of his attackers”.

Yet, in no time at all, accused negated his own protestation as a passive prey when he asseverated that “he drew his gun for self-defense”. The court wonders how he could draw the gun and use it in self-defense if he intends to fire only a warning shot, or, maybe, a shot in the air. How could he prevent his attackers from further attacking him if he simply draws his gun and but not aim it at any of them, or if he was content with merely drawing his gun without intention of firing it or pulling its trigger? The court is not persuaded by such an unnatural and abnormal human conduct. The court is inclined to believe what is natural, normal and consistent with the common experience of humankind. The accused did not only draw his gun, nor did he accidentally pull its trigger and fire it upwards. While Alumbres and Arce cannot be believed in other aspects of their testimony, the court is fully convinced with their positive identification of the accused as the killer of Godofredo Ariate.

Danilo Villa, the lone witness accused called to corroborate his mongrelized defense theory of denial/self-defense/accident, carries the earmarks of a planted witness. He said he witnessed the incident when the accused – his “Pareng Romy” – was repeatedly stabbed and shot on July 11, 1999. After July 11, 1999, he always sees the accused in the afternoons and evenings and engages in a conversation with him. Strangely, never did he mention to his “Pareng Romy” what he witnessed nor did the accused ask him if he witnessed the incident. Stranger even is the fact that of the many meetings he had with the accused, never did they discuss about the bloody incident of July 11.

Then, all of a sudden, a week before he testified in court on October 4, 2001 – and for the first time – accused requested him to testify in the accused’s defense. And that, too, was the first time he learned that the accused was charged for the death of Godofredo Ariate.

If the accused is a friend to Villa as the latter would like to impress upon this court, it is normal human conduct for Villa to share with the accused in the many conversations they had what he witnessed. The accused for his part, will just be too happy to find in Villa not just a friend, but someone who sees the July 11 incident the way he wants this court to see it: that he is either completely innocent, or that he shot Ariate in legitimate self-defense, or that his shooting of Ariate was pure accident. Then he could have, with anxious anticipation of justice being done, preserved the testimony of Villa, and utilize it as early as the preliminary investigation stage of this case. But the accused did not.

That Villa didn’t say a word to the accused about the July 11 incident and the accused never cared to illicit from Villa any knowledge he may have about said incident, only shows that Villa knows nothing of his own personal knowledge about it.[42]

Petitioner claims that his testimony was not at all “confused” or “unbelievable,” but was simply either misunderstood or taken out of context. He claims that “far from being ‘mongrelized’ (his) claim of self-defense, accident and lack of participation is a factual admixture, the components of which, taken singly or jointly, are clear and credible.”

According to petitioner, when he said he drew his gun for self-defense, he never claimed that he was able to effectively proceed to defend himself with his gun. Quoting his testimony, petitioner clarified that what he stated was that he was “not able to fire a warning shot” and had “no chance to aim (his) gun” because after drawing his gun and trying to aim it, he “accidentally pulled the trigger and fired upwards,” not only because he was “so weak and about to faint” but also because “somebody suddenly stabbed (him) at (his) back.” Petitioner argues that his testimony cannot be doubted, for it is undisputed that he suffered wounds at the front, side and back of his body, including his legs and the lower part of his stomach.

Petitioner claims that contrary to the trial court’s observation, he intended to aim and shoot the gun directly at his attackers. He was, however, not able to have a decent shot because of the frenzy of the moment and the numerous wounds he sustained. Thus, petitioner claims it was baseless and irresponsible for the trial court to say that he had no intention of firing his gun.

Petitioner also claims that the judge was biased, based on the fact that out of the 256 questions asked of the petitioner, the trial judge propounded 84 questions or around one-third of the total; while of the 188 questions thrown to defense eyewitness Danilo Villa, 107 questions or almost three-fifths of the total came from the trial judge.

As regards the testimony of Danilo Villa, petitioner claims that the trial court’s rejection of his testimony “just because Villa failed to report what he saw to the authorities until the week he testified in court” is capricious and injudicious. Petitioner claims that Villa had sufficiently explained his silence in testifying that (1) fear had prevented him from reporting to the authorities, and that (2) lack of knowledge of the ongoing prosecution prevented him from telling petitioner what he knows.

As regards the testimonies of the prosecution witnesses, petitioner found the trial court’s giving credence to the same as “anomalous,” since, according to petitioner, “the trial court itself lambasted Alumbres and Arce and their respective testimonies.” Petitioner quoted several parts of the trial court’s Decision on its criticisms of these testimonies:

(1)

“there are loose ends in the(ir) testimony”;

(2) “as dramatis personae of this bloody human drama, they will try mighty hard to free themselves from any blame and portray themselves in the best possible light they can conjure”; and

(3)

“they leave something to be desired in their effort to project themselves as innocent babes and level-headed guardians of peace”[43]

Petitioner claims that the testimonies of Alumbres and Arce are full of exaggerations, falsehoods and

inconsistencies. On the part of Alumbres, petitioner alleges that:

- (1) When asked about his work, he claimed he is a “laborer.” But to justify his presence at the scene of the incident that night of 11 July 1999, he hastened to add that he is a “tanod” of Brgy. 180. However, the incident happened in Brgy. 185, where petitioner resides, and not Brgy. 180, where he and Arce had jurisdiction;
- (2) Alumbres claimed that he was standing beside an alley in Brgy. 180 when he “saw” his “friend” Godofredo talking with petitioner who was with policemen Jimeno and Madriago, and that as he looked again, he “saw” petitioner and even Jimeno and Madriago firing at Godofredo. On cross-examination, however, he admitted not seeing the alleged shooting, but merely hearing gunshots (putukan), so “inalam niya”, that is, he “came near to check who was the gun holder.” With this admission, he belied his earlier claim that he saw Godofredo talking with petitioner and the petitioner shooting at Godofredo;
- (3) Alumbres claimed that he saw Godofredo and petitioner talking, but did not hear their conversation. He later claimed that he heard their conversation, but did not know if they were quarreling. Then in the end of his examination, he admitted having heard the conversation between Godofredo and petitioner before the shooting and it was about Raymond, a mentally retarded boy whom petitioner earlier protected by stopping Godofredo’s maltreatment of him;
- (4) Alumbres at first said that he saw only the petitioner shooting at Godofredo, then he changed his mind and said that he saw not only petitioner, but also Jimeno and Madriago firing at Godofredo;
- (5) Alumbres described appellant as his “long time acquaintance”, but he later contradicted himself by saying that petitioner may not know him, and that after the shooting, he had to ask around about petitioner’s work;
- (6) Alumbres called Jimeno and Madriago as petitioner’s policemen “alalay,” but it turned out that Jimeno and Madriago were not petitioner’s “alalay” but co-employees at the Ninoy Aquino International Airport, and that Alumbres did not even know their names at the time of the incident;
- (7) When shown a sketch of the scene of the accident, he immediately claimed inability to see because “malabo and mata ko”, but he in no time proceeded to recognize, described and even helped mark certain places indicated in the sketch;
- (8) He belied his claim of weak eyesight when he boldly claimed having seen the bullets of the policemen that were meant for him hit the wall of a house.
- (9) Alumbres also stressed that three (3) shots were fired at him: the first shot came from petitioner and (h)it him, while the second and third shots, which came from Jimeno and Madriago, hit the wall of a house. Later, he stated that four (4) shots were fired at him: “Romeo (petitioner) fired his gun twice, the two policemen, one each”, and petitioner’s first shot missed him, but his second shot hit his right leg.[44]

Petitioner claims that Pio Arce’s contradictions are as follows:

- (1) When asked if he remembered anything unusual that happened that night of 11 July 1999, he readily said that there was none. Then he changed his mind by saying that William Ariate told him that his father Godofredo was having a quarrel, but petitioner triggered an exchange of fire, wherein he saw petitioner shooting Godofredo and Alumbres.
- (2) Arce denied any knowledge of petitioner being attacked and wounded.[45]

Petitioner also claims that Arce’s and Alumbres’ testimonies contradict each other:

- (1) According to Alumbres, petitioner had already shot him and Godofredo when Arce arrived. But Arce contradicted Alumbres, saying that when he arrived at the scene he saw petitioner loudly quarreling yet with Godofredo, and so he talked to petitioner but petitioner fired at him, and then he saw petitioner firing at

Godofredo and later at Alumbres;

(2) Alumbres claimed that when Arce arrived, the latter shouted “Romy, tama na yan, bagsak na yang dalawa”. On the other hand, Arce claimed to have shouted only the following “Romy, ayusin na lang natin ito.”;

(3) Alumbres claimed that when Arce arrives, the latter fired a warning shot. But Arce never claimed he fired any warning shot;

(4) Alumbres claimed that Arce brought him and Godofredo to the hospital. But Arce claimed that he merely shouted for people to bring Godofredo and Alumbres to the hospital then he left the scene immediately; and

(5) Alumbres claimed (though he later made a modification) that before the shooting, he saw/heard appellant and Godofredo merely talking, but he did not know if they were quarreling as he was about three full arms length away. On the other hand, Arce claimed that as soon as he arrived he saw petitioner loudly arguing with Godofredo.[46]

Petitioner finally decries the “deafening silence” of Alumbres and Arce on the established fact that it was petitioner who was attacked and, hence, had many wounds. Alumbres never mentioned any stabbing; he knew only the gunshot wound petitioner sustained. In the case of Arce, he never saw any stabbing attack on petitioner.

The credibility of the witnesses of the defense and the prosecution

We have held that the trial judge is the best and the most competent person who can weigh and evaluate the testimonies of witnesses.[47] Likewise, the trial court is in the best position to assess the credibility of the witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand.[48]

Hence, other than the reasons expressly stated by the trial court in its Decision, the witnesses’ demeanor, conduct and attitude on the witness stand were also taken in account by the court. This is particularly relevant in cases such as this, where different interpretations can be had of the same set of testimonies. Indeed, if petitioner’s testimony is interpreted the way he explains it now before us, his story can be adjudged consistent.

But whether the trial court believes what petitioner says is another thing. For example, it is indeed possible that petitioner just happened to meet and greet Jimeno (who denied[49] knowing petitioner) and Madriago, who were both armed, while going home, and just as they were about to be accosted by the group of Godofredo. It is possible that petitioner indeed lost his gun at the time of the incident and merely refrained from reporting its loss even after he was discharged from the hospital. For Villa’s part, it is also possible that he only informed petitioner of what he knew in the week of his testimony, because he only came to know of the homicide charge in the same week. But it is not enough for petitioner to show that these were all possible; he must likewise convince the Court that these were what indeed happened, particularly in this case where testimonies of the prosecution witnesses were found credible. Petitioner’s claims that he and Villa “adequately explained” certain lapses, or that their testimonies were “believable” are but a self-serving evaluation of the testimonies of his own witnesses.

In the same way, the physical evidence consisting of the injuries suffered by petitioner does not necessarily convert the “mongrelized claim of self-defense, accident and lack of participation” into one of a “factual admixture” brought about by petitioner’s state of mind when he drew and fired his gun. The wounds could have been inflicted after petitioner shot Godofredo, a factual scenario rendered probable by the physical evidence consisting of the position of Godofredo’s wound number three. As discussed earlier, the entry point of Godofredo’s wound number three, which was probably the first wound inflicted, was the area midway along the lower portion of the chest and the upper area of the stomach directed downwards. It is likely that this was inflicted

at pointblank range by someone not “so weak and about to faint.”

We are not naïve to feign ignorance that both sets of witnesses – those of the prosecution and the defense – have something to hide. There was something more to the incident than either group is letting us on. That was why the trial court stated that there were loose ends in the prosecution’s testimony, and that they “will try mightily hard to free themselves from any blame and portray themselves in the best possible light they can conjure.” Thus, a lot of unanswered questions remain, including the number of wounds inflicted on petitioner and Godofredo, and the injury of Alumbres. Just as Alumbres and Arce were silent on the wounds sustained by petitioner, defense witnesses likewise had nothing to say on the wounds of Godofredo and Alumbres. However, despite these unanswered questions, we agree with the trial court that the prosecution had been “forthright and consistently credible in positively identifying the accused as the one who shot Godofredo Ariate to death.”

As regards the alleged inconsistencies in the testimonies of Alumbres and Arce, we find these “inconsistencies” either trivial or readily explainable. Those alleged inconsistencies that can easily be explained are the following:

(1) There is clearly no inconsistency in Alumbres’ claims that he was a laborer and that, at the same time, he is a tanod. Petitioner did not pursue the subject or offer any evidence that would show that Alumbres was lying. As a tanod, it is not incredible for Alumbres to be within an area adjacent to his jurisdiction;

(2) On the observation that Alumbres earlier claimed that he saw petitioner shoot Godofredo, but later claimed that he heard a gunshot that made him look to determine who fired the same, it is quite possible that it was the first shot that made him look back at petitioner and Godofredo just in time to see the rest of the first shots fired by petitioner at Godofredo. Being merely three arms away from the firing, it is not unlikely that, after his eyes wandered for a brief moment, he does not even have to twist his head to another direction to be able to look back at petitioner and Godofredo, thus seeing even the very first shot fired;

(3) On the claim that Alumbres at first said that he saw only the petitioner shooting at Godofredo, then changed his mind and said that he also saw Jimeno and Madriago firing at Godofredo, Alumbres had clarified that it was Godofredo who fired the first shot. This was what he was referring to the first time it was asked;

(4) Alumbres’ asking around about petitioner’s work is not at all incompatible with considering petitioner an acquaintance. It is not unlikely for persons to have acquaintances whose work they do not know;

(5) On calling Jimeno and Madriago as petitioner’s “alalay,” Alumbres was merely describing how Jimeno and Madriago appeared to be at that time. Not knowing the names of Jimeno and Madriago at the time of the incident is not inconsistent with any of Alumbres’ statements.

(6) When Alumbres said “malabo and mata ko,” Alumbres was clearly referring to a problem concerning reading near objects, as shown in the second day of cross-examinations when he failed to read small letters on the map presented to him, saying it is blurred.[50] When Alumbres said “malabo ang mata ko” during the first day of cross-examination,[51] Alumbres did not refrain from answering the question regarding the exhibit and even helped mark certain places indicated in the sketch, probably after adjusting his view. This shows that his statement “Malabo ang mata ko” was not intended to let him escape a line of questioning, as petitioner implies. This thus likewise debunks petitioner’s claim that Alumbres belied his claim of weak eyesight when he boldly claimed having seen the bullets of the policemen that were meant for him hit the wall of a house.

(7) The differing accounts on how much Alumbres heard of the exchange between Godofredo and petitioner before the shooting, as opposed to what he found out later; what Pio Arce said when he arrived, and how many shots were fired, are trivial and can easily be forgotten.

(8) When Pio Arce said that he did not remember anything unusual on the night of 11 July 1999, he was clearly referring to the time before the incident. Otherwise, he would not have been testifying at all!

(9) The failure of Alumbres to notice when Arce arrived at the scene of the crime is quite understandable, considering the events that were already transpiring.

We have held that inconsistencies in the testimonies of witnesses on minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies; slight contradictions in fact serve to strengthen the sincerity of a witness and prove that his testimony is not rehearsed.[52] It is settled that so long as the witnesses' testimonies concur on substantial matters, the inconsistencies and contradictions do not affect the witnesses' credibility or the verity of their testimonies.[53]

All things considered, there is nothing to indicate that both Alumbres and Arce deviated from the gist of their testimonies, i.e., that both of them saw petitioner gun down Godofredo Ariate. The aforesaid alleged contradictory statements are but minor inconsistencies when a witness is testifying in court, which only shows that both men witnessed the unfolding of the shooting incident from different vantage points. The slight divergence in their testimonies also goes to show that both men were not rehearsed before they testified at the trial, but testified based on their own perceptions.

Damages

The trial court ordered petitioner to pay actual damages of P21,800.00 and indemnity for death in the amount of P50,000.00. The Court of Appeals affirmed these awards and ordered petitioner to pay an additional amount of P50,000.00 as moral damages. We sustain these awards of damages to the heirs of Godofredo Ariate. The amount of actual damages had been duly proven by receipts.[54] No proof is necessary for the award of civil indemnity for death other than the fact of death of the victim and the culpability of the assailant.[55] The award of moral damages in cases of violent death is indeed fixed at P50,000.00 under current case law.[56]

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CR. No. 26162 dated 29 December 2005 affirming with modification the Decision of the Regional Trial Court of Pasay City, Branch 117, in Criminal Case No. 00-0182, is AFFIRMED.

SO ORDERED.

MINITA V. CHICO-NAZARIO

Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO

Associate Justice

Chairperson

ANTONIO T. CARPIO MA. ALICIA AUSTRIA-MARTINEZ

Associate Justice Associate Justice

RENATO C. CORONA

Associate Justice

* Justices Antonio T. Carpio and Renato C. Corona were designated to sit as additional members replacing Justices Antonio Eduardo B. Nachura and Ruben T. Reyes per Raffle dated 24 September 2007.

[1] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Ruben T. Reyes (now a member of this Court) and Rebecca de Guia-Salvador, concurring. Rollo, pp. 76-85.

- [2] Id. at 58-75.
- [3] Records, p. 1.
- [4] Also spelled Gimeno, Gemenon and Jimeno in various parts of the records and rollo.
- [5] Records, p. 181.
- [6] Id. at 228.
- [7] CA rollo, pp. 102-103.
- [8] Rollo, pp. 84-85.
- [9] Id. at 29-50.
- [10] *People v. Roche*, 386 Phil. 287, 304 (2000).
- [11] Exhibit "A", Folder of Exhibits, p. 1.
- [12] Exhibit "B", id. at 2.
- [13] TSN, 25 January 2001, pp. 6-8 and 10.
- [14] Exhibits "C" to "C-2", Folder of Exhibits, pp. 2-A to 2-C; TSN, 21 March 2001, p. 20.
- [15] Rules of Court, Rule 131, Section 3(m); *National Steel Corporation v. Court of Appeals*, G.R. No. 112287, 13 December 1997, 283 SCRA 45, 76.
- [16] Exhibit "B", Folder of Exhibits, p. 2.
- [17] Exhibit "E" (autopsy Report No. N-99-832), Folder of Exhibits, p. 4; TSN, 25 January 2001, pp. 3-5.
- [18] Rollo, pp. 34.
- [19] Id. at 34-35.
- [20] Exhibit "W," Folder of Exhibits (FID Report No. 181-12-799, N-99-832, 6 August 1999), p. 33.
- [21] TSN, 25 January 2001, pp. 26-29.
- [22] TSN, 21 March 2001, pp. 17-18.
- [23] TSN, 17 August 2001, p. 15.
- [24] Exhibit "E", Folder of Exhibits, p. 4.
- [25] TSN, 25 January 2001, p. 17.
- [26] Underscored portion.
- [27] *Herrera, Remedial Law*, Vol. V, 1999 Ed., p. 14.
- [28] TSN, 7 March 2001, pp. 7 and 50.
- [29] TSN, 25 January 2001, p. 20.
- [30] Id.
- [31] Exhibit "T," Folder of Exhibits, pp. 28-29.

- [32] TSN, 21 February 2001, pp. 76-77.
- [33] TSN, 7 March 2001, pp. 51-52.
- [34] TSN, 21 March 2001, p. 11.
- [35] Id. at 10.
- [36] Id. at 13.
- [37] TSN, 7 September 2001, pp. 13, 31-32.
- [38] TSN, 21 March 2001, pp. 8-9.
- [39] Exhibit “X,” Folder of Exhibits.
- [40] Exhibit “Y,” Folder of Exhibits, p. 34.
- [41] TSN, 21 March 2002, pp. 16-18.
- [42] Rollo, pp. 73-75.
- [43] Id. at 72.
- [44] Id. at 17-20.
- [45] Id. at 21-22.
- [46] Id.
- [47] *People v. Listerio*, 390 Phil. 337, 348 (2000).
- [48] *Ditche v. Court of Appeals*, 384 Phil. 35, 46 (2000).
- [49] Exhibit “O,” Folder of Exhibits, p. 19.
- [50] TSN, 18 April 2001, p. 6.
- [51] TSN, 7 March 2001, p. 33.
- [52] *People v. Sanchez*, G.R. Nos. 121039-45, 25 January 1999, 302 SCRA 21, 51-52.
- [53] *People v. Paneza*, 389 Phil. 617, 639 (2000).
- [54] Exhibits “H,” “I” and “J,” Folder of Exhibits, pp. 7-9.
- [55] *People v. Latupan*, 412 Phil. 477, 490 (2001).
- [56] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

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