

EDGAR GERASTA Y LAPUS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 176981. December 24, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the Decision[1] dated 9 November 2005 of the Court of Appeals in CA-G.R. CR No. 21549 which affirmed in toto the Decision[2] of the Regional Trial Court (RTC) of Cebu, Branch 11, finding petitioner Edgar L. Gerasta (Edgar) guilty of the crime of homicide.

On 31 March 1981, Edgar was charged before the RTC with the crime of Homicide under Article 249 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

That on the 9[th] day of March 1980 at 6:30 o'clock in the evening, more or less, in the Municipality of San Fernando, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and shoot DEOGRACIAS RENDAL, a barangay police, with the use of a firearm, thereby inflicting upon the latter mortal wounds which caused his death shortly thereafter.[3]

It appeared from the same set of facts Edgar was also separately charged with the crime of Illegal Possession of Firearms and Ammunitions. Since the homicide and the illegal possession cases arose from the same alleged incident, the RTC ordered the consolidation of these two cases.

During the arraignment on 28 July 1981, Edgar, with the assistance of counsel de parte, pleaded not guilty.[4] A joint trial on the merits ensued thereafter.

Six witnesses for the prosecution took the witness stand, namely: (1) Alberto Loquez (Alberto), brother-in-law of the victim Deogracias Rendal (Deogracias), who allegedly witnessed the shooting incident involving the purported assailant Edgar and the victim; (2) Teresita Rendal (Teresita), the wife of the late Deogracias, who also testified that she saw the victim fire at by Edgar who was by the window of his house pointing a gun at Deogracias on the road below; (3) Modesto Reyes (Modesto), who testified that he heard a gunshot that prompted him to look out of the window; (4) Patrolman Isidro Duterte (Patrolman Duterte), one of the responding police officers; (5) Patrolman Adriano Empacis (Patrolman Empacis), the other responding officer; and (6) Dr. Arturo Llenes (Dr. Llenes), a physician of Southern Island Hospital, Cebu City, who conducted the autopsy on the corpse of the victim.

The following exhibits were formally offered by the prosecution: (1) Exhibit "A" - Affidavit of Alberto dated 19 March 1980; (2) Exhibit "B" - Order issued by the Assistant Provincial Fiscal for the conduct of the Preliminary Investigation; (3) Exhibit "C" - Joint Affidavit of Patrolmen Duterte and Empacis; (4) Exhibit "D" - the revolver allegedly used in killing the victim; (5) Exhibit "E" - Autopsy Report issued by Dr. Llenes; (6) Exhibit "F" - Death Certificate of Deogracias; (6) Exhibit "G" - a photograph of the crime scene; (7) Exhibit "H" - another

photograph of the vicinity of the crime scene; (8) Exhibit "I" - three live bullets taken from the revolver; (9) Exhibit "J" - Sketch of the staircase of the house of Edgar drawn by patrolman Duterte, in which the victim was found by the responding police officers; and (10) Exhibit "K" - a copy of the Police Blotter of the incident.

Taken together, the evidence offered by the prosecution shows that at around 6:30 in the evening of 9 March 1980, Alberto, brother-in-law of Deogracias, was in the sala of his house when he heard a gunshot.[5] The same sound was heard by Teresita, who was standing beside the road facing the house of Edgar and Modesto, at a nearby store buying cigarettes.[6] After hearing the shot, Alberto immediately went to the window of his house and saw Edgar across the road, by the window of his house pointing a gun at Deogracias, who was lying beside the road. With the gun pointed at Deogracias, Edgar fired for the second time.[7] Simultaneously, Teresita looked at the direction of the gunshot and saw Edgar aiming his gun at Deogracias and shooting the latter.[8] For his part, Modesto went out of the store following the second shot, and saw Deogracias's body lying face down.[9] Both Alberto and Modesto spotted Quirino Gerasta (Quirino), Edgar's brother, emerge from the dark and approach the victim. Edgar asked his brother, "Brod, unsa buhi pa na?" (Brother, is he still alive?) to which Quirino answered in the affirmative.[10] Edgar went down towards the victim. As the gunshots attracted several people from the neighborhood, Edgar, with his gun in his hands, shouted at them: "Who will complain, I will shoot him next." [11] Then, the two brothers brought the body to the balcony of Edgar's house and dropped the same at the stairs.[12] The body fell at the foot of the staircase.[13]

Having received a report of the incident, Patrolman Duterte and Patrolman Empacis hastily proceeded to the house of Edgar where they saw the wounded victim at the foot of the staircase, still breathing but unable to talk.[14] Edgar approached Patrolman Duterte and surrendered his gun saying, "This is the gun I used in shooting [Deogracias]."[15] The policemen also observed bloodstain on the road near the house of Edgar.[16]

The victim was brought to Southern Islands Hospital in Cebu City where he succumbed to the gunshot wounds he sustained.

The following day, Dr. Llenes conducted an autopsy on the corpse of Deogracias, in which she found two gunshot wounds, one in the left thigh and the other in the head.[17] He observed that the wound in the head was fatal, as it severed the brain tissues.[18] He then concluded that the ultimate cause of the victim's death was the destruction of the brain secondary to a gunshot wound.[19] The certificate of death prepared and signed by Dr. Llenes states:

CAUSE OF DEATH x x x.

Cardio pulmonary arrest due to

Intracranial Injury due to Gunshot Wound, Head, penetrating, perforating.[20]

The defense, on the other hand, advanced the theory that the death of Deogracias was not through the fault of Edgar, since the former pointed a gun at the latter, and the two grappled for possession of the gun when it accidentally fired, hitting the victim in the process. The defense put up self-defense. To buttress this theory, the defense presented Edgar, Quirino and the following witnesses: (1) Miriam Gerasta, the wife of the alleged assailant, who corroborated her husband's testimony that the death of the victim was purely an accident; (2) Ismael Barredo, an alleged eyewitness to the incident; (3) Dr. Tomas Refe, senior medico-legal officer, National Bureau of Investigation, Visayas Regional Office, Cebu City. He testified that based on the trajectory of the wounds of the victim, the assailant was at the right side and obliquely in front of the victim.

On the witness stand, Edgar testified that at around 6:30 p.m. of 9 March 1980, while he was in the sala of his house, together with his wife, he heard Deogracias by the roadside challenging him to a fight.[21] Initially, Edgar did not mind it. But when Deogracias got near his house and was about to go up, Edgar allegedly approached him. There, Deogracias purportedly pointed a gun at Edgar. Edgar parried Deogracias' hand which held the gun. The

two wrestled for possession of the gun. In the course thereof, the gun fired twice. Following the second burst of gunfire, Deogracias fell on the stairs. Edgar ran inside the house. At once, his brother Quirino arrived. Quirino asked Edgar why Deogracias challenged him to a fight. Edgar answered he did not know the reason for Deogracias's actuations. He also asked Quirino to call the police authorities. Patrolmen Duterte and Empacis arrived. Edgar handed over the gun to patrolman Duterte and told him it was the gun which he had taken from Deogracias, and that the same fired when they wrestled for its control.[22]

Witness Miriam Gerasta confirmed what Edgar testified to. She added that at one point, Edgar embraced Deogracias to gain control of the gun.

On his part, Ismael Barredo (Ismael) testified that while he was on his way home from the cockpit, he met Deogracias who was drunk and challenging everybody to a fight. Ismael allegedly advised Deogracias to go home but the latter, instead of heeding his advice, threatened the former with a revolver. As Deogracias was walking, Ismael kept an eye on him. When Deogracias reached the place of Edgar, he challenged the latter to a duel. Deogracias went up the stairs and reached the porch, where the two battled for the control of the revolver. He heard two bursts of gunfire and saw Deogracias fall on the stairs.

Quirino testified that on the evening in question, someone informed him that Deogracias was daring his brother Edgar to a fight. Upon hearing this, he allegedly ran the 150-meter distance that separated his house from that of Edgar. As he was nearing, he saw his brother and Deogracias wrestling at the porch. Two gunshots were fired. Deogracias fell down the stairs. He asked his brother why Deogracias was shot. Edgar answered he shot Deogracias because he came upstairs with a gun.[23]

On the witness stand, Dr. Thomas Refe gave his opinion on the result of the autopsy on the victim made by Dr. Llenes. He opined that the gunshot wounds could be inflicted within the span of two seconds if the contesting parties would be grappling for the possession of the gun. As to the relative position of the victim and the assailant, he also said that the gunshot wound in the head could have been inflicted by an assailant firing the gun at the right side and at the back of Deogracias.

Dr. Llenes was again presented by the prosecution on rebuttal. He testified that from the trajectory of the bullet as shown by the gunshot wound in the head, it was possible that the assailant could have been on an elevated place with the victim below when fired at.[24]

In a decision dated 8 November 1996, the RTC found Edgar guilty beyond reasonable doubt of the crime of homicide. He was, however, acquitted of the charge of illegal possession.

The dispositive portion of the RTC decision convicting Edgar reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by the Court x x x finding the accused GUILTY beyond reasonable doubt of the crime of homicide and, taking into account the rules on mitigating and aggravating circumstances and applying the Indeterminate Sentence Law, hereby sentences him to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of prision mayor, as the minimum of it, to fourteen (14) years and eight (8) months of reclusion temporal, as the maximum thereof. The accused is hereby given full credit for the preventive imprisonment that he may have suffered. The accused is also hereby ordered by the Court to indemnify the heirs of Deogracias Rendal in the sum of Fifty Thousand Pesos (P50,000.00) as death indemnity and the sum of Twenty Thousand Pesos (P20,000.00) as reimbursement of the funeral expenses defrayed by them.[25]

Edgar appealed the RTC decision to the Court of Appeals. In a decision dated 9 November 2005, the Court of Appeals affirmed in toto the decision of the RTC. The judgment provides:

WHEREFORE, the instant appeal is DENIED for lack of merit. The decision of the Regional Trial Court of Cebu City, Branch 11, in Criminal Case No. CU-9248 is AFFIRMED in toto.[26]

Hence, the instant case.

Edgar assails the RTC's and the Court of Appeal's findings which gave weight and credence to the accounts of the incident given by prosecution witnesses Alberto and Teresita. Edgar contends that said prosecution witnesses never made unequivocal declarations that they actually witnessed him hitting the victim with a revolver. He points out that the same witnesses did not categorically state what happened prior to the first burst of gunfire, thereby creating doubt on his involvement in the slaughter of Deogracias. He also insists that the lower courts should not have accorded belief to the testimonies of Alberto and Teresita, since they were closely related to the victim. Furthermore, Edgar questions Alberto's belated act of coming forward as a witness.

The elemental question in this case is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[27] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[28] The RTC and the Court of Appeals did not overlook any significant facts in the case.

In no uncertain terms, the prosecution's eyewitnesses, Alberto and Teresita, were in unison in pointing to Edgar as the person who gunned down the victim. They were able to identify Edgar as the perpetrator, since the crime scene was illuminated by an electric bulb perched on an electric post. Teresita testified as follows:

Q:

And you remember that your attention was focused on the residence of the accused in this case?

A:

At first I did not give attention to the house of the accused because my purpose of going out was to get the scattered firewood, but upon hearing the explosion that was the time I focused my attention to the house of the accused

Q:

When your attention was invited by the sudden explosion that you heard at that time, who was the first person you have seen in the direction where the explosion was?

A:

After hearing the explosion, I look back toward the house of the accused and I saw Edgar Gerasta holding a gun pointing the said gun to my husband who was wounded in front of his house, that was after the first explosion.

Q:

You therefore agree with me that you have witnessed the particular moment that the accused of these cases had shot your husband. I am referring to the first explosion that you made mention?

A:

I saw the accused fired the gun to my husband because the accused was in the window of his house, because upon hearing the explosion, I look back to the house of the accused, so I saw the accused holding and pointing the gun to my husband.

Q

After hearing the explosion, how many seconds did you turn your head to the place where the explosion was?

A:

More or less five seconds.

Q:

And at that right moment, you have also seen the accused standing at the side of the window of his residence?

A:

Yes, I saw the accused standing by the window of his house still holding the gun and pointing the said gun to my husband.

Q:

At the time you were standing beside the road fronting the house of the accused?

Q:

Yes, I was standing at the place fronting the house of the accused because I wanted to see what Edgar Gerasta would do to my husband.

Q:

Are you familiar with the residence of Edgar Gerasta?

A:

Yes, sir, because the house of the accused to my house is only more or less two meters away.[29]

Teresita unmistakably perceived the incident as it was unfolding, because it happened within her view, unimpeded by any obstruction. Her house was just across the road from that of the assailant. The electric light from the electric post located so close to the crime scene adequately lit up the place. Thus, the incident could not have escaped her attention, because she was just a few meters away from the assailant.

Alberto, who was more or less 10 meters away from where the assailant was, recalled the incident in this manner:

Q:

How far is that house of Edgar Gerasta from your house?

A:

About 10 or 15 meters.

x x x x

Q:

On March 9, 1980, at about 6:30 in the evening, where were you if you can recall?

A:

I was in the sala of my house.

Q:

At about such time and on such date, could you recall if there was an unusual incident that happened?

A:

At that precise moment, 6:30 in the evening, I heard an explosion which prompted me to look out of the window and I saw Edgar Gerasta by the window of his house pointing a gun to the body of Deogracias Randal lying down on the ground and he fired for the second time.

x x x x

Q:

Will you explain to this Honorable Court how come you were able to see Edgar Gerasta by his window when it was already dark at that time?

A:

I was able to see Edgar Gerasta holding his gun pointing at the same time to the body of Deogracias Randal already lying on the ground because the electric post that was lighted is near the house of Edgar Gerasta and my house is only a few meters away from his house.

Q:

After [Qurino] Gerasta, as you said, answered his brother Edgar Gerasta, "already dead" (patay na), what transpired next?

A:

After that Edgar Gerasta went down, got out of his house and went to the body of Deogracias Randal still carrying with him his firearm and when he was near the body of Deogracias Randal he made announcement, saying: "Whoever is aggrieved, I will shoot him." Then he carried the dead body of Deogracias Randal to his house.

x x x x

Q:

Mr. Witness, could you tell use what happened after that?

A:

Not long after that the policemen arrived so I went down and I saw Edgar Gerasta surrendering his firearm to the policemen x x x.

Q:

You said "policemen", how many policemen were there?

A:

Two policemen.

Q:

What are their names?

A:

Pat. Empacis and Pat. Isidro Duterte.[30]

Although Teresita and Alberto may not have witnessed Edgar pull the trigger for the first time, they were able to see him pointing the gun at the victim just a second or two following the first gunfire. This fact alone would have undoubtedly pinned Edgar as the assailant. But there is more. The two witnesses actually saw him fire the second shot aimed at the victim. Taking pride in his violent feat, he even challenged and threatened to kill anyone who might disapprove of what he just did. Moments later when the policemen arrived, Edgar surrendered to the police officers the gun which he admitted he used in shooting the victim.

What further militates against Edgar's claim is that by raising self-defense, he admitted he shot the victim and inflicted on him the two gunshot wounds. Unfortunately for him, from the testimonies of the prosecution witnesses, it is readily clear that the first requisite of self-defense is wanting. The victim was standing by the road in front of Edgar's house. Edgar was by the window and fired at the victim. Unlawful aggression on the part of the victim was totally absent. Granting *arguendo* that the victim shouted and challenged Edgar to a fight, such act would not have constituted unlawful aggression so as to justify Edgar's taking away the victim's life. First, the victim was unarmed. How could he possibly inflict any harm on Edgar who was armed with a gun?

The version of the defense detailing the manner in which he supposedly defended himself from the assault of the victim is hard to believe. He claims that he and the victim, whom he claimed to be drunk, struggled for possession of the gun allegedly owned by the latter. According to him, in the course of the struggle, the victim who was noticeably of smaller build than Edgar was accidentally hit by the gunshot and fell from the stairs. What is odd is that if the first shot hit the victim and caused him to fall down, why did the victim sustain another gunshot wound from a different bullet? The nature and number of injuries likewise make Edgar's defense highly suspect. If indeed they were wresting control of the gun, it defies logic why the victim suffered one gunshot wound in the head and another in the thigh.

With this frail evidence adduced by Edgar to support self-defense, juxtaposed with the strong and convincing evidence of the prosecution, his conviction is ineluctably forthcoming.

Edgar is clutching at straws in making an issue out of the delay on the part of Alberto to report that he witnessed the incident. There is no standard form of behavioral response when one is confronted with a strange, startling, frightful or traumatic experience — some may shout, some may faint, and some may be shocked into insensibility.[31] Different people react differently to a given stimulus or type of situation.[32] Edgar had sufficiently explained his delay in reporting the crime: that he was shocked, as it was his first time to witness an actual killing.[33]

The relationship of witnesses Alberto and Teresita to the victim did not impair the credibility of their testimonies, absent any showing that they had improper motives. On the contrary, since they were closely related to the victim, their natural instinct would be to help bring the real culprit to justice. Hence, it would make them more believable, as it would be unnatural for them, who are interested in vindicating the crime to impute it to somebody other than the real culprit.[34] To blame an innocent man for the killing of the victim would serve them no purpose.[35]

In fine, this Court defers to the findings of the trial court, which were affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

The mitigating circumstance of voluntary surrender should be considered in Edgar's favor. The evidence shows that Edgar surrendered to a person in authority on the day of the incident. This fact was not contested by the prosecution.

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. Taking into account the mitigating circumstance of voluntary surrender, and the fact that no aggravating circumstance attended the commission of the crime, the maximum penalty of the Indeterminate Sentence Law should be imposed in its minimum period pursuant to Article 64(2) of the Revised Penal Code, which ranges from 12 years and 1 day to 14 years and 8 months. Applying the Indeterminate Sentence Law, the minimum of the imposable penalty shall be taken from the full range of the penalty next lower in degree, i.e, prision mayor or from 6 years and one day to 12 years.

The RTC imposed on Edgar the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum. The penalty imposed by the trial court was within the prescribed range; hence, we sustain it.

The RTC also awarded P50,000.00 as death indemnity and the amount of Twenty Thousand Pesos P20,000.00 for funeral expenses.

The RTC awarded P20,000.00 for funeral expenses incurred by the victim's heirs. However, in *People v. Dela Cruz*,^[36] it was held that when actual damages proven by receipts during the trial amount to less than P25,000.00, as in the present case, the award of temperate damages for P25,000.00 is justified, in lieu of actual damages for a lesser amount. This Court ratiocinated that it would be anomalous and unfair that the heirs of a victim who tried and succeeded in proving actual damages amounting to less than P25,000.00 would be in a worse situation than another who might have presented no receipts at all but would be entitled to P25,000.00 as temperate damages. Hence, in lieu of the actual damages, the heirs of the victim are entitled to P25,000.00 as temperate damages.

In addition, the heirs of the victim are also entitled to P50,000.00 as moral damages in line with recent jurisprudence.^[37]

WHEREFORE, the Decision of the Court of Appeals dated 9 November 2005, which affirmed the 8 November 1996 Decision of the Regional Trial Court of Cebu, Branch 11, finding Edgar L. Gerasta GUILTY of the crime of Homicide, is hereby AFFIRMED with MODIFICATIONS that Edgar L. Gerasta is also ordered to pay the heirs of the victim P50,000.00 as moral damages, and P25,000.00 as temperate damages, in lieu of the award of funeral expenses.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Ramon Bato, Jr. with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, concurring; rollo, pp. 12-21.

[2] Penned by Judge Isaias P. Dicdican.

[3] Records, p. 1.

[4] Id. at 74.

[5] TSN, 21 December 1981, p. 7.

[6] TSN, 19 August 1983, p. 6; TSN, 10 October 1984, p. 5.

[7] TSN, 21 December 1981, p. 7.

- [8] TSN, 10 October 1984, p. 7.
- [9] TSN, 19 August 1983, p. 10.
- [10] TSN, 21 December 1981, p. 9.
- [11] Id. at 9.
- [12] TSN, 19 August 1983, p. 18-22.
- [13] TSN, 24 October 1983, p. 10.
- [14] Id. at 10.
- [15] TSN, 22 July 1982, p. 14.
- [16] TSN, 24 October 1983, p. 12.
- [17] TSN, 2 March 1983, pp. 20, 22.
- [18] Id. at 23.
- [19] TSN, 2 March 1983, p. 26.
- [20] Folder of Exhibits, Exhibit "F," p. 9.
- [21] TSN, 30 September 1985, p. 3-4.
- [22] Id. at 8.
- [23] TSN, 29 April 1985, p. 4.
- [24] TSN, 9 May 1986, p. 3.
- [25] Records, pp. 272-273.
- [26] CA rollo, p. 20.
- [27] *People v. Matito*, 468 Phil. 14, 24 (2004).
- [28] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.
- [29] TSN, 10 October 1984, pp. 5-6.
- [30] TSN, 21 December 1981, pp. 6-10.
- [31] *People v. Castillo*, supra note 28.
- [32] Id.
- [33] TSN, 21 December 1981, p. 35.
- [34] *People v. Manio*, 433 Phil. 409, 415 (2002).
- [35] Id.
- [36] 459 Phil. 130, 138-139 (2003).
- [37] *People v. Ereño*, 383 Phil. 30, 45 (2000); *People v. Concepcion*, G.R. No. 169060, 6 February 2007, 514 SCRA 660, 673.

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