

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LAUDEMAR DE LA CRUZ Y VERDADERO, ACCUSED-APPELLANT.

G.R. Nos. 109619-23. June 26, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court reiterates the time-honored doctrine that the findings of trial courts on the credibility of witnesses and their testimonies are entitled to great weight and are generally not disturbed on appeal, except for strong and valid reasons. In addition, the Court underscores the principle that nighttime does not automatically aggravate a crime. The prosecution must prove that the accused deliberately sought the darkness, took advantage of it and benefited from it by ensuring his non-identification or capture.

The Case

This is an appeal from the 20-page Decision[1] dated November 25, 1992, of the Regional Trial Court of Dagupan City, Branch 44, in the consolidated Criminal Case Nos. D-10203, D-10204, D-10205, D-10206, D-10207 and D-10769, convicting Laudemar de la Cruz of murder, frustrated murder and three counts of attempted murder. Said Decision disposed of six (6) Informations filed against appellant by 2nd Assistant City Prosecutor Ludgerio B. Limbos.

The first Information,[2] docketed as Criminal Case No. D-10203, charged:

“That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, did then and there, wilfully, unlawfully and criminally, have in his possession, custody and control a .45 caliber pistol, with Serial No. 2126560 marked Remington, with four (4) live ammunition, without authority and/or license to possess the same.”

The second Information,[3] docketed as Criminal Case No. D-10204, charged De la Cruz as follows:

“That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, being then armed with a gun, with treachery, evident premeditation and with intent to kill one CESAR MACASIEB, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him on vital parts of his body with the said weapon, thereby causing his death shortly thereafter due to ‘[c]ardio respiratory arrest, massive intrathoracic hemorrhage, multiple gunshot wound’ as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, CESAR MACASIEB, in the amount of not less than THIRTY THOUSAND PESOS (P30,000.00) Philippine currency, and other consequential damages.”

In the third,[4] fourth[5] and fifth[6] Informations docketed as Criminal Case Nos. D-10205, D-10206 and D-10207, respectively, De la Cruz was separately accused of attempting to kill Absalon B. Villabroza, Nivelly Aliven and Bernardo Domingo. Except for the names of the victims and the location of the wound sustained by

each, the three Informations similarly allege the following:

“That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, being then armed with a gun, with treachery and with intent to kill one ABSALON B. VILLABROZA, did then and there, wilfully, unlawfully, and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him on the left shoulder with the said weapon, the said accused having thus commenced a felony directly by overt acts but did not perform all the acts of execution which should have produced the crime of murder by reason of some cause or accident other than his own spontaneous desistance, to the damage and prejudice of the herein complainant, ABSALON B. VILLABROZA.”

The last Information, filed as Criminal Case No. D-10769, charged De la Cruz with frustrated murder as follows:

“That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ, being then armed with a gun, with treachery, evident premeditation and with intent to kill one RICARDO FERNANDEZ, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting him, hitting him on the face and right arm with the said gun, the said accused having thus performed all the acts of execution which could have produced the crime of murder as a consequence, but which nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, that is due to the timely and able medical attendance rendered to him, to the damage and prejudice of the herein complainant, RICARDO FERNANDEZ.”[7]

Accused-appellant pleaded not guilty to all the crimes charged against him.[8] In due course, the trial court rendered a Decision disposing of all six cases as follows:

“WHEREFORE, in Criminal Cases Nos. D-10204, D-10205, D-10206, D-10207 and D-10769, the Court finds accused Laudemar dela Cruz Y Verdadero guilty beyond reasonable doubt of the following crimes:

In Criminal Case No. D-10204, as principal of the crime of [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences him to suffer the penalty of [r]eclusion [p]erpetua, and to pay an indemnity of P50,000.00, and to pay the costs of the proceedings.

Accused Laudemar dela Cruz is ordered to pay the heirs of the deceased the sum of P30,400.00 representing actual expenses.

In Criminal Case No. D-10205, as principal of the crime of [a]ttempted [m]urder attended by the aggravating circumstance of nighttime which is not offset by mitigating circumstance, and pursuant to law, hereby sentences said accused to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of [a]rresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

Accused Laudemar dela Cruz y Verdadero is ordered to pay the actual medical expenses in the sum of P31,420.11 to the Pacific Farms which shouldered the expenses.

In Criminal Case No. D-10206, as principal of the crime of [a]ttempted [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences said accused to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of [a]rresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

The accused is ordered to pay the sum of P1,082.50 to the Pacific Farms, the employer of the complaining

witness which shouldered the expenses.

In Criminal Case No. D-10207, as principal of the crime of [a]ttempted [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences him to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of arresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

Accused is ordered to pay the sum of P2,257.00 as actual expenses incurred by the Pacific Farms, the employer of the offended party.

In Criminal Case No. D-10769, as principal of the crime of [f]rustrated [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences the accused to suffer an indeterminate penalty of from [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as minimum, to [s]eventeen (17) [y]ears and [f]our (4) [m]onths of [p]rison [m]ayor in its maximum period to [r]eclusion [t]emporal in its medium period, as maximum, and to pay the costs.

Accused Laudemar dela Cruz is hereby ordered to pay the sum of P37,000.00 representing the expenses incurred by the complainant Ricardo Fernandez.

For failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. D-10203, accused Laudemar dela Cruz y Verdadero is hereby acquitted of the crime charged without costs.

In this connection, the .45 caliber pistol bearing serial number 2126560 marked Remington and the four (4) live ammunitions are hereby ordered forfeited and confiscated in favor of the [g]overnment. The [c]lerk of [c]ourt of this Court is hereby ordered and directed to transmit said firearm and ammunitions to the PNP at Lingayen, Pangasinan.

SO ORDERED.”[9]

The Facts

Version of the Prosecution

The antecedents of the case, as established by the prosecution and to which the trial court gave credence, evolved in the manner narrated below.

Around 10:00 o'clock in the evening of November 29, 1990, Ricardo Fernandez alias Ricky, then 29 years of age, was having some drinks with his friend Cesar Macasieb at the Crisan Canteen located along Reyes Street, Dagupan City.[10] Shortly, three men, who turned out to be Bernardo Domingo, Absalon Villabroza and Nivelly Aliven, arrived. Their two other companions, Cesar Diolazo and Jolly de Guzman, stayed ten to fifteen meters away from the canteen to watch over the fish which they were to deliver for their employer, the Pacific Farms Incorporated, to Aling Aning at the Magsaysay Market.[11]

According to Fernandez, he was still drinking with Macasieb when Appellant Laudemar de la Cruz arrived.[12] He did not know appellant but had seen him in a wake at the Funeraria Dagupan sometime in August or September 1990.[13] Upon arriving, appellant ordered a bottle of beer which he drank near the entrance of the canteen, about three to five meters from where Fernandez and Macasieb were seated. Then, appellant, who had not finished his bottle of beer, went outside the canteen. Fernandez saw him sit on a chair by the entrance. As they continued conversing and drinking, he disappeared, during which time, Fernandez surmised, he must have urinated. Appellant reappeared and had another drink before leaving again. Then, suddenly, appellant emerged and shot Macasieb. As the latter fell, appellant also shot Fernandez on the face, causing him to feel dizzy and to

fall. After a while, Fernandez rose and ran to the police station.[14]

Bernardo Domingo, a driver in his early forties, related that he was with two companions in the same restaurant on that fateful night. While eating, he glanced at the door and noticed a man standing while drinking beer some two meters away. The man, who was wearing a jacket and a hat, used two hands in gunning down, first, the two persons who were drinking; then, Villabroza, Domingo himself, and Aliven in that order. Domingo's left thigh and right arm were hit.[15] Villabroza was in the act of putting a spoon of food into his mouth when he was hit by appellant on his left shoulder. He fell and, when he came to his senses, saw that Domingo and Aliven were also injured. He then glanced at the door; not seeing appellant anymore, he ran with his companions towards the road to look for their two other companions who could bring them to the hospital. It turned out that Diolazo and De Guzman were already on their way to the police, when they met a mobile car proceeding to the restaurant. Domingo, Villabroza and Aliven were taken to the Luzon Medical Center (LMC).[16]

Sgt. Reynaldo de Vera was on duty at the Dagupan City Police Station on that same evening. Around 10:00 p.m., a bloodied Fernandez, with a gunshot wound on his face, arrived at the police station, where he reported to Sgt. De Vera that he had been shot at the Crisan Store. The police rushed Fernandez to the Pangasinan Medical Center and, on the way, learned from him that it was De la Cruz who had shot him. As Fernandez was being treated at the hospital, Sgt. De Vera and his group returned to the police station, where they were instructed to proceed to the crime scene which was about three hundred meters from the police station.

The police found the store in disarray, with bottles and drinking glasses scattered around. They found three slugs of a .45 caliber firearm and five empty shells from a firearm of the same caliber, which were later forwarded to the National Bureau of Investigation (NBI) for examination. The women at the canteen told the police that they recognized the man who had shot the victims, but that they did not know his name. From the canteen, Sgt. De Vera proceeded to the LMC and learned that the other victims were Domingo, Aliven, Villabroza, and Macasieb who was already dead.

From the hospital, the police went back to their station to scan the police blotter to verify Fernandez' information that his brother had previously lodged a complaint against the man who shot them. True enough, Sgt. De Vera learned from the police records that a certain Boy Fernandez, Councilor Doria and another barangay councilor had complained against Laudemar de la Cruz for alleged threats during a card game.

Upon learning the identity of the man who had gone on the shooting rampage, Sgt. De Vera, in the company of several policemen, proceeded to the residence of appellant at Pantal Centro. Before reaching his house, however, they saw him seated in a waiting shed with a gun in his hand. The police thus drew their weapons as they approached him, but he threw his gun towards the back of the waiting shed. Cpl. Zosimo Fabia retrieved the .45 caliber pistol that was later forwarded to the NBI for examination.

The police then arrested appellant and took him to the police station where he was investigated. Then they brought him to the Pangasinan Medical Center, where Fernandez pointed to him as the man who had shot him. Afterwards, the police also took appellant to the LMC, where the other victims likewise positively identified him as the person who had fired at them.[17]

The death certificate[18] issued by Dr. Tomas G. Cornel, assistant city health officer of Dagupan City, shows that 35-year-old Cesar Macasieb died due to "cardio respiratory arrest" and "massive intrathoracic hemorrhage" caused by the gunshot wounds Macasieb sustained on his right wrist, left hand and the anterior chest wall "along the parasternal line, right, level of the 2nd intercostal space, right, 0.8 cm. in diameter, round in shape"; with a point of exit at the "posterior aspect (back) along the scapular line, left, level of the 5th intercostal space left, 1 cm. in diameter, irregular in shape."[19]

Macasieb was an employee of the Funeraria Dagupan, who earned at least P400 a week. His widow, Avelina, a laundrywoman, was left with three children aged 14, 11 and 6 years. It was Macasieb's maternal grandmother, Candida Bustillo, who spent for his funeral expenses[20] which, referring to an inventory she prepared, amounted to P30,400.[21] In court, she presented a receipt showing that she paid P12,000 to Funeraria Dagupan[22] and another receipt, issued by the Eternal Gardens Memorial Park in Dagupan, showing that she paid a total of P6,100 for the memorial park lot and the interment fee.[23]

For Villabroza, a medical certificate, which attested to the treatment he received for his injuries,[24] was issued by Drs. Carlito V. Arenas and Marilou Arizabal of the LMC Specialists Group, Inc. His statement of account shows that he spent P31,420.11 for his twelve-day hospitalization[25] and P17,784.00 for professional fees.[26] According to him, his employer paid to the LMC the amount of P39,000, which did not include the cost of the stainless steel metal that was inserted into his upper arm bone. In addition, he lost his daily income of P110 when, for two months, he was unable to resume his work as a driver.[27]

Nivelly Aliven, who did not testify during the trial, merely submitted a medical certificate[28] as proof of the injuries he sustained; and a billing statement[29] for his two-day hospitalization at the LMC, showing his medical expenses which added up to P1,082.50.

Bernardo Domingo also sustained two lacerated wounds on the thigh, a fractured right forearm and a "through and through" gunshot wound at the lateral aspect of the right forearm.[30] He stayed for three days in the same hospital and spent a total of P2,251.[31]

For Ricardo Fernandez, his attending physician, Dr. Corlito T. de Guzman, gave this diagnosis in the medico-legal certificate he issued:[32]

"Fracture comminuted maxillary anterior multiple laceration buccal mucosa secondary to [g]un [s]hot wound

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- debridement and removal of foreign body"

For his twenty-five day stay in the hospital, his mother spent P32,000. Receipts labeled "Exh. D" to "Exh. D-60" reflect the expenses he incurred for medicines.[33] Furthermore, he was required to undergo medical checkup for six months.

NBI Senior Ballistician Ireneo S. Ordiano Jr. brought to court the .45 caliber pistol and the magazine containing four live ammunitions taken from appellant; and five empty shells and three bullets gathered from the crime scene. He testified that, after test-firing from the same firearm, he compared the test bullet with an evidence bullet and, finding that both evidence and test bullets had similar individual chambers and striations engraved on their surfaces,[34] concluded that both were fired from the evidence firearm. His findings are contained in a report marked "Exh. G."

Version of the Defense

Testifying in his own defense, appellant claimed that he joined the Armed Forces of the Philippines (AFP) in 1987. In 1988, he was promoted to the rank of private first class; the following year, to corporal, for his having been part of the team that apprehended a CPP-NPA regional commander named Francisco Pascual, a feat for which he was also awarded a certificate and a bronze cross medal for "distinguished exemplary services" in the AFP. On September 11, 1990, he was wounded in a military operation in Labrador for which he was given a spot promotion to desk sergeant. During the incident involved in this case, appellant was assigned to the "46346 Military Intelligence Company, 7th Division, Fort Magsaysay, Palayan City." He was in Dagupan City on a "stick

[sic] out operation” under the command of Capt. Winnefred Perez. As an intelligence officer, he was issued a .45 caliber firearm, Serial No. 2126560.[35]

He was alone conducting surveillance under the stakeout operation when, about nine o’clock in the evening of November 29, 1990, he was at the vicinity of Crisan Canteen. There he met Gil Vismanos, a resident of the same barangay, who invited him for a drink. Vismanos seated himself outside the canteen, while he went inside to order. Appellant was ordering beer when he was fired upon from his right side. Seeing a revolver pointed at him from that side, he immediately dropped to the ground, at the same time drawing out from his waist his .45 caliber firearm that was loaded with seven bullets. He fired three shots towards the three men at his right side, but none at the two men who were at the opposite side. As he was firing, he was crawling backward towards the door of the canteen. He heard “many shots” from the men, but could not ascertain what direction they came from.

Upon reaching the door, he would have proceeded to the south but he opted to go northward, because this portion of Reyes Street was dark. He crossed the river by means of a boat, intending to go home and call up his superiors in Lingayen from the telephone of his neighbor, Atty. Areola. At Atty. Areola’s residence, he tried, for twenty-five to thirty minutes, to contact his unit in Lingayen, but in vain. Thus, he proceeded to the waiting shed to hire a tricycle that would take him to Lingayen. He was at the waiting shed when the police arrived and leveled their guns at him. All he could do was surrender his firearm to them.[36]

According to Gil Vismanos, he invited appellant to join him for a bottle of beer, because they had not seen each other for a long time. Vismanos seated himself in one of the stalls in front of the Crisan Canteen. As appellant entered the canteen to buy beer, Vismanos heard “some shots” coming from “several kinds of guns.” Appellant drew his gun and “retaliated” but did not remain for long inside the canteen, as he “ran towards the river.” Afraid to be caught in the crossfire, Vismanos also ran away.[37]

Hernando Magana, a graduate of the Armament Maintenance and Repair Course in Fort Magsaysay, a noncommissioned AFP officer and weapons instructor, testified mainly on the effect of a .45 caliber bullet on its target. According to Magana, a .45 caliber bullet is so strong that a face hit by it would disintegrate (mawawasak), such that the victim would not be able to observe the subsequent events.[38]

As mentioned earlier, the trial court convicted accused-appellant of the charges of murder, attempted murder and frustrated murder, but acquitted him of the charge of illegal possession of firearms.

Assignment of Errors

In this appeal,[39] appellant attributes to the trial court the following errors:[40]

- “1. THAT THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE APPELLANT’S PLEA OF A ‘SHOOTOUT’ AND THAT APPELLANT MERELY RETURNED FIRE TO DEFEND HIMSELF;
2. THAT THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY SIMPLY BECAUSE THE ATTACK WAS ALLEGEDLY SUDDEN AND UNEXPECTED AND THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME SIMPLY BECAUSE THE INCIDENT TRANSPIRED AT NIGHTTIME; and
3. THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT AND IN NOT ACQUITTING THE APPELLANT.”

The Court’s Ruling

The appeal lacks merit.

First Issue: Self-Defense

In alleging a shoot-out that required his corresponding reaction, appellant impliedly raises the justifying circumstance of self-defense. Thus, during the cross-examination of Prosecution Witness Bernardo Domingo, appellant's counsel tried to ferret out factual bases for the version of the defense that the three men eating inside the canteen and their two companions who remained outside were armed.[41] For the same purpose, during the cross-examination of Witness Absalon Villabroza, the defense tried but failed to make him confirm their assertion that he and his companions "were actually coming up to the accused" before appellant shot at them.[42] Appellant himself testified that he had been fired upon by one of the men in the canteen before he drew his gun and fired back. However, appellant's evidence on the matter does not measure up to the quantum of proof required by law to merit his exoneration from the charges.

In self-defense, an accused admits to having performed the criminal act. He may, however, disclaim legal liability on the ground that his life had been exposed to harm first, before he committed the act in defense of himself. Consequently, once self-defense is invoked, the burden of proof is shifted to the accused to establish the following elements: (1) unlawful aggression on the part of the victim, (b) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself.[43] Of these requisites, the most indispensable is unlawful aggression on the part of the victim. Failure of the defense to prove unlawful aggression results in the failure of the claim of self-defense.[44]

By his own testimony,[45] appellant tried to prove unlawful aggression on the part of the victims. He claimed that he was merely in the act of ordering a bottle of beer, when someone from his right side fired at him. His friend Gil Vismanos supported this claim by testifying that he heard shots from different kinds of firearms before he saw appellant retaliate. But because Vismanos only heard gunshots while he was outside the canteen, without actually seeing who fired the initial shot, the reliability of his supporting testimony on the fact of unlawful aggression cannot be given weight sufficient to tilt the scale of justice in favor of the appellant.

The elimination of Vismanos' testimony on the shooting leaves appellant's testimony as the sole basis for the claim of self-defense. Coming from the defendant himself, such assertion, being a self-serving claim from a polluted source, leaves much to be desired. A plea of self-defense cannot be justifiably appreciated, where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful by itself.[46]

Indeed, if appellant's version of the incident is true, then the victims were so naive as to commit the crime in a lighted public place, barely three hundred meters away from a police station. Considering their superiority in number, the victims could have chosen a more discreet place to ensure the successful execution of their alleged plan to ambush appellant who, as he himself claimed, was undertaking a surveillance mission single-handedly. If it is true that the victims instigated the incident, then none of them, including Fernandez whose face was hit by appellant's gunfire, would have immediately run to the police station to report the incident. In contrast, when appellant was apprehended, he did not inform the police that there had been a shoot-out or that he had acted in self-defense. Such failure is fatal to his defense.[47]

Moreover, the disparate versions of the prosecution and of the defense as to who initiated the aggression was settled by the trial court, which gave unconditional credence to the testimonies of the prosecution witnesses. As this Court has held innumerable times, the sphere of discretion of trial courts rightfully includes determination of the issue of credibility. Absent any palpable error or arbitrariness in the findings of the lower court, we find no reason to conclude differently in this case, for we accord respect and finality to findings of the trial court on the matter of credibility of witnesses, which includes assigning value and weight to each of their testimonies. This is because a trial court has the opportunity, not available to an appellate court, of directly observing each witness'

deportment and manner of testifying.[48]

The defense noticeably failed to impute to the prosecution witnesses any common motive among them that could have impelled them to attack appellant. Neither did it allege any evil purpose that could have spurred them to testify against him. Such failure renders the version of the defense all the more incredible.

In insisting that the incident was actually a shoot-out, appellant points to the total of nine[49] gunshot wounds sustained by the victims which far exceeded the three shots he had allegedly fired plus the four bullets remaining in his gun, which the police had retrieved upon his arrest.[50] He asserts that his .45 pistol has a full-load capacity of only seven bullets. This apparent discrepancy, however, is not beyond explanation. We recall Victim Bernardo Domingo's testimony:

“Q How many shots [were] made by the gun w[i]elder?

A With one shot was directed to one of my companions, and myself, considerably two shots. I was hit on my thigh and again, I was shot on my forearm and still hit the man besides me. [sic]

Q So, there were three shots of you?

A Yes, because the first hit Villabroza, the second shot hit me on my thigh and third, my arm, but it went through and through and hit Aliven.

Q What part of the body of Aliven was hit?

A Here, sir. (Witness pointing to the right side of his body.)

xxx xxx xxx

Q Did you come to know if any slug was recovered from the body of Aliven?

A None, the bullet went through and through.

Q Do you know if any slug was taken from the body of Villabroza?

A The bullet exited.

Q In your case, was there any slug that was recovered?

A The bullet went through and through.”[51]

It is thus not improbable, considering the proximity of the victims to one another and the existence of gunshot wounds with exit points, which some of them sustained, that one shot could have hit two or more of them. That a single bullet might have hit two or more persons “through and through” was in fact affirmed by Defense Witness Magana, who testified on the potency of a .45 caliber firearm.

Furthermore, although there is no testimonial evidence that appellant reloaded his pistol, documentary evidence reveals that he had been issued more than seven (7) bullets for it. Exhibit 1 shows that Lt. Winnefred Perez simultaneously issued to appellant a .45 caliber service pistol, two (2) magazines and fourteen (14) rounds of cartridges for the same pistol.[52] Hence, if appellant had not reloaded his gun during the incident, it is not improbable or beyond credulity that he reloaded it after he fled from the canteen, as a result of which it still contained four (4) live bullets when the police retrieved it behind the waiting shed, where appellant had thrown it.

Worth underscoring is the fact that no other kind of bullet was recovered from the crime scene. Even more significant is the finding that the empty shells and slugs recovered were all fired from the .45 caliber firearm issued to appellant. In the absence of proof to rebut the presumption of regularity in the performance of their task,

the police can be presumed to have made a thorough search for evidence at the crime scene. Thus, nothing but a vain attempt at paving the way for his exculpation is the accounting by appellant of the number of bullets fired from his pistol and that of the live ones recovered from it upon his arrest.

Of paramount importance is the fact that the prosecution has proven beyond reasonable doubt that appellant fired the shots which caused the death of Cesar Macasieb and the wounding of four others. The positive identification of appellant as the gun wielder, coupled with his failure to substantiate his self-defense allegation, points to no conclusion other than that he is responsible and, thus, liable for the crimes charged.

Second Issue: Treachery and Nighttime

In convicting appellant of murder and frustrated and attempted murders, the trial court appreciated the attendance of treachery. For treachery to be considered a qualifying circumstance, two conditions must be satisfied: (a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (b) the said means, method or manner of execution was deliberately adopted.[53] The essence of treachery is that the attack is deliberate and without warning -- done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[54] Under the established facts of the case, we find the conclusion of the court a quo in order.

Indeed, the assault made by appellant was sudden and unexpected, completely taking the persons inside the canteen by surprise. None of the victims had any inkling that appellant who was a stranger to all of them, except to Victim Ricardo Fernandez, would go on a shooting rampage. Fernandez may have noticed that appellant came and went three times prior to the attack, but neither this nor any other act exhibited by the latter was a sufficient warning of impending trouble or an indication of his criminal intent against any of the victims.

Thus, when accused-appellant fired at the unsuspecting victims suddenly and without warning, they were all caught off guard, affording them no opportunity to shield themselves or to run away, much less, to retaliate against their lone assailant. Furthermore, he was armed while, apparently, none of them was. The manner in which he carried out his felonious acts ensured that his criminal design would succeed, and that he would escape unscathed, as he did. Verily, the qualifying circumstance of *alevosia* was present.[55]

However, the generic aggravating circumstance of nighttime cannot be appreciated against appellant. The fact alone that the crimes were committed at night does not automatically aggravate the crimes. Nocturnity becomes a modifying element only when (1) it is specially sought by the offender; (2) the offender takes advantage of it; or (3) it facilitates the commission of the crime by insuring the offender's immunity from identification or capture.[56] In this case, other than the time of the commission of the crimes, nothing else suggests that appellant deliberately availed himself or took advantage of the cover of darkness to facilitate the accomplishment of his felonious design. On the contrary, the *locus criminis* was well-lighted.[57]

Third Issue:

Sufficiency of Prosecution Evidence

While, on the one hand, based on the prosecution evidence and the foregoing discussion, we entertain no doubt as to the culpability of accused-appellant for the murder of Cesar Macasieb and for the attempted murders of Absalon Villabroza, Nivelly Aliven and Bernardo Domingo, on the other hand we believe that the court a quo erred in convicting appellant of frustrated murder for his assault upon Ricardo Fernandez.

In a frustrated felony, the perpetrator performs all acts necessary to produce the crime but, for some reason other than his own spontaneous desistance, the felony is not consummated.[58] Appellant De la Cruz, however, failed to perform all the acts of execution necessary to kill Fernandez. According to the latter, after he had been shot, he

felt dizzy and fell to the ground but was able to stand again and run to the police station. When he was taken to the hospital, he remained conscious. His injuries, though no doubt serious, were not proven to be fatal such that, without timely medical attention, they would have caused his death.[59] Hence, for the injuries inflicted upon Ricardo Fernandez, appellant may be held liable only for attempted murder.

The penalty imposable on a principal in an attempted murder, where there is no aggravating or mitigating circumstance, is prision correccional in its maximum period to prision mayor in its medium period.[60] Applying the Indeterminate Sentence Law, appellant shall suffer the penalty of two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, for each of the four (4) counts of attempted murder.

WHEREFORE, the assailed Decision is AFFIRMED with the MODIFICATION that no generic aggravating circumstance is deemed to have attended the commission of the crimes and that, for the injuries inflicted upon Ricardo Fernandez, Appellant Laudemar de la Cruz is liable only for attempted murder. Appellant's penalties, which shall be served successively in accordance with law, consist of reclusion perpetua for the crime of murder and four (4) separate terms of imprisonment ranging from two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, for the four (4) counts of attempted murder. Costs against appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] Rollo, pp. 25-44. Penned by Judge Crispin C. Laron.

[2] Records for CC No. D-10203, p.1.

[3] Records for CC No. D-10204, p.12.

[4] Records for CC No. D-10205, p.1.

[5] Records for CC No. D-10206, p.1.

[6] Records for CC No. D-10207, p.1.

[7] Records for CC No. D-10769, p.2

[8] Assailed Decision, p. 3; Rollo, p. 27.

[9] Assailed Decision, pp.18-20; Rollo, pp.42-44

[10] TSN, February 5, 1992, pp.3-4.

[11] TSN, February 26, 1992, pp. 23-24; March 23, 1992, p. 27.

[12] TSN, February 5, 1992, p. 4.

[13] TSN, February 6, 1992, p. 3.

[14] TSN, February 5, 1992, pp. 5-11.

[15] TSN, February 26, 1992, pp. 25-27.

[16] TSN, March 23, 1992, pp. 8-14.

[17] TSN, February 11, 1992, pp. 20-33.

[18] Exh. F, CC No. D-10204.

[19] Exh. E, *ibid.*

[20] TSN, January 21, 1992, pp. 7-17.

[21] Exh. C, CC No. D-10204.

[22] Exh. D, *ibid.*

[23] Exh. E, *ibid.*

[24] Exh. A, CC No. D-10205.

[25] Exh. C, *ibid.*

[26] Exh. C-1, *ibid.*

[27] TSN, March 23, 1992, pp. 15-17.

[28] Exh. A, CC No. D-10206.

[29] Exh. B, *ibid.*

[30] Exh. A, CC No. D-10207.

[31] Exh. C, *ibid.*

[32] Exh. A, CC No. D-10769.

[33] TSN, February 5, 1992, pp. 13-15.

[34] TSN, February 25, 1992, pp. 22-26.

[35] TSN, April 20, 1992, pp. 2-9.

[36] *Ibid.*, pp. 9-16.

[37] TSN, April 21, 1992, pp. 3-5.

[38] TSN, April 21, 1992, pp. 4 & 15.

[39] This case was deemed submitted for resolution upon receipt by the Court on September 5, 1997, of the confirmation of appellant's confinement at the New Bilibid Prison.

[40] Rollo, p. 63. The 13-page Appellant's Brief was signed by Atty. Alejandro M. Villamil.

[41] TSN, February 26, 1992, pp. 33-35.

[42] TSN, March 23, 1992, p. 25.

[43] *People vs. Nalangan*, 270 SCRA 234, 238-239, March 20, 1997.

[44] *People vs. Obzunar*, 265 SCRA 547, 566, December 16, 1996.

[45] The facts of this case are similar to those in *People vs. Llabres* (225 SCRA 86, August 4, 1993), in which the Court did not give credence to the uncorroborated claim of appellant that in single-handedly attacking a group of eight men with a bolo he had snatched from a victim, he was resorting to self-defense. The rampage resulted in

the death of one, the near fatal wounding of another and the wounding of two others, with appellant sustaining no injury at all.

[46] *Jacobo vs. Court of Appeals*, 270 SCRA 270, 286, March 21, 1997, citing *Ebajan vs. Court of Appeals*, 170 SCRA 178, February 9, 1989; and *People vs. Flores*, 43 SCRA 342, February 29, 1972.

[47] *Ingles vs. Court of Appeals*, 269 SCRA 122, 129, March 3, 1997, citing *People vs. Sarol*, 139 SCRA 125, October 8, 1985.

[48] *People vs. Zamora*, GR No. 101829, August 21, 1997.

[49] Appellant's Brief, pp. 4-5.

[50] Appellant counted the gunshot wounds thus: Macasieb, three (3); Villabroza, one (1); Domingo, three (3); Aliven, one (1); and Fernandez, one (1). *Ibid.*, p. 5.

[51] TSN, February 26, 1992, pp. 38-40.

[52] Records for CC No. D-10203, p. 112.

[53] *People v. Castillo*, 261 SCRA 493, September 6, 1996.

[54] *People vs. Zamora*, *supra*.

[55] See *People vs. Abrenica*, 252 SCRA 54, January 18, 1996; *People vs. Canuzo*, 255 SCRA 497, March 29, 1996.

[56] *People v. Cayabyab*, GR No. 123073, June 19, 1997.

[57] TSN, February 5, 1992, p. 46.

[58] Art. 6, Revised Penal Code; *People vs. Balderas*, GR No. 106582, July 31, 1997.

[59] *People vs. Nardo*, GR No. 100197, April 4, 1997; *People vs. Pagal*, GR Nos. 112620-21, May 14, 1997.

[60] Art. 248, in relation to Arts. 51 & 64, of the Revised Penal Code.

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