

SECOND DIVISION

[G.R. Nos. 138943-44, September 17, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY ALMAZAN, ACCUSED-APPELLANT.

DECISION

BELLOSILLO, J.:

This is an appeal from the *Joint Decision*^[1] of the trial court declaring accused-appellant Henry Almazan guilty of murder and frustrated murder. It traces its origin to two (2) *Informations* charging Henry Almazan with shooting Noli S. Madriaga with a handgun, aggravated by treachery and evident premeditation, which caused the latter's death; and with shooting Noel Madriaga with the same handgun which would have produced the latter's death if not for timely medical attendance, docketed as Crim. Cases Nos. C-51276 and C-51277 respectively. These cases were tried jointly pursuant to Sec. 14, Rule 119, of the *1985 Rules on Criminal Procedure*.

On 28 September 1996, at about 4:00 o'clock in the afternoon, Vicente Madriaga and a certain Allan played chess in front of the former's house at Pag-asa, Camarin, Caloocan City. Spectators were Vicente's son Noli, who was carrying his 2-year old daughter, Vicente's grandson Noel, and a neighbor named Angel Soliva. While the game was underway, Henry Almazan unexpectedly arrived and brandished a .38 caliber revolver in front of the group. Almazan's fighting cocks had just been stolen and he suspected Angel, one of the spectators, to be the culprit. Thus he said, "*manos-manos na lang tayo*,"^[2] aimed his gun at Angel and pulled the trigger. It did not fire. He tried again, but again it failed.

At this juncture, Vicente Madriaga stood up and tried to calm down Henry, but the latter refused to be pacified ("*ayaw paawat*"). Angel ran away and Henry aimed his gun instead at Noli. Noli cried for mercy, for his life and that of his daughter, but to no avail.^[3] Henry shot Noli at the left side of his stomach sending him immediately to the ground. His daughter, unscathed, held on to Noli, crying. Henry then turned on Noel and shot him on the left thigh. Noel managed to walk lamely ("*paika-ika*") but only to eventually fall to the ground. Thereafter, Vicente Madriaga called on his neighbors who brought Noli and Noel to the hospital. Noli however died before reaching the hospital, while Noel survived his injuries.

Dr. Ma. Cristina Freyra of the PNP Crime Laboratory Service conducted an autopsy on the body of Noli which revealed that the cause of the victim's death was a gunshot at the trunk from a .38 caliber revolver. Dr. Misael Jonathan Ticman, attending physician of Noel, in turn declared that the gunshot wound on the left thigh of Noel was a minor injury that would heal in a week.^[4] Noel was never admitted in the hospital as his doctor sent him home the same day.^[5] On cross-examination, Dr. Ticman testified that if not medically treated the wound might get

infected or lead to the victim's death.^[6]

Witnesses for the defense narrated a different version. They pointed to Angel Soliva instead as the person to blame for Noli Madriaga's death while justifying Noel Madriaga's wound as a result of self-defense.

Henry Almazan testified that at about 4:00 o'clock in the afternoon of 28 September 1996 he went home accompanied by his friend Johnald Molina. Henry's wife informed him upon his return that his fighting cocks, twelve (12) in number, had been stolen. He went out of the house to inquire from neighbors as to who could have taken his cocks. He was followed by Johnald. On their way they saw Vicente Madriaga and Allan playing chess surrounded by Noli, Noel, Angel and other persons. They were drinking liquor. As he (Almazan) and Johnald were passing by, Angel called Henry and asked if he was looking for his fighting cocks. The group then burst into laughter and pointed to their *pulutan*. Someone in the group advised Henry not to look anymore for his fighting cocks as he would only be courting trouble ("*naghahanap ka lang ng sakit ng katawan*"). To this advice Henry replied, "*Bakit naman ganoon?*" Suddenly, Angel pulled out his gun and shot Henry twice but the gun did not fire. Seizing the opportunity Henry grappled with Angel for the possession of his gun. During the scuffle Angel pulled the trigger which hit Noli. Henry finally succeeded in wresting the gun from Angel and aimed it at him. Suddenly, he received a blow from behind and he fell. As he raised his head from the ground, he saw Noel poised to attack him with a broken bottle, so that he had to train his gun at the lower part of Noel's body and fired. The bullet hit Noel on the thigh which sent him reeling down his knees ("*napaluhod*"). Shocked and afraid that he hit Noel, Henry ran home.

Johnald Molina corroborated Henry Almazan's statement in all material points. Johnald testified that the group mocked Henry when they told him not to look for his cocks anymore as they had already been cooked for *pulutan*, and to insist in his search would only cause him physical trouble. Henry could only reply, "*Tila nga may nagnakaw ng mga manok ko Bakit naman ganoon?*" As he made his remarks, someone from the group suddenly pulled out a gun and aimed at Henry. Henry grappled with the gun-wielder who pressed the trigger twice but the gun misfired each time. When the gun-wielder pulled the trigger for the third time it fired, hitting a person who was carrying a small child and standing within the vicinity. He was obviously referring to Noli. Johnald immediately ran towards Henry's house to report the incident to his wife and asked for help. Then he heard another shot, but in his haste to reach Henry's house he ignored it. Upon reaching Henry's house, Henry also arrived. To avoid being involved and out of fear, Johnald did not report the incident to the police. Later however, bothered by his conscience and being the friend of Henry, Johnald volunteered to testify on what he knew of the incident.

The court *a quo* found Henry Almazan's defense devoid of merit. Apart from being positively identified by the prosecution witnesses as the person responsible for the violence and the injuries inflicted, the trial court declared that the theft of Henry's fighting cocks constituted sufficient motive for the killing and that as a cockfight *afficionado* he must have found it imperative to exact vengeance on his suspected culprits.^[7] The trial court held that the testimony of Johnald failed to create reasonable doubt on the guilt of Henry since as a friend he was expected to extend succor to a friend, especially one in need.^[8] Thus, the trial court held Henry

Almazan guilty of murder and frustrated murder as charged.

In imposing the penalty for each offense, the lower court appreciated the qualifying circumstance of treachery against accused-appellant on the ground that the victims were completely defenseless when attacked and did not commit the slightest provocation, but found no justification for evident premeditation as there was no proof as to the manner and time during which the plan to kill was hatched. On the contrary, the trial court found in favor of accused-appellant the mitigating circumstance of passion and obfuscation. Thus, in Crim. Case No. C-51276, accused-appellant was sentenced to the reduced penalty of *reclusion perpetua* instead of death, with all the accessory penalties according to law, and ordered to pay the heirs of the victim P50,000.00 as death indemnity, P8,000.00 as funeral expenses, and to pay the costs; while in Crim. Case No. C-51277, he was sentenced to an indeterminate prison term of eight (8) years of *prision mayor*, as minimum, to fourteen (14) years and eight (8) months of *reclusion temporal*, as maximum, with all the accessory penalties provided by law, and to pay P20,000.00 as civil indemnity, without subsidiary imprisonment in case of insolvency, and to pay the costs.^[9]

Accused-appellant now prays to be absolved of murder in Crim. Case No. C-51276 on the ground that the prosecution has failed to prove his guilt beyond reasonable doubt. He assails the testimony of Shirley Abordo, common-law wife of Nilo Madriaga, for being hearsay, as well as the testimony of Vicente Madriaga for its alleged inconsistencies in various vital points. Significantly, accused-appellant impugns the veracity of the prosecution's evidence for its failure to present Angel Soliva who was primarily involved in the incident and whom the defense points to as the real transgressor. Thus, accused-appellant contends that evidence sufficient to establish the absolute and moral certainty of his guilt being absent he should be acquitted.

As for Crim. Case No. C-51277, accused-appellant contends that the trial court erred in holding him guilty of frustrated murder as the wound sustained by Noel Madriaga was not fatal that could have caused his death if not for timely medical assistance. Moreover, accused-appellant claims that he shot Noel only to forestall any attack on him and not to kill Noel intentionally.

Appellate courts are doctrinally bound by the trial court's assessment of the credibility of witnesses given the clear advantage of a trial judge in the appreciation of testimonial evidence. The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses first-hand and to note their demeanor, conduct and attitude under grueling examination - factors which are significant in the evaluation of the sincerity of witnesses and in unearthing the truth.^[10] We see no reason to depart from this doctrine.

The witnesses for the prosecution were consistent in their narration of the manner by which the events transpired, and they remained steadfast in their identification of accused-appellant as the author of the violence. Despite attempts to confound them, Vicente Madriaga and Noel Madriaga were relentless in their declaration that it was accused-appellant, armed with a .38 caliber revolver, who pounced upon them without warning thereby killing Noli Madriaga and wounding Noel Madriaga in