

TWELFTH DIVISION

[CA-G.R. CR No. 35816, February 24, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY
LIZARDO Y CADIENTE, ACCUSED-APPELLANT.**

D E C I S I O N

GALAPATE-LAGUILLES, J:

We review in this appeal the decision^[1] of the Regional Trial Court of Pasay City dated January 14, 2013 in Criminal Case No. R-PSY-11-03999-CR finding accused-appellant Randy C. Lizardo guilty of frustrated homicide.

The facts are of record.

Randy C. Lizardo is charged with frustrated homicide in the Information^[2] that reads:

X X X

That on or about the 21st day of July 2011, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without justifiable cause, with intent to kill, did then and there wilfully, unlawfully and feloniously attack[,] assault[,] and shot one Glen Bautista Y Alarcos, on the vital parts of his body, thereby performing all the acts of execution which could produced [*sic*] the crime of homicide as a consequence but nevertheless did not produce it by reason [of] causes independent of accused's will, that is due timely arrival of bystander and policemen in the area which led to the arrest of the accused, and immediate medical attendance rendered on said complainant at the Pasay City General Hospital which prevented his death.

Contrary to law.

During the trial of the case, the Prosecution presented Glen Bautista who testified that on July 21, 2011 at 9:35 in the evening, he was standing^[3] in front of a store along G. Villanueva Street in Pasay City^[4] when he saw a man being chased by two policemen.^[5] The man and the policemen were running towards him.^[6] Suddenly, his neck was hit by a bullet, and he fell to the ground. He did not see the man fire a gun.^[7]

Another witness for the prosecution, Paolo de Guzman, testified that when the incident happened, he was seated on a parked motor vehicle near his house at 322 G. Villanueva St.^[8] He was eight meters away from Glen when Randy fired the gun.

[9] On cross-examination, he answered in the affirmative when asked whether Randy and the policemen were running towards Glen.^[10] He also affirmed that Randy fired a gun towards the direction of the policemen^[11] and not towards Glen's direction^[12] so Randy could not have hit the victim.^[13]

Raymond Gamayon, also a witness for the Prosecution, revealed on direct examination that while talking to his friends,^[14] he saw policemen running after a man. The policemen were yelling, "*Snatcher*".^[15] Another man who was then standing in front of Raymond wanted to block the alleged snatcher's way. Suddenly, the alleged snatcher fired a shot.^[16] Raymond categorically identified Randy as the one who pulled the trigger.^[17] When cross-examined, Raymond testified that he knew Paolo.^[18] He added that Paolo was not among the friends that he was talking to before the incident happened because the latter was inside their (Raymond's) house at that time.^[19] Raymond further narrated that he was then standing two meters away from Glen and around six meters away from Randy.^[20] When asked about his and his friends' location in relation to the direction where Randy was running towards, he said, "*We were in front*".^[21] He later stated that the policemen did not fire the shot.^[22]

At the stand, one of the police officers who pursued Randy, PO1 Rigor Octaviano, revealed that while they were chasing Randy, the latter unexpectedly drew a gun and fired at them.^[23] Randy fired only once,^[24] and after the shot, they saw that someone was hit by the bullet. On cross-examination, he testified that he and PO2 Marte Ray Quezon both carried 9mm pistols^[25] but they did not fire any shot.^[26] They also testified that they failed to recover the slug of the bullet that hit Glen.^[27]

Another police officer, PO2 Eleseo Morong, was one of the officers who received a call for reinforcement from the other police officers in the area.^[28] He was part of the team that arrested Randy. He affirmed that in his Affidavit of Arrest, he had declared that the suspect shot one of the policemen.^[29] He later clarified that the accused shot the policemen and not Glen.^[30]

For his defense, Randy testified that while walking along G. Villanueva St., the police suddenly stopped him, focused a flashlight at him, alighted from the motorcycle, and poked a gun at him.^[31] When he ran away, the policemen shouted, "*Holdaper, Holdaper*".^[32] Randy denied shooting Glen. He insisted that it was the police who fired twice.^[33] The man in front of him was hit by the bullet.^[34] After a gunshot was fired, he hid in an alley.^[35] After a while, he voluntarily surrendered for fear of being implicated for a crime he did not commit.^[36]

The RTC discredited Randy's testimony that it was the policemen who fired the shot. In convicting Randy of frustrated homicide, the trial court ratiocinated that Randy's allegation is outweighed by the positive identification of him by the prosecution witnesses Paolo and Raymond as the one who fired the gun:

[T]he bare statement of accused Lizardo that it was the policemen who fired the shot is outweighed by the positive identification of prosecution

witnesses Paolo de Guzman and Armando [sic] Gamayon who pointed to him to be the person who fired a gun that hit victim Glen Bautista. It must be stressed that both witnesses do not personally know each other, neither the accused Lizardo nor the victim Glen Bautista. Thus, there is no reason for them to falsely testify in this case. Based on the foregoing, the identification of the prosecution witnesses de Guzman and Gamayon that it was accused Lizardo who fired a gun that hit victim Glen Bautista is positive and conclusive.

While the Court notes of some inconsistencies in the testimonies of the prosecution witnesses, these are but minor details only which strengthen, rather than weaken the credibility of the witnesses as they erase any suspicion of a rehearsed testimony. While some of the testimony [sic] did not conform to their sworn statements, still it does not destroy the straightforward testimony made in open court and lose their credibility. Sworn statements are often taken right after the harrowing event such that the witness has not yet regained sufficient composure to accurately recall every detail of the incident. The affidavits executed before the police authorities cannot be expected to contain all the details of the occurrence. Testimonies given in open court carry more weight, especially when the witness was made to withstand a protracted and grueling cross-examination. x x x

Feeling aggrieved, Randy now appeals his conviction.^[37] He argues in the main that the statements of the prosecution witnesses are laden with irreconcilable inconsistencies which cast doubt on the moral certainty of his guilt.

Without passing on the issue of whether or not the acts for which Randy was charged constitute frustrated homicide, We find that in light of certain material inconsistencies in the affidavits and testimonies of prosecution witnesses, the case for the prosecution fails.

It is fundamental in criminal law that for evidence to be worthy of credit, it must not only proceed from a credible source; it must, in addition, be credible in itself — in conformity with knowledge, observation, and experience of ordinary men.^[38] The findings of a trial court are no doubt generally not disturbed on appeal with respect to credibility of witnesses. The same does not hold true, however, with respect to credibility of testimony.^[39]

While generally, contradictions between the contents of the affidavit of the witness and his testimony in court do not impair his credibility because affidavits are usually taken *ex parte* and are often incomplete and inaccurate, where the discrepancies between the affidavit and the testimony on the stand are irreconcilable and unexplained and they refer to material issues, such inconsistencies may well reflect on the candor and even honesty of the witness and thus impair his credibility.^[40] Hence, the Supreme Court has recognized as exceptions to the general rule instances where the narration in the sworn statement substantially contradicts the testimony in court.^[41]

In this case, there are several irreconcilable inconsistencies in the affidavit and testimony in court of prosecution witness Raymond. In his affidavit,^[42] he stated

that he saw Randy fire upon the policemen who were chasing the former. In his testimony, however, he contradicted his own statement and testified that Randy fired the gun towards their direction (in front of Randy) and not towards the direction of the police (behind Randy).^[43]

Interestingly, Raymond not only contradicted his own declaration but also the testimonies of the other^[44] prosecution witnesses Paolo, PO1 Octaviano,^[45] and PO2 Morong^[46] who all testified that Randy fired upon the policemen running after him and not upon Glen who was standing in front of him. Even Glen himself believed that if Randy would fire a gun, it would be in the direction of the police who were chasing him and not towards his direction.^[47]

Again, evidence is credible if it is in harmony with the usual course of human experience.^[48] Here, the respective positions of Glen and the policemen in relation to Randy is important to determine whether Randy actually fired the gun that wounded Glen. With the exception of Raymond, all the other prosecution witnesses attested that as the police were pursuing Randy, they were all running towards Glen's direction. If the gun was fired towards the direction of the policemen who were behind Randy, as testified to by the prosecution witnesses, then the trajectory of the bullet would have been towards that direction and not in front of Randy where Glen was standing. It is rather incredible that a gun fired at one direction would go the exact opposite course, as in a ricochet from a hard surface, without actually hitting a hard surface, in contravention of the laws of nature and of physics.

It is also interesting to note that while Paolo categorically testified having witnessed the incident, Raymond declared that the former was not one of the friends that he was with during that time as Paolo was inside their (Raymond's) when the shooting incident occurred. Aside from the fact that Raymond negated Paolo's testimony yet again, this finding also gains significance in light of the trial court's ruling that Paolo and Raymond do not personally know each other thus its conclusion that there was no reason for them to falsely testify.

Indeed, the conflict in the testimonies of the prosecution witnesses is irreconcilable, and the prosecution did not bother to explain the inconsistencies. This is not to mention anymore Randy's claim that it was not him but the police who fired the shot that hit Glen. We are thus left with no clear picture of what really happened that night. The contradictions in the statements of the prosecution witnesses not only undermine all efforts to reconstruct the event in question, but altogether erode the evidentiary value of the evidence for the prosecution.^[49] This inevitably leads to the conclusion that either only one of the witnesses related the correct sequence of events or neither of them stated the true events. The records fail to show which of the conflicting versions is correct. The conviction of the accused cannot be based on speculations that the version consistent with guilt is correct. Further, the prosecution has failed to show that the circumstances invoked completely discount the possibility that persons other than Randy could have perpetrated the crime. If the inculpatory facts and circumstances are capable of two or more explanations, one or more of which is consistent with the innocence of the accused, then the test of moral certainty required to support a conviction is not met.^[50]

In fine, there should be more proof presented to show Randy's alleged complicity in