

## THIRD DIVISION

[ G.R. No. 226486, January 22, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GLECERIO PITULAN Y BRIONES, ACCUSED-APPELLANT.**

### DECISION

**LEONEN, J.:**

In homicide, the prosecution's failure to present the weapon is not fatal to its case. An eyewitness' credible testimony on the fact of the crime and the assailant's identity is sufficient to prove the *corpus delicti*. Moreover, the prosecution's failure to conduct paraffin and ballistic testing has no effect on the evidentiary value of an eyewitness' positive identification of the accused as the assailant. The accused's bare denial, on its own, cannot outweigh the eyewitness' positive identification.

This Court resolves the Notice of Appeal<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of the Court of Appeals, which affirmed the Regional Trial Court Decision<sup>[3]</sup> finding Glicerio Pitulan y Briones (Pitulan) guilty beyond reasonable doubt of the complex crime of direct assault with murder.

Three (3) Informations were filed against Pitulan for direct assault with murder of police Officer 1 Aldy Monteroso (PO1 Monteroso), direct assault with attempted murder of police Officer 1 Alberto Cirilo Dionisio (PO1 Dionisio), and direct assault with frustrated murder of PO1 Benito De Vera (PO1 De Vera). The Informations read:

Criminal Case No. Q-03-116802 against Glicerio Pitulan y Briones for  
Direct Assault with Murder

"That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (sic) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of PO1 ALDY MONTEROSO y BELTRAN, a bonafide member of the PNP CPDO, assigned at police Station 3, Talipapa police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. revolver, hitting him on the chest, thereby inflicting upon him fatal injury which was the direct cause of his death, to the damage and prejudice of the heirs of said PO1 Aldy B.

Monteroso.

CONTRARY TO LAW."

Criminal Case No. Q-03-116803 against Glecerio Pitulan y Briones for  
Direct Assault with Attempted Murder

That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 ALBERTO CIRILO DIONISIO y DELACRUZ, a bonafide member of the PNP, CPDO, assigned at police Station 3, Talipapa police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, but said accused was not able to perform all the acts of execution which should produce the crime of Murder by reason of some cause or accident other than his own spontaneous desistance, to the damage and prejudice of the said PO1 Alberto Cirilo Dionisio y Dela Cruz.

CONTRARY TO LAW."

Criminal Case No. Q-05-133382 against Glecerio Pitulan y Briones For  
Direct Assault with Frustrated Murder

"That on or about the 20<sup>th</sup> day of April, 2003 in Quezon City, Philippines, the said accused, conspiring, confederating with Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan and Augusto Torres, who were killed during the shootout with the apprehending police officers, and with another person whose name, identity and whereabouts has (*sic*) not yet been ascertained, and mutually helping each other, did then and there wilfully, unlawfully and feloniously with treachery, evident premeditation, and taking advantage of superior strength, attack, assault and employ personal violence upon the person of (*sic*) commence the commission of the crime of Murder directly by overt acts upon the person of one PO1 BENITO DE VERA y JOPSON, a bonafide member of the PNP, CPDO, assigned at police Station 3, Talipapa police Station, this City, and therefore an agent of a person in authority who was then engaged in the performance of his official duties, and the accused knew him to be such, by then and there shooting him, with intent to kill, with the use of a .38 cal. [r]evolver, hitting him on the different parts of his body, thereby inflicting upon him fatal injuries, the offender performing all the acts of execution which would produce death as a consequence but which nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, to the damage and prejudice of the said PO1

Benito De Veyra (*sic*) y Jopson.

CONTRARY TO LAW."<sup>[4]</sup>

Pitulan was arraigned on all the charges, to which he pleaded not guilty. Trial thus ensued.<sup>[5]</sup>

For its part, the prosecution presented PO1 De Vera, PO1 Dionisio, and police Officer 3 Eric Cortez (PO3 Cortez) as witnesses. The parties stipulated on the testimonies of the prosecution's other witnesses, the case investigator and the medico-legal officer.<sup>[6]</sup>

From their testimonies, the prosecution alleged that on April 20, 2003, the group of PO1 De Vera, PO1 Dionisio, and PO1 Monteroso responded to a report that of a group of armed men aboard a Hyundai van was acting suspiciously along General Avenue, Barangay Bahay Toro, Project 8, Quezon City. Thus, the officers, in complete uniform, rode their police mobile patrol to the reported location.<sup>[7]</sup>

On their way to General Avenue, the officers saw a van, with plate no. PVY-701, matching the description of the vehicle they were looking for. They ordered the van to halt, but it gave chase instead, until the officers overtook and blocked its path along Road 20.<sup>[8]</sup>

The officers ordered the riders to step out of the vehicle. When all but the driver complied, PO1 Monteroso opened the door opposite the driver's side to check on him. However, as soon as he did so, the driver-who was later identified as Pitulan-shot him thrice on the chest.<sup>[9]</sup>

Simultaneously, the other van passengers, later identified as Eufemio Pitulan, Sergs Pitulan, Edward Pitulan, Felomino Pitulan, and Augusto Torres, wrestled with PO1 De Vera and PO1 Dionisio.<sup>[10]</sup> One (1) of them was able to get PO1 Monteroso's gun and fired at PO1 De Vera, injuring him in the shootout.<sup>[11]</sup>

Pitulan then attempted to escape, but on his way, he encountered PO3 Cortez and his team who was responding to a radio message of the gun battle.<sup>[12]</sup>

PO3 Cortez's team ordered the van to stop and attempted to approach the van. However, its driver, whom he later identified as Pitulan, opened fire at their patrol car. The officers fired back and, in the shootout that ensued, hit the van's left tire. The van hit an island at the intersection of Visayas Avenue and Congressional Avenue.<sup>[13]</sup>

The other van passengers turned out dead in the shootout,<sup>[14]</sup> leaving Pitulan to surrender to the police. Once PO3 Cortez and his team arrested him, they brought Pitulan to the East Avenue Medical Center for treatment.<sup>[15]</sup> The officers were able to recover from him a .38 cal. revolver, four (4) live ammunitions, and two (2) empty shells.<sup>[16]</sup>

Pitulan solely testified for the defense. He alleged that on April 20, 2003, he was with his four (4) brothers on a Besta van driven by a certain Rudy Pagador. Pitulan

fell asleep on the road, only to be awakened later on by successive gunfire, from which he sustained wounds that caused him to fall unconscious on the floor of the van. He later woke up in a hospital, where he was told that his brothers were all dead.<sup>[17]</sup>

In its January 21, 2013 Decision,<sup>[18]</sup> the Regional Trial Court convicted Pitulan of the complex crime of direct assault with murder. It found no dispute that Pitulan was in the van during the shootout, save for his denial that he participated as driver and shooter.<sup>[19]</sup> It gave credence to the eyewitness account of PO1 De Vera over Pitulan's bare denial.<sup>[20]</sup>

In ruling that treachery attended PO1 Monteroso's killing, the trial court noted that PO1 Monteroso was shot thrice after opening the door opposite the driver's side, leaving him no opportunity to defend himself.<sup>[21]</sup> Moreover, since the officer was killed during the performance of his duties, Pitulan was convicted of the complex crime of direct assault with murder.<sup>[22]</sup>

As for the other charges, the trial court found no conspiracy among the van's passengers who were involved in the shootout. Hence, it acquitted Pitulan of direct assault with attempted murder and direct assault with frustrated murder against PO1 Dionisio and PO1 De Vera, respectively.<sup>[23]</sup>

The Regional Trial Court imposed the penalty of *reclusion perpetua* for the complex crime of direct assault with murder. Pitulan was ordered to pay the heirs of PO1 Monteroso P75,000.00 as civil indemnity *ex delicto*, moral damages of P50,000.00, exemplary damages of P30,000.00, and temperate damages of P30,000.00, and costs of suit. The dispositive portion of the Decision read:

WHEREFORE, judgment is hereby rendered finding the accused Glicerio Pitulan y Briones in Criminal Case No. Q-03-116802 GUILTY beyond reasonable doubt of the crime of Direct Assault with Murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*.

Accused Glicerio Pitulan y Briones is hereby further ordered to pay the heirs of PO1 Aldy Monteroso y Beltran the following amounts:

- 1) Php75,000.00 as civil indemnity;
- 2) Php50,000.00 as moral damages;
- 3) Php30,000.00 as exemplary damages;
- 4) Php30,000.00 as temperate damages; and
- 5) costs of suit.

In Criminal Case No. Q-03-116803 and Criminal Case No. Q-03-116804, judgment is hereby rendered ACQUITTING the accused Glicerio Pitulan y Briones of the offenses of Direct Assault with Attempted Murder and Direct Assault with Frustrated Murder, for lack of evidence.

SO ORDERED.<sup>[24]</sup>

Pitulan appealed his case. However, the Court of Appeals, in its August 12, 2015 Decision,<sup>[25]</sup> affirmed his conviction. It found the police officers' testimonies clear

that it was Pitulan who fired successive shots at PO1 Monteroso, the same one who drove off only to be arrested by PO3 Cortez's team.<sup>[26]</sup> It also affirmed the trial court's findings that the killing of PO1 Monteroso was attended with treachery, qualifying the complex crime to direct assault with murder.<sup>[27]</sup>

The Court of Appeals dismissed Pitulan's contention that in failing to present the gun and conduct paraffin and ballistic testing, the prosecution failed to prove his guilt beyond reasonable doubt.<sup>[28]</sup> It held that paraffin testing is extremely unreliable for not being conclusive as to whether the nitrates came from the discharge of a firearm.<sup>[29]</sup> Moreover, it stated that the lack of ballistic testing does not affect the evidentiary value of an eyewitness' positive identification of the assailant, as in this case.<sup>[30]</sup>

On September 18, 2015, Pitulan filed his Notice of Appeal.<sup>[31]</sup> The Court of Appeals, having given due course to his appeal, elevated the case records to this Court.<sup>[32]</sup>

This Court later required the parties to file their supplemental briefs.<sup>[33]</sup> However, both accused-appellant and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, manifested that they would no longer do so. Instead, they would adopt their Briefs filed before the Court of Appeals.<sup>[34]</sup>

In his Brief,<sup>[35]</sup> accused-appellant alleges that the lower courts erred in convicting him of direct assault with murder despite the prosecution failing to establish his identity as PO1 Monteroso's assailant.<sup>[36]</sup>

Expounding on this, accused-appellant claims that PO1 De Vera's eyewitness account should not have been given credence, as he was behind the police mobile during the shootout and, thus, could not have seen the driver who shot PO1 Monteroso. He also insists that the prosecution's failure to conduct ballistic and paraffin testing was fatal, as the officers failed to determine whether he really fired any gun. He also faults the prosecution for failing to present the gun used in the shooting.<sup>[37]</sup>

On the other hand, plaintiff-appellee argues in its Brief<sup>[38]</sup> that PO1 De Vera's testimony was clear and unequivocal, successfully establishing accused-appellant's identity as the assailant. Contrary to accused-appellant's claim, the officer had directly witnessed the shooting because the back of the police mobile was positioned in front of the van.<sup>[39]</sup>

Moreover, plaintiff-appellee, citing *People v. Fernandez*,<sup>[40]</sup> asserts that the presentation of the murder weapon is not indispensable "when the accused has positively been identified."<sup>[41]</sup> Finally, it points out that this Court has rendered both paraffin and ballistic testing inconclusive, citing *People v. De Guzman*<sup>[42]</sup> and *Lumanog v. People*.<sup>[43]</sup>

The issues for this Court's resolution are as follows:

First, whether or not the prosecution's failure to conduct paraffin and ballistic testing