

THIRD DIVISION

[G.R. No. 200026, October 04, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARMANDO DELECTOR, ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

This case involves a brother fatally shooting his own brother. In his defense, the accused pleaded accident as an exempting circumstance. The trial and intermediate appellate courts rejected his plea and found him guilty of murder qualified by treachery. Hence, he has come to us to air his final appeal for absolution.

The Case

Under review is the decision promulgated on September 22, 2006,^[1] whereby the Court of Appeals (CA) affirmed the decision rendered on March 17, 2003 by the Regional Trial Court (RTC), Branch 41, in Gandara, Samar convicting the accused of murder for the killing of the late Vicente Delector, and penalizing him with *reclusion perpetua*, with modification by increasing moral damages to P50,000.00.^[2]

Antecedents

At about 6:00 o'clock in the afternoon of August 8, 1997, the late Vicente Delector was talking with his brother, Antolin, near his residence in Barangay Diaz in Gandara, Samar when the accused, another brother, shot him twice. Vicente was rushed to the Gandara District Hospital where he was attended to by Dr. Leonida Taningco, but he was later on transferred to the Samar Provincial Hospital where he succumbed to his gunshot wounds at about 1:00 a.m. of the next day.^[3]

Vicente's son, Arnel, identified his uncle, the accused, as his father's assailant. Arnel attested that the accused had fired his gun at his father from their mother's house,^[4] and had hit his father who was then talking with Antolin. Corroborating Arnel's identification was Raymond Reyes, who had happened to be along after having come from his school. Raymond also said that Vicente had been only conversing with Antolin when the accused shot him twice.^[5]

On October 2, 1997, the Office of the Provincial Prosecutor of Samar charged the accused with murder in the RTC through the following information, *viz.*:

That on or about the 8th day of August, 1997, at about 6:00 o'clock in the afternoon, at Barangay Diaz, Municipality of Gandara, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery

and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.

CONTRARY TO LAW.^[6]

In his defense, the accused insisted during the trial that the shooting of Vicente had been by accident. His own son corroborated his insistence. According to them, Vicente had gone to their house looking for him, but he had earlier left to go to their mother's house nearby in order to avoid a confrontation with Vicente; however, Vicente followed him to their mother's house and dared him to come out, compelling Antolin to intervene and attempt to pacify Vicente. Instead, Vicente attacked Antolin, which forced the accused to go out of their mother's house. Seeing Vicente to be carrying his gun, he tried to wrest the gun from Vicente, and they then grappled with each other for control of the gun. At that point, the gun accidentally fired, and Vicente was hit.^[7]

Ruling of the RTC

After trial, the RTC rendered its decision,^[8] finding the accused guilty of murder, and disposing:

WHEREFORE, accused Armando Delector is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby meted a penalty of **RECLUSION PERPETUA**.

Accused shall likewise indemnify the heirs of Vicente Delector the sum of Php50,000.00, actual damages of Php12,000.00, moral damages of Php30,000.00 and costs.

In line with Section 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to immediately transmit the living body of the accused Armando Delector to the New Bilibid Prison at Muntinlupa City, Metro Manila where he may remain to be detained. The accused shall be credited for the period he was under preventive detention provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center, otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code, as amended.

SO ORDERED.^[9]

Decision of the CA

Aggrieved, the accused appealed, contending that:

I

THAT THE LOWER COURT ERRED GIVING FULL FAITH AND CEREDENCE

TO THE TESTIMONIES OF THE PROSECUTION WITNESSES; and

II

THAT THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

Nonetheless, the CA affirmed the conviction for murder subject to an increase of the moral damages to P50,000.00,^[10] to wit:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the appeal filed in this case and **AFFIRMING** the decision of the lower court in Criminal Case No. 3403 with the **MODIFICATION** that the award of moral damages is increased to P50,000.00.

SO ORDERED.

The CA opined that the exempting circumstance of accident was highly improbable, stating:

Indeed, given the circumstances surrounding the death of the victim, it is highly improbable that the same was due to an accident. It is unlikely that the accused-appellant would purposely set out and grapple with the victim who, if he is to be believed, was already armed with a gun while he (accused-appellant) was totally unarmed. Such actuation is utterly inconsistent with the ordinary and normal behavior of one who is facing imminent danger to one's life, considering the primary instinct of self-preservation. But then, even granting that the accused-appellant merely acted in defense of his other brother, Antolin, his failure to help or show concern to the victim, who was also his brother, casts serious doubts to his defense of accident.

Furthermore, a revolver, the gun involved in this case, is not one that is prone to accidental firing because of the nature of its mechanism. Considerable pressure on the trigger must have been applied for it to have fired.^[11]

Hence, this appeal, in which the accused insists that:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.^[12]

On its part, the State, through the Office of the Solicitor General, submitted its *appellee's brief* maintaining that the evidence of guilt was sufficient, but

recommending that the crime for which the accused should be held guilty of was homicide, not murder, considering that the records did not support the holding that he had deliberately and consciously adopted a method of attack that would insure the death of the victim; and that evident premeditation was not also shown to be attendant.^[13]

Ruling of the Court

We affirm the decision of the CA that accident could not be appreciated in favor of the accused, but we must find and declare that, indeed, the crime committed was homicide, not murder.

To start with, the lower courts did not err in giving more credence to the testimonies of the Prosecution's witnesses instead of to the testimony of the accused and his son. Arnel and Raymond positively identified the accused as the assailant. Their identification constituted direct evidence of the commission of the crime, and was fully corroborated by the recollection of a disinterested witness in the person of Dr. Taningco, the attending physician of the victim at the Gandara District Hospital, to the effect that the victim had declared to the police investigator interviewing him that it was the accused who had shot him.^[14] The testimonies of Raymond and Dr. Taningco are preferred to the self-serving and exculpatory declarations of the accused and his son.

The factual findings of the RTC are accorded the highest degree of respect, especially if, as now, the CA adopted and confirmed them. Unlike the appellate courts, including ours, the trial judge had the unique firsthand opportunity to observe the demeanor and conduct of the witnesses when they testified at the trial, which were factors in the proper appreciation of evidence of past events. Such factual findings should be final and conclusive on appeal unless there is a demonstrable error in appreciation, or a misapprehension of the facts.^[15]

Secondly, the RTC and the CA both observed that the exempting circumstance of accident was highly improbable because the accused grappled with the victim for control of the gun. We see no reason to overturn the observations of the lower courts.

Article 12, paragraph 4, of the *Revised Penal Code* exempts from criminal liability " (a)ny person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it." The elements of this exempting circumstance are, therefore, that the accused: (1) is performing a lawful act; (2) with due care; (3) causes injury to another by mere accident; and (4) without fault or intention of causing it.

Accident could not be appreciated herein as an exempting circumstance simply because the accused did not establish that he had acted with due care, and without fault or intention of causing the injuries to the victim. The gun was a revolver that would not fire unless there was considerable pressure applied on its trigger, or its hammer was pulled back and released. The assertion of accident could have been accorded greater credence had there been only a single shot fired, for such a happenstance could have been attributed to the unintentional pulling of the hammer during the forceful grappling for control of the gun. Yet, the revolver fired twice,

which we think eliminated accident. Verily, the CA itself pointedly debunked the story of the accused as to how the accident had occurred by characterizing such story not only incomprehensible but also contrary to human experience and behavior.^[16] We adopt and reiterate the following observations by the CA:

... had the accused really been grappling and twisting the victim's right hand which was holding a gun, the latter would not have sustained the wounds. **It was improbable that the gun would fire not only once but twice and both times hitting the victim, had its trigger not been pulled. Further, the location of the gunshot wounds belies and negate(d) accused (appellant's) claim of accident.**

Also, the Court finds incredible [the] accused (appellant's) allegation that he did not know that the victim was hit. He admitted there were two gun reports. The natural tendency of (a) man in his situation would (be to) investigate what was hit. He surely must have known his brother was hit as he even said he let go of the gun. Then he said his brother went home so he also went home. It is odd that he did not attempt to help or show concern for the victim, his brother, had his intention (been) really merely to pacify.^[17]

We reiterate that issues concerning the credibility of the witnesses and their account of the events are best resolved by the trial court whose calibration of testimonies, and assessment of and conclusion about their testimonies are generally given conclusive effect. This settled rule acknowledges that, indeed, the trial court had the unique opportunity to observe the demeanor and conduct of the witnesses, and is thus in the best position to discern whether they were telling or distorting the truth.^[18]

Nonetheless, the Court cannot uphold the judgments of the CA and the RTC and convict the accused for murder. A reading of the information indicates that murder had not been charged against him. The allegation of the information that:

xxx the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.

did not sufficiently aver acts constituting either or both treachery and evident premeditation. The usage of the terms *treachery* and *evident premeditation*, without anything more, did not suffice considering that such terms were in the nature of conclusions of law, not factual averments.

The sufficiency of the information is to be judged by the rule under which the information against the accused was filed. In this case, that rule was Section 9, Rule 110 of the *1985 Rules on Criminal Procedure*, which provided thusly:

Section 9. *Cause of accusation*. - The acts or omissions complained of as constituting the offense **must be stated in ordinary and concise language without repetition**, not necessarily in the terms of the