

THIRD DIVISION

[G.R. No. 170222, June 18, 2009]

EDGAR ESQUEDA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] dated August 19, 2004 and the Resolution^[2] dated April 26, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 26235, affirming the trial court's judgment finding Edgar Esqueda guilty beyond reasonable doubt of the crime of frustrated homicide.

Edgar Esqueda and one John Doe were charged with two (2) counts of Frustrated Murder in two (2) separate Amended Informations, which read:

In Criminal Case No. 14609

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one VENANCIA ALISER with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said Venancia Aliser which prevented her death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.^[3]

In Criminal Case No. 14612

That on or about 11:30 o'clock in the evening of March 3, 1999, at Nagbinlod, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused together with one John Doe, conspiring, confederating and helping one another, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one GAUDENCIO QUINIQUITO with the use of a knife with which the said accused were then armed and provided, thereby inflicting upon the said victim multiple injuries, thus performing all the acts of execution which

would have produce (sic) the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the perpetrators, that is, by the timely and able medical attendance rendered to said GAUDENCIO QUINIQUITO which prevented his death.

Contrary to Article 248, in relation to Articles 6 and 5, of the Revised Penal Code.^[4]

Accused Edgar entered a plea of not guilty. Accused John Doe remains at-large.

During the pre-trial, the parties admitted the identities of the accused and of the private offended parties, the jurisdiction of the court and that the accused and the private offended parties were all residents of Nagbinlod, Sta. Catalina, Negros Oriental. Since the evidence to be presented were common to both cases, the parties through their respective counsels agreed to a joint trial.^[5]

The prosecution presented the testimonies of Venancia Aliser, Gaudencio Quiniquito and Dr. Fidencio G. Aurelia, hospital chief of the Bayawan District Hospital. The evidence of the prosecution tends to establish the following course of events:

Venancia Aliser (Venancia) and Gaudencio Quiniquito (Gaudencio) are live-in partners, living at *Sitio* Nagbinlod, Sta. Catalina, Negros Oriental, together with their children from their first marriages. They were already in bed when, at around 11:30 o'clock in the evening of March 3, 1999, Gaudencio was awakened by a voice coming from the outside of their house calling his live-in partner and asking for a drink. He immediately awakened his live-in partner. While inside the house, Venancia asked the person outside to identify himself. In response, the voice replied that he and his companions are men of Sgt. Torres conducting a roving patrol. When Venancia asked how many they were, the person replied that they are many and with them is Toto Vibar, the son of their *Barangay* Captain. Venancia directed Gaudencio to light a lamp. After lighting the lamp, Gaudencio proceeded to open the door and went out, while Venancia tailed him and stayed by the door. Outside, at the porch, they found a person sitting on a bamboo bench whom they could not identify, while a person whom they identified as Edgar Esqueda (petitioner herein) was standing at the side of the door leading to the porch. Suddenly, the unidentified man stood up and stabbed Gaudencio hitting him on the chest. When Venancia saw the stabbing, she shouted "*watch out Dong!*" and she turned her back to run away but was stabbed by petitioner. She then fell to the ground, but petitioner continued stabbing her on different parts of her body. Gaudencio lost his consciousness. Their children brought them to the crossing in Nagbinlod and they were brought to the Bayawan District Hospital by a *barangay* councilman. Dr. Patrocinio Garupa was the attending physician who treated them. The medical certificate of Gaudencio showed that he sustained a perforating stab wound at the left anterior chest, stab wounds at the neck, left arm and left part of the axillary area.^[6] Venancia's certificate showed that she suffered from multiple stab and incised wounds.^[7] SPO1 Jamandron conducted his initial investigation at the hospital by interrogating Venancia and Gaudencio. The offended parties were referred to the Negros Oriental Provincial Hospital, where they were confined for more than a week.

The defense, on the other hand, presented the testimonies of Claudio Babor,

Domingo Dimol, SPO4 Hermenegildo Cadungog, SPO1 Winefredo Jamandron, Viviana Namoco and the accused Esqueda. The evidence of the defense was intended to establish the following:

On March 3, 1999, from 8 o'clock in the evening to 2 o'clock in the morning of March 4, 1999, petitioner was trawl-fishing in the sea of Cawitan, Sta. Catalina. Claudio Babor testified that he was also trawl-fishing at the same time. He and petitioner, together with their respective companions, were on different boats, which were side by side. Both were able to catch *Atay-atay* and *Tulakhang*.

Domingo Dimol was at the beach of Cawitan, Sta. Catalina. He stayed there from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of the following day waiting for petitioner and Claudio to buy fish from them. At 2 o'clock in the morning, petitioner came ashore and Domingo bought fish from him.

Viviana was at the seashore of Cawitan, Sta. Catalina from 8 o'clock in the evening of March 3, 1999 until 2 o'clock in the morning of March 4, 1999. She, together with twenty other persons, helped the group of petitioner in pulling the rope of the fishing net. Petitioner was manning the rudder. She said that there were two fishing groups. At 2 o'clock in the morning, they all went home and petitioner gave her fish for free.

SPO1 Jamandron conducted the initial investigation in the morning of March 4, 1999 at the Bayawan Emergency Hospital where Gaudencio and Venancia were confined. His investigation revealed that Gaudencio and Venancia could not identify their assailants. He also testified that Gaudencio and Venancia were both conscious, but were in pain during the investigation. He recorded the result of his investigation in the police blotter.

Petitioner denied having committed the crime imputed against him.

On December 12, 2001, the Regional Trial Court (RTC) of Dumaguete City, Branch 33, rendered a Decision^[8] acquitting the petitioner in Criminal Case No. 14612 and convicting him in Criminal Case No. 14609. The dispositive portion of the Decision is as follows:

WHEREFORE, from the foregoing considerations, this Court finds accused, Edgar Esqueda, guilty beyond reasonable doubt of the crime of frustrated homicide in Criminal Case No. 14609. Since there is (sic) no mitigating and aggravating circumstances to offset each other and after applying the Indeterminate Sentence Law, accused Edgar Esqueda is hereby sentenced to suffer the penalty of imprisonment of two (2) years, six (6) months and twenty (20) days of *prision correccional*, as minimum, to eight (8) years, four (4) months and ten (10) days of *prision mayor* medium, as maximum. Since the complainant, Venancia Aliser, was not able to produce evidence as to how much she spent for her hospitalization nor presented evidence to prove other damages, this Court is constrained not to award her damages.

Since the element of conspiracy had not been sufficiently established by the prosecution and as had been admitted that it was the unknown

person who stabbed Gaudencio Quiniquito, accused Edgar Esqueda is hereby acquitted in Criminal Case No. 14612.

Petitioner filed a Notice of Appeal^[9] and the records of the case were transmitted to the CA.

The CA rendered a Decision^[10] dated August 19, 2004 dismissing the appeal and affirming the decision of the RTC. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the decision dated December 12, 2001 of the RTC of Dumaguete City in Criminal Case No. 14609.

Hence, this petition assigning the following error:

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF FRUSTRATED HOMICIDE AND IN TOTALLY DISREGARDING HIS DEFENSE.

Petitioner's defense is anchored on alibi and denial. His witnesses, Claudio, Domingo and Viviana, aver that during the time of the incident, petitioner was out at sea fishing. Petitioner, when called to the witness stand, denied having committed the crime.

Further, in his petition, petitioner alleges that Venancia may have had a motive in falsely accusing him of crime.

Furthermore, the private offended parties failed to identify the perpetrators during the initial investigation. Petitioner averred that the private offended parties should have informed the authorities of the identities of their assailant during the initial investigation. He insisted that the trial court erred in totally disregarding his defense, which resulted in his conviction.

In its Comment to the Petition, respondent, through the Office of the Solicitor General (OSG), averred that the issues raised by the petitioner are factual, hence, inappropriate in a petition for review on *certiorari* before this Court.

The petition is denied for lack of merit.

We have unfailingly held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.^[11] In the present case, petitioner was positively identified by Venancia and Gaudencio as the author of the crime. We quote from the transcript of the stenographic notes:

Venancia on Direct-Examination

PRIVATE PROSECUTOR MARCELO FLORES:

- Q. What did you do when your live-in partner opened the door?
A. He went out and I followed him.

Q. What transpired after that?
A. When he went out, I saw that he was stabbed by the person who was seated.

Q. Where was that person seated?
A. On a chair in the balcony.

Q. What kind of chair?
A. A bench.

Q. **When he was stabbed, what did you do, if any?**
A. **When I saw it, I called out saying, "watch out Dong," and I turned my back, and when I turned my back, I was stabbed by Edgar Esqueda.**

Q. When your live-in partner was stabbed, was he hit?
A. Yes.

Q. What part of his body was hit?
A. The first stab he was hit on the chest.

Q. When you saw your husband hit on the chest, what did you do?
A. I shouted "watch out Dong," and when I turned my back, I was stabbed by Edgar Esqueda.

Q. When that person stabbed your husband hitting him on the chest, where was Edgar Esqueda?
A. Inside, and he already stabbed me inside the house.

Q. **When you were stabbed for the first time by Esqueda, were you hit?**
A. **I was hit here (witness showing a scar located at the left side of her back, located at the waistline).**

Q. How many times were you stabbed at the back?
A. Nine times.

Q. At the back only.
A. Twice.

Q. After you were stabbed twice at the back, what happened to you?
A. I fell.

Q. **When you fell, what did Edgar Esqueda do?**
A. **He continued stabbing me.**

Q. How many wounds did you suffer by (sic) the stabbing of Edgar Esqueda?
A. Nine.

Q. **Is that Edgar Esqueda who stabbed you nine times the same Edgar Esqueda the accused in this case?**
A.