

FIRST DIVISION

[G.R. NO. 166479, February 28, 2006]

**RODOLFO C. VELASCO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari* which seeks to set aside the decision^[1] of the Court of Appeals in CA-G.R. CR No. 23366 dated 30 July 2004 which affirmed the decision^[2] of Branch 41 of the Regional Trial Court (RTC) of Dagupan City in Criminal Case No. 98-02175-D dated 29 June 1999, finding accused-petitioner Rodolfo C. Velasco guilty of Attempted Murder, and its Resolution^[3] dated 21 December 2004 denying petitioner's motion for reconsideration.

An Information^[4] dated 20 April 1998 charged petitioner with the crime of Attempted Murder committed as follows:

That on or about the 19th day of April, 1998, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SN I RODOLFO C. VELASCO, being then armed with a gun, with treachery and with intent to kill one FREDERICK MARAMBA, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting him, hitting him on the left upper arm, the said accused having thus commenced a felony directly by overt acts but did not perform all the acts of execution which could have produced the crime of murder, by reason of some cause or accident other than his own spontaneous desistance, to the damage and prejudice of said FREDERICK MARAMBA.

When arraigned, petitioner, with the assistance of counsel *de officio*, pleaded not guilty to the crime charged.^[5]

On 29 September 1998, the Hon. Luis M. Fontanilla, Executive Judge of RTC of Dagupan City, ordered the release of petitioner after a surety bond was posted by the Mega Pacific Insurance Corporation in the amount of P120,000.00.^[6]

The evidence is summarized by the trial court as follows:

The evidence of the prosecution tends to show that on April 19, 1998, at about 7:30 o'clock in the morning, private complainant Frederick Maramba was cleaning and washing his owner type jeep in front of his house at Lasip Grande, Dagupan City when a motorized tricycle stopped near him. Accused Rodolfo Velasco dashed out of the tricycle, approached

the complainant and fired at him several times with a .45 caliber pistol. The accused missed with his first shot but the second one hit the complainant at the upper arm, causing him to stumble on the ground. The complainant stood up and ran, while the accused continued firing at him but missed.

The shooting incident was reported to the police sub-station in Malued District by Barangay Captain Dacasin of Lasip Grande, describing the suspect as wearing a vest or a "chaleco." The police, composed of SPO4 Romulo Villamil, PO3 Rolando Alvendo, and SPO1 Soliven respondent and pursued the accused who proceeded on board a motorized tricycle to the highway going to Barangay Banaoang in Calasiao town.

The police caught up with the tricycle and brought the accused to the police sub-station. A firearm (Exhibit "A") protruding from the waistline of the accused, three (3) magazines (Exhibit "B", "B-1" & "B-2") and fourteen (14) live ammunitions (Exhibits "C" to "C-13") were confiscated from the possession of the accused. The police also recovered seven (7) spent ammunitions (Exhibits "D" to "D-6") at the crime scene. At the City Jail in Dagupan City where the accused was subsequently brought, the private complainant Frederick Maramba identified and pointed to the accused as the one who fired at him, hitting him on the upper left arm. Complainant identified the affidavit which he executed naming the accused as his assailant (Exhibit "H") and who shot him on the morning of April 19, 1998 in front of his residence at Lasip Grande.

Private complainant further testified that he was hospitalized and treated at the Region 1 Medical Center, Dagupan City by Dr. Arturo de Vera, Jr. who issued a Medico-Legal Certificate stating that the victim sustained, "Gunshot wound point of entry: 1.5 cm lateral aspect distal, 3rd arm left" and; "Gunshot wound point of exit: 4 cm lateral aspect posterior, 3rd arm left" (Exhibit "I"). By reason of his wounds, complainant incurred expenses for hospitalization and medicines in the total amount of P2,696.06 (Exhibit "J" to "J-14").

Armando Maramba, the driver of the tricycle in which the accused rode, testified that he picked up the accused who was wearing a chaleco, at the intersection of Pogo-Lasip Road. Upon reaching the parked jeep which was being washed by the private complainant, the accused ordered him to stop. The accused alighted and fired several shots at the victim. Then the accused went back to the tricycle and ordered him to proceed to Calasiao. The accused alighted at the intersection of the De Venecia Highway and Malued Road and took another tricycle. Witness executed an affidavit before the Police Headquarters in Dagupan City (Exhibit "G") and identified the accused as the one who shot the private complainant.

The accused, on the other hand, interposed the defense of alibi. He said that on April 18, 1998, he went to a friend's house in Lingayen, Pangasinan and spent the night there. The following morning, April 19, 1998, between 6:00 to 7:00 o'clock, he left Lingayen riding in the Volkswagen car of Berting Soriano. He alighted at the corner of Banaoang

diversion road. From there he took a tricycle and told the driver to bring him at the foot of the bridge going to Bayambang. While on his way to Calasiao, he heard a jeep behind him blowing its horn and when he looked back he saw three men on board pointing their guns at him. He told the tricycle driver to stop and thereupon the three men approached him and introduced themselves as policemen. They confiscated his gun and then brought him to the police station for interrogation. Thereafter, the police lodged him in the City Jail of Dagupan.

Accused testified that he did not know personally the complaining witness and denied having fired at him. He further said that his .45 caliber pistol which was seized from him by the police is licensed (Exhibit "2").^[7]

In its decision dated 29 June 1999, the RTC of Dagupan City, Branch 41, found petitioner guilty of the crime charged, disposing of the case in this wise:

WHEREFORE, finding accused Rodolfo C. Velasco guilty beyond reasonable doubt of the crime of attempted murder, defined and penalized under Article 248, in relation to the 3rd par. of Arts. 6 and 51 of the Revised Penal Code, he is hereby sentenced to suffer the indeterminate penalty of Four (4) years of *prision correccional*, as minimum to Eight (8) years and One (1) day of *prision mayor*, as maximum.

Accused is further ordered to indemnify the complaining witness the amount of P2,696.00, as actual damages.^[8]

The trial court gave credence to the testimonies of the private complainant Frederick Maramba and Armando Maramba when they identified petitioner as the assailant. It rejected petitioner's defense of alibi saying it was not impossible for him to be at the crime scene when the crime was committed because the place where he allegedly alighted from the car of a certain Berting Soriano was only about ten minutes away. It concluded that his defense cannot prevail over the positive identification made by the prosecution witnesses.

On 1 July 1999, petitioner filed a Notice of Appeal signifying his intention to appeal to the Court of Appeals.^[9]

Pending appeal with the Court of Appeals, petitioner, after filing a Motion to Bail, was allowed to post bail in the amount of P160,000.00.^[10] To obviate the possibility of flight, the Bureau of Immigration and Deportation (BID) was directed to include petitioner in its hold departure list.^[11]

On 30 July 2004, the Court of Appeals dismissed the appeal and affirmed the decision of the RTC. The decretal portion of the decision reads:

WHEREFORE, for lack of merit, the appeal is DISMISSED. The assailed Decision dated June 29, 1999 of the Regional Trial Court, Branch 41 of Dagupan City, in Criminal Case No. 98-02175-D, is hereby AFFIRMED. Costs against accused-appellant.^[12]

Petitioner moved for a reconsideration of the decision which motion was denied per resolution^[13] dated 21 December 2004.

Petitioner is now before us via petition for review on *certiorari*, raising the following grounds:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE MOTION FOR RECONSIDERATION PER THE RESOLUTION DATED DECEMBER 21, 2004.^[14]

Petitioner invokes the defenses of denial and alibi. He denies having shot the victim. He alleges that the prosecution was not able to sufficiently establish the identity of the assailant because the Barangay Chairman, who reported the incident to the policemen, identified the assailant as one wearing a "chaleco," was not presented to corroborate the testimony of petitioner. He contends that had the Barangay Chairman been presented, the latter's testimony would have been adverse to the prosecution. Instead, he points out that the prosecution presented police officers who were not eyewitnesses. He adds that he had no motive to harm, much less kill, the victim, the latter being a total stranger. He explains that since the identity of the assailant is in doubt, motive becomes important and his alibi gains weight and value.^[15]

In a resolution dated 6 April 2005, the Court, without giving due course to the petition, required respondent to file a Comment.^[16]

In its Comment^[17] dated 8 September 2005, respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that the factual findings of the Court of Appeals cannot be reviewed since the issue (*i.e.*, positive identification) petitioner is raising involves the credibility of witnesses and the weighing of evidence. It asserts that since the same deals with a question of fact and there being no instance present to take the case out of the general rule that factual findings of the Court of Appeals may be reviewed, a review thereof cannot be made because only a question of law can be re-examined if a petition for review on *certiorari* under Rule 45 of the Rules of Court has been filed. It adds that even if the case is to be decided on the merits, the petition likewise will fail.

In his Reply,^[18] petitioner submits that a review of the facts of the case is justified on the ground that the Court of Appeals sanctioned substantial and jurisprudential departures committed by the trial court. He maintains that (1) the trial court precipitately observed that alibi is a weak defense; (2) the trial court did not consider that the prosecution had no evidence proving his intention to kill; (3) the trial court did not consider the fact that victim did not know him and vice-versa; (4) it was impossible for him, a navy man – a protector of the people – to have failed to fatally hit the victim after firing seven shots; and (5) the instant case is a frame

up.

On 17 October 2005, the Court gave due course to the petition and required the parties to submit their respective memoranda.^[19]

In his memorandum, petitioner further argues that the findings of fact in this case should be reviewed because the Court of Appeals erroneously restated the factual findings of the trial court when it purposely omitted and added words changing the tenor of the shooting incident as found by the trial court. He adds that the findings of fact of the trial court do not support a conviction of attempted murder but only attempted homicide as there was no treachery since private complainant was still able to focus his eyes on the gunman until he was fired upon. Further, he points out that the Court of Appeals made different findings as to where the seven spent shells were recovered. He maintains there was suppression of evidence when the prosecution failed to present a ballistic report on the seven empty shells that would show the identity of the assailant. In addition, he claims that since there was suppression of evidence on the part of the prosecution, the testimony of Armando Maramba is not credible, he being a relative of the victim.

Petitioner primarily invokes the defenses of denial and alibi. It is his claim that the prosecution failed to conclusively establish the identity of the assailant and that he was merely framed-up.

At the outset, it must be stressed that the instant petition for review on *certiorari* was filed pursuant to Rule 45 of the Rules of Court where a review is not a matter of right but of sound judicial discretion and will be granted only when there are special and important reasons therefor. It is not the function of this Court to re-examine the evidence submitted by the parties unless the findings of fact of the Court of Appeals are not supported by evidence on record or the judgment is based on a misapprehension of facts. This Court is limited to the review or revision of errors of law and not to analyze or weigh the evidence all over again.^[20]

We agree with the OSG that as ruled by this Court, no questions of facts may be raised in this Court under Rule 45 of the Rules of Court, unless, among other grounds, there is clear and convincing proof that the judgment of the Court of Appeals is based on a misapprehension of facts or when the Court of Appeals failed to notice and appreciate certain relevant facts of substance which if properly considered would justify a different conclusion, and when there is a grave abuse of discretion in the appreciation of facts in the light of the evidence on record. Anything less will not suffice to overturn the decision of the Court of Appeals affirming on appeal the decision of the trial court. It bears stressing that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties and the assessment of the credibility and probative weight of the evidence of the parties and its conclusion anchored on its findings are given high respect if not conclusive effect by this Court, especially if affirmed by the Court of Appeals because of the unique advantage of the trial court of observing and monitoring the demeanor, conduct and deportment of the witnesses as they regale the court with their testimonies. The exception to this rule is when the trial court ignored, overlooked, misconstrued or misappreciated cogent facts and circumstances of substance which if considered would alter the outcome of the case.^[21] After scrutinizing the records of the case and thoroughly evaluating all the evidence proffered, we find no reason to deviate