

FIRST DIVISION

[G.R. No. 129201, March 11, 2003]

REYNALDO CRISTE UNIDAD, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioner, Reynaldo Criste Unidad, appeals from a decision^[1] of the Court of Appeals dated November 14, 1996 and the resolution^[2] denying the motion for reconsideration dated April 30, 1997, in CA-G.R. No. 17129.

Said decision affirmed an amended decision^[3] of the Regional Trial Court of Manila, Branch 14, dated September 5, 1994.

The dispositive portion of the trial court's amended decision reads, as follows:

WHEREFORE, finding the accused guilty of the crime of Homicide as charged in the Information defined and penalized under Article 249 of the Revised Penal Code, he is hereby sentenced to suffer an indeterminate penalty of TWELVE (12) YEARS of PRISION MAYOR, as its minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of RECLUSION TEMPORAL, as its maximum, and to pay the cost.

He is further sentenced to indemnify the heirs of the deceased:

- a. ₱50,000.00 for the death of the victim;
- b. ₱192,000.00 as unearned income; and
- c. ₱132,000.00 for actual expenses pursuant to Articles 104 and 105 of the Revised Penal Code.

SO ORDERED.

Petitioner was, at the time material to this case, the Chief Operations Officer of the Western Police District of the Philippine National Police, with headquarters at U.N. Avenue, Manila.

On January 29, 1993, petitioner was charged of the crime of homicide, in an information that alleged, as follows:

That on or about January 26, 1993, in the City of Manila, Philippines, the said accused with intent to kill did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of

IRENEO DELA CRUZ Y VARGAS by then and there shooting the latter hitting him on the left portion of his chest thereby inflicting upon him mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law.

Arraigned, petitioner entered a plea of not guilty. Trial followed.

The Prosecution's Evidence

The prosecution's witnesses were Rosita dela Cruz, Grace dela Cruz Baltazar, Dr. Manuel Lagonera and SPO2 Norberto Obrero.

Rosita dela Cruz testified^[4] that: At the time of his death, her son Ireneo dela Cruz, Jr. was employed as Jail Officer-1, as shown by the certification^[5] of the Bureau of Jail Management and Penology, with a monthly salary of ₱3,120.00. They incurred funeral and other expenses, due to said death, in the total amount of ₱131,500.00.^[6] At the time of his death, Ireneo dela Cruz, Jr. had a common law wife and three children, namely: Julie, 7 years old; Jojo, 6 years old; and April, 5 years old, all living with them in their house in Kamuning, Quezon City, and she is the one supporting them now.

She further testified that: On January 26, 1993, at about 8:30 o'clock in the evening, Ireneo dela Cruz, Jr. was on official mission at Ma. Cristina St., Sampaloc, Manila. She was aware of this because whenever he was on a special mission which was dangerous, he used to ask permission before leaving because his father is a policeman. At around 10:00 o'clock that same evening, they received an information concerning the death of Ireneo. Hence, they proceeded to the International Funeral Homes. Upon arriving thereat, at about 11:00 o'clock in the evening, she saw her son embalmed. She asked the caretaker why she did not inform them first, considering that the victim had an I.D. card on his chest, and they answered that it was the instruction of Dr. Manuel Lagonera, the Medico-Legal Officer. She has a picture of her son in the newspaper when he fell down at the gate.^[7]

Grace Cruz-Baltazar testified^[8] that: On January 26, 1993, at about 8:40 o'clock in the afternoon, she, her mother and the common law wife of the victim, were in their house in 14-K 1st Kamuning St., Quezon City.

Ireneo dela Cruz, who was her brother, was not with them as he was in an official mission pursuant to the order of the Warden of Quezon City. She learned about the order because on January 24, 1993 at about 8:00 o'clock in the morning, she received a call asking for her brother. At first, she was hesitant to give the call to her brother but the caller was insistent and according to him, he was an informer, so she called her brother and gave the telephone. After their conversation, her brother told him that the informer told him that the convict he was looking for was hiding at Ma. Cristina St.

On January 25, 1993 at around 8:00 o'clock in the evening, her brother arrived very happy and told them that what the informer told him that the escapee Pedrito Oroños was there at Ma. Cristina St. is true. However, he had a problem as he

learned that Pedrito Oroños is being cuddled by a "siga-siga" who is likewise being protected by a WPD officer. She got scared and told him to take care. Her brother assured her not to worry because he had undergone training and that his co-policeman could understand him. On January 26, 1993, at about 10:00 o'clock in the evening, their father sent someone to inform them that her brother was killed. She had executed an affidavit.^[9]

Dr. Manuel Lagonera testified^[10] that: On January 26, 1993, he performed an autopsy of the body of Ireneo dela Cruz, Jr. He performed the autopsy at 9:15 o'clock in the evening after receiving a verbal request of the Homicide Section of the police department. He prepared a Post Mortem Report.^[11] The cause of death^[12] was a gunshot wound with the entry at the left antero-lateral thorax, as shown on the sketch of a human body^[13] and the exit^[14] at the middle of the right side of the back.

At the time he conducted the autopsy at 9:30 o'clock in the evening, he determined that the person died three hours before said time, as the body was then at the state of primary lapidity and pale. Considering the injuries sustained by the victim, the victim could have survived from 5 to 10 minutes after the infliction of the first shot. Even if the victim had been rushed to the nearest hospital, he could not have survived considering that the injuries sustained in the left lung was so intensive. His estimate is that the nozzle of the gun was about two feet away from the point of entry.

SPO2 Norberto Obrero testified^[15] that: He was the investigator on duty from 3:00 to 11:00 o'clock in the evening on January 26, 1993. He received a call from Chief Inspector Reynaldo Unidad who informed their office that he was involved in a shootout wherein he gunned down his quarry along Ma. Cristina St. near the corner of Fajardo St., Sampaloc, Manila.

He took the picture of the [cadaver] and made a sketch of [the same]. Then he gathered information concerning the identity of the victim and witnesses to the incident. He found out that the victim was wearing a sleeveless vest jacket, sporting an ID Card, a holster and a wallet and some pertinent paper belonging to the victim. He then instructed the personnel of the International Funeral Homes to bring the body to the morgue for autopsy. He prepared a report of the incident.^[16] He also prepared an affidavit of arrest^[17] dated January 27, 1993 to the Inquest Prosecutor. At the time he took the picture^[18] from the waist up of the victim, there was an empty holster as the firearm of the victim was then in the possession of the accused.

He was able to recover from the body of the victim an ID which states: BJMP, DILO, Bureau of Jail Management and Penology, Quezon City Jail, EDSA, Quezon City; C-054 Security Control Tag No. QC-054, Quezon City Jail with the name of the owner/holder, Jail Officer 1 Ireneo dela Cruz; designation: Escort Security, and purportedly signed by Temistocles Jamisolamin, Quezon City Warden.^[19] He also found a Mission Order^[20] dated January 15, 1993 which indicates the service firearm of the victim, Cal .38 Armscor Revolver, Serial No. 31091 with 18 rounds of ammunition. Another paper that he found was a Memorandum Receipt^[21] covering the firearm .38 Caliber Armscor, Phil. Model 201, and a US-made handcuff, signed

by JO1 Jorge dela Rosa, supply Sergeant, DILG. He also found an ammo pouch, a lighter case, a bunch of keys, an NBI Clearance^[22] and a Special Order.^[23]

The Defense's Evidence

The defense witnesses were Nelson T. Fuggan, Demelen Renton dela Cruz, Eduardo Herrera, Norma Payawal, petitioner himself, and three others.

Nelson T. Fuggan, the Chief Ballistician of the Criminal Investigation Division of the Manila Police Department's Western Police District, testified^[24] that: He prepared the Laboratory Report No. B-939261,^[25] dated February 3, 1993. His findings were that only one shot was fired from the firearm of the petitioner (a .357 caliber magnum revolver with Serial No. KE-440312), and three shots were fired from that of the victim (a .38 caliber revolver with Serial No. 31091).

Demelen Renton dela Cruz testified^[26] that: She has been a forensic chemist since 1981. She had examined the left and right hands of Ireneo dela Cruz in order to determine the presence of nitrates. She stated her findings in Chemistry Report No. C-93-61.^[27] She affirmed the truth and correctness of her findings, particularly that the presence of nitrates on the left and right hands of Ireneo dela Cruz means that he had fired a gun.

She also examined petitioner's black American eagle shoulder bag, and one light brown necktie, one folded umbrella and a pair of gray socks. She put her findings in Chemistry Report No. C-93-91.^[28] She examined these specimen in order to determine the appropriate gun shot range, which she determined to be as follows: for the necktie, 6 inches; bag, 36 inches; umbrella, 2 to 8 inches; the right sock, over 30 inches; and the left sock, 30 inches.

Eduardo Herrera testified^[29] that: He is a vendor residing at 732 Ma. Cristina St., Sampaloc, Manila. He executed a statement before the police on January 26, 1993 at 10:30 o'clock in the evening. He stated in his affidavit that he heard four shots. The first and second shots that he heard came from the gun of the victim while third gunshot came from the gun of the accused and the fourth gunshot came from the gun of Ireneo dela Cruz.

He knows that the first shot that he heard was fired by Ireneo dela Cruz because he was then two arms length away from him when he fired his gun. The accused fired his gun because the victim was about to shoot him. The victim was only 1-1/2 arms length from the accused when the latter fired his gun. The victim was about two arms length away from the accused when he shot the accused. When he fired two successive shots at the accused, the victim and the accused were then facing each other. The victim fired two shots at the accused while the victim and the accused were facing each other at a distance of about two meters after which he saw the victim fall down. The accused was not hit by the victim. When the accused shot the victim, the victim fell down at the gate of Mrs. Payawal, then the victim fired another shot at the accused. Then he went to disarm the victim and he gave the gun of the victim to the accused. The accused then went to call for a policeman while he guarded the victim. When the accused left to call for a policeman by telephone, the victim was not moving. He did not talk to the victim nor did he touch

him while he was with him. Among the many people who were then present were Barangay Chairman Abes, Mr. Selda and Mr. Awak.

Norma Payawal testified^[30] that: She owns a store at 719 Ma. Cristina St., Sampaloc, Manila. On January 26, 1993 in the evening, Ireneo dela Cruz alias George arrived very drunk and holding a gun in front of her store. George bought a bottle of beer which he drunk inside a jeepney. While he was drinking the beer inside the jeepney, two men who looked liked policemen, as that they had guns tucked in their waists, suddenly arrived and held George at the back of his waistline. George was then drinking beer, shouting and creating trouble.

After a few minutes, Jojo passed by and George blocked his way and poked his gun to Jojo. Somebody said, "Pag-usapan na lang ninyo iyan." He does not know the person who uttered those words; however, he later learned that it is Mang Rey, Reynaldo Unidad. After Reynaldo Unidad told George, "Pare, pag-usapan na lang ninyo iyan," George turned his gun towards Jojo saying, "Putang Ina mo Jojo, papatayin kita." Reynaldo Unidad then identified himself as a policeman and told him to put away his gun, saying, "Pare, ibaba mo iyan baka makadisgrasya ka, pulis ako." George then turned his gun and poked it to Mang Rey saying, "Isa ka pa, huwag kang makialam." George then fired a shot. The victim shot the accused by holding the gun with both hands. She heard two successive shots almost simultaneously.

After hearing the two successive shots, she went inside her store and while inside her store, she heard another shot and then she heard somebody shouting, "Dalhin sa ospital, tulungan ninyo ako." All in all, she heard four shots.

Reynaldo Unidad, petitioner, testified^[31] that: He is the Chief Operations Officer of the Western Police District and his duties are to attend conferences regarding operations, prepare reports for the District Director, prepare the Oplan which is the operational plan, the IMPLAN which is the implementing plan and operational order, and other administrative and staff work.

While he was walking on his way home on January 26, 1993, he was approached by Eduardo Herrera who volunteered to carry his bag of dirty clothes and accompanied him home. But while they were walking along Ma. Cristina St., he heard a shout coming from his back saying, "Putang Ina mo, Jojo, bakit mo ako isinuplong, bakit mo ako kinakalaban, pati nanay ko, kinakalaban mo."

He looked back and, at that instance, a man wearing a black chaleco, maong pants and a pair of white rubber shoes intercepted them, shouting, and then poked his gun directly at Jojo. Jojo answered, "Putang Ina mo, hindi naman ako ang nag-ano eh, kayo nga ang nagwawalanghiya sa nanay ko, vendor lang, hinihingian mo ng P20.00, tapos pinakulong mo pa sa presinto." He advised the man to put down his firearm and said, "Pare, baka naman puwede mong ibaba 'yan at pag-usapan ninyo na lang and problema ninyo." He thought then that he was only joking as they may be acquainted with each other. However, the man turned his ire at him and aimed the firearm towards him but when he remained silent and did not move, the man again aimed the gun at Jojo. While holding the firearm with both hands pointed at Jojo, the man said, "Putang Ina mo, Jojo, papatayin kita."