

FIRST DIVISION

[G.R. No. 128117, February 28, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGAR CAWAYAN Y CRUZ, ACCUSED-APPELLANT.**

D E C I S I O N

PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Cebu City, Branch 14, finding accused Edgar Cawayan y Cruz guilty beyond reasonable doubt of murder and sentencing him to *reclusion perpetua* and to pay the heirs of the offended party the sum P50,000.00 (Fifty Thousand Pesos).^[1]

The facts are as follows:

On February 28, 1996 around 9:00 in the evening, accused, together with friends Maricris Villan, Vilma Barrientos and Ram Florita, was in the house of Cristopher Carreon, situated in Cabantan Street, Cebu City. They were drinking beer, with accused acting as the glass-tender. Except for accused and Ram, the group was playing the local card game "tsiketsa." After downing several bottles of beer, accused, without a word, stood up and left. The group continued to play cards up to the wee hours of the next day.

Around 12:30 in the morning, accused returned. He went straight towards the group still playing "tsiketsa." To Maricris and Vilma's surprise, they saw him sternly looking at Christopher Carreon, and before any one could utter a word he levelled his gun towards Christopher who was lying on the floor face down and shot him at the back. As Christopher rolled bloodied on the floor, he pleaded to accused to spare him but to no avail. When he tried to stand up, accused uttered, "ganina na ko naglagot nimo (why should I not do it? I have been angry with you for a time) and shot him again on the stomach. Accused, upon seeing Christopher slowly dying, ran away.

Post-mortem examination on Christopher's cadaver disclosed that he sustained two gunshot wounds, one at the back and one at the thoracic region. The cause of death was shock secondary to gunshot wound on the thoracic area, posterior aspect.

On the basis of the joint affidavit executed by witnesses Maricris Villan and Vilma Barrientos, on February 29, 1996, Virginia F. Santiago Prosecutor II, filed an Information for murder with the Regional Trial court, Cebu City, as follows:

"The undersigned Asst. Prosecutor of the City of Cebu accuses Edgar Cawayan y Cruz of the crime of Murder, committed as follows:

"That on or about the 28th day of February, 1996, at about 12:30 dawn, in the City of Cebu, Philippines, and within the jurisdiction of this

Honorable Court, the said accused, armed with a revolver, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Christopher Carreon with the revolver hitting the latter upon vital parts of his body and inflicting upon him the following physical injuries, causing:

"SHOCK SECONDARY TO GUNSHOT WOUNDS THORAXIC AREA, POSTERIOR ASPECT."

"and as a consequence of said injuries, Christopher Carreon died few minutes later.

"CONTRARY TO LAW.

"Cebu City, Philippines, February 29,1996.

BAIL RECOMMENDED: Non-bailable.

"(SGD.) VIRGINIA P. SANTIAGO

"Prosecutor II"

"APPROVED

"(SGD.) JUFELINITO R. PAREJA-NPSS - III

"City Prosecutor."^[2]

Arraigned on March 27, 1996, accused pleaded not guilty. On June 24, 1996, accused filed a motion for compulsory submission to treatment and rehabilitation pursuant to Section 31 of Republic Act 6425 or the Dangerous Drugs Act, stating that he is a drug dependent and in fact a prosecution witness admitted that the accused was a drug dependent.^[3] On June 24, 1996, the trial court denied the motion, stating thus:

"It is easy to see that under the first paragraph of the afore-quoted section, it is only when a person charged with an offense is found by the fiscal or the court, at any stage of the proceedings, to be a drug dependent, that the fiscal or the court as the case may be, shall suspend further proceedings and transmit the record of the case to the board. In the instant case, neither the fiscal nor the Court has found that the accused is a drug dependent."^[4]

Hence, trial ensued. On October 31, 1996, the trial court rendered a judgment the dispositive portion of which reads:

"WHEREFORE, premises considered, the accused Edgar Cawayan y Cruz is hereby found guilty beyond reasonable doubt of the felony of murder, attended by the generic aggravating circumstance that the crime was committed in the dwelling of the offended party (morada), but offset by the alternative mitigating circumstance of intoxication. Accordingly, the accused is hereby sentenced to the penalty of Reclusion Perpetua, and to pay the heirs of the offended party the sum of P50,000.00, in conformity

with the current jurisprudential guideposts.

"Costs against accused.

"SO ORDERED."^[5]

Hence, this appeal.^[6]

Accused-appellant raises a lone assignment of error that the trial court erred in convicting him of the crime charged by rejecting the defense of alibi and denial put up by him.^[7]

Accused-appellant Edgar Cawayan submits that the trial court simply brushed aside his defense of *alibi* and denial duly corroborated by other defense witnesses, branding the same as lame and implausible in the face of the firm and affirmative testimonies of two women prosecution witnesses who identified and pointed to the accused as the author of the slaying of deceased Christopher Carreon.^[8]

According to accused-appellant, while it may be true that as between the defense of alibi and positive identification by eyewitnesses, the latter deserves greater credence, there are situations where it is unavoidable simply because it is really the truth, no more no less.

It is thus imperative that we scrutinize the evidence presented by the prosecution which served as the basis for the conviction of the accused.

The prosecution presented two eyewitnesses in the person of Vilma Barrientos and Maricris Vilan, who both testified that they saw accused-appellant shoot the victim twice.

The testimony of Maricris Vilan was the same with that of Vilma Barrientos, saying that it was accused-appellant Edgar Cawayan who shot Christopher Carreon.^[9]

The prosecution also presented the medico legal expert who conducted an autopsy on the body of the deceased Christopher Carreon. The post mortem findings of Dr. Jesus P. Cerna, M.D. reveal the following:

"Gunshot wounds:

1. Entrance, ovaloid, 1.0 x 0.8 cm., with abrasion collar widest infero-laterally by 0.6 cm. edges inverted, back, right scapular area, 7.0 cm. from the posterior median line and 125 cm. above right heel; forward, upward and medially, involving the skin and the underlying soft tissues, fracturing the 2nd and 1st cervical vertebra, (bullet imbedded deep at the base of the skull not recovered).
2. Entrance, ovaloid, 1.0 x 0.6 cm., with contuso-abraded collar widest infero-laterally by 0.5 cm. edges inverted, back, left infra-scapular area, 12.0 cm. from the posterior median line and 116.0 cm. above left heel; directed forward, upward medially, involving the skin and the underlying soft tissue, thru 7th left intercostal space, into