

FIRST DIVISION

[G.R. No. 115692, May 12, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN TANOY, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Accused-appellant Edwin Tanoy was charged with murder for the death of Ricardo L. Espinosa before the Regional Trial Court of Iloilo City, Branch 36, in Criminal Case No. 37116. The Information reads-

"That on or about December 31, 1987 in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, armed with an armalite rifle, with deliberate intent and with decided purpose to kill, with treachery, did then and there, willfully, unlawfully and criminally shoot, hit and wound Ricardo L. Espinosa with the said rifle which the accused provided himself at the time, thereby causing upon said Ricardo L. Espinosa bullet wounds on vital parts of his body which caused his death moments thereafter."

Accused-appellant pleaded "not guilty" on arraignment. Trial on the merits ensued.

The facts as found by the trial court are as follows: On the night of December 30, 1987, in the course of an altercation, accused-appellant pistol-whipped Eduardo Alo on the head. Alo sought refuge at the house of retired Col. Ricardo L. Espinosa who at the time was the barangay captain of Infante, Molo, Iloilo City. That evening, Alo was brought to the hospital by Myrna Espinosa, daughter of Ricardo.

At around 10:00 o'clock the following morning, Ricardo Espinosa, Joel Kilayko and Bgy. Tanod Ruben Segutier went to the police station at Gen. Luna St., Iloilo City to report the incident between accused-appellant and Alo. When Espinosa was about to hand over the brown envelope containing the complaint against accused-appellant to the desk sergeant, accused-appellant P/Sgt. Edwin Tanoy, who was also inside the office of the desk sergeant, brusquely asked Espinosa: "*Why are you running after me?*" to which Espinosa replied: "*We will just settle these things before the police.*"

Accused-appellant then grabbed the armalite rifle of the desk sergeant lying on the table and pointed the same at Espinosa, saying, "*Later, I will kill you.*" Alarmed, Espinosa hid behind the concrete wall enclosing the office of the desk sergeant. A short while later, he emerged from his hiding place with his left arm extended with palm facing forward and his right arm behind his left arm with palm also facing forward as if to cover his chest. While in that defenseless position, accused-appellant shot him on the chest causing him to fall to the ground. Kilayko rushed towards Espinosa but accused-appellant aimed a pistol at him saying, "*You also!*" This prompted Kilayko to run inside the police station and ask for help.

Accused-appellant, however, denied having intentionally killed Espinosa. On the contrary, he averred that Espinosa's death was purely accidental. According to him, Espinosa arrived at the police station at around 10:00 o'clock in the morning of December 31, 1987 and berated him. He asked Espinosa why he was running after him, whereupon Espinosa immediately grabbed the armalite rifle that was lying on the table of the desk sergeant. They grappled for possession of the rifle and in the process, the rifle fired and Espinosa was hit on the chest. When he saw Kilayko rushing towards Espinosa, he aimed his service pistol at him and Kilayko immediately retreated to where he came from.

The trial court did not give credence to the version of the defense. It ratiocinated that the killing of Espinosa could not have been accidental considering the nature of the wounds sustained by the victim. Relying on the medical findings of Dr. Jose Rafio who autopsied the body of the deceased, the trial court concluded that the victim could not have been shot while grappling for possession of the armalite. The wounds sustained by Espinosa on his hands indicated that he was raising his hands as if to cover his body when he was shot. Indeed, had accused-appellant grabbed and held the muzzle or barrel of the armalite rifle, his hands could not have been hit. Besides, it would have been highly improbable for the victim to grab the muzzle of the gun instead of its butt considering his knowledge and experience with firearms considering that he was a retired colonel of the defunct Philippine Constabulary.

The trial court likewise found the location of the brown envelope which Espinosa brought with him when he came to the police station as another telling point against the testimony of accused-appellant. The trial court held that if indeed accused-appellant and the victim were grappling for possession of the armalite rifle, the envelope would not have remained tucked under his arm. The trial court held thus -

"Evidence unrefuted shows that when the victim was fired upon, the said envelope was still tucked under his arm and as such was smeared with the victim's blood. It is very unlikely for the victim not to have lost hold of the brown envelope considering that he grappled for possession of the said armalite rifle. Expectedly, the victim could have resorted to forceful, sudden and jerky movements to gain possession of the rifle and in the process extended his arms over the cement division causing the brown envelope to fall. This not having been so when it was expected under the circumstances, belies the fact that 'grappling' indeed preceded the explosion."^[1]

The trial court likewise ruled that treachery attended the commission of the crime. It found that -

"The prosecution has proven that all three wounds, on both hands and on the chest, of the victim were caused by a single bullet. This fact establishes a clear picture of the victim raising his hands, placing the same one after the other, before or in front of and at the level of his chest, most probably, to ward off the shot. In the case of *People v. Castro*, (G.R. No. L-20555 and L-21449, June 30, 1967), the Supreme Court ruled: