

FIRST DIVISION

[G.R. Nos. 109619-23, June 26, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LAUDEMAR DE LA CRUZ Y VERDADERO, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

In resolving this appeal, the Court reiterates the time-honored doctrine that the findings of trial courts on the credibility of witnesses and their testimonies are entitled to great weight and are generally not disturbed on appeal, except for strong and valid reasons. In addition, the Court underscores the principle that nighttime does not automatically aggravate a crime. The prosecution must prove that the accused deliberately sought the darkness, took advantage of it and benefited from it by ensuring his non-identification or capture.

The Case

This is an appeal from the 20-page Decision^[1] dated November 25, 1992, of the Regional Trial Court of Dagupan City, Branch 44, in the consolidated Criminal Case Nos. D-10203, D-10204, D-10205, D-10206, D-10207 and D-10769, convicting Laudemar de la Cruz of murder, frustrated murder and three counts of attempted murder. Said Decision disposed of six (6) Informations filed against appellant by 2nd Assistant City Prosecutor Ludgerio B. Limbos.

The first Information,^[2] docketed as Criminal Case No. D-10203, charged:

"That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, did then and there, wilfully, unlawfully and criminally, have in his possession, custody and control a .45 caliber pistol, with Serial No. 2126560 marked Remington, with four (4) live ammunition, without authority and/or license to possess the same."

The second Information,^[3] docketed as Criminal Case No. D-10204, charged De la Cruz as follows:

"That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, being then armed with a gun, with treachery, evident premeditation and with intent to kill one CESAR MACASIEB, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him on vital parts of his body with the said weapon, thereby causing his death shortly thereafter due to

`[c]ardio respiratory arrest, massive intrathoracic hemorrhage, multiple gunshot wound' as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, CESAR MACASIEB, in the amount of not less than THIRTY THOUSAND PESOS (P30,000.00) Philippine currency, and other consequential damages."

In the third,^[4] fourth^[5] and fifth^[6] Informations docketed as Criminal Case Nos. D-10205, D-10206 and D-10207, respectively, De la Cruz was separately accused of attempting to kill Absalon B. Villabroza, Nivelly Aliven and Bernardo Domingo. Except for the names of the victims and the location of the wound sustained by each, the three Informations similarly allege the following:

"That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ y Verdadero, being then armed with a gun, with treachery and with intent to kill one ABSALON B. VILLABROZA, did then and there, wilfully, unlawfully, and criminally, attack, assault and use personal violence upon the latter by shooting and hitting him on the left shoulder with the said weapon, the said accused having thus commenced a felony directly by overt acts but did not perform all the acts of execution which should 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 the herein complainant, ABSALON B. VILLABROZA."

The last Information, filed as Criminal Case No. D-10769, charged De la Cruz with frustrated murder as follows:

"That on or about the 29th day of November, 1990, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LAUDEMAR DELA CRUZ, being then armed with a gun, with treachery, evident premeditation and with intent to kill one RICARDO FERNANDEZ, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting him, hitting him on the face and right arm with the said gun, the said accused having thus performed all the acts of execution which could have produced the crime of murder as a consequence, but which nevertheless did not produce it by reason of some causes independent of the will of the perpetrator, that is due to the timely and able medical attendance rendered to him, to the damage and prejudice of the herein complainant, RICARDO FERNANDEZ."^[7]

Accused-appellant pleaded not guilty to all the crimes charged against him.^[8] In due course, the trial court rendered a Decision disposing of all six cases as follows:

"WHEREFORE, in Criminal Cases Nos. D-10204, D-10205, D-10206, D-10207 and D-10769, the Court finds accused Laudemar dela Cruz Y Verdadero guilty beyond reasonable doubt of the following crimes:

In Criminal Case No. D-10204, as principal of the crime of [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences him to suffer the

penalty of [r]eclusion [p]erpetua, and to pay an indemnity of P50,000.00, and to pay the costs of the proceedings.

Accused Laudemar dela Cruz is ordered to pay the heirs of the deceased the sum of P30,400.00 representing actual expenses.

In Criminal Case No. D-10205, as principal of the crime of [a]ttempted [m]urder attended by the aggravating circumstance of nighttime which is not offset by mitigating circumstance, and pursuant to law, hereby sentences said accused to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of [a]rresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

Accused Laudemar dela Cruz y Verdadero is ordered to pay the actual medical expenses in the sum of P31,420.11 to the Pacific Farms which shouldered the expenses.

In Criminal Case No. D-10206, as principal of the crime of [a]ttempted [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences said accused to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of [a]rresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

The accused is ordered to pay the sum of P1,082.50 to the Pacific Farms, the employer of the complaining witness which shouldered the expenses.

In Criminal Case No. D-10207, as principal of the crime of [a]ttempted [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences him to suffer an indeterminate penalty of from [f]our (4) [y]ears and [t]wo (2) [m]onths of [a]rresto [m]ayor in its maximum period to [p]rison [c]orreccional in its medium period, as minimum, to [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as maximum, and to pay the costs.

Accused is ordered to pay the sum of P2,257.00 as actual expenses incurred by the Pacific Farms, the employer of the offended party.

In Criminal Case No. D-10769, as principal of the crime of [f]rustrated [m]urder aggravated by nighttime which is not offset by any mitigating circumstance, and pursuant to law, hereby sentences the accused to suffer an indeterminate penalty of from [t]en (10) [y]ears of [p]rison [c]orreccional in its maximum period to [p]rison [m]ayor in its medium period, as minimum, to [s]eventeen (17) [y]ears and [f]our (4) [m]onths of [p]rison [m]ayor in its maximum period to [r]eclusion [t]emporal in its medium period, as maximum, and to pay the costs.

Accused Laudemar dela Cruz is hereby ordered to pay the sum of P37,000.00 representing the expenses incurred by the complainant Ricardo Fernandez.

For failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. D-10203, accused Laudemar dela Cruz y Verdadero is hereby acquitted of the crime charged without costs.

In this connection, the .45 caliber pistol bearing serial number 2126560 marked Remington and the four (4) live ammunitions are hereby ordered forfeited and confiscated in favor of the [g]overnment. The [c]lerk of [c]ourt of this Court is hereby ordered and directed to transmit said firearm and ammunitions to the PNP at Lingayen, Pangasinan.

SO ORDERED.”^[9]

The Facts **Version of the Prosecution**

The antecedents of the case, as established by the prosecution and to which the trial court gave credence, evolved in the manner narrated below.

Around 10:00 o'clock in the evening of November 29, 1990, Ricardo Fernandez alias Ricky, then 29 years of age, was having some drinks with his friend Cesar Macasieb at the Crisan Canteen located along Reyes Street, Dagupan City.^[10] Shortly, three men, who turned out to be Bernardo Domingo, Absalon Villabroza and Nivelly Aliven, arrived. Their two other companions, Cesar Diolazo and Jolly de Guzman, stayed ten to fifteen meters away from the canteen to watch over the fish which they were to deliver for their employer, the Pacific Farms Incorporated, to Aling Aning at the Magsaysay Market.^[11]

According to Fernandez, he was still drinking with Macasieb when Appellant Laudemar de la Cruz arrived.^[12] He did not know appellant but had seen him in a wake at the Funeraria Dagupan sometime in August or September 1990.^[13] Upon arriving, appellant ordered a bottle of beer which he drank near the entrance of the canteen, about three to five meters from where Fernandez and Macasieb were seated. Then, appellant, who had not finished his bottle of beer, went outside the canteen. Fernandez saw him sit on a chair by the entrance. As they continued conversing and drinking, he disappeared, during which time, Fernandez surmised, he must have urinated. Appellant reappeared and had another drink before leaving again. Then, suddenly, appellant emerged and shot Macasieb. As the latter fell, appellant also shot Fernandez on the face, causing him to feel dizzy and to fall. After a while, Fernandez rose and ran to the police station.^[14]

Bernardo Domingo, a driver in his early forties, related that he was with two companions in the same restaurant on that fateful night. While eating, he glanced at the door and noticed a man standing while drinking beer some two meters away. The man, who was wearing a jacket and a hat, used two hands in gunning down, first, the two persons who were drinking; then, Villabroza, Domingo himself, and Aliven in that order. Domingo's left thigh and right arm were hit.^[15] Villabroza was in the act of putting a spoon of food into his mouth when he was hit by appellant on his left shoulder. He fell and, when he came to his senses, saw that Domingo and Aliven were also injured. He then glanced at the door; not seeing appellant

anymore, he ran with his companions towards the road to look for their two other companions who could bring them to the hospital. It turned out that Diolazo and De Guzman were already on their way to the police, when they met a mobile car proceeding to the restaurant. Domingo, Villabroza and Aliven were taken to the Luzon Medical Center (LMC).^[16]

Sgt. Reynaldo de Vera was on duty at the Dagupan City Police Station on that same evening. Around 10:00 p.m., a bloodied Fernandez, with a gunshot wound on his face, arrived at the police station, where he reported to Sgt. De Vera that he had been shot at the Crisan Store. The police rushed Fernandez to the Pangasinan Medical Center and, on the way, learned from him that it was De la Cruz who had shot him. As Fernandez was being treated at the hospital, Sgt. De Vera and his group returned to the police station, where they were instructed to proceed to the crime scene which was about three hundred meters from the police station.

The police found the store in disarray, with bottles and drinking glasses scattered around. They found three slugs of a .45 caliber firearm and five empty shells from a firearm of the same caliber, which were later forwarded to the National Bureau of Investigation (NBI) for examination. The women at the canteen told the police that they recognized the man who had shot the victims, but that they did not know his name. From the canteen, Sgt. De Vera proceeded to the LMC and learned that the other victims were Domingo, Aliven, Villabroza, and Macasieb who was already dead.

From the hospital, the police went back to their station to scan the police blotter to verify Fernandez' information that his brother had previously lodged a complaint against the man who shot them. True enough, Sgt. De Vera learned from the police records that a certain Boy Fernandez, Councilor Doria and another barangay councilor had complained against Laudemar de la Cruz for alleged threats during a card game.

Upon learning the identity of the man who had gone on the shooting rampage, Sgt. De Vera, in the company of several policemen, proceeded to the residence of appellant at Pantal Centro. Before reaching his house, however, they saw him seated in a waiting shed with a gun in his hand. The police thus drew their weapons as they approached him, but he threw his gun towards the back of the waiting shed. Cpl. Zosimo Fabia retrieved the .45 caliber pistol that was later forwarded to the NBI for examination.

The police then arrested appellant and took him to the police station where he was investigated. Then they brought him to the Pangasinan Medical Center, where Fernandez pointed to him as the man who had shot him. Afterwards, the police also took appellant to the LMC, where the other victims likewise positively identified him as the person who had fired at them.^[17]

The death certificate^[18] issued by Dr. Tomas G. Cornel, assistant city health officer of Dagupan City, shows that 35-year-old Cesar Macasieb died due to "cardio respiratory arrest" and "massive intrathoracic hemorrhage" caused by the gunshot wounds Macasieb sustained on his right wrist, left hand and the anterior chest wall "along the parasternal line, right, level of the 2nd intercostal space, right, 0.8 cm. in diameter, round in shape"; with a point of exit at the "posterior aspect (back) along the scapular line, left, level of the 5th intercostal space left, 1 cm. in diameter, irregular in shape."^[19]