

## **SPECIAL THIRTEENTH DIVISION**

**[ CA-G.R. CR NO. 35130, April 30, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NESTOR A. DELA CRUZ, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**DIMAAMPAO, J.:**

Repugned in this Appeal is the Decision<sup>[1]</sup> dated 9 March 2012 of the Regional Trial Court of Manila, Branch 30, for Frustrated Homicide, in Criminal Case No. 08-259415, the *fallo* of which reads:

“WHEREFORE, accused NESTOR DELA CRUZ y AGBAYANI is found GUILTY beyond reasonable doubt of FRUSTRATED HOMICIDE. He is hereby sentenced to an indeterminate imprisonment of 4 years and 2 months of prision correccional as minimum to 8 years, 8 months and 1 day of prision mayor as maximum and ordering him to pay Isaac S. Ulep, Jr. the amount of Php65,919.60 as actual damages and Php25,000.00 as moral damages.

SO ORDERED.”<sup>[2]</sup>

The Information,<sup>[3]</sup> inculping accused-appellant Nestor Dela Cruz (NESTOR) for the crime of Frustrated Homicide, set forth the following accusatory averments:

“That on or about October 22, 2006, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, real identities and present whereabouts is (sic) still unknown and helping one another, did then and there willfully, unlawfully, and feloniously attack, assault, and use perso-nal violence upon the person of one ISAAC S. ULEP, JR., by then and there, suddenly shooting the latter with a gun hitting him on his back, thereby inflicting upon him serious physical injuries which are necessarily fatal and mortal, thus performing all the acts of execution which should have produced the crime of Homicide as a consequence but nevertheless did not produce it by reason of causes independent of the will of said accused, that is the timely and able medical assistance rendered to said ISAAC S. ULEP, JR., which prevented his death.

Contrary to law.”

Arraigned, NESTOR pled not guilty to the charge.<sup>[4]</sup> Thereafter, trial on the merits ensued.

The evidence for the prosecution cashes in on the testimonies of its witnesses.

On 22 October 2006, at around 9:00 o'clock in the evening, private complainant Isaac Ulep, Jr. (Isaac), a resident of No. 624, Cayco St., Sampaloc, Manila, was standing in front of his house with his wife, Sincerely Ulep (Sincerely); their helper, Gina Fulgoso (Gina); and neighbors, Felix Osias and Clifford Alba. In a trice, Isaac noticed a Blue Daewoo Racer car circling within the vicinity of his residence. He saw NESTOR as one of the passengers when the latter opened the window of the car. Isaac then uttered: "*Nandito na naman kayo, palagi mo na lang akong tinatakot.*" NESTOR retorted: "*Ayaw mo talagang umalis ha.*"

When Isaac turned his back on NESTOR, Sincerely promptly told him to go inside the house as the former was about to shoot him. Isaac suddenly heard a gunshot and felt blood coming from his chest. He turned his head and saw the car of NESTOR speeding away. Isaac was timely brought to the hospital and treated for his wounds. Sincerely and Gina both saw NESTOR as the one who shot Isaac.<sup>[5]</sup>

Fulminating against the prosecution's imputations, the defense recounted a different version—

On the time and date of the incident, NESTOR was in San Mateo, Rizal presiding over a meeting of the AFP Village Homeowners Association. He learned of the shooting incident only in February 2007 when he chanced upon a subpoena left inside his former residence at No. 6 Camarilla St., Quezon City.<sup>[6]</sup>

After trial, the court *a quo* rendered the judgment of conviction. NESTOR moved for reconsideration but failed to attain favorable relief as the court *a quo* denied his plea.<sup>[7]</sup>

Unfazed, NESTOR (now, appellant) seeks refuge before Us asserting that the court *a quo* gravely erred—

## I

IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION'S WITNESSES DESPITE THEIR GLARING AND GROSS INCONSISTENCIES, CONTRADICTIONS AND FABRICATIONS.

## II

IN CONVICTING APPELLANT BEYOND REASONABLE DOUBT WHEN ANY ONE OF THE MULTIPLE GROSS INCONSISTENCIES, CONTRADICTIONS AND FABRICATIONS OF THE PROSECUTION'S WITNESSES SHOULD HAVE BEEN ENOUGH TO CREATE AN IOTA OF DOUBT IN FAVOR OF HIS INNOCENCE.

The Appeal is barren of merit.

Appellant posits that his conviction is not supported by proof beyond reasonable doubt and that the court *a quo* erred in relying heavily on the testimonies of the prosecution witnesses. Otherwise stated, appellant assails the factual findings of the court *a quo* and the credibility of the prosecution witnesses.

Ingrained in Our jurisdiction is the rule that full weight and respect are usually

accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor of the witnesses.<sup>[8]</sup> In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.<sup>[9]</sup>

In the case at bench, We find no cogent reason to deviate from the findings of the court *a quo* that appellant was the one responsible for shooting Isaac.

The prosecution demonstrably established beyond reasonable doubt the essential elements of the crime of frustrated homicide— (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.<sup>[10]</sup>

For one to be criminally liable for a consummated, frustrated or attempted homicide or murder, there must be, on the part of the accused, an intent to kill the victim. Intent to kill is an internal act but may be proved by evidence, *inter alia*, that the accused used a lethal weapon; the nature, location and number of wounds sustained by the victim.<sup>[11]</sup>

Here, the prosecution tellingly demonstrated that appellant intended to kill Isaac as he used a gun and aimed his upper back hitting his right lung. The gunshot wound was fatal had it not been for the timely medical attention accorded to Isaac. If the victim's wound would normally cause death, then the last act necessary to produce homicide would have been performed and death would have resulted were it not for the timely medical attention given to the victim.<sup>[12]</sup>

Along this grain, prosecution witnesses Sincerely and Gina positively identified appellant as the perpetrator of the crime. Consider the following open-and-shut testimonial avowals:

“Q Now, can you tell us if on October 22, 2006 at about 9:30 in the morning --- in the evening, where were you? (sic)

A We were standing in front of our house and my husband and I were conversing.

Q And aside from you and your husband, were there other persons also with you?

A Yes, sir.

x x x

x x x

A Felix Osias, Gina Toposo and Clifford Alban.

Q Now, can you tell us if on that day and night and time, if you have encountered any unusual incident?

A There was, sir.

Q And what is this incident all about?

A My husband was shot.

Q And do you know who ever shot your husband?

A Yes, sir.

x x x

x x x

Q Will you kindly look around inside the courtroom and point to him?

INTERPRETER:

Witness is pointing to a male person inside the courtroom wearing blue polo shirt, who, when asked his name, identified himself as Nestor Dela Cruz y Agbayani.

x x x

x x x

Q And how far were you from --- and do you know who ever shot your husband? Do you know who ever shot him?

A Yes, sir.

x x x

x x x

A Nestor Dela Cruz.

Q Nestor Dela Cruz. And you are referring to the accused?

A Yes, sir.

Q Now, how far were you from where Nestor Dela Cruz was? How far were you? How far were you? Distance. Gaano kalayo? Sabihin mo kung ga'no kalayo d'yan.

A About six to seven meters.

Q Now, where was the accused at the time that you saw him shot your husband? Where was he?

A Inside the car, sir.

x x x

x x x

Q You know him. Now, how many times - - - did you -

- - did you always see this car going to your place?

A Yes, sir.

Q Why?

A That's the car being used by Nestor Dela Cruz who together with companions every time he goes to the apartment. (sic)

x x x

x x x

Q More than five. Now, can you explain to us how was your husband shot by the accused?

A Nestor was inside the car. I recognized him, sir, and I knew he was the one who shot my husband.

Q Now what about - - - what is the lighting condition in the place?

A Well-lighted, sir.

x x x

x x x

Q Now, describe to us now(,) how the accused here shot your husband.

x x x

x x x

A I saw Nestor aiming to shoot my husband so I told my husband to enter the house.

x x x

x x x

Q And did you know where that - - - where did that gunshot come from?

A It came from the car where Nestor was boarded.

Q And did you know who of the passengers ever shot your husband?

A Yes, sir.

Q Who?

A Nestor, sir.

x x x

x x x

Q Now, you said that your husband was shot by the accused. Did you come to know what part of the body of your husband was ever hit by that gunshot?