

NINTH DIVISION

[CA G.R. CR. NO. 25769, August 16, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VALENTINO ESGUERRA, ACCUSED-APPELLANT.**

D E C I S I O N

CARANDANG, J.:

The instant appeal was interposed by the accused Valentino Perez Esguerra to impugn the April 16, 2001 Decision of the Regional Trial Court, Branch 155, of Pasig City in Criminal Case No. 63491, finding said accused guilty beyond a shadow of doubt of the crime of Frustrated Murder in accordance with Articles 248 and 250 of the Revised Penal Code, and consequently sentencing him in this manner:

WHEREFORE, premises considered, the Court finds the accused Valentino Esguerra y Perez GUILTY beyond reasonable doubt as principal of the crime of Frustrated Murder qualified by treachery as defined and penalized under Articles 248 and 250 of the Revised Penal Code, and there being no mitigating or aggravating circumstance and applying the Indeterminate Sentence Law hereby sentences said accused to suffer the Indeterminate penalty of from eight (8) years and twenty one (21) days of prision mayor, as minimum, to fourteen (14) years, ten (10) months and twenty (20) days of reclusion temporal, as maximum.

Accused is further ordered to indemnify private complainant the amount of TWO MILLION PESOS (Php2,000,000.00) as actual and compensatory damages, THREE HUNDRED THOUSAND PESOS (Php300,000.00) as moral damages, FIFTY THOUSAND PESOS (Php50,000.00) as exemplary damages, and TWO HUNDRED THOUSAND PESOS (Php200,000.00) for expenses of litigation, inclusive of attorney's fees, all without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED. (Rollo pp. 46-56)

The origin of this appeal traces to the following factual and procedural antecedents:

On July 8, 1985, the Office of the City Prosecutor of Pasig, through 3rd Assistant Fiscal Rolando L. Gonzales, instituted a criminal Information before the RTC of Pasig City charging Valentino Esguerra (along and in conspiracy with Luis Adea, Jr., and Ramoncito Pascual) with the crime of Frustrated Murder, the accusatory portion of which reads as follows:

That on or about the 28th day of March 1985, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding with one another,

armed with a .45 cal. Pistol, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully, and feloniously attack, assault and shoot one Gerardo Mendoza y Maniquiz on the vital parts of his body which would ordinarily caused his death, thus performing all the acts of execution which should have produced the crime of murder as a consequence but nevertheless, did not produce it by reason of cause independent of their will, that is, due to the timely able medical attendance rendered to said Gerardo Mendoza y Maniquiz which prevented his death.

CONTRARY TO LAW. (Record p. 3)

Upon arraignment on February 1, 1996, Valentino Esguerra, with the assistance of Atty. Aurora Salva-Bautista, pleaded not guilty of the crime for which he is being charged (Record p. 184). However, the case with respect to accused Luis Adea, Jr., and Ramoncito Pascual was archived by the trial court, as said accused have remained at large and were successful in eluding apprehension. Consequently, a full-blown trial on the merits forthwith ensued only in so far as Valentino Esguerra is concerned.

Prosecution evidence established the following facts:

Gerardo Mendoza, the victim herein, used to be the manager of an international freight forwarding company. At around 10:00 in the evening of March 28, 1985, Gerardo and his friend Edwin Quejada were playing a friendly game of darts at a place known as Flicker's Den located at Kapitolyo Drive, Barrio Kapitolyo in Pasig City. At the same time, Valentino Esguerra, Luis Adea, Jr., and Ramoncito Pascual were likewise present at the Flicker's Den. Gerardo was already well acquainted with Luis and Ramoncito, since they were once neighbors in the same residential subdivision. However, Gerardo met Valentino only for the first time that evening. Not long thereafter, Valentino, Luis, and Ramoncito, saying that they wanted to imbibe on liquor but were short of cash, requested Gerardo to treat them for a drink. Gerardo acceded to the request, and the group then left the Flicker's Den at about 10:30 and proceeded directly to My Place Pub, a drinking joint located just along Shaw Boulevard. Upon reaching My Place Pub, the group readily positioned themselves near the bar. Gerardo, Edwin, Luis, and Ramoncito immediately requested to be served with beer, whereas Valentino chose to ask for brandy. Noting that the price of brandy was too expensive, someone from the group called the attention of Valentino and requested him just to order beer instead so as to avoid embarrassment with Gerardo who was "footing the bill" of the group. In a fit of anger due to the remark, Valentino loudly uttered "*Putang ina ninyo, umaangal pa kayo. Matagal na kayong under surveillance sa amin*", and suddenly drew out his gun, a .45 caliber pistol. Ramoncito then ordered "*birahin mo na, upakan mo na.*" As if acting on cue, Valentino fired a shot at Edwin. Having been hit, Edwin fell on the pavement. In just a matter of seconds, Valentino then aimed his firearm at Gerardo, and without saying a word shot the latter from a distance of just about two meters. The bullet found its mark on Gerardo's chin. Gerardo lost his consciousness almost instantaneously, only to regain it when he was already lying at the hospital bed in Medical City Hospital at Mandaluyong. Gerardo was treated at the Intensive Care Unit of the hospital for three weeks. All in all, Gerardo was confined at the Medical City Hospital for a period of one month. After having been discharged, Gerardo still needed to return to the hospital to undergo physical and occupational therapy

sessions, as well as regular examination and monitoring. Gerardo likewise underwent two surgical operations to heal and correct the damage caused by the bullet in his neck and cervical spine. Withal, Gerardo also went to the United States to have his condition evaluated by a physician who specializes in the kind of injury that he sustained, for which Gerardo incurred no less than US\$8,000 in medical expenses. At present, half of Gerardo's body is already disabled. (TSN, Gerardo Mendoza, April 18, 1997, pp. 5-24; October 24, 1997, pp. 3-33)

Gerardo's attending physician Dr. Bienvenido Aldanese testified that Gerardo sustained a gunshot wound that entered his chin and penetrated through his spinal column and cervical spine. Dr. Aldanese needed to insert a tube into Gerardo's oral pharynx to secure a clear passage for air considering that blood was already getting into Gerardo's pulmonary system, and Gerardo was then beginning to drown in his own blood. The penetrating bullet caused a fracture on Gerardo's cervical spine which necessitated to be stabilized in order to minimize further injury to Gerardo's spinal cord. By way of expert medical opinion, Dr. Aldanese stated that Gerardo sustained a fatal gunshot wound, such that without timely and adequate medical attention, Gerardo would have drowned in his own blood and that his spinal cord would have swollen up, thereby making his death certain by reason of inability to breath freely. Dr. Aldanese likewise declared that by reason of the gunshot wound, Gerardo is now suffering from secondary paralysis, which is virtually permanent in nature. (TSN, Dr. Bienvenido Aldanese, November 7, 1997, pp. 6-19).

In an attempt to secure exoneration, Valentino posited the defense of denial, disclaiming having known Gerardo, and all the more shooting the latter in that fateful evening of March 28, 1985. According to Valentino, he is a second hand car salesman by profession, and his usual practice was to transact business deals with prospective clients inside different watering holes. Valentino vividly remembered that he was at My Place Pub at Shaw Boulevard when the shooting incident took place, but denied to being the author of the assault against Gerardo. Valentino declared that he suddenly heard the sound of gunfire during the incident, and he lost no time in leaving the premises of My Place Pub out of panic and fear. (TSN, January 27, 2000, pp. 6-20)

On April 16, 2001, after deliberating upon the evidence adduced by the prosecution and the defense, the trial court rendered the herein assailed Decision convicting Valentino of the crime of Frustrated Murder, and accordingly sentencing him to suffer imprisonment and to pay actual, moral, and exemplary damages, including the expenses of litigation (Rollo pp. 46-56).

Disagreeing with the verdict of conviction, Valentino interposed the present appeal, and for this purpose ascribes to the trial court the following errors:

I.

The court a quo gravely erred in giving weight and credence to the theory of the prosecution and in disregarding that of the defense.

II.

The court a quo gravely erred in convicting accused-appellant of the crime charged despite the prosecution's failure to prove his guilt beyond