



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EDMUNDO ESCAMILLA y JUGO, **G.R. No. 188551**
Petitioner,

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DECASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

FEB 27 2013

X ----- X

DECISION

SERENO, *CJ*:

This is a Petition for Review on Certiorari¹ dated 20 August 2009. It seeks a review of the 10 June 2009 Resolution² of the Court of Appeals (CA) in CA-G.R. CR. No. 30456, which denied the Motion for Reconsideration³ of the 10 November 2008 CA Decision⁴ affirming the conviction of Edmundo Escamilla (petitioner) for frustrated homicide.

BACKGROUND

The facts of this case, culled from the records, are as follows:

Petitioner has a house with a *sari-sari* store along Arellano Street, Manila.⁵ The victim, Virgilio Mendol (Mendol), is a tricycle driver whose route traverses the road where petitioner's store is located.⁶

Around 2:00 a.m. of 01 August 1999, a brawl ensued at the corner of Estrada and Arellano Streets, Manila.⁷ Mendol was about to ride his tricycle

¹ *Rollo*, pp. 3-17.

² *Id.* at 44-45.

³ *Id.* at 36-42.

⁴ *Id.* at 22-35.

⁵ *Id.* at 24.

⁶ *Id.*

⁷ *Id.* at 24-26.

at this intersection while facing Arellano Street.⁸ Petitioner, who was standing in front of his store, 30 meters away from Mendol,⁹ shot the latter four times, hitting him once in the upper right portion of his chest.¹⁰ The victim was brought to *Ospital ng Makati* for treatment¹¹ and survived because of timely medical attention.¹²

The Assistant City Prosecutor of Manila filed an Information¹³ dated 01 December 1999 charging petitioner with frustrated homicide. The Information reads:

That on or about August 1, 1999, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one Virgilio Mendol, by then and there shooting the latter with a .9mm Tekarev pistol with Serial No. 40283 hitting him on the upper right portion of his chest, thereby inflicting upon him gunshot wound which is 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 his will, that is, by the timely and able medical assistance rendered to said Virgilio Mendol which prevented his death.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded not guilty.¹⁴ During trial, the prosecution presented the testimonies of Mendol, Joseph Velasco (Velasco) and Iluminado Garcelazo (Garcelazo), who all positively identified him as the shooter of Mendol.¹⁵ The doctor who attended to the victim also testified.¹⁶ The documentary evidence presented included a sketch of the crime scene, the Medical Certificate issued by the physician, and receipts of the medical expenses of Mendol when the latter was treated for the gunshot wound.¹⁷ In the course of the presentation of the prosecution witnesses, the defense requested an ocular inspection of the crime scene, a request that was granted by the court.¹⁸ On the other hand, the defense witnesses are petitioner himself, his wife, Velasco and *Barangay Tanod* George Asumbrado (Asumbrado).¹⁹ The defense offered the results of the paraffin test of petitioner and the transcript of stenographic notes taken during the court's ocular inspection of the crime scene.²⁰

The Regional Trial Court (RTC) held that the positive testimonies of eyewitnesses deserve far more weight and credence than the defense of

⁸ TSN, 31 October 2000, p. 4.

⁹ *Rollo*, p. 57.

¹⁰ *Id.* at 31.

¹¹ *Id.* at 24.

¹² *Records*, p. 1.

¹³ *Rollo*, p. 23.

¹⁴ *Id.*

¹⁵ *Id.* at 23-25.

¹⁶ *Id.*

¹⁷ *Id.* at 25.

¹⁸ TSN, 10 July 2001, p. 10.

¹⁹ *Rollo*, pp. 23-29.

²⁰ *Id.* at 29.

alibi.²¹ Thus, it found petitioner guilty of frustrated homicide.²² The dispositive portion reads:

WHEREFORE, the Court finds the accused Edmund Escamilla Y Jugo GUILTY beyond reasonable doubt of the crime of Frustrated Homicide under Articles 249 and 50 [sic] of the Revised Penal Code, and hereby sentences the accused to suffer an indeterminate sentence of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. Accused is hereby ordered to indemnify complainant Virgilio Mendol the sum of ₱34,305.16 for actual damages, ₱30,000.00 for moral damages.

SO ORDERED.²³

Petitioner filed a Notice of Appeal dated 14 July 2006.²⁴ In the brief that the CA required him to file,²⁵ he questioned the credibility of the prosecution witnesses over that of the defense.²⁶ On the other hand, the Appellee's Brief²⁷ posited that the prosecution witnesses were credible, because there were no serious discrepancies in their testimonies.²⁸ Petitioner, in his Reply brief,²⁹ said that the prosecution witnesses did not actually see him fire the gun.³⁰ Furthermore, his paraffin test yielded a negative result.³¹

The CA, ruling against petitioner, held that the issue of the credibility of witnesses is within the domain of the trial court, which is in a better position to observe their demeanor.³² Thus, the CA upheld the RTC's appreciation of the credibility of the prosecution witnesses in the present case.³³ Also, the CA ruled that the victim's positive and unequivocal identification of petitioner totally destroyed his defense of alibi. Hence, it found no reason to disbelieve Mendol's testimony.³⁴ In addition, it said that a paraffin test is not a conclusive proof that a person has not fired a gun and is inconsequential when there is a positive identification of petitioner.³⁵

A Motion for Reconsideration³⁶ dated 08 December 2008 was filed by petitioner, who asserted that the defense was able to discredit the testimony of the victim.³⁷

²¹ Id.

²² Id.

²³ CA rollo, pp. 29 and 39.

²⁴ Id. at 41.

²⁵ Id. at 57.

²⁶ Rollo, pp. 30-31.

²⁷ CA rollo, pp. 117-128.

²⁸ Id. at 122-124.

²⁹ Id. at 131-142.

³⁰ Id. at 133-136.

³¹ Id. at 137.

³² Rollo, p. 31.

³³ Id. at 32-33.

³⁴ Id. at 31-32.

³⁵ Id. at 31.

³⁶ Id. at 36-42.

³⁷ Id. at 37-39.

In its 10 June 2009 Resolution,³⁸ the CA denied petitioner's Motion for Reconsideration for being without merit, because the matters discussed therein had already been resolved in its 10 November 2008 Decision.³⁹

Hence, this Petition⁴⁰ assailing the application to this case of the rule that the positive identification of the accused has more weight than the defense of alibi.⁴¹ This Court resolved to require the prosecution to comment on the Petition.⁴² In his Comment⁴³ dated 15 December 2009, the victim said that his positive identification of petitioner was a direct evidence that the latter was the author of the crime.⁴⁴ Furthermore, what petitioner raised was allegedly a question of fact, which is proscribed by a Rule 45 petition.⁴⁵ Thus, the victim alleged, there being no new or substantial matter or question of law raised, the Petition should be denied.⁴⁶

We then obliged petitioner to file a reply.⁴⁷ In his Reply dated 01 March 2010,⁴⁸ he assigned as an error the application by the CA of the rule that the positive identification of the accused has more weight than the defense of alibi.⁴⁹ He posits that the lower court manifestly overlooked relevant facts not disputed by the parties, but if properly considered would justify a different conclusion.⁵⁰ This Court, he said, should then admit an exception to the general rule that the findings of fact of the CA are binding upon the Supreme Court.⁵¹

ISSUES

The questions before us are as follows:

- I. Whether the prosecution established petitioner's guilt beyond reasonable doubt.⁵²
- II. Whether a defense of alibi, when corroborated by a disinterested party, overcomes the positive identification by three witnesses.⁵³

³⁸ Id. at 44-45.

³⁹ Id. at 45.

⁴⁰ Id. at 3-17.

⁴¹ Id. at 8.

⁴² Id. at 100.

⁴³ Id. at 106-114.

⁴⁴ Id. at 110.

⁴⁵ Id. at 112.

⁴⁶ Id.

⁴⁷ Id. at 115.

⁴⁸ Id. at 118-124.

⁴⁹ Id. at 119.

⁵⁰ Id. at 121.

⁵¹ Id. at 120-122.

⁵² Id.

⁵³ Id. at 8.

COURT'S RULING

We deny the Petition.

I. The prosecution proved petitioner's guilt beyond reasonable doubt.

A. Petitioner was positively identified by three witnesses.

Petitioner argues that there was reasonable doubt as to the identity of the shooter.⁵⁴ He is wrong. As correctly held by the RTC and affirmed by the CA, the identity of the assailant was proved with moral certainty by the prosecution, which presented three witnesses – the victim Mendol, Velasco, and Garcelazo – who all positively identified him as the shooter.⁵⁵ We have held that a categorical and consistently positive identification of the accused, without any showing of ill motive on the part of the eyewitnesses, prevails over denial.⁵⁶ All the three witnesses were unswerving in their testimonies pointing to him as the shooter. None of them had any ulterior motive to testify against him.

Mendol said that he was about to ride his tricycle at the corner of Arellano and Estrada Streets, when petitioner, who was in front of the former's store, shot him.⁵⁷ The first shot hit its target, but petitioner continued to fire at the victim three more times, and the latter then started to run away.⁵⁸

Velasco, who was also at the corner of Estrada and Arellano Streets, heard the first shot, looked around, then saw petitioner firing at Mendol three more times.⁵⁹

Lastly, Garcelazo testified that while he was buying bread from a bakery at that same street corner, he heard three shots before he turned his head and saw petitioner pointing a gun at the direction of the victim, who was bloodied in the right chest.⁶⁰ Garcelazo was just an arm's length away from him.⁶¹

The three witnesses had a front view of the face of petitioner, because they were all facing Arellano Street from its intersection with Estrada Street, which was the *locus criminis*.⁶² Although the crime happened in the wee

⁵⁴ *Rollo*, p. 10.

⁵⁵ *Id.* at 32-33.

⁵⁶ *Anilao v. People*, G.R. No. 149681, 15 October 2007, 536 SCRA 98.

⁵⁷ TSN, 31 October 2000, p. 4.

⁵⁸ TSN, 02 April 2002, p. 8.

⁵⁹ TSN, 08 March 2004, p. 13.

⁶⁰ TSN, 11 August 2003, pp. 5-9.

⁶¹ *Id.* at 10.

⁶² TSN, 31 October 2000, pp. 4-6; 22 April 2002, pp. 5-6; and 11 August 2003, pp. 5-6.

hours of the morning, there was a street lamp five meters from where petitioner was standing when he shot the victim, thus allowing a clear view of the assailant's face.⁶³ They all knew petitioner, because they either bought from or passed by his store.⁶⁴

B. The intent to kill was shown by the continuous firing at the victim even after he was hit.

Petitioner claims that the prosecution was unable to prove his intent to kill.⁶⁵ He is mistaken. The intent to kill, as an essential element of homicide at whatever stage, may be before or simultaneous with the infliction of injuries.⁶⁶ The evidence to prove intent to kill may consist of, *inter alia*, the means used; the nature, location and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.⁶⁷

Petitioner's intent to kill was simultaneous with the infliction of injuries. Using a gun,⁶⁸ he shot the victim in the chest.⁶⁹ Despite a bloodied right upper torso, the latter still managed to run towards his house to ask for help.⁷⁰ Nonetheless, petitioner continued to shoot at him three more times,⁷¹ albeit unsuccessfully.⁷² While running, the victim saw his nephew in front of the house and asked for help.⁷³ The victim was immediately brought to the hospital on board an owner-type jeep.⁷⁴ The attending physician, finding that the bullet had no point of exit, did not attempt to extract it; its extraction would just have caused further damage.⁷⁵ The doctor further said that the victim would have died if the latter were not brought immediately to the hospital.⁷⁶ All these facts belie the absence of petitioner's intent to kill the victim.

II. Denial and alibi were not proven.

In order for alibi to prosper, petitioner must establish by clear and convincing evidence that, *first*, he was in another place at the time of the offense; **and**, *second*, it was physically impossible for him to be at the scene of the crime.⁷⁷ The appreciation of the defense of alibi is pegged against this standard and nothing else. Petitioner, as found by both the RTC and

⁶³ *Rollo*, p. 57.

⁶⁴ TSN, 31 October 2000, p. 6; 22 April 2002, p. 9; and 11 August 2003, p. 7.

⁶⁵ *Rollo*, p. 12.

⁶⁶ *Mahawan v. People*, G.R. No. 176609, 18 December 2008, 574 SCRA 737.

⁶⁷ *Id.*

⁶⁸ TSN, 02 April 2002, p. 9.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 8-9.

⁷³ TSN, 31 October 2000, p.10.

⁷⁴ TSN, 02 April 2002, p.10.

⁷⁵ TSN, 14 January 2003, p. 13.

⁷⁶ *Id.* at 13-14.

⁷⁷ *People v. Erguiza*, G.R. 171348, 26 November 2008, 571 SCRA 634.

CA, failed to prove the presence of these two requisite conditions. Hence, he was wrong in asserting that alibi, when corroborated by other witnesses, succeeds as a defense over positive identification.⁷⁸

A. Petitioner was unable to establish that he was at home at the time of the offense.

The alibi of petitioner was that he was at home asleep with his wife when Mendol was shot.⁷⁹ To support his claim, petitioner presented the testimonies of his wife and Asumbrado.⁸⁰

1. The wife of petitioner did not know if he was at home when the shooting happened.

The wife of petitioner testified that both of them went to sleep at 9:00 p.m. and were awakened at 3:00 a.m. by the banging on their door.⁸¹ However, she also said that she did not know if petitioner stayed inside their house, or if he went somewhere else during the entire time she was asleep.⁸² Her testimony does not show that he was indeed at home when the crime happened. At the most, it only establishes that he was at home before and after the shooting. Her lack of knowledge regarding his whereabouts between 1:00 a.m. and 3:00 a.m. belies the credibility of his alibi. Even so, the testimonies of relatives deserve scant consideration, especially when there is positive identification⁸³ by three witnesses.

2. Asumbrano did not see the entire face of the shooter.

Petitioner is questioning why neither the RTC nor the CA took into account the testimony of Asumbrado, the *Barangay Tanod* on duty that night.⁸⁴ Both courts were correct in not giving weight to his testimony.

Asumbrado said that he was there when the victim was shot, not by appellant, but by a big man who was in his twenties.⁸⁵ This assertion was based only on a back view of the man who fired the gun 12 meters away from Asumbrado.⁸⁶ The latter never saw the shooter's entire face.⁸⁷ Neither did the witness see the victim when the latter was hit.⁸⁸ Asumbrado also

⁷⁸ *Rollo*, p. 9.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ TSN, 08 March 2004, pp. 4-5.

⁸² *Id.* at 6.

⁸³ *People v. Lucas*, 260 Phil. 334 (1990).

⁸⁴ *Rollo*, p. 9.

⁸⁵ TSN, 18 May 2004, pp. 4-5.

⁸⁶ *Rollo*, p. 72.

⁸⁷ TSN, 18 May 2004, p. 14.

⁸⁸ *Rollo*, p. 65.

affirmed that he was hiding when the riot took place.⁸⁹ These declarations question his competence to unequivocally state that indeed it was not petitioner who fired at Mendol.

B. Petitioner's home was just in front of the street where the shooting occurred.

Physical impossibility refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.⁹⁰ Petitioner failed to prove the physical impossibility of his being at the scene of the crime at the time in question.

Both the prosecution and the defense witnesses referred to the front of appellant's house or store whenever they testified on the location of the shooter. Petitioner was in front of his house when he shot the victim, according to Velasco's testimony.⁹¹ Meanwhile the statement of Asumbrado that the gate of the store of the petitioner was closed when the shooting happened⁹² can only mean that the latter's house and store were both located in front of the scene of the crime.

Petitioner proffers the alibi that he was at home, instead of showing the impossibility of his authorship of the crime. His alibi actually bolsters the prosecution's claim that he was the shooter, because it placed him just a few steps away from the scene of the crime. The charge is further bolstered by the testimony of his wife, who could not say with certainty that he was at home at 2:00 a.m. – the approximate time when the victim was shot.

Based on the foregoing, it cannot be said that the lower courts overlooked any fact that could have justified a different conclusion. Hence, the CA was correct in affirming the RTC's Decision that petitioner, beyond reasonable doubt, was the assailant.

WHEREFORE, in view of the foregoing, the Petition is **DENIED**. The 10 June 2009 Resolution⁹³ and 10 November 2008 Decision⁹⁴ of the Court of Appeals in CA-G.R. CR. No. 30456 are hereby **AFFIRMED in toto**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁸⁹ Id. at 76-77.

⁹⁰ *Esqueda v. People*, G.R. No. 170222, 18 June 2009, 589 SCRA 489.

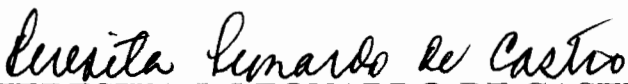
⁹¹ TSN, 22 April 2002, p. 4.

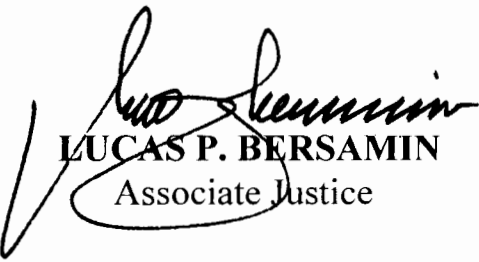
⁹² TSN, 18 May 2004, p. 10.

⁹³ *Rollo*, pp. 44-45.

⁹⁴ Id. at 22-35.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice