

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO N. POLANGCUS, ACCUSED-APPELLANT.

Ponente: HERNANDO, J.

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HERNANDO, J.:

This is an appeal interposed by accused-appellant Rogelio Polangcus from the Judgment[1] dated July 31, 2013 of the Regional Trial Court (RTC), Branch 14 of Baybay City in Crim. Case No. B-10-09-102 for Murder.[2]

Appellant seeks the reversal of the judgment of conviction on the ground that he did not commit the crime charged against him and that the court a quo erred in finding that prosecution witness Fernando Huerta has positively identified him as the perpetrator of the crime.

The Antecedents

In an Information dated August 18, 2010, Prosecutor I Fe Claire P. Carolino C. Paragatos of the Office of the Assistant Provincial Prosecutor of Baybay City, Leyte charged accused-appellant Rogelio Polangcus y Nodalo, with Murder, as follows:

That on or about the 9[th] day of June, 2010, in the Municipality of Albuera, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill and with treachery, did then and there wilfully, unlawfully, and feloniously assault and shoot Ruperto Huerta y Real with the use of a hand gun, which accused provided for the purpose, thereby hitting and inflicting upon, said Ruperto Huerta y Real gunshot entrance wound thru and thru at the left lumbar area and an exit wound at the abdomen epigastric area which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the victim.

CONTRARY TO LAW.[3]

At his arraignment on November 11, 2010, Rogelio Polangcus, assisted by counsel de oficio, Atty. Divino Niño P. Polo, pleaded not guilty to the offense.[4]

Pre-trial conference proceeded and thereafter, the prosecution and the defense presented their respective evidence.

Evidence for the Prosecution

The Office of the Solicitor General (OSG) narrated in its Brief[5] the version of the prosecution:

On June 9, 2010, at around 7:00 o'clock in the evening, the victim Ruperto Huerta was in waiting shed in Sitio Magbangon, Brgy. Tinag-an, Albuera, Leyte. The victim was then with his sons, namely: Ronald Huerta and Fernando Huerta. While all of them were still in the waiting shed and all facing the road, when suddenly a burst of gunfire was heard from the opposite direction which is a sugarcane plantation. The gunfire prompted Fernando Huerta to look back and he saw a man, who was wearing a hat and army jacket, firing a gunshot. Fernando Huerta instantly took his father's knife and pursued the assailant. The assailant attempted to shoot Fernando Huerta but the gun misfired. At that juncture, Fernando Huerta overtook the assailant, stabbed the latter and grappled for the gun. Fernando Huerta, however, retreated after he noticed that the assailant had a

companion nearby. Fernando Huerta went back to the waiting shed and saw his father lying on the pavement.

Thereafter, the police officers PO1 Emmanuel Dico Talua and PO3 Noel O. Aranas, SPO2 Carisma and the Chief of Police of Albueria, Leyte arrived at the crime scene. At the waiting shed, police officers discovered the lifeless body of Ruperto Huerta on the ground with a gunshot wound at his back. Ruperto Huerta was immediately rushed to the Ormoc Hospital where he was pronounced dead on arrival.

At around 10:30 o'clock in the morning of the following day, PNP Albueria Station received a telephone call that a person wearing a cap and military jacket was confined for a stab wound at the Western Leyte Provincial Hospital in Baybay, Leyte. The police officers proceeded to the Western Leyte Provincial Hospital together with Fernando Huerta to determine whether that person is the assailant. At the hospital, Fernando Huerta found the person confined as his father's assailant, who was later identified as herein appellant Rogelio Polangcus. Appellant's hands were then subjected to paraffin examination. Appellant's right hand yielded positive to gun powder residue. His left hand yielded negative.[6]

Evidence for the Defense

On the other hand, the accused-appellant narrated his defense in his own Brief,[7] as follows:

To refute the allegations hurled against the accused, the defense presented its lone witness, the accused Rogelio Nudalo Polangcus himself.

Rogelio Nudalo Polangcus testified that he was a resident of Sitio Wangag Albueria, Leyte for fifteen (15) years already and he does know the victim of this case. On June 9, 2010, he was in Brgy. Antipolo sawing coco lumber with his helpers Junilo Ando, Jessie Wenceslao and Ojing Garcia. Brgy. Antipolo is located two (2) kilometers, more or less, from Brgy. Tinag-an. On that same day, he slid down the mountain and was wounded on his right side of his body hence he was brought to Western Leyte Provincial Hospital at around 9:00 o'clock of June 9, 2010 by his wife. It was in the hospital on the following day that the policemen arrived and brought him to the police station.

During cross examination, he averred the fact that in going to Brgy. Tinag-an, he could pass by the Brgy. Antipolo but on his way to his house, he instead took the shorter route through Brgy. Salvacion. This is because Brgy. Salvacion, he can ride a habal-habal in going to his house and on that day he was already wounded. In the hospital, it was actually the police officers who pointed to him as the person who killed the victim. And so he was brought for paraffin testing to which he does know the result.

During clarificatory questions of the court, he said that he did not immediately sought medical treatment for his wound because his wife was still looking for money. When he was pinpointed as the accused by the police officers, he protested, but the latter insisted to bring him out of the hospital for paraffin testing and that they were even admonished by his attending doctor.[8]

The Ruling of the RTC

On July 31, 2013, the court a quo ruled for the conviction of accused-appellant. It applied the totality of circumstances test on the admissibility and reliability of out-of-court identification of suspects. It ruled that the face to face encounter of the witness Fernando Huerta and the accused immediately after the commission of the crime is more than sufficient evidence to establish that appellant was the perpetrator of the crime. Moreover, it also found that the crime was attended with treachery, thus qualifying the crime to murder, viz:

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Applying the foregoing factors in this case at bar, this Court is convinced that the prosecution is (sic) able to sufficiently establish the identity of the accused. The face to face encounter of the witness Fernando Huerta with the accused immediately after the commission of the crime, is more than sufficient to establish that the

accused is the perpetrator of the crime. The fact that the accused is not known to the (sic) Fernando Huerta, and the latter does not know the name of the former is of no moment. Those matters are not essential elements in proving the commission of the crime of murder. By human experience, the witness who had closed (sic) encounter with the accused could not be mistaken on the latter's identity despite that they are not familiar to each other. In this case, it is worthy to note that accused was still wearing his army jacket in the hospital when he was identified. The defense capitalized on the darkness of the night to negate the identity of the accused as perpetrator of the crime. However, the close encounter of the witness with the accused that fought each other allows the former to have close look on the latter, and his observations on the identity of the accused cannot be set aside.

As the identity of the accused is now settled issue, it is incumbent to determine his criminal liability. From the evidence presented and proffered by the prosecution, there is no doubt that the accused perpetrated the killing of the victim with alevosia. The victim Ruperto Huerta was facing the road at the time of the shooting, while his back was exposed absolutely to the attacker without any opportunity to defend himself. The attack was so sudden and perpetrated in such a manner to afford impunity to the attacker from any defense that the victim might make. xxx

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Furthermore, the defense of alibi interposed by the accused does not warrant any merit. His assertions as to his whereabouts on June 9, 2010 uncorroborated by any testimony from the persons whom he alleged his companions as well as the fact that he proffered no convincing explanation as to the cause of the injury he sustained on June 9, 2010 failed to cast any doubt on his guilt. Instead it buttressed the evidence of the prosecution. He failed to show to this Court that it would be physically impossible for him to be in the locus criminis at the time of the commission of the crime. In fact, he could easily negotiate from Brgy. Atipolo to Tinag-an which distance is not more than two (2) kilometers.

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WHEREFORE, PREMISES CONSIDERED, this Court finds the accused guilty-beyond reasonable doubt of the crime charged, and hereby sentences him to suffer the penalty of reclusion perpetua.

Accused ordered to indemnify the heirs of the victim the amount of Php75,000.00.

SO ORDERED.[9]

The Assignment of Errors

The judgment convicting accused-appellant of the offense charged constrained him to interpose this appeal on the grounds that the lower court erred in:

- I. Finding that prosecution witness Fernando Huerta has positively identified accused-appellant as the perpetrator of the crime despite existing incredibility thereby creating doubt as to the truthfulness of his testimony; and
- II. Convicting the accused-appellant of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

On the other hand, the OSG argued that the court a quo did not err in convicting accused-appellant of the crime of murder and thus the Court's decision should be sustained. However, it suggested some modifications in the award of damages since what the court a quo awarded was merely the amount of Php75,000.00 as indemnity.

The Ruling of this Court

We resolve to deny this appeal.

Accused-appellant insists that the evidence presented by the prosecution did not suffice to establish the fact that he is the perpetrator and author of the crime. He capitalizes on the circumstance that the crime was committed at nighttime where no light illuminated the area. Moreover, the identification of his person was very suggestive as it was the police who presented him to Fernando Huerta for identification. In effect, the initial identification made in the hospital pointing to him as the assailant of the victim came from the police and even the manner of his identification was highly unprocedural since he was alone when “identified” and was not placed in a line-up.

We are not persuaded.

Contrary to appellant’s assertions, the evidence on record discloses that prosecution witness Fernando Huerta, the son of the victim, was able to see appellant sufficient enough to identify him. Stress is given that the victim and his sons were in the waiting shed. When the gunburst sounded off, Fernando Huerta immediately looked behind and towards the direction of the source of the gunburst. Immediately, he got the knife of his father and took off towards the assailant, whom he stabbed. He could have fought more with the assailant, if not for the other person whom he assumed to be acting as back-up of the accused-appellant. During the investigation conducted by the police, he described the physical features of the assailant and gave the added information that said assailant was wearing a fatigue or military-type jacket and a bull cap, aside from sustaining the stab wound he inflicted. This description led to the identification of the accused-appellant as the assailant. Additionally, accused-appellant tested positive for the presence of nitrates on his right hand, which fact he failed to adequately explain as to why he had these on his hand.

Records likewise disclose that treachery attended the commission of the crime. The attack made by accused-appellant towards the victim was without warning since the former fired at the latter from the back, which attack was obviously deliberate and precise enough, affording no chance for the victim to resist or escape.

We also find it incongruous that the private complainants will charge accused-appellant with the crime of Murder if he was not the real perpetrator. Fernando Huerta would not positively identify him as the assailant of his father, if such had not been the truth, and allow the real perpetrator to go scot free. We also find appellant’s alibi to be not worthy of credence particularly since that he was not able to sufficiently explain the cause of the wound he suffered,[10] which cause was the reason why he was in the hospital. He also stated in court his alleged “helpers” in cutting coconut lumber[11] who could have corroborated his testimony on his alleged whereabouts, but he opted not to present them. As it stands, the positive identification of his person by Fernando Huerta will point to no other culprit but him.

Ergo, We find no reversible error in the judgment handed down by the trial court in convicting the accused-appellant with murder. However, as pointed out by the OSG, aside from the Php75,000.00 civil indemnity, it failed to award the other monetary consideration associated with being found guilty of the crime of murder. On this score, since the evidence disclosed that the heirs of the victim testified as to their grief over his death,[12] on how they tried to revive the victim by bringing him to the hospital, and that they incurred expenses during his internment,[13] We deem it proper to modify the award of damages. Consistent with jurisprudence,[14] the accused-appellant is also directed to pay the heirs of the victim the following amounts: Php50,000.00 as moral damages; Php30,000.00 as exemplary damages and temperate damages of Php25,000.00.[15]

WHEREFORE, this appeal is DENIED. The Decision dated July 31, 2013 of the Regional Trial Court (RTC), Branch 14 of Baybay City, Leyte in Crim. Case No. B-10-09-102 for Murder is AFFIRMED with MODIFICATION only in the award of damages. Aside from the Php75,00.00 awarded by the trial court, accused-appellant is likewise directed to pay the heirs of the victim the following amounts: Php50,000.00 as moral damages; Php30,000.00 as exemplary damages and temperate damages of Php25,000.00.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by RTC Judge Carlos O. Arguelles.

[2] RTC Decision; RTC records, pp. 166-175.

[3] Information; RTC records, p. 1.

[4] Order dated November 11, 2010; RTC records, p. 23. Certificate of Arraignment; RTC records, p. 22.

[5] Brief for the Appellee; Rollo, pp. 91-107.

[6] Ibid. Citations omitted.

[7] Brief for the Accused-Appellant; Rollo, pp. 51-65.

[8] Evidence for the Defense, Brief for the Accused-Appellant; Rollo, pp. 51-65; 56-57.

[9] RTC Decision; *supra*.

[10] TSN, May 22, 2013, p. 23.

[11] Ibid at p. 31.

[12] Testimony of Bibiana Porlas Huerta, April 28, 2011, pp. 3-14.

[13] Ibid.

[14] *People v. Zulueta*, G.R. No. 192183, November 11, 2013.

[15] *People v. Bernardo*, G.R. No. 198789, June 3, 2013.

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