

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ROLANDO CACANINDIN, SR. AND ROLANDO CACANINDIN, JR., ACCUSED-APPELLANTS.

Ponente: BARZA, J.

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BARZA, J.:

This is an appeal from the Decision[1] dated 5 December 2012 of the Regional Trial Court, Branch 195, Parañaque City, finding Rolando Cacanindin, Sr. and Rolando Cacanindin, Jr. guilty beyond reasonable doubt of Murder and sentencing them to suffer the penalty of reclusion perpetua.

The Information[2] charges Rolando Sr. and Rolando Jr. of the crime of Murder, committed as follows:

"That on or about the 28[th] day of May 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating with ROLLY CACANINDIN Y GONZALES, who is still at large, and all of them mutually helping and aiding one another, armed with a knife, with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and stab one JERRY ORTILLO Y RUPANAN, thereby inflicting upon him mortal stab wounds which directly caused his death.

CONTRARY TO LAW."

Both accused were arraigned on 14 June 2006 and with the assistance of counsel de oficio, entered a plea of not guilty.[3]

Pre-trial was terminated on 9 August 2006 after the signing of the documentary evidence by the parties and the admission of the defense as to the identity of the two accused.

During the trial, the prosecution presented the testimonies of Babylin Ortillo, Jayson Solano and Librado Cruz. Ortillo's testimony was dispensed with after the parties stipulated on the following: that she is the wife of the victim; that the victim at the time of his death was a fisherman and earning P450.00 a day; and that as a consequence of the death of the victim, they incurred expenses in a total amount of P20,000.00 which include the burial, funeral, cemetery and food.[4] Cruz's testimony was dispensed with after the parties stipulated on the fact that he witnessed the arrest of the accused.[5]

The testimony of Jayson Solano, as summarized by the trial court, is as follows:

"Solano testified that he knows the victim because he lives with him and his family at Ninoy Aquino Avenue, Sto. Niño, Parañaque City. He also knows both accused because they are his neighbors. On May 28, 2006, at around 11:40 in the evening, he and the victim were at Ninoy Aquino Avenue, Sto. Niño, Parañaque. Because the victim was already "nakainom", he told him to go home with him. When they passed thru SMD Compound on their way home, they were surprised to see accused Rolando, Jr., running after them, holding a "dos por dos" and once the latter was able to catch up with the victim, he hit the victim's nape with said "dos por dos". After the victim fell on the ground, accused Rolando, Jr. held the former's two (2) hands while accused Rolando, Sr. stabbed him (victim), about six (6) times at the back, with a foot long samurai. Because he was

scared, he ran and called the victim's wife and his cousin, for help. The victim's wife went with him at the place of the incident where they saw the victim bloodied and already dead. They brought the victim to the Parañaque Community Hospital where he (victim) was pronounced dead."

For the defense, the testimonies of the two accused Rolando Sr. and Rolando Jr., Ronnie Ubano and Fernando Santos were presented.

Rolando Jr. was 24 years old when presented at the stand. He denies the charge of murder against him. He, however, admitted knowing the person of the deceased victim, Jerry Ortillo, as the latter was his friend and the latter's son, Jonathan Ortillo, was his childhood friend. Their houses are situated near each other in Ninoy Aquino St., Sto. Niño, Parañaque City.

At 10 o'clock in the evening on 28 May 2006, Rolando Jr. was watching basketball in their place. He was with his friends which included the son of the deceased victim, Jonathan. Their group left the basketball court at 2 o'clock in the morning. On the way home, he saw the nephew of Jonathan, Jessie Ortillo and their "ampon," Jason Ortillo, holding stones. The two then threw stones at them. Rolando Jr. and his friends ran away.

Rolando Jr. reached his house and saw it in disarray. Stones and broken plates were all over the place. Then someone threw stones at their roof. Rolando Jr. did not go out to find out who did it. A few moments thereafter, the barangay officials arrived and invited him to their office where he was informed that the person with whom his father had a fight died already. He was put in detention after his medical examination. Rolando Jr. had no idea then why he was examined and why he was turned over to the police by the barangay officials. He later on found out that he was accused of being involved in the affray (rambol). After a week, his father, Rolando Sr., surrendered.

Rolando Sr. was 45 years old when presented to testify. He was working as a driver prior to this case. He confirms that co-accused, Rolando Jr., is his son. On the date and time of the incident, he was with his children Rosemarie, Ricky, Randy and Reynold in their residence at Ninoy Aquino Avenue. The deceased victim's house is 50 meters away while SMD Compound, where the incident happened, is about five-minute walk away. While exchanging stories with his children that night, he heard stones being thrown at their house. Rolando Sr. went out to see who was doing it and saw the deceased victim, Jerry Ortillo. Upon going out of his house, the deceased victim suddenly stabbed him at his left chest. Thereafter, the two grappled for the possession of the knife. They rolled on the ground and when the deceased victim was on top of Rolando Sr., he (victim) stood up and ran away.

Rolando Sr. then told his children to call the barangay to help bring him to the hospital. He reached the hospital at 1 o'clock in the morning the following day, 29 May 2006. He was treated thereat as evidenced by a certificate^[6] dated 3 June 2010. After 2 days of confinement at the hospital, Police Officer Calvo arrived to investigate. The officer was accusing Rolando Sr. as the one responsible for the death of the victim. Rolando Sr. denied the accusation. The following day, PO1 Calvo returned with the barangay officials and arrested Rolando Sr. He was also put in detention at the Parañaque City Jail.

Ronnie Ubano, a friend of both Rolando Jr. and the deceased victim, testified that he was with them and their other friends on the date and time of the incident. They watched the basketball games in the basketball court in their place until 2 o'clock in the morning. They then hung out in a computer shop nearby for ten minutes. After which they noticed a commotion near Rolando Jr.'s house. Rolando Jr. crossed the highway to go home. Ronnie saw somebody threw a stone at Rolando Jr. He also heard shouts coming from the big gate near the bridge. Then somebody, whom he did not know, came out of the gate holding a weapon that looks like a samurai. Policemen came afterwards. Rolando Jr. was arrested that night.

Fernando Santos, another neighbor of the Cacanindins, testified that on the said date and time, he saw Rolando Sr.

and the victim fighting in front of the the former's house. Fernando's house is two houses away from the house of the Cacanindins. He saw the victim stab Rolando Sr. on the left chest. After that, the victim left. Rolando Sr. went back to his house. After an hour, the barangay officials arrived and brought Rolando Sr. to the hospital. Rolando Jr. was not around that time.

The trial court gave full faith and credit to the version of the prosecution and found Rolando Sr. and Rolando Jr. guilty beyond reasonable doubt for the murder of Jerry Ortillo and sentenced them accordingly. It appreciated the presence of the qualifying circumstance of treachery and found conspiracy. The dispositive portion of the decision dated 5 December 2012 reads, as follows:

"WHEREFORE, this Court finds both accused ROLANDO CACANINDIN, JR. AND ROLANDO CACANINDIN, SR., GUILTY BEYOND REASONABLE DOUBT of the crime of murder and hereby sentences them to suffer the penalty of reclusion perpetua which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

Both accused are likewise ordered to pay the heirs of the victim the amounts of Twenty Thousand Pesos (P20,000.00) as actual damages; Fifty Thousand Pesos (P50,000.00) as civil indemnity ex delicto; Forty Thousand Pesos (P40,000.00) as moral damages; and Twenty Thousand Pesos (P20,000.00) as exemplary damages.

The City Jail Warden of Parañaque is hereby ordered to transfer said accused to the National Bilibid Prison, Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED."

Hence, this appeal by ROLANDO SR. and ROLANDO JR. on the following grounds:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT, INCREDIBLE AND IMPROBABLE TESTIMONY OF PROSECUTION WITNESS JASON SOLANO AND IN TOTALLY DISREGARDING THE DEFENSE OF DENIAL AND ALIBI OF ACCUSED-APPELLANTS.

III

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AS A QUALIFYING CIRCUMSTANCE.

IV

THE TRIAL COURT GRAVELY ERRED IN RULING THAT THERE IS CONSPIRACY IN THE CASE AT BAR.

The instant appeal contends that the trial court erred in not considering its denial and alibi. The appellants also raise in issue the inconsistency between the affidavit and the testimony in court of prosecution witness Solano, in that his affidavit is inconsistent with his testimony in court. In the affidavit, it appears that there were three assailants namely, Rolando Sr., Rolando Jr. and Rolly. In open court, Solano only mentioned Rolando Sr. and

Rolando Jr. Appellants also bring to the attention of the Court the inconsistency of the prosecution witness as to the correct sequence of events, the actual positions of the appellants and the victim during the stabbing incident and what the prosecution witness Solano did after witnessing the murder of the victim. Appellants claim that Solano's testimony is incompatible with human knowledge, observation and common experience of man. To further discredit the testimony of prosecution witness Solano, the appellants contend that there is a possibility that he merely concocted such story considering that he was living with the victim's family.

The appellants also contend that the trial court erred in appreciating the qualifying circumstance of treachery in this case. The prosecution failed to prove that the appellants deliberately and consciously adopted such means and methods or manner of attack as would deprive the victim of an opportunity for self-defense or retaliation. The appellants should be given the benefit of the doubt and treachery should not be considered since there is no proof of the circumstances surrounding the manner in which the aggression commenced. Moreover, appellant Rolando Sr. sustained an injury from the fight he had with the victim which circumstance further belies treachery.

It is also argued that conspiracy was not proven by positive and conclusive evidence. In this case, aside from the inconsistent statement of the prosecution witness, the defense was able to establish that Rolando Jr. was not present when Rolando Sr. had a fight with the victim.

In his Brief[7], the Solicitor General, for the State, submitted that the guilt of the appellants for the crime of Murder has been proven beyond reasonable doubt, and recommended that the assailed Decision be affirmed in toto.

The appeal is bereft of merit.

The Court finds no reason to disturb the findings of the trial court. The evidence proffered by the prosecution vis-a-vis the defense of denial and alibi, was properly appreciated by the trial court. The defense's attempt to discredit Solano's testimony by arguing that his testimony is fabricated and inconsistent fail to persuade the Court into reversing the appellants' conviction. It is a well-entrenched doctrine that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.[8]

At the outset, it is well to note that the appellants failed to establish any ill motive that will impel the prosecution witnesses to falsely accuse them of committing the crime. The Court adheres to the established rule that in the absence of any evidence to show that the witness was actuated by any improper motive, his identification of the assailant should be given full faith and credit.[9]

On the issue of inconsistent statements allegedly committed by prosecution witness Solano, the Court holds that the same does not impair his credibility. True, an examination of his sworn statement will reveal that he mentioned the name of one Rolly Cacanindin as involved in the killing of the victim in this case. However, as correctly argued by the State, citing jurisprudence[10]:

"Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness since an affidavit, being taken ex-parte, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or from want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution's witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements."

The perceived inconsistency was made irrelevant by Solano's testimony upon questions from the trial court, in which he categorically affirmed that it was Rolando Jr. who held the hands of the victim. It has been held that the witnesses need not know the names of the accused as long as they recognize their faces. What is important is that the witnesses are positive as to the perpetrators' physical identification from the witnesses' own personal knowledge.[11]

On direct examination, Solano testified that:

"x x x

The Court:

Who held the hands of Jerry?

A:

It was Rolando Cacanindin, Jr., Your Honor.

The Court:

And while Rolando Cacanindin, Jr. was holding the hands of Jerry, Rolando Cacanindin, Sr. stabbed him where?

A:

At the back, Your Honor.

x x x[12]

On Cross Examination, Solano further testified:

"x x x

Q:

After Jerry fell down, you said that Rolando Cacanindin, Jr. held the victim's arms. What arm did Rolando Cacanindin, Jr. use (sic) in holding the victim's arm?

A:

Both of his hands, Sir.

Q:

That was the only participation of Rolando Cacanindin, Jr., he held the arms of victim Jerry Ortillo and just hit him in the nape, is that correct?

A:

Yes, Sir.

x x x"[13]

Neither does the Court find the other inconsistencies raised in this appeal as sufficient to exonerate the appellants from the murder of the victim. It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[14]

The appellants and the victim in this case all resided in one community. The basketball court where appellant Rolando Jr. was supposedly at and stayed in the evening of 28 May 2006 is a five-minute tricycle ride away from his residence[15], while as also testified by Rolando Jr., the SMD compound where the crime was committed was a ten-minute walk away from his house in Sto. Niño, Parañaque City.[16] Defense witness Ronnie Ubano did not notice if there was at any point that the appellant Rolando Jr. left the basketball court from 10 o'clock in the evening to 2 o'clock in the morning.[17] Appellant Rolando Sr. testified that from 9 o'clock in the evening of 28 May 2006 up to 1 o'clock in the morning of 29 May 2006, he was in his house which is around five minutes walk to the SMD Compound.[18]

These statements from the defense witnesses are significant to buttress the decision of the trial court in rejecting the defense of alibi. In *People vs. Nieto*[19], it was reiterated that:

"x x x alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Secondly, alibi is unacceptable when there is a positive identification of the accused by a credible witness. Lastly, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene."

The Court also affirms the trial court's finding of the presence of treachery in this case, judged by the manner by which the attack on the victim was made. To quote the trial court:

"Solano's testimony that both hands of the victim were held by accused Rolando, Jr. while being stabbed by accused Rolando, Sr. shows the presence of treachery because under such situation the victim was deprived of any real chance to fight back and defend himself. In the case of *People vs. Pascual*, 512 SCRA (sic) and *People vs. Concepcion*, 514 SCRA 660, the Supreme Court held that treachery is present when the offender commits any crime against persons employing means, methods, or form in the execution thereof which tend directly and especially to insure its execution without risk to the offender arising from any defense which the offended party might make. In the instant case, holding the hands of the victim while being stabbed was the means employed by the accused to insure that the former could not fight back and defend himself."

In case of *People vs. Cleopas*[20], treachery was appreciated to qualify the killing to murder when the manner of the attack was made, as follows:

"Cipriano Supero testified that appellant Florencio Pirame held the arms of the victim while Epifanio and Teodorico Cleopas struck the victim on the head, causing his death. The victim was defenseless during the attack as his hands were restrained by appellant, facilitating the beating of the victim by the other perpetrators. Clearly, the manner by which the victim was restrained and assaulted was deliberately and consciously adopted by his assailants to ensure his demise. Thus, there was treachery in the killing of the victim, as the offenders employed means, methods or forms in the execution thereof which tended directly and specially to insure its execution, without risk to themselves arising from the defense which the victim might take."

In the more recent case of *People vs. Tabarnero*[21], the Supreme Court agreed with the argument of the Solicitor General that treachery was amply demonstrated by the restraint upon the victim therein, which effectively rendered him defenseless and unable to effectively repel, much less evade, the assault. To support its findings of

treachery, the Supreme Court cited the following cases:

"In *People v. Montejo*, the prosecution witnesses testified that after challenging the victim to a fight, the accused stabbed the victim in the chest while he was held in the arms by the accused and a companion. Not requiring a swift and unexpected commencement to the attack, the Court held:

Thus, there is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer [*People v. Condemena*, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; *People v. Lunar*, G.R. No. L-15579, May 29, 1972, 45 SCRA 119.] In the instant case, it has been established that the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms.

In *People v. Alvarado*, the accused and his companions shouted to the victim: "Lumabas ka kalbo, kung matapang ka." When the victim went out of the house, the accused's companions held the victim's hands while the accused stabbed him. Despite the yelling which should have warned the victim of a possible attack, the mere fact that the accused's companions held the hands of the victim while the accused stabbed him was considered by this Court to constitute *alevosia*." (citations omitted)

Conspiracy was also found in the above mentioned case of *Cleopas*, thus:

"x x x These concurrent actions of appellant and his co-accused reveal a mutual intention and determination to kill the victim, an indicator of conspiracy. Conspiracy, in order to exist, does not require an agreement for an appreciable period prior to the commission of the crime; it exists if, at the time of the commission of the offense, the accused had the same purpose and was united in its execution. The fact that appellant conspired in the commission of the crime charged was sufficiently and convincingly shown by his active participation in holding the victim to render him immobile, thus enabling the other two accused to consummate their dastardly act of killing the victim."

Hence, the trial court in this case did not err in finding the two accused-appellants to have conspired to commit the crime charged.

With the qualifying circumstance of treachery being present, the trial court correctly found the appellants' guilty of Murder in accordance with Art. 248 of the Revised Penal Code, as amended, which imposes the penalty of reclusion perpetua to death for murder. The imposable penalty of reclusion perpetua in this case was also correctly meted on them.

WHEREFORE, the assailed Decision is hereby AFFIRMED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] Records, pp. 24-31

[2] Records, p. 3

[3] Records, p. 40

[4] Order dated April 23, 2007, Records, p. 63

[5] Order dated February 2, 2009, Records, p. 155

- [6] Exhibit "1" for the defense, Records, p. 413
- [7] Rollo, pp. 101-108
- [8] People vs. Lingasa, G.R. No. 192187, December 13, 2010
- [9] People vs. Hate, G.R. No. 145712, September 24, 2002
- [10] People vs. Astudillo, G.R. No. 141518, April 29, 2003
- [11] People vs. Dinamling, G.R. No. 134605, March 12, 2002; People vs. Sorila, Jr., G.R. No. 178540, June 27, 2008
- [12] TSN, June 4, 2008, pp. 12-13
- [13] TSN, June 4, 2008, p. 30
- [14] People vs. Ignas, G.R. Nos. 140514-15, September 30, 2003; People vs. Nelmidia, G.R. No. 184500, September 11, 2012
- [15] TSN, June 17, 2009, p. 8
- [16] TSN, February 24, 2010, p. 10
- [17] TSN, April 7, 2010, p. 8
- [18] TSN, August 23, 2010, p. 16
- [19] G.R. No. 177756, March 3, 2008
- [20] G.R. No. 121998, March 9, 2000
- [21] G.R. No. 168169, February 24, 2010

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