PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY PERALTA Y MABBONAG, CESAR LIBAN Y PERALTA, AND PHILIP SORIANO Y PASION, ADVIENTO SORIANO Y PASION, ROBERTO SORIANO Y PASI...

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

Accused-appellants Rudy Peralta, Cesar Liban, and Philip Soriano are before this Court appealing[1] from the 24 August 2010 Judgment[2] promulgated on 03 September 2010 by Branch 04 of the Regional Trial Court of Tuguegarao City.

ANTECEDENTS

Accused-appellants Rudy Peralta, Cesar Liban, and Philip Soriano and their supposed cohorts, Mario Bartolome, Napoleon Liban, Adviento Soriano, Roberto Soriano, Mar Soriano, and Lito Acierto were charged before the Regional Trial Court, Branch 4, Tuguegarao City, as follows:

* Criminal Case No. 6618 – Robbery with Rape;
* Criminal Case No. 6619 – Robbery in Band;
* Criminal Case No. 6620 – Frustrated Murder;
* Criminal Case No. 6621 – Murder;
* Criminal Case No. 6642 – Robbery in Band.[3]

Additionally, accused-appellant Rudy Peralta was charged with Rape in Criminal Case No. 6622.[4]

The accusatory portions of the six (6) Informations read:

> Criminal Case No. 6618 for Robbery with Rape
>
> "The undersigned Provincial Prosecutor of Cagayan accuses Rudy Peralta, Cesar Liban, Mario Bartolome, Napoleon Liban alias Poli, Philip Soriano, Adviento Soriano, Roberto Soriano and Ferdinand Soriano alias Mar of the crime of Robbery with Rape, defined and penalized under Articles 293 and 294 No. 2 of the Revised Penal Code, as amended by Section 9 of Republic Act No. 7659, committed as follows:
>
> That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Rudy Peralta, Cesar Liban, Mario Bartolome, Napoleon Liban alias Poli, Philip Soriano, Adviento Soriano, Roberto Soriano and Ferdinand Soriano alias Mar, armed

with guns, conspiring together and helping one another with intent to gain and by the use of force, violence, threat and intimidation of persons enter inside the house of the complainants AAA[5] and Rodrigo dela Cruz and once inside the house did then and there willfully, unlawfully and feloniously take, steal and carry away against the will of the aforesaid owners of the following:

Taken from AAA:
Gold ring and a pair of earring valued at P1,500.00

Rodrigo dela Cruz:
One (1) Nikon Quartz Wall Clock
Chargeable lamp

belonging to AAA and Rodrigo dela Cruz respectively valued at P1,500.00 value of the items taken from AAA to the damage and prejudice of the aforesaid owners, that on the same occasion of the robbery the said accused above-mentioned, likewise armed with the aforesaid arms, conspiring together and helping one another with lewd design and by the use of force, threat and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA against her will.

Contrary to law."[6]

Criminal Case No. 6619 for Robbery in Band

"The undersigned Provincial Prosecutor accuses Rudy Peralta, Cesar Liban, Lito Acierto y Cumloy, Napoleon "Poli" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano and Mar Soriano of the crime of Robbery in Band defined and penalized under Article 293 and 294 No. 5 in relation to Article 296 of the Revised Penal Code, committed as follows:

That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Rudy Peralta, Cesar Liban, Lito Acierto y Cumloy, Napoleon "Poli" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano and Mar Soriano, armed with guns, conspiring together and helping one another with intent to gain and by the use of force, violence, threat and intimidation of persons did then and willfully, unlawfully and feloniously enter inside the house of the complainant Virgilio Remigio and by the use of violence, threat and intimidation of persons did then and there take, steal and carry away against the will of the owner the following:

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a. Several clothes;
b. Blankets
c. Cash money amounting to P5,000.00 more or less
d. Two (2) gold plated SEIKO watch quartz
e. One (1) Orient watch automatic
f. One (1) black SEIKO quartz
g. A ring, and
h. Airgun trade mark ESTRELLA PARCO with serial number 12353

all with a total of P20,000.00 more or less and belonging to the complainant Virgilio Remigio, to the damage and prejudice of the aforesaid owner, Virgilio Remigio in the aforesaid amount of TWENTY THOUSAND (P20,000.00) PESOS, Philippine Currency.

Contrary to law."[7]

Criminal Case No. 6620 for Frustrated Murder

"The undersigned Provincial Prosecutor accuses Rudy Peralta, Cesar Liban, Napoleon "Poli" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano and Mar Soriano and Lito Acierto y Cumloy, of the crime of Frustrated Murder, defined and penalized under Article 248 in relation to Articles 6 and 50 of the Revised Penal Code, committed as follows:

That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Rudy Peralta, Cesar Liban, Napoleon "Poli" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano, Mar Soriano and Lito Acierto y Cumloy armed with guns, conspiring together and helping one another with intent to kill, with evident premeditation and with treachery did then and willfully, unlawfully and feloniously attack, assault and shoot one, Jimmy C. Remigio, inflicting upon him gunshot wound on his body.

That the accused had performed all the acts of execution which would have produce the crime of Murder as a consequence but which, nevertheless, did not produce it by reason of causes independent of their own will.

That in the commission of the offense the aggravating circumstance of dwelling was present.

Contrary to law."[8]

Criminal Case No. 6621 for Murder

"The undersigned, 1st Assistant Provincial Prosecutor accuses Rudy Peralta, Cesar Liban, Napoleon "POLI" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano and Mar Soriano and Lito Acierto y Cumloy, of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code as amended by Section 6 of Republic Act No. 7659:

That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Rudy Peralta, Cesar Liban, Napoleon "Poli" Liban, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano, Mar Soriano and Lito Acierto y Cumloy armed with guns, conspiring together and helping one another with intent to kill, with evident premeditation and with treachery did then and willfully, unlawfully and feloniously attack, assault and shoot one, Virgilio C. Remigio, inflicting upon him gunshot wound own his body which cause his death.

That in the commission of the offense the aggravating circumstance of dwelling was present.

Contrary to law."[9]

Criminal Case No. 6622 for Rape

"The undersigned Provincial Prosecutor upon the complaint filed by the mother of the offended party, CCC[10] in the Municipal Trial Court of Baggao, Cagayan, and which is found on page 1 of the record of the case and forming as an integral part of this Information, accuses Rudy Peralta, of the crime of Rape, defined and penalized under Article 335 No. 1 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, committed as follow:

That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Rudy Peralta, armed with a gun, with lewd design and by the use of force, violence, threat and intimidation did then and there willfully, unlawfully, and feloniously have sexual intercourse with the offended party, BBB[11] against her will.

Contrary to law."[12]

Criminal Case No. 6642 for Robbery in Band

"The undersigned Provincial Prosecutor accuses Rudy Peralta y Mabbonag, Cesar Liban y Pasion, Lito Acierto y

Cundoy, Napoleon Liban alias Poli, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Sorianio y Pasion and Ferdinand Soriano alias Mar of the crime of Robbery in Band, defined and penalized under Articles 293 and 294 No. 4, in relation to Article 296 of the Revised Penal Code, committed as follows:

That on or about June 11, 1994, in the Municipality of Baggao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Rudy Peralta y Mabbonag, Cesar Liban y Pasion, Lito Acierto y Cundoy, Napoleon Liban alias Poli, Mario Bartolome, Philip Soriano, Roberto Soriano, Adviento Soriano y Pasion and Ferdinand Soriano alias Mar, armed with guns, conspiring together and helping one another with intent to gain and by the use of violence against, threat and intimidation of persons did, then and there willfully, unlawfully and feloniously enter inside the house of the complainant Rodrigo dela Cruz and once inside by the use of threat and intimidation of person did then and there take, steal and carry away against the will of owner the following personal properties, to wit:

a. Emergency light
b. One (1) Gold earring (one pair)
c. One (1) Gold ring
d. One (1) wall clock and
e. cash money in the amount of P1,200.00

belonging to Rodrigo dela Cruz and his daughter Marivic dela Cruz all valued at P2,000.00 more or less, to the damage and prejudice of the aforesaid owner Rodrigo dela Cruz in the aforesaid amount of TWO THOUSAND (P2,000.00) PESOS, Philippine Currency more or less.

Contrary to law."[13]

Upon being arraigned of the charges against them, accused-appellants Rudy Peralta, Philip Soriano, and Cesar Liban, as well as accused Adviento Soriano, Roberto Soriano, Mar Soriano and Mario Bartolome entered a plea of not guilty to the crimes charged. The six (6) cases were jointly tried.[14]

Lito Acierto was discharged and utilized as State Witness, while accused Mario Bartolome died while under detention. Napoleon Liban alias Poli, on the other hand, remains at large.[15]

The prosecution presented Emily Remigio, Dr. Salvador Pallagao, accused discharged as state witness Lito Acierto, AAA, BBB, Jimmy Remigio, SPO1 Ferdinand Pascual, Francisco Vergara, and Sonny Gabriel, as witnesses.[16] On the other hand, the defense presented the accused-appellants and the accused except Napoleon Liban, as witnesses. All of them interposed the defense of alibi.[17]

Pertinent Facts

Lito Acierto testified that in the evening of 11 June 1994, he met with the group of accused-appellant Rudy Peralta.[18] They proceeded to Bitag Pequeño.[19] Upon reaching the place, they forcibly opened a house.

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Thereafter, Rudy Peralta pulled AAA outside and brought her near a guava tree where Rudy Peralta, Roberto Soriano, and Cesar Liban sexually assaulted her.[20]

After the sexual assault against AAA, accused-appellants and the group entered the house of Rodrigo dela Cruz.[21] Thereafter, they proceeded to a house owned by Virgilio Remigio.[22] AAA was ordered to knock on the door and inform Virgilio Remigio that policemen were with her.[23] Subsequently, one of the malefactors entered the house and poked a gun at Virgilio Remigio.[24] Then, one of the malefactors shot Virgilio Remigio and his son Jimmy Remigio.[25] Virgilio Remigio died from the injuries he suffered.[26]

Ruling of the Regional Trial Court

After trial, the court a quo found the accused-appellants Rudy Peralta and Cesar Liban, and accused Roberto Soriano guilty of the crime of Rape (Criminal Case No. 6618); the accused-appellants Rudy Peralta, Cesar Liban and Philip Soriano guilty of Serious Physical Injuries (Criminal Case No. 6620); the accused-appellants Rudy Peralta, Cesar Liban and Philip Soriano guilty of Murder (Criminal Case No. 6621). All accused were acquitted for the crime of Robbery in Band (Criminal Case No. 6619) due to insufficiency of evidence against them.[27]

Hence, the instant appeal where accused-appellants seek acquittal on the basis of this lone submission[28]:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

OUR RULING

Accused-appellants argue that in the Information for Criminal Case No. 6621, they were charged for Frustrated Murder, but in the assailed Decision, the trial court convicted them for Murder. They asseverated that the Constitution mandates that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him.[29] In addition, the accused-appellants averred that their re-arraignment for the crime of Murder, which was done after so many years, was not attributable to them, hence, such re-arraignment was unjustified.[30]

The accused-appellants further posited that assuming arguendo that they were properly arraigned for Murder, the prosecution failed to establish their guilt beyond reasonable doubt. According to them, the prosecution failed to present proof that Virgilio Remigio was injured during the incident since no medical certificate was presented and no medico legal officer testified.[31]

On the other hand, the Office of the Solicitor General argued that after the sexual assault against AAA, accused-appellants proceeded to the house of Virgilio Remigio. AAA was ordered to knock on the door and inform the occupants that policemen were with her. Subsequently, one of the accused-appellants entered the house and poked a gun at him. Then, one of the accused-appellants fired his gun, which prompted Virgilio Remigio to run. Thereafter, one of the accused-appellants chased Virgilio Remigio and shot him. The Office of the Solicitor General contended that from the foregoing, the accused-appellants are criminally liable for the death of Virgilio Remigio, especially that they were positively identified by witness Emily Remigio.[32]

What is being assailed by the accused-appellants is their conviction for Murder (Criminal Case No. 6621). We find that they were properly convicted for the said crime.

Witnesses Emily Remigio and Jimmy Remigio positively identified the accused-appellants to be among the five (5) malefactors who entered their house on 11 June 1994 and shot Virgilio Remigio.[33] Thus, the following

elements of Murder were successfully proved:

1. That a person was killed;
2. That the accused killed that person;
3. That the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and
4. That the killing is not parricide or infanticide.[34]

Although based on the testimony of Emily Remigio only one malefactor shot Virgilio Remigio,[35] in conspiracy, which can be inferred from the accused-appellants and accused concerted actions of arriving together at the scene of the crime fully armed, the act of one is the act of all of them.[36]

Indeed, the prosecution was able to prove beyond reasonable doubt the accused-appellants' guilt for the killing of Virgilio Remigio.

A review of the records of the case reveals that the accused-appellants interposed the defense of alibi. It has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. It is evidence that is negative in nature and self-serving, thus, it cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence. There being no strong and credible evidence adduced to overcome the testimony of prosecution witnesses, no weight can be given to the alibi of accused-appellants.[37]

Axiomatic is the rule that findings of trial courts are accorded the highest respect and are generally not disturbed by the appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted. This rule is founded on the fact that the trial judge has the unique opportunity to personally observe the witnesses and to note their demeanor, conduct and attitude on the witness stand, which are significant factors in evaluating their honesty, sincerity and credibility. Through direct observations in the entire proceedings, the judge can be expected to reasonably determine whose testimony to accept and which witness to disbelieve. On the other hand, the reviewing magistrate has none of the advantages peculiar to the trial judge's position, and could rely only on the cold records of the case and on the judge's discretion.[38]

In an attempt to escape criminal liability for Murder, the accused-appellants' posited that they were convicted for Murder, a crime which, according to them, they were not charged.[39] In their Brief, they asked whether the amendment of the Information and the re-arraignment of the accused-appellants are allowed.[40]

The first Information filed was for Frustrated Murder, but the victim eventually passed away. Thus, the State filed an Amended Information of Murder. The certificate of arraignment only mentions "pleaded not guilty to the crime charged" without mentioning the specific crime. This prompted the trial court to admit the Amended Information for Murder and set the arraignment of the accused-appellants and accused in an Order dated 10 September 2007.[41]

It is evident that Frustrated Murder is but a stage in the execution of the crime of Murder, hence the former is necessarily included in the latter. There is identity of offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other or when the second offense necessarily includes the offense charged in the first information. In this connection, an offense may be said to necessarily include another when some of the essential elements or ingredients of the former, as this is alleged in the information, constitute the latter. In the case before Us, it is indispensable that the essential element of intent to kill, as well as

qualifying circumstances, such as evident premeditation and treachery, be alleged in both an Information for Frustrated Murder and for Murder, thereby meaning and proving that the same material allegations are essential to the sufficiency of the Informations filed for both. This is because, except for the death of the victim, the essential elements of consummated Murder likewise constitute the essential ingredients to convict herein accused-appellants for the offense of Frustrated Murder.[42]

What is involved here is not a variance in the nature of different offenses charged, but only a change in the stage of execution of the same offense from frustrated to consummated murder. This being the case, we hold that the trial court correctly admitted the Amended Information for Murder.[43]

An appraisal of the Amended Information for Murder[44] will readily show that the nature of the offense originally charged was not actually changed. Instead, an additional allegation, that is, the fact of the death of the victim was supplied. That the accused-appellants committed a felonious act with intent to kill the victim continues to be the prosecution's theory. There is no question that whatever defense herein accused-appellants may adduce under the original Information for Frustrated Murder equally applies to the Amended Information for Murder. Under the circumstances thus obtaining, the Amended Information for Murder is, at most, an amendment as to form which is allowed even during the trial of the case.[45]

Even without the amendment, the accused-appellants were apprised clearly of the nature of the offense with which they were convicted. It is true that due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his prosecution for a crime stands or not. The right is not transgressed if the information sufficiently alleges facts constituting an offense that includes or forms part of the offense established to have been committed by the accused.[46]

The Amended Information and the conviction under it could not conceivably have come as a surprise to accused-appellants for the simple and obvious reason that the charge is essentially the same offense as that charged under the original Information.

All told, We sustain the conviction of the accused-appellants.

Finally, all monetary awards should earn interest in conformity with current jurisprudence.[47]

WHEREFORE, the instant Appeal is DISMISSED. The 24 August 2010 Judgment promulgated on 03 September 2010 by Branch 04 of the Regional Trial Court of Tuguegarao City is AFFIRMED with the MODIFICATION in that all the monetary awards for damages shall earn annual interest at the legal rate of six percent (6%) from the date of finality of this Decision until fully paid.[48] Costs against the accused-appellants.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

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[1] Rollo, pp. 67-86.

[2] Ibid., pp. 88-108.

[3] Ibid., pp. 88-89.

[4] Ibid., p. 89.

[5] In the case of People vs. Versoza, February 1, 2012, G.R. No. 183093, the Supreme Court deemed best to

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withhold the real name of victim of rape although she is already of age and apparently not covered by the provisions of Republic Act No. 9262.

[6] Rollo, p. 89.

[7] Ibid., p. 90.

[8] Ibid., pp. 90-91.

[9] Record, p. 33.

[10] The name of the victim's mother is withheld in order to maintain confidentiality.

[11] Supra note 5.

[12] Rollo., p. 91.

[13] Ibid., pp. 91-92.

[14] Ibid., p. 72.

[15] Ibid.

[16] Ibid., pp. 92-93.

[17] Ibid., pp. 97.

[18] Transcript of Stenographic Notes (TSN), June 8, 1998, pp. 2-3.

[19] Ibid., p. 3.

[20] Ibid., pp. 4-5.

[21] TSN, March 20, 2001, p. 3.

[22] Ibid., p. 4.

[23] TSN, October 18, 2001, p. 5.

[24] TSN, July 27, 1995, p. 5.

[25] Ibid., p. 6.

[26] TSN, October 17, 1995, p. 5.

[27] Rollo, pp. 32-35.

[28] Ibid., p. 67.

[29] Ibid., pp. 77-78.

[30] Ibid., p. 82.

[31] Ibid., p. 83.

[32] Ibid., p. 139.

[33] TSN, July 27, 1995, p. 7; December 6, 2004, p. 10.

[34] People of the Philippines v. Gabrino, G.R. No. 189981, March 9, 2011, 645 SCRA 187.

[35] TSN, July 27, 1995, p. 6.

[36] People of the Philippines v. Jose Torrefiel, G.R. No. 115431, April 18, 1996, 256 SCRA 369.

[37] People of the Philippines v. Alfredo, G.R. No. 188560, December 15, 2010, 638 SCRA 749.

[38] Alicando v. People, G.R. No. 181119, July 31, 2013, 702 SCRA 662.

[39] Rollo, p. 79.

[40] Ibid., p. 81.

[41] Record, p. 218.

[42] Teehankee v. Madayag and People of the Philippines, G.R. No. 103102, March 6, 1992, 207 SCRA 134.

[43] Ibid.

[44] Record, p. 33.

[45] Supra note 42.

[46] People of the Philippines v. Manansala, G.R. No. 175939 , April 3, 2013, 695 SCRA 70.

[47] People v. Hatsero, G.R. No. 192179, July 3, 2013, 700 SCRA 597.

[48] Ibid.

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