

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERT GOMEZ, JIMMY RODRIGUEZ, RENATO AMAYBAY @ BUK-AN AMAYBAY, AND EDEN CARMONA, APPELLANTS.

G.R. No. 128378. April 30, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the Court of Appeals decision,[1] affirming the decision of the Regional Trial Court of Bacolod City, Branch 44 in Civil Case No. 8895,[2] wherein appellants Robert Gomez, Jimmy Rodriguez, Renato Amaybay (a.k.a. Buk-An Amaybay), and Eden Carmona were found guilty beyond reasonable doubt of the crime of Murder and modified the sentence, among others, from reclusion temporal in its maximum period to reclusion perpetua, to a single penalty of reclusion perpetua.

The facts, as established by the evidence, are as follows.

On November 5, 1989, between 8:45-9:00 in the evening, Joel Lagundino was walking along San Juan Street near Galo Street in Bacolod City, when a sudden commotion caught his attention.[3] Ten meters away from where he was situated, he saw four men, who turned out to be appellants, attack Samson Perez, the owner of the house where he had been living for the past month.[4] Since the light from a lamppost and from a nearby store provided good illumination, Lagundino was able to see the faces of the appellants clearly.[5] He recognized the four men, for he often saw them at the store.[6]

Appellants ganged up on Perez and began to stab him. Perez pulled out a revolver and opened fire, grazing the ear of one of his assailants. But even as Perez was able to fire one more shot, his attackers overwhelmed him and he fell to the ground. The four men were still stabbing the prone Perez when Lagundino left the grisly scene.[7]

On June 20, 1990, an Information was filed against all the above-named appellants, to wit:

That on or about the 5th day of November, 1989, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating, and acting in concert with one another, each of them being then armed with bladed weapons, with evident premeditation, with intent to kill, without any justifiable cause or reason, by means of treachery and abuse of superiority, did, then and there, willfully, unlawfully, and feloniously assault, attack and stab with their respective weapons one Samson Perez thereby inflicting upon his person the following wounds, to wit:

xxx xxx xxx

which wounds directly caused the death of said victim SAMSON PEREZ to the damage and prejudice of the heirs of the victims as follows:

xxx xxx xxx

Act contrary to law.[8]

Upon arraignment on September 12, 1990, all the appellants entered a plea of not guilty.[9]

During the trial, Lagundino positively identified appellant Carmona, Amaybay and Rodriguez in open court as among those who attacked and stabbed Perez.[10] Gomez, who was absent, was identified through a photograph.[11]

Dr. Romeo S. Gellada, the medico-legal officer who performed the autopsy on the victim,[12] testified that the victim suffered eight wounds, namely, one abrasion, one incised wound and six different stab wounds. Two of the stab wounds were located on the victim's back.[13] He was of the opinion that all the wounds could have been inflicted either by the same instrument or several blades of the same kind.[14]

In their defense, appellants Eden Carmona and Renato Amaybay both alleged that they were in their respective homes on the night Perez was killed.[15] Carmona further alleged that he never left his house that night.[16]

Jimmy Rodriguez, on the other hand, testified that on November 5, 1989, at 8:00 p.m., he was on the corner of San Juan and Galo Streets when he heard someone shout at him from behind.[17] After that, he heard gunfire and felt a bullet hit the side of his head.[18] As he fell to the ground, he saw Samson Perez approach him and say, "You're here, you traitor!" Perez attempted to shoot him again, but he stabbed Perez in the chest.[19] After wounding Perez, Rodriguez ran away and boarded a trisikad to the Provincial Hospital for treatment.[20] Rodriguez did not report the incident to the police and, instead, left for Gen. Santos City.[21]

On March 10, 1994, a judgment was rendered by the Regional Trial Court of Negros Occidental, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution to be substantially sufficient to establish the guilt of the four accused, namely: Jimmy Rodriguez, Eden Carmona, Renato Amaybay and Robert Gomez for the crime of Murder beyond reasonable doubt, the Court hereby sentences each of the four accused to serve the penalty of reclusion temporal in its maximum period to reclusion perpetua, as provided for by Article 248 of the Revised Penal Code, as amended, and for the four accused to solidarily and jointly pay the heirs of Samson Perez the amount of P30,000.00 by way of civil indemnity.

SO ORDERED.[22]

Appellants appealed the decision to the Court of Appeals, which was docketed as CA-G.R. CR No. 17339, based on the following assignment of errors:

- I -

The Lower Court erred in holding and finding the testimony of the lone prosecution witness Joel Lagundino as the principal basis in the conviction of the Accused.

- II -

The Lower Court erred in convicting the accused Robert Gomez, Jimmy Rodriguez, Eden Carmona and Renato Amaybay @ Buk-an Amaybay of the crime charged, and thereafter sentencing them to suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua, so provided for by Article 248 of the Revised Penal Code, as amended, and for the four accused to solidarily and jointly pay the heirs of Samson Perez the amount of P 30,000.00 by way of civil indemnity.[23]

On October 2, 1996, a decision was rendered by the Court of Appeals, the dispositive portion of which reads:

WHEREFORE, the judgment of the lower court finding the accused guilty beyond reasonable doubt of the crime of Murder defined and punishable under Article 248 of the Revised Penal Code is hereby AFFIRMED, but the sentence imposed is hereby MODIFIED to Reclusion Perpetua, the civil indemnity awarded is hereby increased to P50,000.00. However, pursuant to paragraph 2, Section 13, Rule 124 of the 1985 Rules on Criminal Procedure, this judgment shall not be entered, and the Clerk of Court of this Court is hereby directed to forward the records of this case to the Supreme Court, for its review.

Furthermore, pursuant to Administrative Circular No. 1-92, the bondsmen of the accused are hereby ordered to surrender them to the court of origin within ten (10) days from receipt of a copy of this decision, and inform this Court of the fact of such surrender. The court of origin shall order the transmittal of the accused to the National Bureau of Prisons through the Philippine National Police where they shall remain in confinement pending final resolution of their appeal.

If the accused are not surrendered within the aforesaid period of ten (10) days, their bonds shall be forfeited and an order of arrest shall be issued by this Court. The appeal taken by them shall also be dismissed under Section 8, Rule 124 of the Revised Rules of Court as they shall be deemed to have jumped bail.

SO ORDERED.[24]

The case was certified to us in view of the imposition of the penalty of reclusion perpetua. Appellants failed to file their Brief despite being directed to do so. On June 26, 2002, a Resolution was issued which dispensed with the filing of appellants' brief.[25]

Appellants maintained that the incident was nothing more than a chance encounter between the victim and Rodriguez, and that the latter acted in self-defense.[26] They also claim that the testimonies of the prosecution witnesses are, "beyond the course of natural events," and that the prosecution's evidence, in general, is "anchored on exaggerated testimonies and cannot definitely (sic) survive the crucible test of reason and certainty." [27] In other words, they assail the findings of fact of the trial court regarding the credibility of the witnesses. Again, we hold that matters affecting credibility are best left to the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying.[28] The findings of fact of the trial court were affirmed by the Court of Appeals. As a general rule, an appellate court will not disturb the findings of the lower court, unless there appears in the record some facts or circumstances of weight and influence which has been overlooked or the significance of which have been misinterpreted.[29]

Appellant Rodriguez claims that he was shot by the victim from afar. However, his own medical certificate states that "powder burns" were found on the left part of his face.[30] These "powder burns" could either be soot deposits or powder tattooing which, in most cases, can only be caused if the shot was fired at close range. Neither of these "burns" would normally show if the wound was caused by a distant gunshot.[31] Moreover, the location of the wound shows that Rodriguez was shot while he and the victim were face-to-face. These findings, coupled with the number and location of the stab wounds sustained by the victim, weigh heavily against the possibility that Rodriguez was alone during the incident and that he was merely defending himself in a chance encounter with the victim.

There is no evidence to show that prosecution eyewitness Lagundino harbored any ill-motive to falsely testify against the appellants. The inescapable and logical conclusion is that no such ill motive exists and the testimony of Lagundino must be given full faith and credit.[32]

Next, the appellants emphasized the lack of any direct evidence that prove the existence of a conspiracy between them. They also argued inasmuch as the prosecution failed to establish any motive on their part to kill the victim, no conspiracy can be inferred.[33] However, the long-standing doctrine is that, although there is no direct proof of conspiracy, the same may still be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the appellants themselves when such acts point to a joint purpose and design, concerted action and community of interest.[34] It can be clearly seen from the evidence that Samson Perez was overwhelmed in a concerted attack by the four appellants. They ganged up on him and, apparently driven by the same blood-thirsty purpose, they repeatedly stabbed him with bladed weapons and continued to do so even after Samson Perez fell to the ground.[35]

Meanwhile, appellant Amaybay and Carmona raised the defense of alibi. The prevailing rule is that, for alibi to prosper, not only must appellant prove that he was at another place at the time of the commission of the crime, but also that it was physically impossible for him to be at the crime scene at that time.[36] Carmona testified that his house was situated one hundred meters away from the scene of the crime, and that it would take him only five minutes to walk there.[37] Jamaybay, on the other hand, testified that he lived a mere thirty meters away from the crime scene and that it would take him only two minutes to walk there.[38] Surely, these distances and times fall short of what it takes to be physically impossible. Furthermore, appellants were positively identified by prosecution witness Lagundino.[39] Well-settled is the rule that the positive identification of the accused, when categorical, consistent and without any ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[40]

The records show that appellant Robert Gomez is no longer in custody and no explanation was given for his absence. Evidently, he jumped bail, which is a form of flight. In criminal law, flight means the act of evading the course of justice by voluntarily withdrawing oneself to avoid arrest or detention or the institution or continuance of criminal proceedings. Flight, in jurisprudence, has always been a strong indication of guilt, betraying a desire to evade responsibility.[41]

Appellants also make much of the fact that there was an appreciable delay between the date of the commission of the crime, November 5, 1989, and the day when Lagundino testified on July 14, 1992. They alleged that Lagundino never adequately explained the reason for such delay, and that this omission, “rendered the evidence for the prosecution insufficient to establish appellants’ guilt in connection to (sic) the requisite of moral certainty.”[42] However, the fact that it took Lagundino little more than two years and eight months before he was able to give testimony in this case does not damage his credibility. His initial reluctance to implicate the appellants was undoubtedly borne out of fear that they would come after him if he came forward.[43] The prevailing rule is that fear of reprisals serves to excuse such delay,[44] and thus the credibility of Lagundino’s testimony is maintained.

We find that the trial court correctly appreciated the qualifying circumstance of abuse of superior strength. It appears that the deceased was armed with a gun and was able to fire at his attackers.[45] However, it is apparent that he failed to save his life despite being armed. Evidently, it was the superiority in number enjoyed by the appellants which allowed them to overpower the victim. Basically, Perez was overwhelmed by the combined and concerted attack of the appellants. This not the first time that abuse of superior strength was appreciated when the victim himself seemed to be sufficiently armed, and we deem it proper to appreciate this qualifying circumstance in the instant case.[46] Hence, the circumstance of abuse of superior strength qualified the killing to Murder.

Under Article 248 of the Revised Penal Code, Murder is penalized by reclusion perpetua to death. There being neither aggravating nor mitigating circumstances, appellants must suffer the penalty of reclusion perpetua, as prescribed by Article 63 (2) of the Code.

With regard to damages, the appellate court correctly awarded to the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity, which needs no further proof other than the death of Samson Perez.[47] In addition, they must also be awarded the amount of Fifty Thousand Pesos (P50,000.00) as moral damages, pursuant to prevailing jurisprudence.[48]

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. CR No. 17339, finding appellants ROBERT GOMEZ, JIMMY RODRIGUEZ, RENATO AMAYBAY and EDEN CARMONA guilty beyond reasonable doubt of the crime of Murder, sentencing them to suffer the penalty of Reclusion Perpetua, and ordering them to pay the heirs of the victim, Samson Perez, civil indemnity in the amount of P50,000.00, is

hereby AFFIRMED with the MODIFICATION that appellants are further ordered to pay, jointly and severally, the heirs of the victim moral damages in the amount of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] CA-G.R. CR No. 17339; penned by Associate Justice Hector L. Hofilena; concurred in by Associate Justices Hilarion L. Aquino and Romeo A. Brawner

[2] Criminal Case No. 8895; penned by Presiding Judge Anastacio I. Lobaton.

[3] TSN, 14 July 1992, p. 3.

[4] Id., pp. 15, 19; TSN, 2 June 1992, pp. 5-6.

[5] Id., p. 6.

[6] Id., p. 8.

[7] Id., pp. 5-6, 27.

[8] Records, p. 2.

[9] Records, p. 27.

[10] TSN, 14 July 1992, pp. 9-10.

[11] Id., pp. 11-12.

[12] Records, pp. 169-170.

[13] Records, pp. 169-170; TSN, 22 April 1991, pp. 10-11.

[14] TSN, 22 April 1991, pp. 13-14.

[15] TSN, 20 October 1993, pp. 17-18, 31.

[16] Id., p. 9.

[17] Id., pp. 36-37, 49.

[18] Id., pp. 37-39.

[19] Id., pp. 48-49.

[20] Id., p. 39.

[21] Id., pp. 43, 50.

[22] Records, p. 251.

[23] CA Rollo, p. 39.

[24] Id., pp. 111-112.

[25] Rollo, p. 141.

[26] CA Rollo, pp. 8, 11.

[27] CA Rollo, pp. 10, 12-13.

[28] People v. Alcodia, G.R. No. 134121, 6 March 2003, citing People v. Castillo, G.R. No. 130205, 5 July 2000, 335 SCRA 100.

[29] People v. Alcodia, G.R. No. 134121, 6 March 2003, citing Cueme v. People, G.R. No. 133325, 30 June 2000, 334 SCRA 795, and People v. Pascual, G.R. No. 127761, 28 April 2000, 331 SCRA 252.

[30] Records, p. 225.

[31] DI MAIO, GUNSHOT WOUNDS: PRACTICAL ASPECTS OF FIREARMS, BALLISTICS AND FORENSIC TECHNIQUES (1999), pp. 136-146; DIX & CALALUCE, GUIDE TO FORENSIC PATHOLOGY (1999), pp. 56-59; SAFERSTEIN, CRIMINALISTICS: AN INTRODUCTION TO FORENSIC SCIENCE (1995), p. 449; TRADIO, HANDBOOK OF CRIMINAL INVESTIGATION (1993), p. 151.

[32] People v. Caloza, G.R. Nos. 138404-138406, 28 January 2003, citing People v. Galam, G.R. No. 114740, 15 February 2000, 325 SCRA 489.

[33] CA Rollo, pp. 6-8.

[34] People v. Aliben, G.R. No. 140404, 27 February 2003, citing People v. Dacibar, G.R. No. 111286, 17 February 2000.

[35] TSN, 14 July 1992, pp. 5-7, 12, 22-28.

[36] People v. Bustamante, G.R. Nos. 140724-140726, 12 February 2003, citing People v. Alvarado, G.R. No. 145730, 19 March 2002.

[37] TSN, 20 October 1993, pp. 12, 14.

[38] Id., p. 28.

[39] TSN, 14 July 1992, pp. 9-12.

[40] People v. Pinuela, G.R. Nos. 140727-140728, 31 January 2003.

[41] People v. Cueto, G.R. No. 147764, 16 January 2003, citing People v. Andarme, G.R. No. 140426, 30 July 2002. (emphasis supplied)

[42] CA Rollo, p. 53.

[43] TSN, 14 July 1992, pp. 13, 40.

[44] People v. Chatto, G.R. No. 102704, 10 March 1993, 219 SCRA 785.

[45] TSN, 14 July 1992, pp. 5-6, 27.

[46] People v. Manalo, G.R. No. 107329, 24 January 1994, 229 SCRA 479.

47 People v. Aliben, G.R. No. 140404, 27 February 2003, citing People v. Abadies, G.R. No. 135975, 14 August 2002.

[48] People v. Aliben, supra, citing People v. Domingo, G.R. No. 143660, 5 June 2002 and People v. Dela Cruz, G.R. No. 139970, 6 June 2002.

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