

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE LARRY COLONIA, APPELLANT.

G.R. No. 138541. June 12, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us is an appeal from the Decision[1] dated September 17, 1998 of the Regional Trial Court of Malaybalay City, Branch 9, in Criminal Case No. 6725-94, finding herein appellant, Jose Larry Colonia, guilty beyond reasonable doubt of murder for killing Leonardo Mallari. His brothers and co-accused, Eduardo and Rene Colonia, were acquitted of the charge.

The appellant and his co-accused were charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code in an Information[2] which read:

That on or about the 2[nd] day of January 1994, at dawn, at Purok 2, Barangay Kiburiao, Municipality of Quezon, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and taking advantage of their superior strength, armed with pieces of wood and a sharp bladed weapon, did then and there wilfully, unlawfully and criminally attack, assault, strike and stab CPL. LEONARDO MALLARI, inflicting upon the latter mortal injuries which caused the instantaneous death of LEONARDO MALLARI; to the damage and prejudice of the legal heirs of LEONARDO MALLARI in such amount as may be allowed by law.

Contrary to and in violation of Article 248 of the Revised Penal Code.

Upon arraignment on November 25, 1994, all three accused, assisted by counsel, pleaded "not guilty." [3] Thereafter, trial on the merits ensued.

The prosecution presented two witnesses: Antonio Urcinado, [4] an eyewitness to the stabbing incident and the victim's widow, Gretel O. Mallari. [5] On the other hand, the defense presented accused Eduardo Colonia [6] and his neighbor, Daylinda Oro. [7]

The records disclose that, at around 1:45 a.m. on January 2, 1994, prosecution witness Antonio Urcinado and the victim, Leonardo Mallari, both soldiers of the Philippine Army, were walking in Purok 2, Kiburiao, Quezon, Bukidnon. Both came from a disco party in Kiburiao proper where they had a drinking spree with some of their friends. On the other side of the road was a group of nine men, from one of whom Mallari requested a match with which to light his cigarette. Moments later, an argument broke out between Mallari and a member of the group, Eduardo Colonia, who approached the two soldiers. Whereupon Urcinado saw Mallari kick Eduardo, causing the latter to fall. As Urcinado was pacifying Mallari, Eduardo's brother, Rene Colonia, struck Mallari's head with a round stick, causing Mallari to fall face down. As Mallari lay flat on his stomach, another brother of Eduardo, accused Jose Larry Colonia, stabbed Mallari on the left side of his back with a hunting knife, penetrating his chest. [8] Urcinado ran to the army camp for assistance but, upon his return with companions from the detachment,

Mallari was already dead and the group had fled.

The police authorities conducted an investigation before proceeding to the army camp in Kipulot, Palalapaw. Although no post-mortem examination was conducted on Mallari's cadaver, the defense admitted that the cause of death was massive hemorrhage due to a stab wound.

The second witness for the prosecution was the victim's wife, Gretel O. Mallari, who testified that she learned of her husband's death only the following morning. She declared that, by reason of her husband's death, she suffered mental anguish and sleepless nights. She further asked the court to award her the amount of P5,000 for attorney's fees, P3,000 for litigation expenses, P15,000 for embalming and coffin, and P3,000 for the vigil. On cross-examination, she admitted that the GSIS released P10,000 as burial benefits.

The defense of Eduardo Colonia consisted mainly of denial and alibi. He claimed that he arrived home on January 1, 1994 at around 8:00 p.m. from Cagayan de Oro City where he worked in a construction project. While the family was eating dinner, Daylinda Oro arrived and asked him about her son who was working with him there. After a while, he went to sleep. So did his brothers, Jose Larry and Rene. The following morning, Eduardo was awakened by a commotion in the neighborhood. They heard that someone had been killed in the plaza. He went out of the house to inquire into what it was all about but soldiers arrested him and brought him to the barracks for interrogation as one of the suspects in the killing. The next day, his two brothers were also arrested. He did not personally know Antonio Urcinado and was surprised to learn that Urcinado knew them.

Daylinda Oro corroborated Eduardo's testimony that, at the time Mallari was killed at Kiburiao, Quezon, Bukidnon on January 2, 1994, the three Colonia brothers were already asleep. She declared that she knew the Colonias because they were neighbors. On January 1, 1994, on learning that Eduardo had arrived from Cagayan de Oro City, she proceeded to their house to ask about her son who was working with him there. Eduardo told Daylinda that her son had no money for fare so he did not come home. Eduardo's mother, Bonifacia, requested Daylinda to help her dress the chicken and cook "biko." She acceded to Bonifacia's request and stayed up to midnight in her house. At around 9:00 p.m., she noticed that Eduardo, Rene and Jose Larry were already asleep in the sala. At past midnight, Daylinda heard gunshots, prompting her to go out of her house to look for her youngest daughter who was not yet home. She returned to Bonifacia's house to seek assistance. While there, she saw Jose Larry, Eduardo and Rene still sleeping in the sala.

After weighing the evidence on record, the trial court rendered judgment finding appellant Jose Larry Colonia guilty of murder. Accused Eduardo Colonia and Rene Colonia were acquitted for insufficiency of evidence and for having acted in defense of their brother. The dispositive portion of the decision read:

WHEREFORE, the Court hereby acquits accused Eduardo Colonia for failure of the prosecution to prove his guilt beyond reasonable doubt while accused Rene Colonia having acted in defense of his brother co-accused Eduardo is likewise acquitted.

The Court having found Jose Larry Colonia guilty beyond reasonable doubt of the crime of Murder, hereby sentences him to Life Imprisonment and to indemnify the heirs of Leonardo Mallari the following:

- 1) P50,000.00 for his death;
- 2) P50,000.00 for moral damages;
- 3) P5,000.00 for attorney's fees;
- 4) P3,000.00 for litigation expenses;
- 5) P3,000.00 for the expenses during the vigil; and
- 6) P15,000.00 for the embalmment and coffin; less the P10,000.00 released by the GSIS for burial expenses.

SO ORDERED.

The two principal issues for resolution are: (1) whether the trial court erred in appreciating the qualifying circumstance of treachery against appellant and (2) whether the trial court erred in convicting appellant of murder, instead of homicide, when the guilt for murder was not proven by the prosecution beyond reasonable doubt.

Appellant raises the following arguments:

First, appellant argues that he should be acquitted because of Urcinado's failure to identify Mallari's assailants when he was presented in court. To support his argument, petitioner cites the case of *People vs. Esmale*[9] which held that the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal for, even if the commission of the crime can be established, without proof of the identity of the criminal beyond reasonable doubt, there can be no conviction.

Once again, we stress that the correct identification of the author of a crime should be the primary concern of criminal prosecution in a civilized legal system and corollary to this is the actuality of the commission of the offense with the participation of the accused.[10] In the case at bar, Urcinado's error about the Colonia brothers' names cannot justify appellant's acquittal. This Court has repeatedly held that identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person. One may be familiar with the face but not necessarily the name. It does not follow therefore that, to be able to identify a person, one must first know his/her name.[11] Experience in fact shows that, precisely because of peculiar acts committed before them, eyewitnesses, especially victims of a crime, can remember the identity of criminals with a high degree of reliability. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memory.[12] While Urcinado failed to identify the Colonias by name, he was able to positively identify them by face. On direct examination, Urcinado testified:

ATTY. OKIT:

Q You said that there was a group of persons whom you did not know at that time, you could identify the faces of those persons that made the rumble?

A Yes.

Q If the persons who joined the rumble which you saw are in this court, can you point to them if they are in this court?

A Yes.

Q Kindly step down from the witness stand and go to the persons who are seated in the bench for the accused and point to this court the persons whose faces you were able to identify at that time of the rumble and touch the shoulders of the persons?

A (witness stepped down from the witness stand and proceeded to the bench assigned for the accused and touched the shoulder of accused Rene Colonia, witness touched the shoulder of accused Eduardo Colonia and witness touched the shoulder of accused Jose Larry Colonia).

xxx xxx xxx

Q

What was the last act that you saw after Rene struck Mallari with a wood?

A The stabbing.

Q Who stabbed Mallari?

A Larry Colonia.

Q If Larry is in court, can you identify him?

A Yes.

Q How far were you from Mallari and Larry Colonia when Larry stabbed Mallari?

A Three meters.

Q What did you see, what weapon did Larry Colonia use in stabbing Mallari?

A A hunting knife.

Q How many times did you see Larry stabbed (sic) Mallari?

A Once.[13]

No cogent reason exists to overturn the trial court's finding that Urcinado positively and unequivocally identified appellant as the felon who stabbed Mallari. Urcinado had a good look at his companion's assailant. He actually saw appellant stab Mallari as he was just three meters away from the victim. This is in addition to the fact that the Colonia brothers were familiar to him since he had been stationed in Kiburiao, Quezon, Bukidnon for a year prior to the incident. It is doctrinal that the trial court's evaluation of the credibility of a witness and his testimony is accorded the highest respect, for the trial court has an untrammelled opportunity to observe directly the demeanor of a witness and thus, to determine whether he is telling the truth.[14]

Second, appellant raises the defense of alibi, saying that, at the time of the incident, he was at home asleep. Such defense does not merit serious consideration. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must also prove that he could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.[15] In this case, Eduardo claimed that, at time of the incident, he and his brothers, Rene and Jose Larry, were already asleep in their house which was 300 meters away from the crime scene. Clearly, there was no physical impossibility for the appellant to be at the scene of the crime when it happened. Likewise, the defense of alibi must be supported by credible corroboration, preferably from disinterested witnesses. While appellant's alibi was corroborated by Daylinda Oro, such corroboration was not credible and, as observed by the trial court:

Likewise, the Court cannot believe defense witness Daylinda Oro's testimony as it is unnatural and highly improbable for a housewife to be out from her house that very evening from 8:00 o'clock to 12:00 o'clock to assist a neighbor in the household chores unmindful of her own family's needs and desires at that time. The Court cannot also believe her story of taking solely the task of looking for her daughter without asking her husband to join her.[16]

Moreover, Urcinado's positive identification of appellant as the author of the crime negates alibi. Alibi cannot prevail over the positive identification of the accused by an eyewitness who has no untoward motive to falsely testify.[17]

Third, appellant contends that the trial court erroneously appreciated treachery in the commission of the crime of murder. He claims it should be downgraded to homicide. We agree.

Although it was established that appellant inflicted the fatal stab wound on Mallari, the trial court erroneously appreciated the qualifying circumstance of treachery. For treachery to be considered, it must be clear that the accused deliberately and consciously adopted the means of execution that rendered the person attacked with no opportunity to defend himself or to retaliate.[18] Treachery is not presumed; it has to be proved as convincingly as the killing itself.[19] The prosecution evidence showed that the victim and accused Eduardo had a heated argument. It was only when the victim kicked Eduardo that Rene and Jose Larry joined the fracas. There was an initial aggression on the part of the victim that resulted in the rumble and ultimately his death. Thus, the victim was not totally defenseless. He was sufficiently forewarned of the possible reprisal from Eduardo's group. Hence, we rule out treachery.

In the absence of the qualifying circumstance of treachery, the crime committed by appellant was not murder but homicide.

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There being no mitigating or aggravating circumstances attending the crime, the penalty should be imposed in its medium period.[20] Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be the medium period of reclusion temporal while the minimum term is anywhere within the range of prision mayor, the penalty next lower to that of reclusion temporal.

We sustain the award by the trial court of civil indemnity and moral damages in the amount of P50,000 each, pursuant to prevailing jurisprudence.[21]

Regarding the attorney's fees and litigation expenses, Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in any event, it must be reasonable, just and equitable. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the rule. As such, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of such award.[22] Aside from the dispositive portion, nothing was ever said by the trial court in the body of the decision to justify the award of attorney's fees and litigation expenses. Hence, we disallow them.

The award of actual damages should also be deleted. Article 2199 of the Civil Code provides that a party may recover actual and compensatory damages only for such loss as he has duly proved. Nonetheless, appellant should pay the heirs of the deceased temperate damages in the amount of P25,000. Under Article 2224 of the Civil Code, temperate damages "may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty."

WHEREFORE, the decision of the Regional Trial Court of Malaybalay City, Branch 9, is hereby AFFIRMED with the MODIFICATION that appellant Jose Larry Colonia is found guilty of homicide only and sentenced to an indeterminate penalty of 8 years and 1 day of prision mayor, as minimum, to 14 years and 8 months and 1 day of reclusion temporal, as maximum. Appellant is also ordered to pay the amount of P25,000 as temperate damages to the heirs of the deceased. The award of actual damages, litigation expenses and attorney's fees is hereby deleted.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.

[1] Penned by Acting Presiding Judge Arcadio D. Fabria, Rollo, pp. 16-21.

[2] Original Records, p. 35.

[3] Id., p. 45.

[4] TSN, December 12, 1994.

[5] TSN, May 5, 1995.

[6] TSN, November 28, 1997.

[7] TSN, November 28, 1997.

[8] TSN, December 12, 1994, pp. 10-12.

[9] 243 SCRA 578, 592 [1995].

[10] People vs. Ibay, 312 SCRA 153, 178 [1999], citing People vs. Galera, 280 SCRA 492, 504 [1997].

[11] People vs. Biñas, 320 SCRA 22, 56 [1999].

[12] People vs. Mendoza, 348 SCRA 318, 330 [2000].

[13] TSN, December 12, 1994, pp. 8, 14.

[14] People vs. Gamboa, 341 SCRA 451, 463 [2000].

[15] People vs. Dubria, 341 SCRA 134, 147 [2000].

[16] Rollo, p. 19.

[17] People vs. Timon, 281 SCRA 577, 598 [1997].

[18] People vs. Geguira, 328 SCRA 11, 34 [2000].

[19] People vs. Nagum, 322 SCRA 474, 479-480 [2000].

[20] Art. 64 [1], Revised Penal Code.

[21] People vs. Manlansing, GR. No. 131736-37, March 11, 2002; People vs. Caber, 346 SCRA 166, 167 [2000].

[22] Padilla vs. CA and Averia, Jr., G.R. No. 119707, November 29, 2001.

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