

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RESTY HORMINA, APPELLANT.

G.R. No. 144383. January 16, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellant Resty Hormina assails the decision[1] dated December 16, 1999, of the Regional Trial Court of Iloilo City, Branch 30, convicting him of murder and sentencing him to suffer the penalty of reclusion perpetua and to pay the heirs of Ricardo Felipe P60,000.00 as death indemnity, P20,700.00 for funeral expenses, and P100,000.00 in moral damages.

In an Information dated June 30, 1995, the City Prosecutor of Iloilo City charged Resty Hormina and Kevin Lozada with murder allegedly committed as follows:

That on or about the 13[th] day of June, 1995 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a gun, conspiring and confederating between themselves, working together and helping one another, with treachery and evident premeditation, did then and there willfully, unlawfully and criminally shoot, hit and wound Ricardo Felipe, with the said gun with which the accused was provided at the time, thereby causing upon Ricardo Felipe bullet wound on vital part (sic) of his body, which caused his death a few moments thereafter.

CONTRARY TO LAW.[2]

When arraigned, both Hormina and Lozada pleaded not guilty to the charge. Trial ensued thereafter.

Four witnesses, namely: Maritess Villanueva, who witnessed the incident; SPO1 William Garcera, who investigated the incident; Dr. Tito Doromal, who conducted an autopsy on the victim's body; and Abelardo Felipe, the victim's father, testified for the prosecution.

MARITESS VILLANUEVA, a fish vendor, testified that at a little past midnight of June 13, 1995, she and her husband, Reynaldo Villanueva, were on their way to the Iloilo City fishing port,[3] having just come from their house at dela Rama Street, Iloilo City. They were on board a trisikad (tricycle) driven by the victim, Ricardo Felipe, when suddenly Kevin Lozada blocked the trisikad. Immediately thereafter, somebody from behind the trisikad fired a gun at Ricardo.[4] When Maritess turned her head to see the gunman, she saw Resty Hormina holding a handgun standing one arm's length away from Ricardo. Ricardo likewise turned his head and asked Hormina why he fired at him.[5] Sensing Hormina's deadly resolve, Ricardo alighted from the driver's seat of the trisikad and jumped behind the cab to seek cover.[6] But on seeing that it was a futile move, Ricardo, together with Reynaldo, jumped out of the trisikad and started to run away. Hormina chased Ricardo and shot him again.[7] Ricardo fell as a result. Hormina and Lozada then fled the scene. A few minutes thereafter, police officers arrived and conducted their investigation on the crime scene.

At the trial, SPO1 WILLIAM GARCERA, an investigator of the Philippine National Police (PNP) assigned to the

General Luna Police Precinct 1 in Iloilo City, testified that he went to the crime scene in the morning of the following day.[8] He saw blood splattered in front of NENACO warehouse at dela Rama Street.[9] Garcera was looking into the matter when a certain Emmanuel Abada approached him. Abada claimed to have witnessed the incident, and volunteered to give his statement thereon.[10] Together, they went to the police station in General Luna where Abada executed his affidavit.[11]

The following day, Maritess Villanueva, accompanied by her husband, met with Garcera to give her own statement.[12] Garcera declared that while the affidavits of Abada and Villanueva were in English, he made sure that the two understood their contents by translating them into the Ilonggo dialect before they affixed their signatures.[13] Garcera stressed that it was Abada and Villanueva who supplied the names of the accused because they knew them very well.[14] Thereafter, Garcera prepared the criminal complaint for murder against the two accused.[15]

DR. TITO DOROMAL, a PNP medico-legal officer in Iloilo City, conducted the autopsy of the victim.[16] The medical findings were as follows:

HEAD AND NECK:

- 1) Contused-abrasion, 2 x 0.7 cm., in dia., right frontal region.
- 2) Contused-abrasion, 2.3 x 1.1 cm., in dia., left lateral frontal area.
- 3) Contusion, 3.5 x 2.8 cm., in dia., right zygomatic arch.
- 4) Contused-abrasion, 2.6 x 1.7 cm., in dia., right anterior face.
- 5) Contused-abrasion, 4.8 x 3.1 cm., in dia., left anterior face.

THORACO-ABDOMINAL REGIONS/EXTREMITIES:

- 1) BULLET WOUND, oval in shape, 1 x 0.4 cm., in dia., with abrasion collar around, 1.2 x 0.6 cm., in dia., postero-medial aspect, upper 3[rd], left arm, 21 cms., above the left elbow, penetrating muscle tissue, directed forward, upward, medially and the slug lodged underneath the muscle tissue, along the medial 3[rd], level of the 1[st] rib, left.
- 2) BULLET WOUND, 0.6 x 0.7 cm., in dia., with abrasion collar around 1 x 0.9 cm., in dia., postero-lateral, left thoracic wall, 12 cms., from the posterior median line, 117 cms., from the left heel, penetrating the thoracic cavity at the level of the 8[th] intercostal space, perforating thru & thru the lower lobe, left lung, medial aspect, upper lobe, left lung, posterior pericardial sac, penetrating the atrio-ventricular junction, left anterior pericardial sac, penetrating muscle tissue of the 2[nd] intercostal space, along mid-clavicular line, where the slug lodged, extracted and recovered.[17]

Dr. Doromal testified that the contusions and abrasions on the victim's head and neck were caused by forcible contact with rough objects.[18] The bullet wounds found on Ricardo's back indicated that the assailant was at the left back portion of the victim.[19] The absence of powder burns also revealed that the distance between the assailant and the victim was more than 24 inches.[20] Of the two bullet wounds, wound no. 2 was fatal because it caused the hemorrhage, which in turn, caused Ricardo's death.[21]

The victim's father, ABELARDO FELIPE, testified that he was in Tuburan, Passi, attending to his carabao, when he received the painful news of his son's death on June 13, 1995.[22] He declared that his son's death caused his family much pain and no amount of moral damages could compensate them for their loss.[23] He claimed that Ricardo's funeral expenses totaled P20,700.[24]

Appellant RESTY HORMINA testified on his own behalf as sole witness for the defense. At the trial, he denied the charges outright. He declared that on the afternoon of June 13, 1995, he asked Kevin Lozada to help him build a bamboo bed.[25] Kevin agreed and together, they were able to finish making the bamboo bed at about 7:00 in the evening.[26] As a sign of gratitude, Hormina invited Lozada for a snack at Aldos Restaurant.[27] To reach said place, they flagged down the trisikad driven by Ricardo. On board already were spouses Reynaldo and Maritess Villanueva as passengers. Ricardo allowed Hormina and Lozada to board the trisikad, but Reynaldo protested.[28] An argument ensued between Ricardo and the Villanuevas.[29] To avoid trouble, Hormina said, he and Lozada decided to alight from the trisikad and walk towards the plaza.[30] They went ahead of the trisikad. When they were already at a distance from the trisikad, they heard shots.[31] They turned around and saw Ricardo falling to the ground and Reynaldo running away.[32] Hormina and Lozada immediately took cover. When the commotion subsided, people swarmed into the streets and the police arrived. Hormina and Lozada then went near Ricardo and saw him lifeless. Maritess was standing alone in the middle of the scene, while Reynaldo was nowhere to be found.[33] The policemen arrested Hormina and Lozada. They were then brought to the police station, only to be released shortly afterwards. But according to Hormina, after Maritess gave her statement to the police, he and Lozada were re-arrested at their respective houses.

On cross-examination, Hormina denied that immediately before they boarded the trisikad, they came from the birthday celebration of his brother Rodney Hormina.[34] He said that before Lozada was arrested, the latter was beaten and maltreated by the police at the back of Maritess' house.[35] During the beating, according to Hormina, Lozada was told by Maritess' husband, Reynaldo, to point at Hormina as the perpetrator of the crime instead of Reynaldo.[36]

On December 16, 1999, the trial court rendered its decision finding herein appellant Resty Hormina, guilty of murder qualified by treachery. The charge against Kevin Lozada was dismissed for lack of sufficient evidence to show conspiracy. The dispositive portion of the trial court's decision reads:

CONSIDERING THE FOREGOING, the Court finds accused Resty Hormina guilty beyond reasonable doubt for the crime of Murder qualified by treachery. This court finds no other qualifying circumstance in the commission of said offense, hence, imposes upon the accused Resty Hormina the penalty of RECLUSION PERPETUA.

The accused Resty Hormina is also directed to pay the sum of P60,000.00 as indemnity for the death of Ricardo Felipe; P20,700.00 as expenses for the burial of the victim Ricardo Felipe; and P100,000.00 as moral damages, to the heirs of the victim Ricardo Felipe.

The Court finds that no sufficient evidence had been presented by the prosecution to prove that the accused Kevin Lozada conspired with the accused Resty Hormina in the killing of Ricardo Felipe; hence, the charge for murder against him is hereby DISMISSED.

SO ORDERED.[37]

Hence, the instant appeal.

Before us appellant avers that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED RESTY HORMINA OF A CAPITAL OFFENSE ON INSUFFICIENT EVIDENCE.[38]

Thus, the sole issue before us is whether the prosecution's evidence suffices to sustain a conviction beyond reasonable doubt. The resolution of this issue hinges on the credibility of the prosecution eyewitness, Maritess Villanueva.

Appellant contends that witness Maritess Villanueva could not have possibly seen the gunman because, as she said in her testimony, the shot came from behind. He adds that she could not positively identify him as the gunman in open court after a lapse of two and a half (2-1/2) years. Appellant attributes an ill motive on Maritess' part, prompting her to point at him as the assailant. This is because, according to appellant, she wanted to shield her husband, Reynaldo, from possible prosecution for the killing of Ricardo. Appellant claims that Reynaldo was extremely jealous of Ricardo, because Maritess was ardently attracted to Ricardo because of his build and countenance.

Appellee, through the Office of the Solicitor General (OSG), counters that Maritess could identify Hormina as the assailant because immediately before the first attack, Maritess caught a glimpse of him hiding behind a lamppost. Immediately after Maritess and her husband had passed Hormina, Maritess heard the gunshot. At an arm's length, Maritess could not have been mistaken as to the identity of the gunman. Moreover, says the OSG, the trial court's findings on the credibility of witnesses may not now be disturbed on appeal as they are generally binding upon the appellate court.

The OSG also points out that the killing was attended by treachery, which qualified the offense to murder. Based on the prosecution's evidence, the shots were fired from behind and Ricardo had no inkling of the sinister plot against him. Unaware of impending danger, Ricardo was not in the condition to defend himself, thereby ensuring that the act of killing was free from any risk whatsoever to the assailant.

After carefully sifting the evidence on record in this case, we see no reason to depart from the findings of the trial court, particularly on the credibility of Maritess Villanueva's testimony. It bears stressing at this point, that findings of the trial court will not be disturbed on appeal unless it is shown that it has plainly overlooked certain facts of substance, which, if considered, might affect the result of the case. This is so because the trial judge, having personally heard the witnesses and observed their deportment and manner of testifying during trial, is in a better position to decide in particular the question of credibility.[39]

Appellant's claim that Maritess did not actually see who fired the shots is a negative assertion. It is outweighed by the positive and candid declaration of the witness under oath. According to her, the first shot came from behind the trisikad. Upon hearing it, as a natural reaction to a stimulus, Maritess immediately turned her head to where the sound came from. She saw appellant Hormina holding a handgun, an arm's length away from the victim. She also categorically testified that she saw appellant chase the victim and then shoot him to death. The test to determine the value of the testimony of a witness is whether or not such is in conformity with human knowledge and consistent with the experience of mankind.[40] We find it more in accord with human experience that the chasing and the second shooting were mere continuation of the first attack in order to accomplish the assassin's determination to kill. Where conditions of visibility are favorable and the eyewitness' assertion as to the identity of the assailant is not tainted with bias, said assertion as to the identity of the malefactor can very well be accepted.[41]

Appellant next contends that after the lapse of two and a half years, Maritess could no longer positively identify him in open court as the gunman. The contention is devoid of sufficient basis. On record, Maritess positively identified him as Ricardo's assailant. She knew appellant very well as they lived in the same neighborhood. Appellant does not adduce any reason why Maritess' memory should suddenly fail her in court. Hence, his bare contention must fail.

In this appeal, we note with disfavor the sudden change in the theory of appellant's defense. From mere denial during the trial, he now imputes the authorship of the fatal shooting to Maritess' husband, Reynaldo. Belatedly, he now claims that Reynaldo allegedly felt jealous of the victim, Ricardo, because of the extraordinary attention

showered by Maritess upon him. Thus, according to appellant now, Ricardo had set him up as a fall guy for Ricardo's death. This contention, in our view, is purely speculative. The records fail to show any concrete evidence that would buttress appellant's change in theory. Appellant's testimony during the trial was that both Maritess and Reynaldo got mad at Ricardo for taking in two more passengers. Nothing was said about jealousy at all. We find the twist now in appellant's defense to be nothing but a futile effort to exculpate himself. After weighing the conflicting versions of the prosecution and the defense, we agree with the trial court's conclusion, that the prosecution's version is more in accord with human experience, hence credible.[42]

But was the offense committed murder or only homicide?

The trial court, in convicting appellant of murder, ruled that the killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden, unexpected, and unforeseen attack on the person of the victim, without the slightest provocation on the part of the latter.[43] In this case, when Ricardo Felipe was shot, he did not have the faintest idea that he was going to be attacked. Also, before appellant attacked him, appellant was hiding behind the lamppost and waiting for the trisikad to pass by. This indicates that appellant devised a way to effectively execute the attack without risk to himself. Hence, the killing was attended by treachery, qualifying the offense to murder.

The penalty for the crime of murder is reclusion perpetua to death.[44] The two penalties being both indivisible, and there being neither mitigating nor aggravating circumstance in this case, the lesser of the two penalties, which is reclusion perpetua, should be applied pursuant to the second paragraph of Article 63 of the Revised Penal Code.[45]

Modification of the award of damages, however, is in order. In line with current jurisprudence, the amount of P60,000 as civil indemnity is reduced to only P50,000.[46] Moral damages of P100,000 ought likewise to be reduced to P50,000, in view of the purpose for making such award, which is to compensate the heirs of the victim for injuries suffered and not to enrich them.[47] The claim for actual damages in the amount of P20,700, being supported by receipts, is well taken.

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 30, in Criminal Case No. 45060 finding appellant, RESTY HORMINA, guilty beyond reasonable doubt of the crime of murder and sentencing him to reclusion perpetua, is AFFIRMED with the MODIFICATION that appellant is ORDERED to pay the heirs of the victim, Ricardo Felipe, the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P20,700.00 as actual damages. Costs de officio.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 17-28.

[2] Records, p. 1.

[3] TSN, 12 December 1997, pp. 3-4.

[4] Id. at 5.

[5] Id. at 6 & 7.

[6] Id. at 9.

[7] Ibid.

[8] TSN, 9 October 1997, pp. 2 & 10.

[9] Ibid.

[10] Ibid.

[11] Abada, however, was not presented as a witness for the State for reasons known only to the prosecution.

[12] TSN, 9 October 1997, p. 11.

[13] Id. at 7.

[14] Id. at 11 & 12.

[15] Id. at 9.

[16] TSN, 18 April 1997, pp. 2-3.

[17] Records, p. 62.

[18] TSN, 18 April 1997, p. 3.

[19] Id. at 7.

[20] Ibid.

[21] Id. at 8-9.

[22] TSN, 3 July 1998, pp. 3 - 4.

[23] Id. at 8.

[24] Id. at 5.

[25] TSN, 21 January 1999, p. 9.

[26] Id. at 10.

[27] Ibid.

[28] Id. at 4.

[29] Id. at 5.

[30] Ibid.

[31] Ibid.

[32] Id. at 6.

[33] Ibid.

[34] Id. at 8.

[35] Id. at 24-25.

[36] Id. at 26.

[37] Rollo, p. 28.

[38] Id. at 41.

[39] People v. Rafael, G.R. Nos. 146235-36, 29 May 2002, 382 SCRA 753, 766.

[40] People v. Dela Cruz, G.R. No. 130608, 26 August 1999, 313 SCRA 189, 202-203.

[41] People v. Bragat, G.R. No. 134490, 4 September 2001, 364 SCRA 425, 430.

[42] See People v. Enfectana, G.R. No. 132028, 19 April 2002, 381 SCRA 359, 368.

[43] People v. Coca Jr., G.R. No. 133739, 29 May 2002, 382 SCRA 508, 519.

[44] ART. 248, REVISED PENAL CODE.

[45] ART. 63. Rules for the application of indivisible penalties. - ...

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

...

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

....

[46] People v. Saure, G.R. No. 135848, 12 March 2002, 379 SCRA 128, 143; People v. Gelin, G.R. No. 135693, 1 April 2002, 379 SCRA 717, 726; People v. Godoy, G.R. No. 140545, 29 May 2002, 382 SCRA 680, 692.

[47] People v. Obosa, G.R. No. 129688, 2 April 2002, 380 SCRA 22, 35.

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