

RONNIE SUMBILLO, FRANCISCO SERICON, JOSELITO SERICON, AND FELIX GAYUSO, JR., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 167464. January 21, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

This is an appeal[1] from the Court of Appeals' Decision[2] dated 23 November 2004 in CA-G.R. CR No. 26562 as well as the Resolution[3] dated 17 March 2005 denying the Motion for Reconsideration. The Court of Appeals affirmed with modification the 8 February 2002 Decision[4] of the Regional Trial Court of Manila, Branch 33, convicting Ronnie Sumbillo of the crime of attempted murder as principal and Francisco Sericon, Joselito Sericon and Felix Gayuso, Jr. as accomplices.

In an Amended Information dated 9 September 1999, Ronnie Sumbillo, Francisco Sericon, Joselito Sericon, and Felix Gayuso, Jr. (petitioners) were charged with the frustrated murder of Edilberto Pangan, Jr. (Pangan).[5] They pleaded not guilty upon arraignment.

During the trial, the prosecution presented Pangan, Pangan's wife Evelyn Prieto Pangan, Pangan's employee Dante Morales, and the attending physician Dr. Policarpio Santos, Jr.[6]

Pangan testified that on 15 November 1995 at about 8:00 in the evening, he arrived from work and noticed the bruises on his wife's body. Pangan decided to bring his wife to the hospital so he went outside to get his jeep which was parked 30 meters from their house. While removing the lawanit cover of his jeep, accused Ronnie Sumbillo (Sumbillo) suddenly appeared and aimed his gun on Pangan. Sumbillo pulled the gun's trigger but it did not fire. Pangan hid behind his jeep and covered himself with the lawanit. Pangan heard Sumbillo pulling the gun's trigger several times but the gun did not fire. Pangan ran towards his house but Francisco Sericon, Joselito Sericon, and Felix Gayuso, Jr. stopped him and held him. However, Pangan was able to free himself. While running towards his house, Pangan heard a gunshot. Pangan fell on the pavement and was unconscious.[7]

Pangan stated that his cousin, Leopoldo Macayag, brought him to Mary Johnston Hospital where he was given first aid treatment. Then, Pangan was transferred to Metropolitan Hospital where he was confined for three days.[8]

Evelyn Pangan and Dante Morales corroborated Pangan's testimony. Evelyn Pangan added that on 15 November 1995 at around 7:30 p.m., while she was walking towards Juan Luna Street, she was hit at the back. She fell on the ground and saw Joselito Sericon holding a wooden stick. Then, Emelinda Sericon and Nida Almario kept pulling her hair and pushing her to the ground. Evelyn Pangan shouted for help and eventually her relatives and neighbors rescued her while Nida Almario, Joselito and Emelinda Sericon ran away. Evelyn Pangan further stated that she sustained slight injuries so when her husband saw her, he decided to bring her to the hospital. While her husband was getting their jeep, she saw Sumbillo pointing a gun at her husband.[9]

Dr. Policarpio Santos, Jr. stated that aside from the hematoma and contusion at the back of Pangan's head which was treated with an ice pack, Pangan was in normal condition and was given analgesic only.[10]

On the other hand, Sumbillo alleged that on 15 November 1995, he was on duty from 7:00 p.m. to 2:00 a.m. of the next day as Barangay Tanod of Panday Pira Extension. Sumbillo stated that he was in the Barangay Hall when he saw her sister, Emelinda Sericon, filed a complaint against Evelyn Pangan. Sumbillo denied seeing Pangan that evening. Sumbillo also denied that he was in possession of any firearm.[11]

Felix Gayuso, Jr. testified that on 15 November 1995 at about 8:00 p.m., he was busy serving the customers at their carinderia in Canal de Reyna St., Tondo, Manila until midnight. Felix Gayuso, Jr. stated that he only knew about the incident because he was informed that her aunt, Emelinda Sericon, was involved in an altercation with Pangan's wife. Felix Gayuso, Jr. stated that when he arrived from school on 16 November 1995, his parents informed him that two policemen came to their house. Since the policemen did not have a warrant, his father was not arrested. Felix Gayuso, Jr. also stated that a case was filed against his father but was subsequently dismissed because Pangan was not able to identify his father in court. Felix Gayuso, Jr. denied having met Pangan on 15 November 1995 and explained that he was probably charged with the crime because of his relation to Sumbillo.[12]

Joselito Sericon testified that on 15 November 1995, he was watching the PBA game at his friend's house when somebody informed him that Evelyn Pangan mauled his mother, Emelinda Sericon. Joselito Sericon stated that he immediately went to the place of the incident and saw his mother lying on the floor. He brought his mother to Tondo General Hospital. Then, they went to the Barangay Hall to report the incident. Joselito Sericon said that he was angry with Pangan's wife but he had no intention to take revenge. Joselito Sericon alleged that he was charged with the offense because he was related by blood to all the co-accused. Francisco Sericon and Emelinda Sericon corroborated their son's testimony.[13]

During the trial, the defense presented an affidavit of desistance signed by Pangan.[14]

The trial court gave premium to the testimonies of the prosecution witnesses. The defenses of alibi and denial cannot prevail over the positive identification and unwavering positive assertions. The trial court was convinced that petitioners conspired with one another in the commission of crime. However, since there was no allegation of conspiracy in the Information, Francisco Sericon, Joselito Sericon and Felix Gayuso, Jr. were considered as accomplices. The simultaneous act of holding Pangan while Sumbillo was pulling the trigger was aimed to deprive Pangan the chance to escape or put up a defense, thus facilitating the commission of the crime.[15]

The trial court stated that the affidavit of desistance signed by Pangan was only an afterthought because Emelinda Sericon testified that Pangan expressed willingness to desist from pursuing the case if the charges against Evelyn Pangan would be withdrawn. The trial court ruled that the affidavit of desistance was only a bargain and it did not suggest that Pangan's declarations were clouded by a misapprehension of facts.[16]

On 8 February 2002, the trial court rendered its decision, finding Sumbillo guilty of the crime of Attempted Murder as principal and Francisco Sericon, Joselito Sericon, and Felix Gayuso, Jr. as accomplices. The trial court sentenced Sumbillo to suffer an indeterminate prison term ranging from four years, two months and one day of prision correccional maximum as minimum to six years and one day of prision mayor minimum as maximum. The accomplices were sentenced to suffer an indeterminate prison term ranging from six months and one day of prision correccional minimum as minimum to four years, two months of prision correccional medium as maximum. All of the accused were ordered to indemnify the victim jointly and severally P12,000 as medical expenses.[17]

On appeal, petitioners contended that the trial court erred in giving weight and credence to the incredulous testimonies of the prosecution witnesses which were conflicting and inconsistent. Petitioners alleged that the prosecution failed to prove their guilt beyond reasonable doubt because the imputation of the crime was merely fabricated.[18]

In its 23 November 2004 Decision, the Court of Appeals affirmed the trial court's decision with modification as to the penalty so that Sumbillo should suffer the indeterminate prison term of four years, two months and one day of prison correccional maximum as minimum to eight years and one day to ten years of prison mayor in its medium period as maximum.[19]

The Court of Appeals ruled that the discrepancies in the testimonies of the prosecution witnesses refer to immaterial and collateral matters that do not affect the credibility of the witnesses. The Court of Appeals held that petitioners' alibi and denial are bereft of merit in the light of the positive and categorical assertions made by the prosecution witnesses.

Hence, this appeal.

We find the appeal without merit. The Court of Appeals was correct in affirming the trial court's ruling that attempted murder was clearly established by the prosecution witnesses. The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination.[20] These significant factors are needed in unearthing the truth, especially in conflicting testimonies. The findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted,[21] which is not true in the present case.

The clear and convincing testimonies of Pangan and the other prosecution witnesses positively point to Sumbillo as the one who held a gun and tried to shot Pangan. As correctly pointed out by the appellate court, the inconsistencies in the prosecution witnesses' testimonies pertain to minor details which do not affect the witnesses' credibility.[22]

Sumbillo's alibi that he was on duty as Barangay Tanod cannot prevail over the positive and categorical testimonies of the prosecution witnesses. Sumbillo's testimony, corroborated by the accomplices and other witnesses, does not prove that it was physically impossible for Sumbillo, Francisco Sericon, Joselito Sericon, and Felix Gayuso, Jr. to be at the crime scene or its immediate vicinity at the time of the incident. Alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate. It is generally rejected when the accused is positively identified by a witness.[23]

The trial court was correct in appreciating the qualifying circumstance of treachery to have attended the commission of the crime. The evidence shows that when Sumbillo aimed the gun, the Sericons and Gayuso, Jr. held different parts of Pangan's body, giving him no opportunity to defend himself. Then, when Pangan was able to free himself, he ran away with his back turned against Sumbillo who kept on firing his gun until he was hit at the back of his head.[24]

Treachery has been defined as "the deliberate employment of means, methods, or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise." [25]

In *People v. Pascual*, [26] the Court held:

Attempted Murder is punishable with the penalty two degrees lower than that prescribed for the consummated

felony under Article 51 of the Revised Penal Code. Accordingly, the imposable penalty is prison mayor. Absent any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum penalty to be imposed should be within the range of prison correccional, and the maximum of the penalty to be imposed should be within the range of prison mayor in its medium period.[27]

The penalty of indeterminate prison term of four years, two months and one day of prison correccional as minimum to eight years and one day of prison mayor as maximum was correctly imposed on Sumbillo.

In *People v. Continente*,[28] the Court stated:

On the other hand, being an accomplice to the crimes of murder and attempted murder, the penalty to be imposed on appellant Donato Continente shall be the medium periods of reclusion temporal and prison correccional, respectively. Applying the Indeterminate Sentence Law in both cases, the maximum of the penalty to be imposed on appellant Continente as an accomplice to the crime of murder is the medium period of reclusion temporal and the minimum shall be prison mayor, while the maximum of the penalty to be imposed on the said appellant as an accomplice to the crime of attempted murder is the medium period of prison correccional and the minimum shall be arresto mayor.[29]

The penalty of indeterminate prison term ranging from six months of arresto mayor as minimum to four years, two months of prison correccional as maximum should be imposed on the accomplices. Thus, the penalty imposed on the accomplices, Francisco Sericon, Joselito Sericon and Felix Gayuso, Jr. should be modified. However, the trial court was correct in holding Sumbillo, Francisco Sericon, Joselito Sericon and Felix Gayuso, Jr. jointly liable to pay Pangan P12,000 representing medical expenses.

Finally, Pangan is likewise entitled to exemplary damages since the qualifying circumstance of treachery was firmly established. If an aggravating circumstance, either qualifying or generic, accompanies the crime, an award of P25,000 as exemplary damages is justified under Article 2230 of the Civil Code. This serves as deterrent to serious wrongdoings, and as vindication for undue sufferings and wanton invasion of the rights of an injured person or punishment for those guilty of outrageous conduct.[30]

WHEREFORE, we AFFIRM the 23 November 2004 Decision of the Court of Appeals in CA-G.R. CR No. 26562 finding Ronnie Sumbillo guilty beyond reasonable doubt of attempted murder as principal and Francisco Sericon, Joselito Sericon and Felix Gayuso, Jr. as accomplices with the MODIFICATION that the accomplices are hereby sentenced to suffer imprisonment of six months of arresto mayor, as minimum, to four years and two months of prison correccional, as maximum. In addition to the award of P12,000 representing medical expenses, Pangan is also entitled to the award of P25,000 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente, concurring.

[3] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente, concurring.

[4] Penned by RTC Acting Presiding Judge Romulo A. Lopez.

- [5] Rollo, p. 53.
- [6] Id. at 30.
- [7] Id. at 31.
- [8] Id. at 55.
- [9] Records, p. 196.
- [10] Rollo, p. 56.
- [11] Id. at 59-60.
- [12] Id. at 56-57.
- [13] Id. at 57-59.
- [14] Id. at 61.
- [15] Id. at 60-63.
- [16] Id.
- [17] Id. at 63-64.
- [18] Id. at 68-78.
- [19] Id. at 46.
- [20] *People v. Lopez*, G.R. No. 172369, 7 March 2007, 517 SCRA 749, 760.
- [21] *People v. Alarcon*, G.R. No. 174199, 7 March 2007, 517 SCRA 778, 784.
- [22] Rollo, p. 42.
- [23] *Resayo v. People*, G.R. No. 154502, 27 April 2007, 522 SCRA 391, 407.
- [24] Rollo, p. 62.
- [25] *People v. Cabinan*, G.R. No. 176158, 27 March 2007, 519 SCRA 133, 140-141.
- [26] G.R. No. 173309, 23 January 2007, 512 SCRA 385.
- [27] Id. at 400.
- [28] 393 Phil. 367 (2000).
- [29] Id. at 407.
- [30] *People v. Ausa*, G.R. No. 174194, 20 March 2007, 518 SCRA 602, 618-619.

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