PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCO DE GUZMAN A.K.A. FRANCISCO V. DE GUZMAN, JR., APPELLANT.

G.R. No. 173477. February 04, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the Decision[1] dated March 29, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00679 affirming with modification the Decision[2] dated October 12, 2004 of the Regional Trial Court (RTC), Branch 42, Dagupan City in Criminal Case No. 2003-0914-D. The RTC found the appellant Franco de Guzman guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of reclusion perpetua. The Court of Appeals modified the appellant's sentence to death.

The facts are as follows:

In an Information[3] dated December 8, 2003, the appellant was charged before the RTC as follows:

> That on November 14, 2003 in the evening at Brgy. Guiguilonen, Mangaldan, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun and with the use of a motorcycle to facilitate the commission of the offense, with intent to kill, treachery and evident premeditation, conspiring and confederating together, did then and there, willfully, unlawfully and feloniously attack, shoot and hit DR. FIDELITO MANAOIS several times, inflicting upon him fatal gunshot wounds in the vital parts of the body, causing his untimely death, to the damage and prejudice of his heirs.
>
> CONTRARY to Article 248 of the Revised Penal Code as amended by RA 7659.[4]

A Warrant of Arrest[5] was issued on November 28, 2003 for the appellant's arrest. On December 15, 2003, he was incarcerated at the Bureau of Jail Management and Penology (BJMP), Dagupan City.[6]

During arraignment, the appellant pleaded not guilty.[7] Trial ensued.

The first witness for the prosecution, Senior Police Officer (SPO) 2 Nestor Quijada[8] of the Philippine National Police (PNP), Mangaldan, Pangasinan, testified on a certification on the police blotter regarding a confrontation between the appellant and his wife, Dr. Ma. Odah Manaois de Guzman, daughter of the victim Dr. Fidelito Manaois. The Certification[9] narrated that on November 29, 2003, Dr. Ma. Odah Manaois de Guzman visited the appellant at the municipal jail and asked him why he killed her father. The appellant replied that she was the one he intended to kill.

The second witness was Dr. Ophelia T. Rivera, the Municipal Health Officer of Mangaldan, Pangasinan, who conducted the autopsy on the body of Dr. Fidelito Manaois on November 15, 2003. As per post-mortem report signed by Dr. Rivera, the victim sustained the following wounds:

> - Gunshot wound, point of exit, 1.5 cm[.], parasternal area, medial clavicular line, level of 2[nd] intercostals space, left.

- Gunshot wound, point of exit, 1.5 cm., parasternal area, medial clavicular line, 3 cm. above the nipple, right.

- Gunshot wound, point of exit, 1.5 cm., lateral clavicular line, 3 cm. below the nipple, right.

- Gunshot wound, point of exit, 1.5 cm., midclavicular line, 3 cm. below the nipple, right.

- Gunshot wound, point of exit, 1.5 cm., medial clavicular line, 4 cm. below the subcostal margin, epigastric area, right.

- Gunshot wound, point of exit, 1.5 cm., 2 cm. to the right lateral area of the umbilicus, right.

- Gunshot wound, point of entry, 1.2 cm., anterior aspect, just above the knee, left.

- Two metallic object[s] lodged on the medial aspect, middle third, thigh, Right.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 4 cm. from the vertebra, level of T3, left.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 3.5 cm. from the vertebra, level of T4, right.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 6 cm. from the vertebra, level of T7, left.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 3 cm. from the vertebra, level of T8, right.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 3 cm. from the vertebra, level of L2, right.

- Gunshot wound, point of entry, 1.0 cm., paravertebral area, 5 cm. from the vertebra, level of L3, right.

- Gunshot wound, point of entry, 1.0 cm., sacral area.

- Gunshot wound, point of entry, 1.0 cm., buttocks, left.

- Abrasion, #1-2 x 1 cm., #2 - 1.5 x 1 cm., buttocks, right.

- Gunshot wound, point of entry, 1.0 cm., midaxillary line, 4 cm. below the subcostal margin, left.

- Gunshot wound, point of entry, 1.0 cm., posterior aspect, proximal third, upper arm, left.

- Gunshot wound, point of entry, 1.0 cm., posterior axillary line, infrascapular area, left.

- Deformed upper arm, left.

- Gunshot wound, point of entry, 1.0 cm[.], posterolateral aspect, middle third, upper arm, left.

- Gunshot wound, point of exit, 1.5 cm., medial aspect, proximal third, upper arm, left.

- Gunshot wound, point of entry, 1.0 cm., midaxillary area, level of 3[rd] intercostals space, left.

- Gunshot wound, point of exit, 2 cm[.], posteromedial aspect, middle third, thigh, left.[10]

Dr. Rivera indicated the cause of death of Dr. Fidelito Manaois as cardiorespiratory arrest secondary to hypovolemic shock due to multiple gunshot wounds.[11]

The prosecution next presented Armando B. Nipales, a pedicab driver. Nipales testified that at about 7:30 in the evening on November 14, 2003, he transported the appellant to Barangay (Brgy.) Guiguilonen, Mangaldan. While on the way, the appellant called someone through his cellular phone and then alighted near a junkshop owned by Dr. Fidelito Manaois. Nipales heard the appellant instruct someone on the cellular phone to remove the plate number of a certain motorcycle as they would execute someone. The appellant then poked a gun at him and advised him to leave. When Nipales heard a gunshot, he moved his vehicle fast.[12]

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The fourth witness presented was Angelito Malanum. Malanum testified that he and the appellant were employed in the hardware business of Dr. Fidelito Manaois.[13] At about 6:30 p.m. of November 14, 2003, he drove Dr. Fidelito Manaois in a tricycle to Brgy. Cabaruan, San Fabian, Pangasinan, where they stayed for about an hour. On the way home to Mangaldan, they took the San Fabian-San Jacinto route. At the Embarcadero Bridge, they saw in the opposite direction two persons riding in tandem on a motorcycle. Upon seeing them, the two suddenly turned around to pursue them and switched off their headlight. When they reached the boundary of Brgy. Guiguilonen, the back rider shot them three times. Malanum looked back and recognized the appellant as the person who fired at them. Dr. Fidelito Manaois who was riding behind him was hit by the first volley of gunfire. Malanum, for his part, was hit twice by the succeeding gunshots fired by the appellant. He lost control of the tricycle, swerved to the left and fell. He managed to stand up despite his wounds and attempted to cross the road. He met the appellant, but he continued his way to the other side of the road. He then heard a gunshot. He looked back and saw the appellant shooting Dr. Fidelito Manaois. About the same time, some people from the nearby house helped him. He was taken to the Region I Medical Center in Dagupan City.[14] Malanum further testified that none of the police officers who responded to the scene escorted him to the hospital.

On cross-examination by the defense counsel, Malanum admitted that he was confined at the hospital for one week and was not investigated by the policemen at the scene of the crime because he was immediately rushed to the hospital. He added that he did not divulge at once the identity of their assailant to the police because he was not sure who their enemies were and he needed to see a counsel. When asked why he was not sure of the identity of their assailant, Malanum answered that he was sure that their assailant was the appellant.[15] He likewise affirmed his sworn statement[16] given on November 23, 2003 at the Mangaldan PNP station. He also testified that during the police investigation on November 23, 2003, he had already told the investigators the name of their assailant before he was shown the appellant's picture.

The fifth witness presented by the prosecution was PO2 Vicente Abrazaldo, a member of the PNP Mangaldan, Pangasinan. His oral testimony, however, was dispensed with upon the admission of the defense counsel of a set of six colored photographs of the victim and the empty shells and slug of a 9mm caliber handgun.[17]

Lastly, the prosecution presented Dr. Ma. Odah Manaois de Guzman. She testified that she was married to the appellant on March 6, 2002. They both lived with her father, Dr. Fidelito Manaois, at the latter's residence in Poblacion, Mangaldan, Pangasinan for about five months. The appellant however had irreconcilable differences with her father. Their relationship turned sour so she left him and took a job in Angeles City where she stayed up to the death of her father.[18] She further testified that the appellant had been threatening her and her family with serious harm, and even death, before the incident. After her father was buried, she confronted the appellant inside the municipal jail and exacted explanation for the crime. The appellant did not deny killing her father albeit he retorted that she was the one he planned to kill.[19] She added that at the time her father was killed, she was no longer residing in Mangaldan but in Angeles City and that they had not seen or talked to each other for quite sometime. The appellant did not know of her whereabouts.

The defense for its part presented the appellant himself, Franco de Guzman, who denied the charges against him. The appellant alleged that he had been separated from his wife since February 3, 2003, when his wife left their house, and that he had stopped going to the victim's house. He also testified that he was interrogated at the Mangaldan Police Station on November 19, 2003, but was sent home. He was again summoned on November 23, 2003 and was identified by Armando Nipales as the one who rode on the latter's pedicab. The appellant also averred that he did not see Angelito Malanum inside the station nor was he ever confronted by Malanum.

The defense also presented Mark John Placido, who testified that he was at the appellant's house in Brgy. Sto. Tomas, San Jacinto, Pangasinan on November 14, 2003 from 6:30 p.m. up to 10:00 p.m. He watched a movie

with the appellant, a certain Manang and Lolo Delfin and left said house after 10:00 p.m. The appellant allegedly never left the house.[20]

Lastly, the defense presented SPO4 Bennie Centeno. SPO4 Centeno testified about the application the appellant had filed with the PNP and the result of the appellant's medical, dental, neuro-psychiatric and physical examination. The prosecution underlined the result of the appellant's neuro-psychiatric test as "minimally recommended."[21]

On October 12, 2004, the RTC rendered a decision finding the appellant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision states:

> WHEREFORE, the Court finds the accused Franco de Guzman, Jr. a.k.a. Francisco V. de Guzman, Jr. guilty beyond reasonable doubt of the felony charged and aggravated by treachery and evident premeditation and is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P50,000.00 and to pay the costs.
>
> SO ORDERED.[22]

The Court of Appeals in a Decision dated March 29, 2006, affirmed with modification the RTC ruling. The dispositive portion of the Court of Appeals' decision states:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed decision dated October 12, 2004 is MODIFIED. Appellant is hereby meted the penalty of DEATH. Appellant is likewise ordered to pay the heirs of the victim the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages and P25,000.00 as temperate damages in addition to the civil indemnity awarded by the trial court.
>
> Pursuant to Section 13 (a), Rule 124 of the 2000 Revised Rules on Criminal Procedure, as amended, this case together with the entire record, is hereby forthwith certified, and ordered elevated to the Supreme Court for review.
>
> SO ORDERED.[23]

Hence, this appeal.

The Court accepted the case on September 5, 2006 and required the parties to submit supplemental briefs.

In his brief, the appellant alleges that

> I.
>
> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO MEET THE QUANTUM OF PROOF REQUIRED TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.
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> II.
>
> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED WITH PRECIPITATE DISFAVOR APPELLANT'S DEFENSE OF DENIAL AND ALIBI IN THE LIGHT OF EXCULPATORY FACTS AND CIRCUMSTANCES THAT ARE SUFFICIENT TO ACQUIT APPELLANT.
>
> III.
>
> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT GAVE CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES ANGELITO MALANUM AND ARMANDO NIPALES WHICH FOR THE MOST PART ARE CONTRARY TO HUMAN EXPERIENCE AND NOT WORTHY OF

BELIEF[,] THUS GIVING RISE TO A LOT OF ROOM FOR REASONABLE DOUBT AS TO APPELLANT'S GUILT.

IV.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT APPRECIATED THE PRESENCE OF TREACHERY AND EVIDENT PREMEDITATION DESPITE THE FAILURE OF THE PROSECUTION TO PRESENT EVIDENCE THAT THE KILLING WAS QUALIFIED AND/OR AGGRAVATED BY SAID QUALIFYING AND/OR AGGRAVATING CIRCUMSTANCES.

V.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND APPELLANT RESPONSIBLE FOR THE DEATH OF THE VICTIM DESPITE THE TENUOUS IF NOT FLAWED OUT-OF-COURT IDENTIFICATION OF APPELLANT WHICH VIOLATED HIS RIGHT TO DUE PROCESS.[24]

Simply, the issues are: (1) Did the prosecution meet the quantum of proof required to overcome the constitutional presumption of innocence of the appellant? (2) Did the trial court err in dismissing the appellant's defense of denial and alibi? (3) Did the trial court err in giving credence to the testimonies of Angelito Malanum and Armando Nipales? (4) Were treachery and evident premeditation present in this case? (5) Was the out-of-court identification of the appellant flawed?

As to the first issue, the 1987 Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right. In this case, the prosecution was able to meet the quantum of proof required to convict the appellant. The testimonies of six witnesses for the prosecution, and the documentary and other exhibits presented amount to no less than proof beyond reasonable doubt of the crime charged.

As to the second issue, the trial court and Court of Appeals correctly dismissed the appellant's defense of alibi. Alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For it to prosper, proof that the defendant was somewhere else when the crime was committed is insufficient. He must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. In the case before us, the appellant himself testified that he was at the very same area where the crime was committed. He never testified that it was physically impossible for him to be at the scene of the crime on the date and at the time it happened. What is clear is that he was within the vicinity of the locus criminis.[25]

As to the third issue, the rule is well-settled that where the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court absent any showing that the lower courts overlooked matters of substance which if considered would change the result.[26] There is, however, no such fact or circumstance in this case sufficient to overturn the trial court's finding. We thus uphold the findings of credibility of the witnesses of the trial court as upheld by the Court of Appeals.

As to the fourth issue, treachery is present in this case. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[27] In this case, the victim Dr. Fidelito Manaois was shot fourteen times resulting in numerous wounds in his body. He was attacked suddenly and unexpectedly while on the way home aboard a tricycle. He was shot several times in the back and so was the eyewitness Angelito Malanum. He was shot without warning and with no means to put up any defense. The manner of commission of the crime was deliberately adopted when the assailants purposely stopped their motorcycle, turned around and followed the

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tricycle where the victim and Malanum rode. The assailants then attacked the victim and Malanum in a secluded area to ensure that no one could witness the crime or come to the victim's aid.

On the other hand, for evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[28]

In this case, there is no showing of the specific time, in the evening of November 14, 2003, when the crime was executed. The evidence showing (1) that the appellant said over his cellphone, at around 7:30 p.m. on November 14, 2003, that they were going to hit somebody, and (2) that sometime that same evening the crime was committed, fails to prove beyond reasonable doubt that sufficient time had elapsed to allow appellant time to reflect and that he clung to his determination to kill the victim. Hence, evident premeditation was not proven in this case.

As for the last issue, the appellant was positively identified by eyewitness Angelito Malanum. Even if he was identified only nine days later, this delay does not cast doubt on the veracity of Malanum's testimony. The failure of the witness to reveal at once the identity of the appellant as the perpetrator of the crime does not impair his credibility. His fear for his life, the fact that he was nearly killed himself, must be taken into consideration. The situation of the witness must be taken in the context of reality and his diffidence on the matter is therefore understandable.[29]

Article 248 of the Revised Penal Code provides:

> Art. 248. Murder. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:
>
> - With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
>
> - In consideration of a price, reward, or promise;
>
> - By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
>
> - On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;
>
> - With evident premeditation;
>
> - With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (As amended by R.A. 7659) (Emphasis supplied.)

There being present the qualifying circumstance of treachery, the crime committed by the appellant is murder in accordance with Article 248 of the Revised Penal Code above-mentioned. Since there is no aggravating circumstance and no mitigating circumstance, the penalty to be imposed is reclusion perpetua.

As for the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[30]

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, based on recent jurisprudence, the award of civil indemnity ex delicto of P75,000 for the heirs of Dr. Fidelito Manaois is in order.[31]

Moral damages in the amount of P50,000 should be given in view of the violent death of the victim and the resultant grief of his family.[32] Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, like treachery,[33] as in this case. Hence, and as an example and deterrent to future similar transgressions, the Court finds that an award of P25,000 for exemplary damages is proper.[34]

WHEREFORE, the Decision dated March 29, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00679 affirming with modification the Decision dated October 12, 2004 of the Regional Trial Court, Branch 42, Dagupan City in Criminal Case No. 2003-0914-D is AFFIRMED with MODIFICATION. Appellant Franco de Guzman is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, qualified by treachery. Appellant is sentenced to suffer the penalty of Reclusion Perpetua. The appellant is further ORDERED to pay the heirs of Dr. Fidelito Manaois the amounts of P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages, all with interest at the legal rate of six percent (6%) per annum from this date until fully paid.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., and Leonardo-De Castro, JJ., concur.
Carpio, J., on official leave.
Nachura, J., no part. Filed pleading as Sol Gen.
Brion, and Peralta, JJ., on leave.

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[1] Rollo, pp. 2-14. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Godardo A. Jacinto and Vicente Q. Roxas concurring.

[2] CA rollo, pp. 13-25. Penned by Judge Rolando G. Mislang.

[3] Records, pp. 1-C to 1-D.

[4] Id. at 1-C.

[5] Id. at 24.

[6] Id. at 37.

[7] Id. at 45.

[8] TSN, February 5, 2004, pp. 1-2.

[9] Id. at 28.

[10] Id. at 6-7.

[11] Id. at 7.

[12] TSN, February 20, 2004, pp. 2-7.

[13] TSN, April 14, 2004, pp. 2-3.

[14] Id. at 5-12.

[15] Id. at 15-20.

[16] Records, p. 3.

[17] TSN, March 25, 2004, pp. 2-6.

[18] TSN, May 24, 2004, pp. 2-10.

[19] Id. at 11-14.

[20] TSN, July 7, 2004, pp. 2-4.

[21] TSN, August 17, 2004, pp. 2, 5-9.

[22] CA rollo, p. 25.

[23] Rollo, p. 13.

[24] Id. at 74-75.

[25] People v. Andales, G.R. Nos. 152624-25, February 5, 2004, 422 SCRA 253, 269.

[26] People v. Bacalto, G.R. Nos. 116307-10, August 14, 1997, 277 SCRA 252, 262.

[27] People v. Duban, G.R. No. 141217, September 26, 2003, 412 SCRA 131, 138.

[28] People v. Escarlos, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482.

[29] People v. Tulop, G.R. No. 124829, April 21, 1998, 289 SCRA 316, 331.

[30] People v. Tubongbanua, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[31] Id.

[32] Id. at 743.

[33] People v. Nicolas, 448 Phil. 253, 268 (2003).

[34] Id.

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