

PEOPLE OF THE PHILIPPINES, Appellee, vs. DAMASO GANDIA y CASTRO, JERRY RAMIREZ y RECIO, RENATO OLLERES y RIVERA, DANTE GANDIA y SANTOS, JOEL GONZALES y TODIO and ERNESTO CALARIP...

G.R. No. 175332. February 06, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the March 16, 2006 Decision[5] of the Court of Appeals in CA-G.R. H.C. No. 01648 which affirmed with modification the September 28, 1995 Decision of the Regional Trial Court, Branch 33, Siniloan, Laguna, finding them – six accused guilty beyond reasonable doubt of murder, Damaso Gandia (Damaso), Jerry Ramirez (Ramirez), Renato Olleres (Olleres), Dante Gandia (Dante), Joel Gonzales (Gonzales) and Ernesto Calaripio (Calaripio) appealed to this Court.

Appellants were, along with Eduardo Bagolbagol y Esplana, indicted for murder in an Information dated September 1, 1993 reading:

“That on or about June 28, 1993 at G. Redor St., Municipality of Siniloan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, while conveniently armed with deadly weapons (firearm & balisongs) with intent to kill, conspiring, confederating and mutually helping one another, with treachery and evident premeditation and taking advantage of superior strength did then and there wil[l]fully, unlawfully and feloniously attack, assault and stab several times one Louie Albuerro y Ser[r]ano by the said weapons thereby inflicting upon him stab wounds in the vital parts of his body which directly caused his death, to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, evident premeditation and abuse of superior strength attended the commission of the crime.”[6]

From the records of the case, the following version established by the prosecution is culled:

At around 12 midnight of June 27, 1993, while Louie Albuerro (the victim) and his companions including Francisco Serrano[7] (Francisco) were at a drinking spree at the Ruby Disco Pub[8] located on G. Redor Street, Siniloan, Laguna, Francisco pressed for the service to them of more beer, but as the pub was about to close, it was denied. A club bouncer thereupon approached Francisco and pub owner Damaso. Pedro Serrano (Pedro), sensing trouble, intervened to calm down the parties.[9]

The victim and company thereupon settled their bill and left in the course of which empty bottles were thrown at them. Irritated, Francisco and the victim returned at which Damaso, who was standing at the main door of the pub, tried to play down the incident. The victim boxed Damaso, however,[10] drawing Pedro to restrain Damaso and apologize for what the victim did. Not mollified, Damaso instructed his men to run after the victim as he himself took his gun at the upper floor of the pub and thereafter fired it.[11]

The victim, Francisco and Elpidio Serrano immediately fled but Damaso and his men chased them.

Damaso and his men caught up with the victim who stumbled down. As the victim lay in a prone position, Gonzales, Dante, Ramirez and Olleres stabbed him several times as Calaripio and Bagolbagol watched.

The victim was pronounced dead on arrival at the General Cailles Memorial Hospital[12] due to “hemorrhage, severe, secondary to stab wound-chest and abdomen.” The Necropsy Report[13] showed that he obtained nine stab wounds and abrasions in different parts of his body.

Gonzales and Calaripio were arrested not long after the incident. Bagolbagol surrendered to the police the following day or on June 29, 1993. Damaso went to Bicol but surrendered a year after or on June 28, 1994. Dante went to Cardona, Rizal, Olleres to San Pablo City, and Ramirez to Pasig City where they were respectively arrested.

All of the accused invoked alibi.

By Decision of September 28, 1995,[14] the trial court convicted all the accused and disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered, finding accused, namely: DAMASO GANDIA Y CASTRO, JERRY RAMIREZ Y RECIO, RENATO OLLERES Y RIVERA, DANTE GANDIA Y SANTOS, JOEL GONZALES Y TODIO and ERNESTO CALARIPIO Y MORALES guilty beyond reasonable doubt of the crime of MURDER, qualified by treachery. On accused DAMASO GANDIA Y CASTRO, JERRY RAMIREZ Y RECIO, RENATO OLLERES Y RIVERA, DANTE GANDIA Y SANTOS AND JOEL GONZALES Y TODIO, without the presence of any aggravating or mitigating circumstance, hereby sentences them to Reclusion Perpetua.

Accused ERNESTO CALARIPIO with the presence of the privileged mitigating circumstance of minority, he being born on April 11, 1979, applying the Indeterminate Sentence Law, hereby sentences him to undergo imprisonment ranging from six (6) years and one (1) day of prision mayor as minimum to eight (8) years of prision mayor as maximum.

To indemnify the heirs of the victim Louie Albuerro, jointly and severally: (a) For the death of the victim – P50,000.00; (b) Funeral expenses actually incurred and paid – P30,844, without subsidiary imprisonment in case of insolvency, and to pay the costs.

x x x x

Considering that all the accused are detention prisoners, they should be credited with “full time during which the[y] underwent preventive imprisonment”, if they had voluntarily agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners; otherwise, they will be credited in the service of their sentence with 4/5 of their preventive imprisonment.[15]

Damaso, Dante and Ramirez, who had filed a Notice of Appeal, subsequently filed separate motions to withdraw appeal which this Court granted.[16]

Pursuant to *People v. Mateo*,[17] this Court, by Resolution of September 15, 2004,[18] referred the case with respect to appellants Olleres, Gonzales and Calaripio to the Court of Appeals.

Appellants faulted the trial court in finding them guilty beyond reasonable doubt. In any event, they posited that they should only be held liable for homicide as the aggravating circumstance of treachery was not alleged with specificity so as to qualify the killing to murder, pursuant to Sections 8 and 9 of the Revised Rules on Criminal Procedure that took effect on December 31, 2000.[19]

By Decision of March 16, 2006,[20] the appellate court affirmed the conviction of the accused-appellants

including Damaso, Dante and Ramirez who had withdrawn their respective appeals. It modified the trial court's decision, however, by acquitting Calaripio and imposing exemplary damages to the five accused. Thus it disposed:

WHEREFORE, premises considered, the assailed Decision dated September 28, 1995 is AFFIRMED with MODIFICATION. Damaso Gandia, Jerry Ramirez, Renato Olleres, Dante Gandia and Joel Gonzales [are] ordered to pay, jointly and severally, the heirs of Louie Albuerio the additional amount of P25,000.00 as exemplary damages. Ernesto Calaripio is ACQUITTED of the charge of murder. His immediate release from custody is hereby ordered unless he is being held for other lawful causes.

x x x x[21] (Emphasis in the original; underscoring supplied)

With Calaripio's acquittal, Partial Entry of Judgment relative to his appeal was entered on March 16, 2006[22] and Order of Release was issued by the appellate court on March 17, 2006.[23]

In view of the Notice of Appeal[24] from the appellate court's decision filed by the remaining appellants Olleres and Gonzales,[25] the records of this case were forwarded to this Court. By Resolution of February 5, 2007,[26] this Court required the parties to file their supplemental briefs if they so desire within 30 days from notice. Both parties manifested that they were no longer filing any supplemental briefs.[27]

The Court finds the affirmance by the Court of Appeals of the guilt of appellants Olleres and Gonzales well-taken. It finds the appellate court, however, to have erred in ordering Damaso, Ramirez and Dante who had, it bears repeating, withdrawn their appeal, to pay the heirs of the victim, jointly and severally, along with the two remaining appellants Olleres and Gonzales P25,000 in exemplary damages.

The trial court's decision in so far as Damaso, Ramirez and Dante are concerned had before become final and executory after they withdrew their appeal. Separate entries of judgment with respect to them had in fact been made. As such, the appellate court is bereft of the power to modify the trial court's judgment as to them. Even if the trial court erred in not awarding exemplary damages in the first place in light of the established presence of an aggravating circumstance, the award thereof by the appellate court cannot affect Damaso, Ramirez and Dante as, in effect, they did not appeal and it is not favorable to them. So Section 11, Rule 122 of the Rules of Court directs:

SEC. 11. Effect of appeal by any of several accused. –

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

x x x x (Emphasis and underscoring supplied)[28]

WHEREFORE, the March 16, 2006 Decision of the Court of Appeals in CA-G.R. H.C. No. 01648 is hereby AFFIRMED with MODIFICATION, the dispositive portion to read as follows:

WHEREFORE, the assailed Decision dated September 28, 1995 is AFFIRMED with MODIFICATION. Renato Olleres, and Joel Gonzales [are] ordered to pay, jointly and severally, the heirs of Louie Albuerio the additional amount of P25,000.00 as exemplary damages. Ernesto Calaripio is ACQUITTED of the charge of murder. His immediate release from custody is hereby ordered unless he is being held for other lawful causes.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Filed his Urgent Motion to Withdraw Appeal, CA rollo, p. 73, which this Court granted by Resolution of

December 8, 1999, CA rollo, pp. 75-76. An entry of judgment had been made on January 27, 2000, CA rollo, p. 81.

[2] Also spelled Gerry in some parts of the records.

[3] Filed his Urgent Motion to Withdraw Appeal, CA rollo, p. 139, which this Court granted by Resolution of July 22, 2002, CA rollo, p. 143. An entry of judgment had been made on September 11, 2002, CA rollo, p. 226.

[4] Filed his Urgent Motion to Withdraw Appeal, id. at 106, which this Court granted by Resolution of June 18, 2001, id. at 111-112. An Entry of Judgment had been made on July 27, 2001, id. at 225.

[5] Id. at 281-304. Penned by Justice Juan Q. Enriquez, Jr. with the concurrence of Justices Godardo A. Jacinto and Vicente Q. Roxas.

[6] Records, p. 44.

[7] Also referred to as Frankie.

[8] Also spelled Robie.

[9] TSN, December 8, 1993, pp. 6-7.

[10] TSN, February 10, 1994, pp. 4-6.

[11] TSN, December 8, 1993, pp. 7-8 and February 10, 1994, pp. 5-6.

[12] TSN, December 8, 1993, pp. 11-13; TSN, June 21, 1994, pp. 9-13; TSN, January 17, 1994, pp. 45-46.

[13] Records, pp. 16-17.

[14] Id. at 202-230.

[15] Id. at 229-230.

[16] Vide notes 1, 3 and 4.

[17] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[18] CA rollo, p. 279.

[19] Id. at 147-180.

[20] Id. at 281-304.

[21] Id. at 303.

[22] Id. at 306.

[23] Id. at 305.

[24] Id. at 309-310.

[25] Although the names of all accused except Calaripio were still included in the title of the case and were designated as accused-appellants, it is understood that there were only two appellants left: Renato Olleres and Joel

Gonzales.

[26] Rollo, p. 27.

[27]Id. at 28-30 for the appellee and pp. 31-34 for the appellants.

[28] Vide *People v. Medrano*, 207 Phil. 516 (1983), where the therein accused Gilbert Medrano did not file any appeal but he was erroneously included as an appellant along with his three co-accused. This Court amended the dispositive portion of the Decision by deleting any reference to him.

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