

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUNJUN DUCABO, ACCUSED-APPELLANT.

G.R. No. 175594. September 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 31 July 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01116, which affirmed the Decision[2] dated 31 January 2005 of the Regional Trial Court (RTC) of Las Piñas City, Branch 275, in Criminal Case No. 01-0055, finding herein appellant Junjun Ducabo guilty beyond reasonable doubt of the crime of murder committed against Rogelio Gonzales y Factor, and sentencing him to suffer the penalty of reclusion perpetua, but modified the amount of damages awarded.

An Information[3] dated 14 December 2000, charged appellant with the crime of murder, committed as follows:

That on or about 24th day of October 2000, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant], without justifiable motive with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shoot with a gun the head of one ROGELIO GONZALES Y FACTOR thereby inflicting mortal gunshot wound to the said victim which directly caused his death.[4]

When arraigned, appellant, with the assistance of counsel de oficio, pleaded NOT GUILTY to the crime charged.

During the pre-trial conference held on 11 December 2003, the counsel for the appellant admitted the written statement[5] of Rolando Gonzales, Jr. y Factor (Rolando), but denied the certificate of death[6] of the victim. The counsel for the appellant reserved the marking of evidence in the course of trial. In an Order[7] dated 11 December 2003, the trial court considered the pre-trial closed and terminated. Thereafter, trial ensued.

The prosecution presented the victim's brother, Rolando, to prove the material allegations in the Information and to identify the appellant as the perpetrator of the crime charged. Conversely, the defense presented the appellant to refute all the allegations in the Information.

In an Order[8] dated 5 October 2004, the trial court, as stipulated upon by the parties, dispensed with the testimonies of SPO1 George Gabriel, the Police Investigator who conducted the investigation and prepared the Affidavit of Rolando, and Dr. Ma. Cristina Freyra, who performed the Post-Mortem Examination on the victim, for they had no personal knowledge of the crime charged.

The evidence for the prosecution consists solely of the testimony of Rolando, the victim's brother. He disclosed that on 24 October 2000, at around 5:45 in the morning, he saw the appellant walking back and forth, twice, in front of their house at Simeon Street, Fatima Compound, Las Piñas City. At around 6:18 in the morning, while he was sweeping inside their house, his brother Rogelio, the victim, went out in front of their house also to sweep. When the victim went out of their house, the appellant was not there. He was five meters away from his brother. While the victim was sweeping in a stooping position at almost 90 degrees, the appellant suddenly appeared

behind the victim. Appellant was one meter away from the victim. The appellant then poked a gun and shot the victim once at the back of his head, a little higher on his nape, causing the latter to fall on the ground. Thereafter, Rolando immediately called for help from their neighbors to bring the victim to the hospital. Unfortunately, the victim was pronounced dead on arrival at the Perpetual Help Hospital in Las Piñas City. The victim died of hemorrhagic shock as a result of a gunshot wound on his head.[9]

Rolando testified that it was the appellant who shot the victim because at the time of the shooting incident, he was only five meters away from the victim and the appellant as he was inside their house near the door. He also claimed that he had known the appellant for about 10 years as they were neighbors at Simeon Street, Fatima Compound, Las Piñas City. He added that prior to 24 October 2000, there was an altercation involving their neighbors. The victim tried to pacify those who were involved in the said fight. Consequently, he was threatened by these persons, one of them a relative of the appellant. Rolando considered the said incident to be the motive for killing the victim.

On the other hand, the defense presented the appellant, who interposed the defense of denial. The appellant denied he was the one who shot the victim because they were gangmates in Simeon Street, Talon Dos, Las Piñas City, for more than two years and he had no motive to kill him. According to appellant, on 24 October 2000, at around 6:00 in the morning, he went to the store of the victim to buy bread and cigarettes. After those items were handed over to him by the victim, the latter followed him and sat in front of his store. Surprisingly, when he was about two meters away, two persons appeared somewhere behind the victim. Appellant recognized them as Joey Cuaderno (Joey) and Anicer Mingolio (Anicer). Joey immediately poked a gun at him and told him not to run, otherwise, he will be hurt. Unexpectedly, Joey shot the victim on his head. Anicer, on the other hand, served only as a lookout. Thereafter, Joey and Anicer ran away. The appellant claimed that when he saw Joey shoot the victim, he was not able to move (natulala) for 15 minutes. When the people arrived to help the victim, he went home.

Appellant averred that he did not report the killing incident to any police authority because the police officers arrived instantaneously. He did not inform the police officers that Joey and Anicer were the persons who shot the victim because of the death threats he and his family received. The appellant maintained that Rolando was not at the crime scene.

Appellant also revealed that prior to 24 October 2000, there was an incident that happened in a cockfight located in front of the house of Joey at Simeon Street, Talon Dos, Las Piñas City. In said incident, the victim did not pay his cockfight bet to his opponents, Joey and Anicer. The victim ran amuck and punched Joey. Appellant claimed he witnessed the incident as he was only five meters away from the place where it happened and considered the same as the motive for killing the victim.

After trial, the RTC rendered its Decision dated 31 January 2005, finding the appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered finding [appellant] Jun Jun Ducabo GUILTY beyond reasonable doubt of the crime of Murder as charged and sentenced to undergo the prison term of Reclusion Perpetua and suffer the accessory penalty provided for by law and indemnify the heirs of the deceased Rogelio Gonzales y Factor the sum of P50,000.00 and pay the costs.[10] (Emphasis supplied.)

Aggrieved, appellant appealed to the Court of Appeals by filing a Notice of Appeal.[11] Appellant argued that the trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime charged.

The Court of Appeals rendered a Decision dated 31 July 2006, affirming with modification the RTC Decision, the decretal portion of which reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant JUNJUN DUCABO is hereby ordered to pay the heirs of the victim, ROGELIO GONZALES y FACTOR, the following sums: (a) Fifty Thousand Pesos (P50,000.00) as moral damages, and (b) Twenty Five Thousand Pesos (P25,000.00) as temperate damages. The civil indemnity of P50,000.00 awarded by the trial court is MAINTAINED.[12]

Dissatisfied, the appellant appealed the aforesaid Decision to this Court.

This court required the parties to simultaneously submit their respective supplemental briefs. Both the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs filed before the Court of Appeals as their supplemental briefs.

After a meticulous review of the records, this court resolves to uphold the judgment of conviction against the appellant.

The appellant alleges that the trial court merely relied on the bare testimony of Rolando, the prosecution's alleged eyewitness, in convicting him of the crime charged. The appellant avers that Rolando testified that he saw him shoot the victim; however, during Rolando's cross examination, he categorically admitted that at the time of the shooting incident, he was looking at the ground, as he was then sweeping inside their house. Furthermore, Rolando cannot even describe the firearm allegedly used in killing the victim, which proved that he was not in the crime scene and he did not actually witness the shooting.

The aforesaid arguments raised by the appellant hinges on the credibility of a Rolando's testimony.

It is well-entrenched that the findings of the trial court on the credibility of a witness deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence. We have recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of their unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth.[13] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[14] Thus, except for compelling reasons, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[15]

In the case at bar, this Court fully agrees in the findings of the trial court and the appellate court that the testimony of Rolando is credible. As can be clearly gleaned from the records of this case, Rolando positively identified the appellant as the person who shot the victim as he was just five meters away from his brother and the appellant at the time of the shooting incident. Such statements were repeatedly and consistently declared by Rolando even in his cross examination. Likewise, Rolando clearly described the events that took place before, during, and after the victim was shot by the appellant on 24 October 2000. Even the Court of Appeals stated that the appellant's criminal participation was proven with clarity and moral certainty because Rolando had a full view of the appellant's overt act while the startling event was taking place. Here we quote the testimony of Rolando:

Q:

Now, on the said date [24 October 2000] at around 6:15 in the morning, while you and your brother [the victim] were sweeping[,] was there any untoward incident that took place?

A:

Nothing, sir, except when my brother was shot by him.

Q:

Who shot your brother?

A:

[appellant].

Q:

When did [appellant] shot (sic) your brother?

A:

24 October 2000.

Q:

What time?

A:

Around six, sir.

Q:

Where was [appellant], when he shot your brother, [the victim]?

A:

At Simeon.

Q:

Now, from the place where your brother [the victim] was standing, where was [appellant]?

A:

When my brother [the victim] was sweeping, he was shot by [appellant], while he is at the back.

Q:

What was the relative position of your brother, when he was shot by [appellant]?

A:

Stooping down while sweeping.

Q:

Will you please stand up and demonstrate the position of your brother at that time he was shot by [appellant]?

Court Interpreter:

The Witness demonstrated wherein the Witness stoop-down almost his head parallel to the waist.

Pros. Castillo:

Almost ninety degrees to his body.

Court Interpreter:

Stipulate, Atty.?

Atty. Gaite:

Yes, almost ninety degrees to his body.

Q:

In relation to your brother [the victim], where was [appellant] at the time the latter shot the former? Will you again stand up and show to the Honorable Court?

A:

Directly behind.

Q:

How far was [appellant] from your brother [the victim], when your brother was shot by him?

A:

More or less one meter. It is MALAPITAN.

Q:

And how far were you from the two at that time?

A:

About five meters, because I was inside the house near the door.

Q:

Now, what happened to your brother [the victim], after he was shot by [appellant]?

A:

He fell down.

X X X X

Q:

Now, when you show (sic) [appellant] for the first time on [15 October 2000][16] at around 6:15 in the morning, what was he doing?

A:

He is (sic) walking back and forth in front of the house.

Q:

What time was that?

A:

5:45.

Q:

And, how many times did you see him, how many times did he walk back and forth in front of your house?

A:

About two times.

Q:

And after that what did he do?

A:

And then after that, sir, my brother went out to sweep and after that I saw he shot my brother.

Q:

In that particular instance, what was [appellant] doing when you saw him?

A:

Sir, because my brother went out of the house, [appellant] was not there. And then, while my brother was already sweeping, I saw he came near and poke a gun and shot my brother.[17] (Emphasis supplied.)

Cross Examination:

Q:

Now, on the morning of [24 October 2000], when for the first time did you see [appellant]?

A:

At 6 in the morning.

Q:

What was he doing?

A:

He is walking to and fro in front of the house.

Q:

When you say walking back and forth, how many meters did he move back and forth?

A:

About seven meters.

Q:

And, you said this was in front of your house?

A:

Yes, Sir.

Q:

How many times did he walk back and forth in your house?

A:

About two times.

Q:

And, where were you, Mr. witness, when you saw him walking back and forth?

A:

In front of our house but inside our premises.

x x x x

A:

Somewhere at the door.[18] (Emphasis supplied.)

From the foregoing, this Court finds Rolando's testimony plausible. His positive identification of the appellant as the perpetrator of the crime charged was categorical and consistent; hence, we cannot cast any doubt on his credibility as prosecution witness. Also, there was no indication that he was improperly motivated when he testified against the appellant. As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[19] It bears stressing that Rolando was the brother of the victim and it would be unnatural for him, being a relative and interested in vindicating the crime, to implicate someone other than the real culprit lest the guilty go unpunished. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence, and blame one who is innocent of the crime.[20] In this case, Rolando's act of testifying against the appellant was motivated only by no other than his strong desire to seek justice for what had happened to his brother.

While it is true that in Rolando's cross examination he stated that he was sweeping during the time that the alleged incident transpired and his attention was more or less focused on the ground; however, in his re-direct examination, he clearly disclosed that he noticed the presence of the appellant in front of their house because when he saw the appellant he was not yet sweeping but was about to sweep.[21] In this regard, this Court also deems it necessary to quote the discussions made by the appellate court, which states:

To stress, Rolando's credibility was not tainted by any modicum of doubt. He was certain that appellant was the lone assailant. Rolando had known appellant as a neighbor in the same compound spanning seven years

since 1993 until that dreadful incident. His favorable condition of visibility that early morning enabled him to see the commencement and consummation of appellant's nefarious act. Rolando first saw appellant walking back and forth in front of their house. While he was sweeping, there was no noted obstruction that could have prevented him from noticing the sudden arrival of appellant. Rolando, stationed at their door at that time, from five (5) meters distance, saw appellant come within one meter at the back of the victim, after which appellant shot the victim at close range, hitting him on the nape. Significantly, Rolando identified appellant in court as the malefactor, to which the latter did not object.

Once a person gains familiarity with another, identification becomes an easy task even from a considerable distance. Most often, the face and body movements of the assailants create a lasting impression on the victim's and eyewitness' minds which cannot be easily erased from their memory.[22] (Emphasis supplied.)

The argument of the appellant that Rolando's failure to identify the firearm used in killing the victim strengthened the fact that he did not witness the shooting incident deserves scant consideration. It is already well established that the identification and the presentation of the murder weapon are not indispensable to the prosecution's cause when the accused has positively been identified.[23] Since Rolando has positively identified the appellant, his failure to identify and present the firearm used in killing the victim cannot be considered fatal to his testimony.

The appellant likewise denies having committed the crime charged because the victim was his gangmate for almost two years and he had no motive to kill the victim. Instead, he imputed the commission of the crime charged to some other persons, who, according to him, had the motive for killing the victim. The said contentions of the appellant stand on hollow ground.

This Court had previously said that aside from its intrinsic weakness, the defense of denial cannot prevail over the positive identification made by the prosecution witness who had no improper motive whatsoever to falsely testify against the accused. Between the self-serving testimony of the accused and the positive identification by the prosecution witness, the latter deserves greater credence.[24] Moreover, in the crime of murder, motive is not an element of the offense. Motive becomes material only when the evidence is circumstantial or inconclusive, and there is some doubt on whether a crime has been committed or whether the accused has committed it. Indeed, motive is totally irrelevant when ample direct evidence sustains the culpability of the accused beyond reasonable doubt. Where a reliable eyewitness has fully and satisfactorily identified the accused as the perpetrator of the felony, motive becomes immaterial in the successful prosecution of a criminal case. Hence, whether or not appellant had any motive in killing the victim, his conviction may still follow from the positive and categorical identification made by the witness.[25]

In the case under consideration, it must be noted that the appellant immediately left the scene of the crime after the victim was shot. He also admitted during trial that he did not report to the police authorities that Joey and Anicer were the persons who shot the victim. He merely kept silent for a long period of time allegedly because of the death threats made by the alleged culprits. It is noteworthy that the appellant was apprehended three years after the commission of the crime charged because he cannot be located by the authorities. Likewise, he simply mentioned the name of Joey and Anicer as the persons responsible for killing the victim when he was already detained for almost one year in a detention cell in Las Piñas City. The sole reason given by him for his late confession was because of the threats made upon him by Joey and Anicer. To our mind, these are lame excuses posited by the appellant only to exonerate himself from his criminal liabilities and responsibilities. The fact that he immediately went home after the killing incident and was nowhere to be found thereafter are clear indications of guilt on his part. If the appellant was not the person responsible for killing the victim, he could have reported it right away to the police authorities who, according to him, immediately arrived at the scene of the crime.[26] The alleged fear for his life was also inexistent at such point in time because the police authorities were already there

at the scene of the crime and the alleged culprits had already escaped. In the wordings of the trial court, “the presence of the police itself was an assurance that they were there to serve justice. The assailants he pointed to were no longer there and could not made (sic) any threat against him. Any proclaimed fear by the [appellant] to report the supposed assailants is thus more of a concoction rather than a fact.”[27]

Having been positively identified by Rolando as the author of the crime, appellant’s defense of denial and lack of motive, being self-serving and unsubstantiated, cannot be given any evidentiary value.

This Court agrees with the trial court in appreciating treachery as a circumstance qualifying the killing of the victim. As we have consistently ruled, there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[28]

In the case at bar, the attack on the victim was deliberate, sudden and unexpected. The appellant, surreptitiously and without warning, shot the victim who was at that time unarmed and completely unaware of any impending danger to his life. He had no opportunity to offer any defense at all against the surprise attack by the appellant with a deadly weapon. All these indicate that the appellant employed means and methods which tended directly and specially to insure the execution of the offense without risk to himself arising from the defense which the victim might have.

The Information also alleged that evident premeditation attended the killing.

For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[29] Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt.[30] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[31] In the case at bar, the prosecution failed to show the presence of any of these elements.

Appellant is guilty of murder, qualified by treachery, for the wrongful death of the victim. Under Article 248[32] of the Revised Penal Code, as amended, the penalty imposed for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is reclusion perpetua, pursuant to Article 63, paragraph 2[33] of the Revised Penal Code. The prison term imposed by the trial court and as affirmed by the Court of Appeals is therefore correct.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[34]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[35] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence,[36] the award of P50,000.00 to the heirs of the victim as civil indemnity is proper.

As to actual damages, the heirs of the victim are not entitled thereto because said damages were not duly proved

with reasonable degree of certainty.[37] However, the award of P25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[38] Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[39] Thus, the award of temperate damages by the appellate court is in order.

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[40] The award of P50,000.00 as moral damages is likewise in order.

The heirs of the victim are also entitled to exemplary damages in the amount of P25,000.00 since the qualifying circumstance of treachery was firmly established.[41]

WHEREFORE, all the foregoing considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01116 is **AFFIRMED WITH MODIFICATION**. Appellant Junjun Ducabo is found **GUILTY** beyond reasonable doubt of murder as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery. There being no aggravating or mitigating circumstance in the commission of the crime, the appellant is hereby sentenced to suffer the penalty of reclusion perpetua. The appellant is **ORDERED** to pay the heirs of Rogelio Gonzales y Factor the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages and P25,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Ynares-Santiago, (Chairperson), Quisumbing, Austria-Martinez, and Reyes, JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring; rollo, pp. 2-11.

[2] Penned by Judge Bonifacio Sanz Maceda, CA rollo, pp. 15-20.

[3] Id. at 8.

[4] Id.

[5] Marked as Exhibit "A." Records, p. 55.

[6] Marked as Exhibit "B," id. at 56.

[7] Id. at 17.

[8] Id. at 53.

[9] Id. at 56.

[10] CA rollo, p. 20.

[11] Records, p. 83.

[12] Rollo, p. 11.

[13] *People v. Benito*, 363 Phil. 90, 98 (1999).

[14] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[15] *People v. Benito*, supra note 13 at 98.

- [16] It should be 24 October 2000 and not 15 October 2000.
- [17] TSN, 3 March 2004, pp. 9-14.
- [18] TSN, 18 May 2004, pp. 5-6, 11.
- [19] *People v. Rendoque*, 379 Phil. 671, 685 (2000).
- [20] *People v. Dulanas*, G.R. No. 159058, 3 May 2006, 489 SCRA 58, 76-77.
- [21] TSN, 18 May 2004, pp. 11-13.
- [22] Rollo, p. 8.
- [23] *People v. Magdaraog*, G.R. No. 151251, 19 May 2004, 428 SCRA 529, 540.
- [24] *People v. Benito*, supra note 13 at 100.
- [25] *People v. Galano*, 384 Phil. 206, 217 (2000).
- [26] TSN, 9 November 2004, p. 17.
- [27] CA rollo, p. 20.
- [28] *People v. Dela Cruz*, G.R. Nos. 154348-50, 8 June 2004, 431 SCRA 388, 396-397.
- [29] *People v. PO3 Tan*, 411 Phil. 813, 836-837 (2001).
- [30] *People v. Manes*, 362 Phil. 569, 579 (1999).
- [31] *People v. Rivera*, 458 Phil. 856, 879 (2003).
- [32] 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:
1. With treachery, x x x.
- x x x x.
- [33] ART. 63. Rules for the application of indivisible penalties.- x x x.
- x x x x
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- [34] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.
- [35] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.
- [36] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400; *People v. Cabinan*, G.R. No. 176158, 27 March 2007; *People v. De Guzman*, G.R. No. 176158, 27 March 2007.
- [37] *People v. Tubongbanua*, supra note 35 at 742.
- [38] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.
- [39] *People v. Surongon*, G.R. No. 173478, 12 July 2007.

[40] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[41] *People v. Beltran, Jr.*, *supra* note 34 at 741.

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