

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHBERT AMODIA Y BABA, MARIO MARINO Y PATNON, AND ROY LO-OC Y PENDANG, ACCUSED-APPELLANTS.

G.R. No. 177356. November 20, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the January 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01628 entitled *People of the Philippines v. Johbert Amodia y Baba, et al.* The CA Decision affirmed the August 24, 2005 Decision[2] of the Quezon City Regional Trial Court (RTC), Branch 89 in Criminal Case No. Q-03-118165, which found accused-appellants Johbert Amodia, Mario Marino, and Roy Lo-oc guilty of the crime of murder.

The Facts

On June 10, 2003 at about 3:00 a.m., Richard Avila Roda, an Assistant Manager of Nognog Videoke Restaurant in Quezon City, went out of the restaurant to invite customers. Once out of the restaurant, he saw seven persons mauling someone. He noticed that three of the attackers, whom he later identified as accused-appellants Amodia, Marino, and Lo-oc, were regular customers of their restaurant. The other four were unknown to him; so was the victim. He saw Lo-oc hold the shoulders of the victim while Marino and Amodia took turns in beating the victim. One of their companions had a knife, who, upon seeing Roda, threatened to kill him. As a result of the beating, the victim fell on the ground. Roda immediately approached the victim and saw blood oozing out of the back of his head. One of the maulers was about to deliver another blow on the victim but Roda was able to stop him by saying, "Hindi na kayo naawa." Accused-appellants then went inside the restaurant and drank one bottle of beer each. Roda did not immediately report the incident because he was threatened by accused-appellants who were still hanging around the area. He later went home with the owner of the restaurant.[3]

Later, in the early morning of the same day, he saw the body of the victim still in the place where he fell. There were already some barangay tanods and police officers investigating the incident. The victim, later identified as Jaime Bartina, was then brought to the Quezon City General Hospital.[4] Someone then informed Cornelia Bartina, the live-in partner of the victim, that the latter was brought to the hospital. She immediately went to the hospital where she found Jaime still alive, but noticed that blood was dripping from his mouth which stained his clothes. Jaime died at around 5 o'clock in the afternoon of June 10, 2003.

On June 12, 2003, upon the advice of a person from the La Loma Police Station, Roda went to Camp Karingal in Quezon City to report what he had witnessed. The police then filed an investigation report which became the basis for the filing of an Information against accused-appellants. The Information that charged them with murder reads:

That on or about the 10[th] day of June, 2003, in Quezon City, Philippines, the said accused, JOHBERT

AMODIA y BABA, a minor, 17 years old, conspiring and confederating with MARIO MARINO y PATNON and ROY LO-OC y PENDANG and four (4) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, qualified by evident premeditation, and treachery, taking undue advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of JAIME BARTINA y PLATITAS, by then and there mauling him, causing the said victim to [fall] on the ground, hitting his head on a concrete fence, thereby inflicting upon him serious and mortal injuries, which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said JAIME BARTINA y PLATITAS.

CONTRARY TO LAW.[5]

Accused-appellants pleaded not guilty to the charge against them. They denied involvement in the death of the victim and averred alibi as their defense. Lo-oc declared that he had been drinking alcohol at Abdul Videoke Bar in the early morning of June 10, 2003, having been dismissed from work and abandoned by his wife. According to Lo-oc, at around one to three o'clock in the morning, he went out of the bar and saw a man slumped on the ground asking for help. He lifted the man and saw that he was soaked in his own blood. At this time, Amodia and Marino, who were pedicab drivers, passed by the area. Lo-oc called on the two to help him bring the wounded man to the hospital. The two, however, refused because pedicabs were not allowed to travel along the national highway. Consequently, Lo-oc just placed Bartina on a sitting position beside the wall and left him. He then went back to the bar and continued drinking. He did not report the incident to the authorities.[6]

Marino and Amodia corroborated the testimony of Lo-oc and insisted too their non-participation in the crime.

On August 24, 2005, the RTC rendered a Decision, the dispositive part of which reads:

WHEREFORE, premises considered, judgment is rendered finding accused JOHBERT AMODIA y BABA, MARIO MARINO y PATNON, and ROY LO-OC y PENDANG guilty [beyond reasonable doubt] of the crime of Murder.

The penalty for murder is reclusion perpetua to death (Art. 248 RPC). Considering that Johbert Amodia was still a minor at the time of the commission of the crime, he is entitled to a privilege mitigating circumstance of one degree lower. Hence, the penalty for the crime committed by Johbert Amodia is reclusion temporal. Applying the Indeterminate Sentence Law, he is sentenced to Eight (8) years and One (1) day of prision mayor as minimum to Fourteen (14) years, Eight (8) months and One (1) day of reclusion temporal as maximum.

With respect to accused Mario Marino and Roy Lo-oc, they are each sentenced to reclusion perpetua there being no aggravating nor mitigating circumstance. All accused are ordered to jointly and severally pay the heirs of the victim the sum of [PhP] 27,909.00 as actual damages and [PhP] 50,000.00 as indemnity.

Further, the period of their preventive imprisonment is credited in full in their favor if they abide by Art. 29 of the Revised Penal Code.

Without costs.

SO ORDERED.[7]

The case was appealed to the CA.

The Ruling of the CA

In a Decision dated January 23, 2007, the appellate court affirmed the trial court's decision. It gave credence to the positive testimony of the prosecution eyewitness who, according to the CA, was not actuated by improper motive to testify against accused-appellants. It also dismissed accused-appellants' denial and alibi, as by their own

account, all of them were together in the crime scene with the bloodied victim at the time the crime happened, thus, reinforcing the testimony of the prosecution eyewitness.

The CA, moreover, held that the killing was qualified by the circumstance of abuse of superior strength. It found that accused-appellants took advantage of their superior strength when they conspired with four other assailants in mauling the unarmed and defenseless victim.

Hence, we have this appeal.

The Issues

In a Resolution dated August 15, 2007, this Court required the parties to submit supplemental briefs if they so desired. On October 10, 2007, accused-appellants, through counsel, signified that they were no longer filing a supplemental brief. Thus, the issues raised in accused-appellants' Brief dated April 17, 2006 are now deemed adopted in this present appeal:

I.

The court a quo gravely erred in giving full weight and credence to the incredible testimony of the prosecution witness.

II.

The trial court gravely erred in convicting the accused-appellants despite the fact that their guilt was not proven beyond reasonable doubt.

III.

Assuming arguendo that the accused-appellants are guilty in Criminal Case No. Q-03-118165, the trial court erred in convicting them of the crime of murder.[8]

In essence, the case involves the credibility of the prosecution eyewitness and the proper designation of the crime committed.

The Ruling of the Court

The appeal is partly meritorious.

Accused-appellants' conviction is anchored on the positive testimony of the prosecution eyewitness which accused-appellants dismiss as full of inconsistencies. They allege that it was unbelievable that a person who had witnessed a crime and who was genuinely willing to help the victim should simply go home without immediately reporting the matter to the authorities. Moreover, they claim that it was improbable that the assailants would hang around within the area of the crime to drink three rounds of beer instead of immediately fleeing.

We are not convinced. Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given.[9] In this case, the prosecution eyewitness explained that he did not immediately report the incident to the police because the assailants threatened to hurt him. What made this threat appear so real was the fact that accused-appellants lingered within the vicinity of the crime for a couple of hours after the mauling incident. After the authorities had discovered the victim, however, he volunteered to relate what he had seen. It took him only two days before giving his statement. This delay, if it can be considered as one, is hardly unreasonable or unjustified under the circumstances.

Also untenable is accused-appellants' contention that non-flight of the assailants signified innocence. Unlike flight of an accused, which is competent evidence against the accused as having a tendency to establish the accused's

guilt, non-flight is simply inaction, which may be due to several factors.[10] It cannot be singularly considered as evidence or as a manifestation determinative of innocence.[11]

Thus, weighed against the positive testimony of the prosecution eyewitness, accused-appellants' defenses of denial and alibi lose ground. As correctly ruled by the trial court and affirmed by the CA:

In a situation like this, the rule well settled in this jurisdiction is that positive identification of the accused, when categorical and consistent and without any showing of ill-motive on the part of an eye witness testifying on the matter, prevails over denial of [the] accused, which if not substantiated by clear and convincing evidence, [is] negative and self serving evidence undeserving of weight in law. The Court is not prepared to depart from said rule as the plain denial of the accused of the crime cannot gain judicial acceptance nor can it be equated with evidentiary force and value for want of clear and convincing proof to sustain the same. Besides, the fact remains that the three accused were together, at one instance, at about 3:00 a.m. of June 10, 2003 at the very site where Bartina was lying bloodied on the ground and ignored his need to be brought to the hospital to save his precious life.[12]

We do not, however, agree that the qualifying circumstance of abuse of superior strength had been sufficiently proved. To appreciate the attendant circumstance of abuse of superior strength, what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense.[13] Mere superiority in number is not enough to constitute superior strength.[14] There must be clear proof that the assailants purposely used excessive force out of proportion to the defense available to the person attacked.[15]

In this case, although the victim was unquestionably outnumbered, it was not shown that accused-appellants deliberately applied their combined strength to weaken the defense of the victim and guarantee the execution of the crime. Notably, accused-appellants took turns in boxing the victim. When the victim fell, the prosecution witness was able to hold him, preventing accused-appellants from further hurting him. Then accused-appellants simply turned away. To be sure, had accused-appellants really intended to use their superior strength to kill the victim, they would have finished off the victim, and probably even the lone prosecution eyewitness.

To stress, qualifying circumstances must be proved as clearly as the crime itself. In order to appreciate the attendant circumstance of abuse of superior strength, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event.[16]

As regards the award of damages, it was proper for the trial court to grant civil indemnity in favor of the heirs of the victim. Civil indemnity in homicide and murder cases requires no proof other than the fact of death as a result of the crime and proof of accused-appellant's responsibility for it.[17] The trial court, however, failed to award moral damages. Moral damages is granted without need of further proof other than the fact of the killing.[18] Thus, moral damages of PhP 50,000 is additionally awarded in favor of the heirs of the victim.

WHEREFORE, the Court AFFIRMS the January 23, 2007 Decision of the CA in CA-G.R. CR-H.C. No. 01628 with MODIFICATIONS to read as follows:

WHEREFORE, premises considered, judgment is rendered finding accused-appellants JOHBERT AMODIA y BABA, MARIO MARINO y PATNON, and ROY LO-OC y PENDANG guilty beyond reasonable doubt of the crime of HOMICIDE.

Considering that Johbert Amodia was still a minor at the time of the commission of the crime, he is entitled to a privilege mitigating circumstance of one degree lower. Hence, the penalty for the crime committed by Johbert Amodia is prision mayor. Applying the Indeterminate Sentence Law, he is sentenced to two (2) years, four (4) months and one (1) day of prision correccional as minimum to eight (8) years, eight (8) months and

one (1) day of prision mayor as maximum.

With respect to accused-appellants Mario Marino and Roy Lo-oc, they are each sentenced to eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. All accused are ordered to jointly and severally pay the heirs of the victim the sum of PhP 27,909 as actual damages, PhP 50,000 as moral damages, and PhP 50,000 as civil indemnity.

Further, the period of their preventive imprisonment is credited in full in their favor if they abide by Art. 29 of the Revised Penal Code.

Without costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 2-9. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes, Jr. and Noel G. Tijam.

[2] CA rollo, pp. 18-23. Penned by Judge Elsa I. De Guzman.

[3] Rollo, pp. 3-4.

[4] Id. at 4.

[5] Id. at 2-3.

[6] Id. at 5.

[7] Supra note 2, at 23.

[8] CA rollo, p. 37.

[9] People v. Castillo, G.R. No. 118912, May 28, 2004, 430 SCRA 40, 49; People v. Abendan, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106, 123.

[10] People v. Toralba, G.R. No. 139411, August 9, 2001, 362 SCRA 491, 500; People v. Omar, G.R. No. 120656, March 3, 2000, 327 SCRA 221, 229.

[11] People v. Abacia, G.R. Nos. 135552-53, June 21, 2001, 359 SCRA 342, 348.

[12] Supra note 1, at 7-8.

[13] People v. Hernandez, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 122-123; People v. Abejuela, G.R. No. 134484, January 30, 2002, 375 SCRA 236, 246; People v. Cardel, G.R. No. 105582, July 19, 2000, 336 SCRA 144, 160.

[14] People v. Gregorio, G.R. No. 153781, September 24, 2003, 412 SCRA 90, 99; People v. Sansaet, G.R. No. 139330, February 6, 2002, 376 SCRA 426, 433; People v. Sia, G.R. No. 137457, November 21, 2001, 370 SCRA 123, 137.

[15] People v. Lobrigas, G.R. No. 147649, December 17, 2002, 394 SCRA 170, 180; People v. Mondijar, G.R. No. 141914, November 21, 2002, 392 SCRA 356, 367; Sansaet, supra.

[16] People v. Cañete, G.R. No. 120495, March 12, 1998, 287 SCRA 490, 501.

[17] *People v. Whisenhunt*, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

[18] *People v. Geral*, G.R. No. 145731, June 26, 2003, 405 SCRA 104, 111; *People v. Cabote*, G.R. No. 136143, November 15, 2001, 369 SCRA 65, 78; citing *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679.

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