

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GENEROSO ROLIDA Y MORENO @ KA DAVID/KA RAQUEL, APPELLANT.

G.R. No. 178322. March 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Along with Alex Malabana alias Ka Aldrin, Rodelio Verdagera alias Ka Abel, Nelson Cay alias Ka Noel, and one Ka Marcel, Generoso Rolida y Moreno alias Ka David/Ka Raquel (appellant) was charged before the Regional Trial Court (RTC) of Gumaca, Quezon with Murder in an Information reading:

X X X X

That on or about the 27[th] day of August, 2001, at Barangay San Isidro Ilaya, Municipality of General Luna, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with high powered firearms, M-14 and M-16, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearms, one Froilan Roman y de Gala, thereby inflicting upon the latter multiple gunshot wounds on different parts of his body, which directly caused his death.[1]

X X X X

Only appellant was arraigned, however, as his co-accused had remained at large and the trial court ordered the case archived as to them.[2] Appellant pleaded not guilty.[3]

Through the combined testimonies of Marilyn Roman (Marilyn), the widow of Froilan Roman and daughters Pamela Roman (Pamela) and Maryann Roman (Maryann), the prosecution established the following version:[4]

At around 8:45 p.m. of August 27, 2001, while the victim and his family were asleep, somebody kicked the door of their house open. Four armed men immediately entered and went straight to the place where the victim and Marilyn were sleeping. Other men surrounded the house as the four who entered tied the hands of the victim with a rope, hit him on the chest with a rifle, and pulled him outside by his hair.

While kneeling and with one gun poked at his neck, the victim, then a member of a Citizens Armed Forces Geographical Unit (CAFGU) in General Luna, Quezon, begged for his life for the sake of his family. One of his assailants replied that the victim had taken one life, hence, he must pay it with his own. The victim's family thereafter heard gunshots, and the victim fell on the ground lifeless. The armed men then fired two shots in the air, exclaiming "Mabuhay! Tagumpay ang NPA!" (Long live the triumphant NPA!) and hurriedly left.

The victim's family positively identified appellant as one of the victim's assailants. Marilyn recognized appellant as he had no cover on his face, while Pamela and Maryann remembered him because of the scar on his face.

Marciano Endiape (Endiape), allegedly a former member of the New People's Army (NPA), also testified that the

victim was assassinated for allegedly having guided military operatives in a raid on an NPA camp, which resulted in the death of two NPA members and the loss of their firearms.[5] He further stated that the killing of the victim was planned in a meeting held on August 20, 2001 at an NPA camp; and that appellant was one of those who attended the meeting and eventually left for the victim's residence in Pidac, General Luna, Quezon on August 24, 2001.[6] He went on to declare that those persons, including appellant, returned to the camp only on August 28, 2001, exultantly shouting, "Tagumpay na naman ang NPA dahil may napatay na namang kalaban" (The NPA is triumphant again as it just killed another enemy.)[7]

By the account of Dr. Constancia Mecija, Municipal Health Officer of General Luna, Quezon, her post-mortem examination of the victim showed that the cause of his death was severe hemorrhage secondary to multiple gunshot wounds.[8]

Upon the other hand, appellant, denying any knowledge of the incident, claimed that at about 8:35 p.m. on August 27, 2001, he was sleeping at his house with his mother in Don Juan Verceles, San Francisco, Quezon;[9] and that he did not know his co-accused Alex Malabana and the victim, as well as prosecution witnesses Pamela and Endiape.[10]

Branch 61 of the Gumaca, Quezon RTC crediting the version of the prosecution, held that the killing was attended by treachery, conspiracy, and evident premeditation, thus:

x x x x

The fact that high powered guns were used by the accused as testified to by the witness Pamela Roman (April 22, 2004, p. 4), the attack was made in the stillness of the night, the attack was so sudden and unexpected at the time the victim was asleep and what more he was tied with a rope and hit with their long firearm on his chest before he was shot successively which caused his instant death show clearly that treachery attended manifestly the killing in this case.

x x x x

As treachery was conclusively established in this case, abuse of superiority of strength is hereby absorbed.

x x x x

[T]he act of accused showed their unity of purpose, joint design to kill the victim following a consciously adopted plan. Conspiracy having been established the act of one is considered the act of all. [People v. Abendan, 360 SCRA 126 (2001)]

x x x x

Evident premeditation appears to have been thoroughly and sufficiently established in the case at bench as shown from the testimony of Marcelino (sic) Endiape, a former active member of the NPA who formerly belongs to the group SY'P Rivas Buenavista, Quezon headed by Ka Marcel. The court relied heavily on his testimony being in a position to have acquired full knowledge of the same having been with the accused at the time he was an active member of NPA.

x x x x

x x x The NPAs commissioned to undertake the execution of Froilan Roman, Ka Marcel, Ka Aldrin, Ka David, Ka Noel, and Ka Abel left Brgy. Malaya, General Luna on August 14, 2001 for Pidac, General Luna, Quezon precisely to kill the object their mission (sic) and in the evening of August 28, 2001 they returned to Brgy. Malaya from Brgy. Pidac, General Luna with jubilation and shouted "Tagumpay na naman ang NPA dahil may napatay na namang kalaban."

The evidence shows that there was sufficient lapse of time between the determination and the execution to allow the accused to reflect upon the consequences of their act. In this case, they determined to commit the crime on August 24, 2001 and the killing of Froilan Roman was made in the evening of August 27, 2001. Evidently, there was indeed sufficient time for the accused to reflect on the consequences of the act. The essence of premeditation is that the execution of the criminal act is preceded by cool thought and reflection to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. [People v. Bibat, 290 SCRA 29 (1998)][11] (Underscoring supplied)

The trial court thus convicted appellant of Murder, by Judgment of May 30, 2005, disposing as follows:

WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the court finds accused GENEROSO ROLIDA alias Ka David and alias Ka Raquel guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentencing (sic) him to suffer the penalty of DEATH. Accused is ordered to pay the heirs of Froilan Roman the amount of P50,000.00 as civil indemnity; P50,000.00 as moral damages, exemplary damages in the amount of P30,000.00. Accused is further ordered to pay the amount of P18,320.00 as actual damages.

In so far as ALEX MALABANA alias Ka Aldrin, Rodelio Verdagera alias Ka Abel, Nelson Cay alias Ka Noel, and one alias Ka Manuel (sic) are concerned, who are presently at large, case is hereby ordered ARCHIVED until their arrest. Let an alias warrant of arrest be issued for their apprehension.[12]

In his brief filed with the Court of Appeals to which the case was elevated on automatic review,[13] appellant argued that he was mistakenly identified by the victim's family which did not have ample opportunity to observe the faces of the malefactors in view of the rapid turn of events, as well as the shock and panic that had overcome them;[14] and that his alibi was not improbable, the location of his residence being borne out by the records; and that he did not flee, unlike his co-accused, indicates his innocent conscience.[15]

The Solicitor General countered that there was no doubt as to the identity of appellant as one of the malefactors since Pamela and Maryann positively identified him through the scar on his left cheek;[16] and that appellant's alibi cannot prosper considering his failure to prove that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[17]

By Decision dated March 5, 2007,[18] the appellate court affirmed that of the trial court, with modification in that the penalty was reduced to reclusion perpetua pursuant to Republic Act (RA) No. 9346, and the award of exemplary damages was lowered to P25,000.00.[19] Thus it disposed:

WHEREFORE, the judgment of the court a quo finding the accused guilty beyond reasonable doubt of the crime of murder qualified by treachery and with the aggravating circumstance of evident premeditation is hereby affirmed with modification in the sense that the penalty of DEATH is modified to Reclusion Perpetua pursuant to Republic Act 9346 which prohibits the imposition of the death penalty. The award of P30,000.00 as exemplary damages is likewise modified to P25,000.00. The rest of the awards are affirmed. The alias warrants of arrest for the apprehension of Alex Malabana alias Ka Aldrin, Rogelio Verdagera alias Ka Abel, Nelia Cay alias Ka Noel and one alias Ka Marcel stay.

Hence, this appeal.

In separate manifestations, appellant and the Solicitor General informed that they were no longer filing supplemental briefs, their respective positions having been adequately discussed in the Briefs they had filed with the appellate court.[20]

In finding the existence of conspiracy, the trial and appellate courts found the collective acts of appellant and his cohorts before, during, and after the shooting of the victim as indicating the pursuit of a common design to kill,

hence, the act of one is the act of all.

The trial and appellate courts also found the deliberate employment of high-powered guns and nocturnity to have obviated any opportunity for the victim to defend himself, hence their appreciation of the presence of treachery which absorbed the circumstance of abuse of superior strength.

Relying on the testimony of Endiape, both courts held that evident premeditation attended the killing, there having been a sufficient interval for cool thought and reflection between the time appellant and his group determined to commit the crime on August 24, 2001 when they left for the victim's residence, and the time that they actually executed the planned attack on August 27, 2001.

The trial and appellate courts thus found appellant guilty beyond reasonable doubt of Murder qualified by treachery and aggravated by evident premeditation.

This Court finds no compelling reason to rule otherwise. Parenthetically, the Court notes that appellant did not even present his mother to corroborate his claim of alibi.

With respect to the penalty, the Court finds the appellate court's imposition of reclusion perpetua to be in accord with the mandate of R.A. No. 9346.[21] It bears to stress that appellant is not eligible for parole.[22]

As for the award of damages, the Court sustains the appellate court's awards of P50,000 as moral damages and P25,000 as exemplary damages, but increases its award of civil indemnity from P50,000 to P75,000, and awards temperate damages of P25,000 in lieu of the actual damages proven in the amount of P18,320.

The award of P50,000 as moral damages is in order in view of the violent death of the victim and the resultant grief of his family.[23] The award of exemplary damages of P25,000 is in order too, the crime having been committed with one or more aggravating circumstances.[24]

In line with prevailing jurisprudence, civil indemnity ex delicto is, however, increased to P75,000.[25] And since the actual damages proven during the trial amount to less than P25,000, the same having totaled only P18,320, the award of temperate damages of P25,000 in lieu thereof is justified.[26]

WHEREFORE, the March 5, 2007 Decision of the Court of Appeals affirming that of Branch 61 of the Gumaca, Quezon RTC is MODIFIED in that the award of civil indemnity is INCREASED to P75,000; that temperate damages in the amount of P25,000 are AWARDED in lieu of actual damages; and that appellant is not eligible for parole. In all other respects, the challenged Decision is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario,[*] Brion, and Peralta,**] JJ., concur.

* Additional member per Special Order No. 580 dated March 2, 2009 in lieu of Justice Dante O. Tinga who is on official leave. Justice Antonio Eduardo B. Nachura, who was earlier designated as an additional member per Special Order No. 571, will take no part in its deliberation being then the Solicitor General.

** Additional member per Special Order No. 572 dated February 12, 2009 in lieu of Justice Presbitero J. Velasco, Jr. who is on official leave.

[1] Records, p. 2.

[2] Id. at 19, 43.

[3] Ibid.

[4] TSN, August 12, 2004, pp. 3-7; TSN, April 22, 2004, pp. 3-7; TSN, June 16, 2004, pp. 3-6.

[5] TSN, May 19, 2004, pp. 2-3.

[6] Id. at 4-6.

[7] Ibid.

[8] TSN, September 22, 2004, pp. 2-5.

[9] TSN, December 9, 2004, p. 4.

[10] Id. at 3-8.

[11] Records, pp. 239-246.

[12] Id. at 249.

[13] Id. at 251.

[14] CA rollo, pp. 69-71.

[15] Id. at 73-74.

[16] Id. at 138.

[17] Id. at 148.

[18] Penned by Associate Justice Monina Arevalo-Zenarosa, with the concurrence of Justices Marina L. Buzon and Edgardo F. Sundiam; CA rollo, pp. 166-190.

[19] CA rollo, pp. 189-190.

[20] Rollo, pp. 31-35.

[21] Section 2 of R.A. No. 9346 provides:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[22] Vide Section 3 of R.A. No. 9346:

SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[23] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 743.

[24] Ibid.

[25] *People v. Tubongbanua*, supra at 742; vide *People v. Dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433, 452.

[26] Vide *People v. Villanueva*, G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582, wherein the Court held:

[W]hen actual damages proven by receipts during the trial amount to less than P25,000, as in this case, the award of temperate damages for P25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds P25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

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