

ROMEO ILISAN Y PIABOL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 179487. November 15, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the August 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 29937, which affirmed with modification the June 14, 2005 decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding petitioner Romeo Ilisan guilty beyond reasonable doubt of homicide.

The RTC and the CA similarly arrived at the following factual findings:

On February 3, 2002, a baptismal celebration was held at the residence of Ricky Silva in Barangay Nagkaisang Nayon, Novaliches, Quezon City. Among those who attended were petitioner and one Joey Gaton (Gaton). They belonged to different groups of guests.[3]

While Gaton and petitioner were having a drinking spree with their respective groups, one of petitioner's companions apparently got irked by the way Gaton looked at him. This prompted petitioner and his companions to maul Gaton. A melee then ensued; in the course of which, petitioner shot Gaton at the abdomen, causing the latter's instantaneous death.[4] The gun used by petitioner was a .45 caliber pistol.

On February 7, 2002, an Information for murder was filed against petitioner with the RTC of Quezon City, Branch 81, viz.:

That on or about 3[rd] day of February, 2002, in Quezon City, Philippines, the above-named accused, did then and there, willfully, unlawfully and feloniously with intent to kill, and with treachery and evident premeditation and with use of superior strength assault, attack and employ personal violence upon the person of one JOEY GATON Y GARALDE, by then and there shooting him with a gun hitting him on his trunk, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of JOEY GATON Y GARALDE.

CONTRARY TO LAW.[5]

When arraigned on March 18, 2002, petitioner pleaded not guilty to the offense charged.[6]

Evidence for the prosecution consisted mainly of the testimonies of Gabriel Gaton, the victim's brother, Marlon Dellamas, and Edgardo Dag-um, both neighbors of the victim, who all positively identified petitioner as the gunman. Gabriel Gaton was summoned to the place of the incident while his brother was being mauled; Marlon Dellamas went to the scene of the incident to look for his brother Jojo; and Edgardo Dag-um was at the place where the mauling and shooting transpired.

In his defense, petitioner and his witnesses, Jomarie Ilisan and Jaime Escasinas, petitioner's brother and cousin,

respectively, claimed that another guest, Chito Partisala, a jail guard in Bicutan, was the assailant. The defense also presented Engineer Leonard Jabonillo, Forensic Chemist of the Central Police District Crime Laboratory, who testified that petitioner tested negative for gunpowder residue when paraffin tests were conducted on him a day after the incident.

In its June 14, 2005 decision, the RTC accorded more weight to the positive testimonies of the prosecution witnesses over the declarations of the defense. There being no adequate proof that treachery and evident premeditation qualified the killing of Gatón, the RTC convicted petitioner of homicide, viz.:

IN VIEW OF THE FOREGOING, the Court finds accused ROMEO ILISAN y PIABOL guilty beyond reasonable doubt of the crime of Homicide punishable under Article 249 of the Revised Penal Code. Applying the provisions of the Indeterminate Sentence Law and there being no mitigating or aggravating circumstances, the accused is hereby sentenced to suffer imprisonment for a term ranging from eight years and one day of prison mayor as minimum to fourteen years and eight months of reclusion temporal as maximum, and to indemnify the heirs of the deceased in the amounts of P75,000.00 as actual damages, P50,000.00 for the death of the victim and P50,000.00 as moral damages.

The period during which said accused was under detention should be deducted from the service of his sentence. Let a mittimus order be issued for service of sentence.[7]

On appeal to the CA, petitioner questioned the credibility of the prosecution witnesses who allegedly harbored ill motive against him because they were either related to the victim or to one of the participants in the commotion. Petitioner also argued that the negative results of the paraffin residue test conducted on him strongly indicate his innocence.[8]

In a Decision dated August 23, 2007, the CA affirmed the RTC's finding of guilt, but modified the amount of actual damages awarded and the maximum period of the penalty imposed by adding one (1) more day thereto, viz.:

WHEREFORE, the trial court's Decision dated June 14, 2005 is affirmed, subject to the modification of the maximum period of the indeterminate sentence to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, and the reduction of the award of actual damages to P58,520.00.[9]

Hence, the present petition wherein petitioner reiterates the issues he raised before the CA.

We deny the petition.

The Court generally defers to the trial court's evaluation of the credibility of witness and their testimonies, for it is in a better position to decide questions of credibility, having heard the witnesses themselves and observed their attitude and deportment during trial.[10] In the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, we are doctrinally bound by the trial court's assessment of the credibility of witnesses.[11] The application of this rule becomes even more stringent when such findings are sustained by the appellate court,[12] as in the present case.

We see no misappreciation of facts committed by the courts a quo, which were uniform in their reliance on the prosecution's version. Both were correct in concluding that the identity of petitioner and his actual shooting of Gatón were established beyond moral certainty through the testimonies of three (3) witnesses, namely: (i) Gabriel Gatón, who was summoned to the place of the incident while his brother Gatón was being mauled; (ii) Marlon Dellamas, who went to the scene of the incident to look for his brother; and (iii) Edgardo Dag-um, who was in the vicinity when the shooting transpired. Their ensuing testimonies are notable:

Gabriel Gatón:

Q:

When Helen Dellamas went to your house and told you that your brother was being mauled, what did you do, if you did anything?

A:

We went to the place and we saw a person holding a gun.

Q:

You said that you went to the place, where was this place located?

A:

Near our house, sir.

Q:

Now, you said that you saw a man when you went there, what else did you see?

A:

I saw him pointing a gun at my brother Joey.

Q:

How far were you when you saw that man who was pointing a gun at your brother Joey?

A:

(Witness indicating a distance of 10 meters more or less.)

Q:

And how far was the man with a gun from your brother Joey?

A:

(Witness indicating a distance of 2 meters.)

Q:

What was the position of your brother Joey when the man was pointing his gun to your brother Joey?

A:

Sidewise, sir.

Q:

What happened after you saw the man pointing a gun at your brother?

A:

I shouted: Don't (Huwag naman) but he ignored me and then the gun went off.

Q:

What happened after the gun went off?

A:

After firing the gun, he pointed the gun to the bystanders.

Q:

What happened to your brother?

A:

He fell down, sir.[13]

Marlon Dellamas:

Q:

Please tell this Honorable Court what [you were] doing [at] that time?

A:

I was looking for my brother Joey Dellamas.

Q:

If you can remember, were there many people on that alley?

A:

Yes sir.

Q:

And what was the [lighting] condition of that alley at that time?

A:

It was very bright at that time.

Q:

At that time and place, was there any unusual incident that transpired on that place?

A:

Yes ma'am, there was. They were arguing.

Q:

You said that they were arguing, tell this Honorable Court who was arguing, could you please be specific?

A:

The visitors of the owner of the house, ma'am.

x x x x

Q:

What happened after they entered the gate which you said was opened?

A:

The person who was armed with a gun shot at Joey Gatton.

Q:

How far were you when this person shot Joey Gaton, how far were you to this person?

A:

I was very near, ma'am. I was about a meter only away from them.

x x x x

Q:

And what happened after this person who you just identified as Romeo Ilisan shot Joey Gaton, what happened?

A:

Joey Gaton fell down, ma'am.[14]

Edgardo Dag-um:

Q:

While you were enjoying yourself with your companions, do you recall of any unusual incident that happened?

A:

Yes, sir, we heard shouts.

Q:

Where did [those] shouts c[o]me from?

A:

From outside.

Q:

When you heard [the] shouts, what did you do?

A:

We went out the premises of the house of my sister.

x x x x

Q:

And what did you see outside?

A:

There were persons quarrelling, sir.

Q:

Do you know that persons who were quarrelling [at] that time?

x x x x

A:

I saw my brother-in-law Jojo Dellamas and Joey Gaton being mauled by some male persons.

x x x x

Q:

And when you saw people attacking your brother-in-law and Joey Gaton, what else happened?

A:

When some of the neighbors were approaching the scene of the incident, those male persons who were mauling my brother-in-law entered the yard of the house of Jaime E[s]casinas.

Q:

Mr. Witness, you said a while ago that Joey Gaton was already dead, how did he die?

A:

He was shot, sir.

Q:

Who shot him?

A:

Romeo Ilisan, sir.

x x x x

Q:

You pointed to Romeo Ilisan as the person who shot Joey Gaton, how far were you when Romeo Ilisan shot Joey Gaton?

A:

About two (2) meters away sir.

Q:

What kind of firearm did this Romeo Ilisan use in shooting Joey Gaton?

A:

.45, sir.[15]

The fact that Gabriel Gaton is the victim's brother does not impair his credibility as a witness. Relationship by itself does not give rise to a presumption of bias or ulterior motive, nor does it ipso facto diminish the credibility or tarnish the testimony of a witness. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the culprit. The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would actually deter them from implicating persons other than the true culprits.[16]

There is likewise no indication that Marlon Dellamas and Edgardo Dag-um were improperly motivated when they testified against petitioner. As aptly observed by the Office of the Solicitor General in its Comment,[17] aside

from the prosecution witnesses' relationship with the other participants in the fight, petitioner failed to show any other basis for the ill motive he imputes against them. 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.[18]

Petitioner's reliance on the negative results of the paraffin test conducted on him the day after the fateful event must fail. Our ruling in *People v. Manalo*,[19] is apropos:

[E]ven if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test. The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol.

Indeed, paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test has proved extremely unreliable. It can only establish the presence or absence of nitrates or nitrites on the hand; still, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun.[20] Conversely, the absence of gunpowder nitrates on petitioner's hands, the day after the incident, does not conclusively establish that he did not fire a gun; neither are the negative results yielded by the paraffin test an insurmountable proof of his innocence.

The courts a quo also correctly rejected the version of the defense as a mere afterthought intended to exculpate petitioner, viz.:

If it is true that they saw Chito Partisala sh[o]t Joey, why they did not tell the policeman who arrived at the crime scene immediately that Partisala was the gunman. Why did Jomarie wait until somebody pointed to the accused as the gunman before he told them that it [was] Partisala who shot the victim.[21]

Thus, the positive, clear, and categorical testimonies of the three eyewitnesses to the crime deserve full merit in both probative weight and credibility over the negative results of the paraffin test conducted on petitioner and his witnesses' anomalous claims.

We now go to the penalty imposed. Homicide is punishable by reclusion temporal.[22] There being no mitigating or aggravating circumstance proven in the case at bar, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.[23]

Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than reclusion temporal, which is prision mayor (six [6] years and one [1] day to twelve (12) years). Hence, the indeterminate sentence of 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, imposed by the RTC, and affirmed with modification by the CA, is correct.

The civil indemnity and moral damages awarded by the RTC and the CA were also in order and consistent with current jurisprudence.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[24] Under prevailing jurisprudence, the award of P50,000.00 to the heirs of the victim as civil indemnity is proper.[25]

Moral damages must also be awarded because these are mandatory in cases of homicide, without need of allegation and proof other than the death of the victim.[26] The award of P50,000.00 as moral damages[27] is

correct.

We must, however, modify the actual damages awarded by the CA. Actual damages pertain to the actual expenses incurred by the victim's heirs in relation to his death, i.e., burial and funeral expenses. To justify an award therefor, it is necessary for a party to produce competent proof or the best evidence obtainable, such as receipts.[28] In this case, the actual expenses incurred for the wake and burial of the victim were duly shown by receipts marked as Exhibits "K," "L," "M," and "M-1"[29] in the aggregate amount of P88,520.00. But the CA awarded only P58,520.00, which, after a perusal of the records, appears to have been caused by the non-inclusion of Exhibit "L," a receipt for P30,000.00 paid by the victim's wife to La Funeraria Novaliches for the deceased's autopsy and embalming treatment, and use of mortuary equipment for the interment. Having convincingly proved the nature of the expense in the amount of P30,000.00 in Exhibit "L," it is only right to increase the actual damages awarded to the victim's heirs to P88,520.00.

WHEREFORE, premises considered, the petition is hereby DENIED. The August 23, 2007 Decision of the Court of Appeals is AFFIRMED with modification that the award of actual damages is increased to P88,520.00.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Abad, and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated June 28, 2010.

[1] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring; rollo, pp. 38-48.

[2] CA rollo, pp. 42-51.

[3] Id. at 43.

[4] Id.; Certificate of Death of Joey Gatón (Records, p. 15); The medico-legal report concluded that Joey Gatón's cause of death was hemorrhagic shock secondary to gunshot wound of the abdomen (Records, p. 143).

[5] Records, p. 1.

[6] Id. at 32.

[7] Supra note 2, at 50-51.

[8] Brief for the Appellant; CA rollo, pp. 65-87.

[9] Supra note 1, at 47.

[10] *People v. Dela Cruz*, G.R. No. 184792, October 12, 2009, 603 SCRA 455, 464.

[11] *People v. Ballesta*, G.R. No. 181632, September 25, 2008, 566 SCRA 400, 416; *People v. Benito*, 363 Phil. 90, 98 (1999).

[12] *People v. Ballesta*, supra, at 416; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

[13] TSN, June 20, 2002, pp. 4-6.

[14] TSN, May 23, 2002, pp. 3-6.

- [15] TSN, July 31, 2002, pp. 3-6.
- [16] *People v. Quilang*, 371 Phil. 241, 255 (1999); *People v. Villanueva*, 362 Phil. 17, 34 (1999).
- [17] Rollo, pp. 53-59.
- [18] *People v. Ballesta*, supra note 11, at 416; *People v. Rendoque*, 379 Phil. 671, 685 (2000).
- [19] G.R. Nos. 96123-24, March 8, 1993, 219 SCRA 656, 663.
- [20] *People v. Cajumocan*, G.R. No. 155023, May 28, 2004, 430 SCRA 311, 317-318; *People v. De Guzman*, 320 Phil. 158, 169-170 (1995).
- [21] Supra note 2, at 48.
- [22] REVISED PENAL CODE, Art. 249.
- [23] REVISED PENAL CODE, Art. 64, par. 1.
- [24] *Tarapen v. People*, G.R. No. 173824, August 28, 2008, 563 SCRA 577, 603-604, citing *People v. Tubongbanua*, 500 SCRA 727, 742 (2006).
- [25] *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 592-593; *Tarapen v. People*, supra note 24, at 604; *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 400.
- [26] *Tarapen v. People*, supra note 24, at 604; *People v. Bajar*, 460 Phil. 683, 700 (2003).
- [27] *People v. Lusabio, Jr.*, supra note 25, at 593; *People v. Bajar*, supra, at 700.
- [28] *Tarapen v. People*, supra note 24, at 604; citing *People v. Jamiro*, 344 Phil. 700, 722 (1997).
- [29] Records, pp. 146-149.

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