

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AGUSTINO TAMOLON AND ANTONIO CABAGAN, APPELLANTS.

G.R. No. 180169. February 27, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is an appeal from the Decision[1] dated August 23, 2007 of the Court of Appeals (CA) affirming, with modification, the judgment[2] dated February 12, 1996 of the Regional Trial Court (RTC), Branch 21, Davao del Sur, convicting Agustino Tamolon[3] and Antonio Cabagan[4] (appellants) of Multiple Murder.

The relevant facts and proceedings:

Appellants, with several others,[5] were charged with Multiple Murder, docketed as Criminal Case No. XXI-377 (93), before the RTC, Branch 21, Bansalan, Davao del Sur, in an Information which reads:

That sometime last March of 1984, in the Municipality of Magsaysay, Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns and bolos, with intent to kill, and taking advantage of superior strength conspiring, confederating and mutually helping one another, did, then and there willfully, unlawfully and feloniously attack, assault, shoot, hack and massacre Jaime Malabarbas, Ely Malabarbas, Judith Malabarbas, Wilfredo Panton and Gerry Panton, the herein victims/offended parties[,] which gunshot and hack wounds caused to their instantaneous death, to the damage and prejudice of the offended parties.

CONTRARY TO LAW.[6]

Upon arraignment, the appellants pleaded not guilty.

The case was tried jointly with four other cases, where the appellants were likewise charged under separate informations, viz.: for arson,[7] for other forms of arson,[8] and for two counts of grave threats.[9] However, except for the herein appellants, all the other accused in these criminal cases remain at large.

The conflicting versions of the prosecution and the defense on the antecedent facts of the case, as summarized by the appellants in their brief, follow:

Evidence for the prosecution tend to establish that at about 8:00 p.m. of March 15, 1984, the group of ERNESTO DAMALI alias ALANG, AGUSTINO TAMOLON, ANTONIO CABAGAN, SAMSON CABAGAN, KIMPO ANGGA, JOSEPH WAGIA, and MODESTO LANDAS were supposed to conduct a roving patrol. When they reached the house of the MALABARBAS in Sitio Maibu, Magsaysay[,] Davao del Sur, except for LANDAS, they opened fire at the MALABARBAS family and then hacked them which resulted to the death of JAIME, ELY, JUDITH, all surnamed MALABARBAS, WILFREDO and GERRY, both surnamed PANTON (T.S.N., pp. 8, 11 & 13, December 1, 1993).

EVIDENCE FOR THE DEFENSE:

Accused-appellant AGUSTINO TAMOLON who testified on April 5, 1995 stated that at the time of the

massacre of the Malabarbas family in Sitio Maibu, Magsaysay, Davao del Sur on March 15, 1984, he was a resident of Santa Felomina, Makilala, North Cotabato, which is far from the boundary of Magsaysay, Davao del Sur. He lived as a farmer, and in 1984, he was engaged in honey gathering in the mountains of Makilala, North Cotabato. He does not know the Malabarbas family nor does he know anything about their massacre. He met MODESTO LANDAS in 1989 in Barangay Laya where he was assigned as a CAFGU. He also knows that LANDAS was arrested and detained at the Magsaysay Municipal Jail in Magsaysay, Davao del Sur, Landas was promised by the Municipal Mayor that he will help him (LANDAS) if he would name all those who participated in the commission of the crime.

Accused-appellant ANTONIO CABAGAN denied having participated in the massacre of the Malabarbas Family. He was arrested and detained in 1993 in Magsaysay, Davao del Sur, where MODESTO LANDAS was also detained. During their detention, VILMA GANAD (whose rubber plantation and copra dryer were set on fire) and ANTONIO MALABARBAS, came to see him and LANDAS, and asked them to testify against DAMALI and TAMOLON, and in exchange, they will help them get out of jail and GANAD promised them money and support in the form of rice subsidy. He, however, refused because he "did not actually see the persons who did the crime, but LANDAS agreed (T.S.N., pp. 6-9, 11-13, June 8, 1995).

GREGORIO SUMAKBANG, the Barangay Captain of Magbuk, Tulunan, from 1965 to 1987, testified that CABAGAN and TAMOLON were never linked to the massacre of the MALABARBAS Family in 1984, and that it was only in 1993 that he came to know that they were linked and arrested for the massacre. He knows MODESTO LANDAS and was a sponsor of LANDAS at his wedding. LANDAS came to see him twice in 1993 and requested him not to get involved in the cases. He further stated that LANDAS testified against Tamolon and ANTONIO CABAGAN to free himself from jail and who was subsequently released in February, 1993. He also knows that MODESTO LANDAS died in September 1994, during the fiesta of Malungon (T.S.N., pp. 7-10, September 15, 1995).

SUNGKADAN AMIT, a pastor of the Christian Missionary alliance in Sta. Felomina, Makilala, North Cotabato, testified that he knows AGUSTINO TAMOLON. During the years 1983 to 1984, TAMOLON was a farmer and a honey gatherer, and that during these period he was not a member of any armed group in Makilala, North Cotabato (T.S.N., pp. 12-13, September 15, 1995).[10]

After trial, on February 12, 1996, the RTC rendered its Decision convicting both appellants of multiple murder. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, this Court hereby pronounces Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Multiple Murder as defined and penalized under Art. 248 of the Revised Penal Code for the death of Ely Malabarbas, Wilfreda Panton, Judith Malabarbas, Jaime Malabarbas and Jerry Panton and hereby sentences each accused to suffer the penalty of Reclusion Perpetua for the death of Ely Malabarbas; Reclusion Perpetua, for the death of Wilfreda Panton; Reclusion Perpetua, for the death of Judith Malabarbas; Reclusion Perpetua, for the death of Jaime Malabarbas and Reclusion Perpetua, for the death of Jerry Panton subject to the limitation provided for under Article 70 of the Revised Penal Code and to indemnify the heirs of each victim the sum of FIFTY THOUSAND (P50,000.00) PESOS pursuant to recent jurisprudence. x x x.

SO ORDERED.[11]

The RTC decision was elevated directly to the Supreme Court for automatic review. However, conformably with our ruling in *People v. Mateo*,^[12] the case was, by Resolution dated December 13, 2004, referred to the CA. Parenthetically, no appeal was taken by the appellants in the other cases against them.^[13] Accordingly, insofar as the other criminal cases are concerned, the Decision of the RTC of Davao del Sur had become final and executory.

On August 23, 2007, the CA promulgated its Decision, disposing as follows:

FOR THE REASONS STATED, the appealed Judgment dated February 12, 1996, of the Regional Trial Court, Branch 21, Davao del Sur in Criminal Case No. XXI-377(93), is AFFIRMED with the MODIFICATION that the accused is ORDERED to pay the heirs of each of the victim[s] P50,000.00 as indemnity, and P50,000.00 as moral damages. Costs de officio.

SO ORDERED.[14]

Thus, this appeal, assigning the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS AGUSTINO TAMOLON AND ANTONIO CABAGAN GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MULTIPLE MURDER ON THE LONE, FABRICATED, ILL-MOTIVATED, AND POLLUTED TESTIMONY OF MODESTO LANDAS.

II

THE COURT A QUO GRAVELY ERRED IN ORDERING ACCUSED-APPELLANTS TO INDEMNIFY THE HEIRS OF EACH OF THE FIVE (5) VICTIMS THE SUM OF FIFTY THOUSAND PESOS.[15]

The appeal is bereft of merit.

The appellants cast aspersion on the credibility of lone prosecution witness, Modesto Landas, who admitted having been with the armed group that massacred the Malabarbas family. Moreover, they question the motive of Landas who, they said, told the authorities of the alleged criminal activities of the group only after he had been arrested and detained, nine years after the alleged incident. They then submit that "the evidence presented by the prosecution came from a polluted source," harping on Landas being with the roving team at the time of the commission of the crime, making him a co-conspirator.

However, the trial court gave full weight and credence to Landas' testimony. Evaluating the same, the court said:

Witness Modesto Landas was likewise very positive, direct, straight-forward and convincing in his testimony against accused Agustino Tamolon and Antonio Cabagan. This witness never faltered or wavered in his claim about the participation of accused Agustino Tamolon and Antonio Cabagan in the massacre of the Malabarbas family and in setting fire to the dr[y]er of Vilma Ganad.[16]

The CA also held that, by way of exception, the testimony of a co-conspirator may, even if uncorroborated, be sufficient for conviction when it is shown to be sincere in itself, because it is given unhesitatingly and in a straightforward manner, and is full of details by which their nature could not have been the result of a deliberate afterthought.[17]

In this regard, worthy of reiteration is the doctrine that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses, since it has observed firsthand their demeanor, conduct and attitude under grueling examination. Absent any showing of a fact or circumstance of weight and influence which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings on and assessment of the credibility of a witness made by the trial court remain binding on an appellate tribunal.[18] A trial court's assessment of the credibility of a witness is entitled to great weight, even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[19] Thus, in *Valcesar Estioca y Macamay v. People of the Phils.*,[20] we held:

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following

well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

By the foregoing standards especially because the trial court's findings were concurred in by the CA, we are obliged to adopt the trial court's evaluation of Landas' credibility.

As to the appellants' defense which is based mainly on denial and alibi, nothing is more settled in criminal law jurisprudence than that denial and alibi cannot prevail over the positive and categorical testimony of the witness.[21] In *People of the Phils. v. Carlito Mateo y Patawid*, [22] we had occasion to state:

Accused-appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. x x x. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. x x x.

Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. Alibi is an inherently weak defense, which is viewed with suspicion and received with caution, because it can easily be fabricated.[23] For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the locus criminis at the time of its commission.[24]

In the case at bench, no convincing evidence was presented by the defense to reinforce the appellants' denial and alibi.

As to the award of additional damages, the CA is correct in ordering the appellants to pay the sum of P50,000.00, as moral damages, to the heirs of each of the victims. We held in *People v. Panado*: [25]

We grant moral damages in murder or homicide only when the heirs of the victim have alleged and proved mental suffering. However, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages may be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. x x x. With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved.

Given the foregoing disquisition, we find no reason to reverse the Decision of the CA upholding the conviction of accused-appellants.

WHEREFORE, the petition is DENIED and the assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 00463 is AFFIRMED in toto.

SO ORDERED.

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

[*] Additional member in lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

[**] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 568 dated February 12, 2009.

[***] In lieu of Associate Justice Consuelo Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

[1] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring; rollo, pp. 4-12.

[2] Promulgated by RTC Judge Rodolfo A. Escovilla.

[3] Also referred to as "Agustino Tamulon" in the information for multiple murder.

[4] Referred to as "Tony Cabagan" in the information for multiple murder.

[5] The other accused are Ernesto Dawali alias Alang, Samson Cabagan, Kimpo Angga and Joseph Wagia.

[6] CA rollo, p. 5.

[7] Docketed as Criminal Case No. XXI-365 (93), in an information which reads:

That on or about December 15, 1991 at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused with intent to gain, motivated by spite or hatred towards the owner of the property and acting as a syndicate, conspiring, confederating, helping one another and acting in concert did then and there willfully, unlawfully, and feloniously set on fire or burn the copra dryer (pugon) owned by Mrs. Vilma vda. de Ganad valued at P30,000.00 to the damage and prejudice of the said offended party.

CONTRARY TO LAW. (Id. at 17.)

[8] Docketed as Criminal Case No. XXI-364 (93), in an information which reads:

That sometime in March 1992, or thereabout, at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused with intent to gain, motivated by spite or hatred to the property owner, and acting as a syndicate, conspiring, confederating and acting in concert, did then and there willfully, unlawfully and feloniously set on fire or burn the rubber plantation and/or farm of one Mrs. Vilma vda. de Ganad to the damage and prejudice of the said offended party in the amount of P20,000.00.

CONTRARY TO LAW. (Id. at 18.)

[9] Docketed as Criminal Case No. XXI-342 (92), in an information which reads:

That sometime on January 1, 1992 at Tacul, Magsaysay, Davao del Sur, within the jurisdiction of this Court, the said accused conspiring, confederating, helping one another and acting in concert with other persons, whose identities are still to be determined but who will be charged appropriately once established later, did, then and there willfully, unlawfully and feloniously send a written note or letter to one Vilma Serapion vda. de Ganad demanding from the latter the amount of P60,000.00 and threatening, should she fail to deliver the sum, to burn her rubber trees and to kill her and other members of her family, to her damage and prejudice; that the threat letter was sent to the offended party through a middleman.

CONTRARY TO LAW. (Id.)

[10] Id. at 58-60.

[11] Id. at 25-28.

[12] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[13] The RTC disposed of the other criminal cases as follows:

In Criminal Case No. XXI-343(92) for Grave Threats, the Court finds accused Agustino Tamolon and Antonio Cabagan GUILTY beyond reasonable doubt of the crime of Grave Threats as defined and penalized under Article 282 par. 1 of the Revised Penal Code. Since the accused in threatening the complainant imposed a condition that of demanding the amount of P60,000.00 and killing the members of Vilma Ganad's family if the demand is not met, and therefore the crime threatened to be committed is Homicide, the Court has to lower the penalty by two degrees from Reclusion Temporal which is the penalty provided for the crime of Homicide, and since the threat was made through a middleman, the Court hereby imposes upon said accused Agustino Tamolon and Antonio Cabagan the Indeterminate Penalty of four (4) months and one (1) day of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum.

In Criminal Case No. XXI-343(92) the Court is at a loss as to the penalty to be imposed upon the accused considering that the crime the accused intended to commit is that of Malicious Mischief, should the private complainant fail to meet the demand but the prosecution failed to allege in the said Information the damage that the private complainant will suffer as a result of the crime of Malicious Mischief. Considering that the penalty in Malicious Mischief would depend on the amount of the damage occasioned thereby, and the Information failed to allege the amount of the damage, the Information aforesaid suffers from a very substantial defect. In view hereof, the Court ACQUITS accused Agustino Tamolon and Antonio Cabagan of Grave Threats in Criminal Case No. XXI-342(92).

In Criminal Case No. XXI-365(93) for Arson this Court finds accused Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Arson defined and penalized under Art. 322 par. 4 of the Revised Penal Code as amended by P.D. 1613, and hereby sentences each of them to suffer an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum and to indemnify private complainant Vilma Ganad the sum of THIRTY THOUSAND (P30,000.00) PESOS for the burned copra dr[y]er.

In Criminal Case No. XXI-364(93) this Court finds accused Agustino Tamolon and Antonio Cabagan guilty beyond reasonable doubt of the crime of Other Forms of Arson defined and penalized under Art. 321 par. 2, sub-par. C of the Revised Penal Code as amended by P.D. 1613 and hereby sentences each accused to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of Reclusion Temporal as maximum and to indemnify private complainant Vilma Vda. de Ganad the sum of TWENTY THOUSAND (P20,000.00) PESOS for the damage caused to the partially burned rubber plantation. Both accused being detained are entitled to full credit of the preventive imprisonment they had undergone if they have signed their conformity to abide by the rules and regulations imposed upon inmates by the Provincial Jail authorities of Davao del Sur, otherwise, they shall be entitled only to four-fifths (4/5) of the preventive imprisonment they had undergone. The case with respect to accused Romy Solutan in Criminal Case No. XXI-365(93) for Arson is hereby ordered DISMISSED in view of the death of said accused and the cases against accused Ernesto Damali alias Alang, Samson Cabagan, Kimpo Angga, Joseph Wagia, Boy Cabagan and Joseph Madot are hereby ordered placed in the archive to be retrieved therefrom as soon as these accused shall have been arrested.

SO ORDERED. (CA rollo, pp. 26-28.)

- [14] Rollo, p. 11.
- [15] Id. at 40.
- [16] CA rollo, p. 75.
- [17] Citing *People v. Cuya, Jr.*, 141 SCRA 351, 354 (1986).
- [18] *People of the Phils. v. Budoy Gonzales y Lacdang*, G.R. No. 180448, July 28, 2008.
- [19] *Rene Soriano @ "Renato" v. People of the Phils.*, G.R. No. 148123, June 30, 2008.
- [20] G.R. No. 173876, June 27, 2008.
- [21] *People of the Phils. v. Donato Bulasag y Arellano alias "Dong,"* G.R. No. 172869, July 28, 2008.
- [22] G.R. No. 179036, July 28, 2008.
- [23] *People v. Penaso*, 383 Phil. 200, 210 (2000).
- [24] *People v. Fernandez*, G.R. No. 134762, July 23, 2002, 385 SCRA 38, 51.
- [25] G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

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