

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MUHAMMAD
ABDULAH, ALIAS “BONG ABDULAH,” ALIAS
“BONG HASAN ZAMAN,” APPELLANT.**

G.R. No. 182518. January 20, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For final review by the Court is the trial court's conviction of appellant Abdulah for murder. In the July 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00023, the appellate court, on intermediate review, affirmed in toto the August 24, 2000 Decision[2] of the Regional Trial Court (RTC), Branch 158 of Pasig City in Criminal Cases Nos. 98124, 98125 and 98126.

It was six in the evening more than a decade and a half ago, or on November 6, 1992, when the events leading to this case began to unfold. One of the victims, Evelyn Aguirre, was then visiting in the house of the other victim, her daughter Romelyn Diolago, at Victoria St., Intramuros, Manila. With her in the house were her other daughters, Leny and Jovy Aguirre (another victim), and her granddaughter, Cristy-Lyn. At that time, Romelyn was at a night club working. Appellant Mohamad "Bong" Abdulah, Romelyn's brother-in-law, and a companion, entered the house and asked for the latter.[3]

Informed of Romelyn's whereabouts, Bong decided to fetch Romelyn at the club. He dragged Evelyn from the house, out of the alley leading to the house, and to a black car. His companion, Latip Mangsungayan, poked a .38 caliber gun at Jovy, dragged her and pushed her inside the car. Three other companions of Bong were already in the car, a certain Racid alias Lumang Kulog, Bagyo alias Muhammad, and Dhats Kamama. Bong then belted out to the neighbors who got curious over the commotion, "Kung ano'ng nakikita ninyo, walang magsasalita, totodasin ko lahat, walang makikialam, totodasin ko kayong lahat!" (You must not interfere with us, and keep silent over what you are witnessing right now; otherwise, I will kill all of you!). Bong then drove the car and sped off.[4] Evelyn and Jovy never returned to the house. That was the last time they were seen alive.[5]

The following day, November 7, 1992, three female dead bodies were found by the police at the grassy area of the apartment road in Maharlika Village, Taguig, Metro Manila [now, the City of Taguig]. The bodies had stab wounds, and the necks had ligature marks. The cadavers were then brought to the Philippine National Police (PNP) Crime Laboratory for autopsy.[6] On November 15, 1992, prompted by a news report, the relatives of the victims went to Taguig, and there identified the dead bodies as those of Evelyn, Romelyn and Jovy.[7]

The police theorized that appellant killed the victims to avenge the death of his brother Rex, Romelyn's live-in partner. The police further believed that appellant must have been convinced of the family's involvement in the death of Rex, considering that Rex's killer was the former boyfriend of Romelyn and hailed from the same hometown as the family.[8]

On March 24, 1993, three separate Informations[9] for murder were filed against appellant with the RTC of Pasig City. The accusatory portions thereof read:

Criminal Case No. 98124

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6[th] day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Jovy Aguirre on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.

Criminal Case No. 98125

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6[th] day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Romelyn D. Diolago on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.

Criminal Case No. 98126

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6[th] day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Evelyn Aguirre on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.[10]

Appellant and his cohorts remained at large for several years.[11] In 1998, appellant was finally brought to trial in these murder cases, following his apprehension and detention for violation of Presidential Decree (P.D.) No. 1866, of the elections gun ban, and of Republic Act (R.A.) No. 6425.[12] On arraignment, he pleaded not guilty to the murder charges.[13]

In his defense, appellant asserted that he was mistakenly identified as "Muhammad Abdulah," because he is "Musa Dalamban." He was arrested not for the murder of the victims but for violation of special laws. He further denied knowing any of the victims,[14] claiming that, at the time the murder happened, he was in Cotabato City working as a helper of Guapal Saliling in the latter's wood business.[15]

On August 24, 2000, the trial court rendered its Decision[16] finding the appellant guilty beyond reasonable doubt of three counts of murder. The dispositive portion thereof reads:

WHEREFORE, accused Muhammad Abdulah, also known as "Bong Abdullah", "Bong Hasan Zaman" is found guilty beyond reasonable doubt of having committed three (3) counts of Murder under Article 248 of the Revised Penal Code in Criminal Cases Nos. 98124, 98125 and 98126 and is sentence (sic) to suffer in prison

the penalty of Reclusion Perpetua for each count.

He is also ordered to indemnify the private complainant Romeo Dindero the amount of (sic) P150,000.00 and to pay another P150,000.00 as moral damages plus the cost of suit.

SO ORDERED.[17]

On direct appeal to this Court in G.R. Nos. 145306-08, we referred the cases to the appellate court for intermediate review following the doctrine in *People v. Mateo*.^[18] In its July 17, 2007 Decision,^[19] the CA, as aforesaid, affirmed in toto the decision of the trial court. Thus, we now finally review the trial and the appellate courts' uniform findings.

We affirm with modifications. The Court notes that the basis of the trial and the appellate courts in convicting the appellant of three counts of murder is circumstantial evidence, given the absence of any direct evidence as to who actually killed the victims. Section 4, Rule 133 of the Rules of Court provides that, for the same to be sufficient for conviction, there must be more than one circumstance; the facts from which the inferences are derived are proven; and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.^[20] A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain leading to one fair and reasonable conclusion that the defendants are guilty, to the exclusion of any other conclusion.^[21] The circumstances proved must be concordant with each other, consistent with the hypothesis that the accused is guilty and, at the same time, inconsistent with any hypothesis other than that of guilt. As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.^[22]

Here, the circumstances proven during the trial are that (1) appellant and several companions went to the house of Romelyn in Intramuros, Manila; (2) on arrival, appellant asked for the whereabouts of Romelyn; (3) appellant then forcibly dragged the victims Evelyn and Jovy from Romelyn's house to the alley leading to the house and pushed them inside a parked black car; (4) one of appellant's companions poked a gun at Jovy; (5) appellant then warned the onlookers to not interfere with them and to be silent over what was happening; (6) appellant drove the car and sped off; (7) the day after Evelyn and Jovy were taken, their dead bodies, together with that of Romelyn, were recovered in Taguig, Metro Manila; and (8) their bodies had stab wounds, and the necks had ligature marks.

Appellant was also positively identified by the prosecution witnesses, Leny Aguirre, Evelyn's daughter, who was in the house when appellant arrived, and Sabina Badilla, a neighbor, who saw the commotion. Thus, Leny, on direct examination, related:

Q:

Now, when you, together with your sister Juliet, mother and niece were at the house of Ate Romelyn in Intramuros, was there any person who arrived in the said house?

A:

Yes, Sir.

Q:

Who was that person who arrived?

A:

Bong and one companion.

Q:

And do you know why Bong and his companion arrived at the house of your Ate Romelyn?

A:

Yes, Sir.

Q:

Why?

A:

They are looking for Ate Cristy.

Q:

When you said Ate Cristy, are you also referring to your Ate Romelyn?

A:

Yes, Sir.

Q:

By the way, who was able to talk to Bong Abdulah in your house?

A:

My mother.

Q:

At that time, what time did Bong Abdulah was able to talk to your mother looking for your Ate Romelyn?

A:

6:00 in the afternoon.

Q:

Now, what was the reply of your mother, if any, when Bong was looking for your Ate Romelyn?

A:

She said that she is going to fetch my sister Romelyn at the club.

Q:

And what happened next when you (sic) mother told Bong that she will just pick up your Ate Romelyn at the club?

A:

My mother Evelyn accompanied Bong at the club to fetch my sister Romelyn or Cristy.

Q:

Aside from your mother Evelyn, who else went with Bong Abdulah to fetch your Ate Romelyn?

A:

Ate Jovy.

Q:

And when you said Jovy, are you referring to Jovy Aguirre?

A:

Aguirre-Bolandos.

Q:

Now when your mother Evelyn Bolandos and your sister Jovy Aguirre-Bolandos went out with Bong Abdulah to fetch your Ate Romelyn, were they able to return?

A:

No more.

Q:

What happened to your mother and sister?

A:

From that time, we did not hear anything about them.

Q:

And when for the first time did you come to know that something tragic happened to your mother and sisters?

A:

On November 8, 1992.

Q:

And what happened to your mother and sisters?

A:

We have heard that there was a massacre and they are the victims.

Q:

Now, by the way, when you learned that your mother and sisters were killed, where did you and your other sister and niece went?

A:

In Taguig.

Q:

And where in Taguig?

A:

In (sic) the Municipal Hall of Taguig.

Q:

And what happened when you arrived at the Municipal Hall of Taguig?

A:

I got afraid when I learned about it.

Q:

Why?

A:

I got afraid when the pictures were shown to me and it was true that my mother and my sisters were massacred.

Q:

Now, you said that it was Bong Abdullah who fetched your mother and sisters. Will you be able to identify Bong Abdullah if you will see him again?

A:

Yes, sir.

Q:

If he is inside this courtroom, please point out to him?

(Witness pointing to the man in yellow T-shirt with RPJ leverage who identified himself as Musa Ed Dalamban).[23]

Sabina Badilla further testified as follows:

Q:

Now, when you were then in front (sic) of your house in Victoria St., Intramuros, Manila on November 6, 1992 at around 6:00 in the evening, will you please tell us if there was any unusual incident if any that you noticed?

A:

Yes, Sir.

Q:

Will you please tell this Hon. Court, what was that unusual incident?

A:

What I saw at that time when I was in front of my house was that Muhammad Bong Abdullah Mangsungayan was dragging Evelyn Bolandos and also they were poking a .38 caliber gun then this Latip Mangsungayan was the one whose (sic) holding Jovy then, they dragged them. Muhammad told us that "kung anong nakikita ninyo walang magsasalita, totodasin ko lahat walang makikialam totodasin ko kayong lahat."

Q:

Now, when you saw Bong Abdullah alias Muhammad Mangsungayan and Latip Mangsungayan forcibly dragging Evelyn Aguirre and Jovy, what did you do, if any?

A:

I was not able to do anything because they were threatening us, then what Bong and Latip did they dragged

Evelyn and Jovy out from the alley, I can see the black car outside and that is where they're riding and also there were three other persons there waiting at the car.

Q:

What happened next, if any, after Bong Abdulah and Latip Mangsungayan dragged Evelyn and Jovy towards that parked black car?

A:

The next thing that happened was that the door of the black car was opened and Jovy and Evelyn were forcibly pushed inside the car and I saw Racid alias Lumang Kulog and Bagyo alias Muhammad twin brother of the accused Muhammad and also Dhats Kamama, they were five all in all siksikan na sila sa kotse because they pushed Evelyn and Jovy inside. That makes them seven all in all inside the car.

Q:

What happened next when you saw Evelyn and Jovy pushed inside that car?

A:

After I saw Evelyn and Jovy pushed inside the car and all of them were already inside then the one who drove the car was Muhammad alias Bong Abdulah then they sped off then I did not know anymore what else happened.

Q:

By the way, if you will see again this Bong Abdulah alias Muhammad Mangsungayan, will you be able to identify him?

A:

Yes sir, I can identify him because before I used to talk to him but now it seems he doesn't know me anymore because my hair was long before and also I wore a Bombay dress because my husband is a Bombay.

Q:

If he is present inside this courtroom please point to him?

A:

Him beside the woman wearing Turban.

Interpreter:

Witness pointed to a man wearing yellow T-shirt and when asked what's his name identified himself as Musa Dalamdam.

A:

No, it's not his true name he's telling a lie.[24]

The circumstantial evidence presented in this case and the positive identification of appellant as the person who abducted the victims, Evelyn and Jovy, are sufficient to render the conviction of the former for the killing of the latter. In the two cases of *People v. Delim*,^[25] with similar factual milieu as the one at bar, where the victim was abducted and was consequently found dead, we held the accused liable for the killing.

Appellant's defenses of denial and alibi in this case are not worthy of belief, given that he failed to show that it

was physically impossible for him to be present at the time and place of the crime.[26] Established is the rule that denial and alibi, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[27]

In this case, nevertheless, we find appellant liable only for the death of Evelyn and Jovy, there being no evidence to show that he also abducted Romelyn. While the prosecution witnesses testified that appellant intended to proceed to the club where Romelyn worked, no evidence was produced that he, in fact, reached the club and fetched Romelyn from there.

As in *Delim*,[28] we also find, in this case, appellant guilty only of homicide defined and penalized by Article 249[29] of the Revised Penal Code (RPC). Treachery and evident premeditation, the circumstances alleged in the informations, cannot be appreciated to qualify the killing to murder, considering that these were not proven during the trial. It is an ancient but revered doctrine that qualifying and aggravating circumstances before being taken into consideration, for the purpose of increasing the penalty to be imposed, must be proved with equal certainty as those which establish the commission of the criminal offense. It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing must similarly be shown by the same degree of proof.[30]

Considering the absence of any modifying circumstance in the commission of homicide, the indeterminate penalty to be imposed for each of the two counts should be within the range of *prisión mayor*, as minimum, to *reclusión temporal* in its medium period, as maximum.

Following current jurisprudence, appellant is ordered to pay the heirs of the victims, for each of the two counts of homicide, civil indemnity of P50,000.00 and moral damages of P50,000.00.[31]

WHEREFORE, premises considered, the appeal is **PARTIALLY GRANTED**. The July 17, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00023, and the August 24, 2000 Decision of the Regional Trial Court, Branch 158 of Pasig City in Criminal Cases Nos. 98124, 98125 and 98126 are **AFFIRMED WITH THE FOLLOWING MODIFICATIONS**:

- (1) appellant is found guilty beyond reasonable doubt of two (2) counts of homicide defined and penalized under Article 249 of the Revised Penal Code;
- (2) for each count, he is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prisión mayor* in its maximum period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal* in its medium period, as maximum.
- (3) for each count, appellant is ordered to pay the heirs of the victims civil indemnity of P50,000.00 and moral damages of P50,000.00.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Leonardo-De Castro,[*] JJ., concur.

[*] Additional member per Special Order No. 546 dated January 5, 2009.

[1] Penned by Associate Justice Enrico A. Lanzas, with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente concurring; CA rollo, pp. 140-162.

[2] Records, pp. 251-260.

- [3] TSN, July 30, 1998, pp. 2-7, 10-12.
- [4] TSN, July 20, 1999, pp. 3-4.
- [5] TSN, July 30, 1998, p. 4; TSN, July 20, 1999, p. 5.
- [6] TSN, February 1, 1999, pp. 4-6.
- [7] TSN, June 9, 1998, p. 6; TSN, July 30, 1998, p. 4; TSN, February 9, 1999, p. 5.
- [8] Records, pp. 13-14.
- [9] Id. at 1, 18 and 22.
- [10] Id.
- [11] Id. at 29.
- [12] Id. at 31.
- [13] Id. at 41.
- [14] TSN, March 13, 2000, pp. 1-6; TSN, June 26, 2000, pp. 1-3.
- [15] TSN, July 10, 2000, pp. 3-8.
- [16] Supra note 2.
- [17] Records, p. 260.
- [18] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [19] Supra note 1.
- [20] People v. Oliva, 402 Phil. 482, 493 (2001); People v. Casingal, 391 Phil. 780, 794 (2000); Section 4, Rule 133 of the Rules of Court provides in full:
- Sec. 4. Circumstantial evidence, when sufficient.--Circumstantial evidence is sufficient for conviction if:
- (a) There is more than one circumstance;
 - (b) The facts from which the inferences are derived are proven; and
 - (c) The combination of all circumstances is such as to produce a conviction beyond reasonable doubt.
- [21] People v. Geron, 346 Phil. 14, 24 (1997).
- [22] People v. Calica, G.R. No. 139178, April 14, 2004, 427 SCRA 336, 349-350.
- [23] TSN, July 30, 1998, pp. 3-5.
- [24] TSN, July 20, 1999, p. 3-4.
- [25] 444 Phil. 430 (2003); G.R. No. 175942, September 13, 2007, 533 SCRA 366.
- [26] People v. Delmo, 439 Phil. 212, 259 (2002).
- [27] People v. Baltazar, 455 Phil. 320, 331 (2003); People v. Berdin, 462 Phil. 290, 304 (2003).
- [28] Supra.
- [29] Article 249 of the RPC provides:

Art. 249. Homicide.--Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[30] People v. Derilo, 338 Phil. 350, 364 (1997).

[31] People v. Sorila, G.R. No. 178540, June 27, 2008 SCRA; People v. Bajar, 460 Phil. 683 (2003).

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