

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHRISTOPHER TALITA, APPELLANT.***G.R. No. 184702. October 02, 2009*

Ponente: ABAD, J.

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This is an appeal from the March 14, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. 01747, finding appellant Christopher Talita a.k.a. "Praning," who had been charged along with Abraham Cinto and Virgilio Ramiro (still at large), guilty beyond reasonable doubt of the crimes of a) murder in Criminal Case 98-727,[2] b) frustrated murder in Criminal Case 98-728,[3] and c) attempted murder in Criminal Case 98-729,[4] all of the Regional Trial Court of Parañaque City.[5]

The evidence for the prosecution shows that, at about 2:00 p.m. on August 7, 1998, Marty Sarte parked his car before his house on 1[st] Street, Meliton Ave., Barangay San Antonio, Parañaque, Metro Manila. As his wife, Sunshine Sarte, was about to board the car, she saw appellant Talita walking from behind the car toward its windows. Marty was then at the driver's seat while her aunt, Marilou Tolentino, occupied the backseat. Sunshine's grandmother, Maxima Alejandro, stood in front of the house, bidding goodbye to those who were about to leave.

Suddenly, appellant Talita turned around, pulled out a caliber .38 revolver, fired at least six shots through the window at those in the car, and left. Once the firing ceased, Sunshine saw Marty and Marilou wounded and motionless. She moved toward the driver's side of the car. But Talita returned, this time astride the motorcycle that someone wearing a helmet drove for him. He fired his gun at her but hit the car's hood instead. The motorcycle riders then fled.

Sunshine drove her wounded kin to the Parañaque Medical Center but Marilou was brought in dead. Marty received first aid treatment and was later transferred to the Far Eastern University Hospital where he was confined for over a month. He incurred at least P388,478.00 in medical expenses.

Shortly after the shooting, Enriqueta De Ocampo, a traffic enforcer directing traffic along Sucat Intersection, noticed two men riding a motorcycle. She was unable to see the face of the driver who wore a helmet but she later identified his passenger as appellant Talita. He carried a gun. She saw the motorcycle riders force their way across the intersection, heading toward the Manila Memorial Park.[6]

Meanwhile, SPO4 Alfredo Bagunas got a call from the Tactical Operations Center about the shooting incident. He proceeded to the Parañaque Medical Center to investigate. Sunshine gave him her story. Returning to the crime scene, he recovered two empty shells and one deformed slug which were fired from a caliber .38 revolver.

On follow-up investigations, Bagunas learned that appellant Talita and Cinto rented a Kawasaki 125cc motorcycle with plate number PK 9770 from Manuelito Balais in the morning of August 7, promising to return it at 8:30 in the evening. Acting on this information, on August 11, 1998 the police arrested Talita and Cinto at Blk. 18, Lot 6, Sitio Imelda, Taguig, Metro Manila. Sunshine and Maxima, who stood in front of the house during the shooting,

later identified Talita in a police line-up. Marty also pointed to Talita as the man who took a shot at him.

For their part, appellant Talita and Cinto denied having committed the crimes of which they were charged. While they admitted having rented a motorcycle from Balais, they said that they in turn rented it to Virgilio Ramiro at Severina Village. Ramiro introduced them to two other men who allegedly needed the motorcycle for picking up money somewhere in Sucat. After Ramiro and the two men left, Talita and Cinto lingered at the village's gate. Ramiro returned the motorcycle at about 4:00 p.m. Talita and Cinto then brought it back to Balais at about 8:00 p.m. on the same day.

In a decision dated August 15, 2001, the trial court rejected appellant Talita and Cinto's defense of denial and found them guilty beyond reasonable doubt of the crimes charged. The cases against their fellow accused Ramiro were archived pending his arrest.[7]

In Criminal Case 98-727, the trial court found Talita and Cinto guilty of murder, qualified by the aggravating circumstances of treachery and evident premeditation, and sentenced them to suffer the penalty of death by lethal injection. The court further ordered them to pay Marilou's heirs P50,000.00 as civil indemnity and P50,000.00 as exemplary damages. In Criminal Case 98-728 for frustrated murder, the trial court sentenced them to suffer imprisonment ranging from 17 years and 4 months to 20 years each and ordered them to jointly pay their victim P388,478.00 in actual damages. And, in Criminal Case 98-729 for attempted murder, the trial court sentenced them to suffer imprisonment ranging from 8 years and one day to 10 years.[8]

Both appellant Talita and Cinto appealed to this Court. But, pursuant to our ruling in *People v. Mateo*,<sup>[9]</sup> their cases were referred to the Court of Appeals for adjudication.<sup>[10]</sup> On March 14, 2008, the latter court reversed the trial court's decision with respect to Cinto but affirmed it with modification as to appellant Talita. It acquitted Cinto on ground of reasonable doubt given that the prosecution failed to have him clearly identified as the motorcycle's driver.<sup>[11]</sup>

As regards appellant Talita, the Court of Appeals agreed with the trial court's factual findings and affirmed his conviction. The appeals court held, however, that evident premeditation as aggravating circumstance cannot be appreciated against him since the prosecution failed to show how and when the assailants decided to commit the crimes charged and how much time had elapsed before these were carried out.<sup>[12]</sup> The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, all premises considered, the instant appeal is PARTLY GRANTED.

In Criminal Case No. 98-727 for murder, the decision of the trial court, insofar as Christopher Talita is concerned, is AFFIRMED with the following modifications:

- The penalty is reduced to Reclusion Perpetua;
- The award of exemplary damages is reduced to P25,000.00; and
- The appellant Christopher Talita is ordered to pay, on top of the P50,000.00 death indemnity, the additional sum of P50,000.00 to the heirs of Marilou Tolentino, as moral damages.

In Criminal Case No. 98-728 for frustrated murder, the decision of the trial court is AFFIRMED with the modification that the appellant Christopher Talita is to suffer the indeterminate sentence of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum.

In Criminal Case No. 98-729 for attempted murder, the decision of the trial court is AFFIRMED with the modification that the appellant Christopher Talita is to suffer the indeterminate sentence of four (4) years and

two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum.

The appellant Abraham Cinto is ACQUITTED in Criminal Case Nos. 98-727, 98-728 and 98-729 on the ground of reasonable doubt, his identity not having been clearly established. Consequently, the appealed judgment of the trial court with respect to appellant Abraham Cinto is REVERSED and SET ASIDE.

The appellant Abraham Cinto being in detention, his custodian/Director, Bureau of Corrections, is directed to cause his release from notice hereof and to make a return of such compliance within five (5) days to the Clerk of this Court unless he be held for some other lawful cause.

IT IS SO ORDERED.[13]

Appellant Talita seeks by notice of appeal this Court's review of the decision of the Court of Appeals.[14]

The key issue in this appeal is whether or not it was appellant Talita who walked by the car mentioned in this case and fired his gun at Marilou, Marty, and Sunshine.

Here, the trial court relied, in pinning the liability on appellant Talita, on the testimonies of Sunshine and Maxima, both of whom positively identified him as the assailant. Sunshine pointed to Talita in open court:

Atty. Bautista:

Q:

And when you said you saw Talita passing by before he shot you and your companions, where was he in relation to your location?

A:

Sir, nasa likuran po siya.

Q:

Back of what?

A:

At the back of the car, sir.

Q:

When you saw him for the first time and you said about to board your Nissan Sentra, where was Talita then?

A:

Sir noong pasakay na po kami ng kotse, nakita ko siyang nag-pass by.

Q:

Where was he when you first saw him?

A:

Nasa gilid lang po namin siya.

Q:

And how far was he when you first saw him?

A:

Mga ganyan lang po. (Witness demonstrated a distance of about one (1) meter).

x x x x

Q:

You have been mentioning and testifying about this person named Talita. If you will see him again, will you be able to recognize him?

A:

Yes, sir.

Q:

And will you kindly look around this courtroom now and tell us if this person Talita is present?

A:

Yes.

Q:

Will you kindly stand up and point to the person of Talita?

A:

Yes, sir. (Witness stood up and pointed to a person who, when asked his name, answered Christopher Talita).

x x x x

Q:

Now, you said that Talita shot you and your companions. Who were your companions madam witness?

A:

My companions then are my aunt, my husband and my baby sir.

x x x x

Q:

What kind of gun did Talita use in shooting at you and your group?

A:

Maliit lang pong baril iyong ginamit niya.

Q:

And how many times did he fire at you and your group if you can still remember?

A:

Maraming beses po, perhaps more than six (6) times.[15]

Maxima confirmed Sunshine's above statements in this manner:

Atty. Bautista:

Q: You said that Talita approached you, from what direction, left or right?

A: He came from the back portion of the car.

x x x x

Q: When the motorcycle stopped, how far was it from the back of the car?

A: Malapit lang po.

Atty. Bautista:

Witness demonstrating a distance of about half a meter from the back portion of the car.

x x x x

Q: How about you, what were you doing when Talita approached you?

A: I stopped because I saw Talita carrying a gun.

Q: What kind of gun was Talita holding then, a short or long firearm?

Atty. Bautista:

Witness demonstrating a short firearm, Your Honor.

When Talita approached you from the back of the car, what did you do?

A: He repeatedly shot my daughter, Marilou Tolentino.

Q: How many times did he fire his gun?

A: Around six times and twice at Marty.[16]

Sunshine and Maxima's identification of appellant Talita as the assailant is corroborated by the testimonies of Marty, Sunshine's wounded husband, and Enriqueta De Ocampo, the traffic enforcer, who also identified him.

Since this Court's appreciation of the testimonies of the prosecution witnesses is hampered by the fact that its members took no part at the trial, it must of necessity lend weight to the trial court's factual findings especially since there is no showing that its findings are palpably unsound or have nothing to support them in the record. The trial judge had the benefit of observing the witnesses first hand, their emotions or lack of it, their spontaneity or reluctance, their bodily reactions to interrogations, or the slight changes in the expressions on their faces. These send strong signs of falsehood or truth in testimonies. For this reason, the factual findings and conclusions of the trial court from such testimonies are usually entitled to much weight.[17]

What is more, the trial court found that soon after the police arrested Talita and his co-accused, both Sunshine and Maxima identified them at the police line-up on August 12, 1998, just five days after the shooting incident.[18] No doubt, their recollections of what happened were then still fresh in their minds. The possibility of their committing a mistake is somewhat remote.

Appellant Talita of course claims that positive identification is impossible since the shooting was too swift for ample observation. But it was not that swift. Sunshine saw Talita as he walked toward the car and pumped about six shots into the vehicle's occupants. What is more, Talita returned shortly after and fired his gun at Sunshine, giving her further opportunity to observe him. Besides, conditions of visibility at the time favored the witnesses, factors that lend credence to their testimonies.[19] The incident took place in broad daylight. Talita stood just about one meter from Sunshine, and a mere half meter from Maxima. Marty also said that Talita shot him from a distance of about two feet. [20] Under these circumstances, positive identification could not have been elusive.

The absence of proof that appellant Talita had a motive to commit the crime is of course not indispensable to conviction since the witnesses positively identified him and described with definiteness his role in the crime.[21] Likewise, the fact that Talita did not go into hiding cannot be considered proof of innocence. While it has been held that flight is an indication of guilt, non-flight does not necessarily mean non-guilt or innocence. Evidence of flight is usually taken into account merely to strengthen a finding of guilt. Non-flight cannot be singularly considered as evidence of innocence.[22]

Talita mainly relied on denial which, like alibi, is inherently a weak defense because it can easily be fabricated.[23] The Court held in *People v. Bandin*[24] that denial and alibi cannot be given greater evidentiary value than the testimonies of credible witnesses on affirmative matters. Positive identification, where categorical and consistent and without any showing of ill-motive on the part of the witnesses, prevails over denial which, if not supported by clear and convincing proof, is a negative and self-serving evidence, undeserving of weight in law.[25]

In sum, the Court finds no compelling reason to disturb the factual findings of the trial court with regard to Talita's culpability. There being no mitigating or aggravating circumstances, the Court of Appeals correctly reduced the penalty for murder in Criminal Case 98-727 from death to reclusion perpetua.[26] Accordingly, this Court affirms the modification of penalties in Criminal Cases 98-728 and 98-729 for frustrated murder and attempted murder, respectively. But, while the trial court and the Court of Appeals commonly awarded P50,000.00 as death indemnity to the heirs of Marilou Tolentino in Criminal Case 98-727, prevailing jurisprudence dictates an award of P75,000.00.[27] All other monetary awards are sustained.

WHEREFORE, the appealed decision of the Court of Appeals in CA-G.R. CR-H.C. 01747 is **AFFIRMED** with **MODIFICATION**.

In Criminal Case 98-727, accused-appellant Christopher Talita is found **GUILTY** beyond reasonable doubt of the crime of Murder and is **SENTENCED** to suffer the penalty of Reclusion Perpetua. He is **ORDERED** to pay the heirs of Marilou Tolentino the sum of P75,000.00 as indemnity for death, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

In Criminal Case 98-728, accused-appellant Christopher Talita is found **GUILTY** beyond reasonable doubt of the crime of Frustrated Murder, and is **SENTENCED** to suffer the indeterminate sentence of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is **ORDERED** to pay Marty Sarte the sum of P388,478.00 as actual damages.

In Criminal Case 98-729, accused-appellant Christopher Talita is found **GUILTY** beyond reasonable doubt of the crime of Attempted Murder, and is **SENTENCED** to suffer the indeterminate sentence of four (4) years and two (2) months of prision correccional as minimum to ten (10) years of prision mayor as maximum.

### **SO ORDERED.**

Ynares-Santiago[\*], Carpio Morales[\*\*], Brion, and Del Catillo, JJ., concur.

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[\*] Designated additional member in lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 691 dated September 4, 2009.

[\*\*] In lieu of Associate Justice Leonardo A. Quisumbing, per Special Order No. 690 dated September 4, 2009.

[1] Rollo, pp. 3-24. Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Lucenito N. Tagle.

- [2] Records, p. 1.
- [3] Id. at 14.
- [4] Id. at 27.
- [5] Branch 259, presided by Judge Zosimo V. Escano.
- [6] TSN, January 25, 1999, pp. 136-140.
- [7] CA rollo, pp. 71-81. Penned by Judge Zosimo V. Escano.
- [8] Id. at 80-81.
- [9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [10] CA rollo, p. 203.
- [11] Rollo, pp. 17-19.
- [12] Id. at 15-17.
- [13] Id. at 22-23.
- [14] CA rollo, p. 257.
- [15] TSN, December 14, 1998, pp. 72-82.
- [16] TSN, November 10, 1998, pp. 43-48.
- [17] Libuit v. People, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 618.
- [18] TSN, October 30, 1998, pp. 16-17.
- [19] People v. Dela Cruz, G.R. No. 175929, December 16, 2008.
- [20] TSN, December 7, 1999, pp. 245-246.
- [21] People v. Benito, 363 Phil. 90, 98-99 (1999).
- [22] People v. Eduarte, G.R. No. 176566, April 16, 2009.
- [23] People v. Honor, G.R. No. 175945, April 7, 2009.
- [24] G.R. No. 176531, April 24, 2009.
- [25] Danofrata v. People, 458 Phil. 1018, 1028-1029 (2003).
- [26] People v. Balleras, 432 Phil. 1018, 1027 (2002).
- [27] People v. De Guzman, G.R. No. 173477, February 4, 2009.

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