

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTHONY C. DOMINGO AND GERRY DOMINGO, ACCUSED-APPELLANTS.

G.R. No. 184958. September 17, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal by Anthony C. Domingo from the January 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00325. The CA affirmed the April 23, 2001 judgment[2] of the Regional Trial Court (RTC), Branch 2 in Kalibo, Aklan, which found accused-appellant Anthony Domingo guilty of murder with frustrated murder in Criminal Case No. 5517. Accused-appellant Gerry Domingo has neither been arrested nor arraigned.

The Facts

Anthony was charged with murder and frustrated murder in an information that reads as follows:

That on or about the 18[th] day of July, 1999, in the evening, in Barangay Cabugao, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a long firearm, conspiring, confederating and helping each other, with evident premeditation, treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ROSEMELYN DE PEDRO, thereby inflicting upon the latter mortal gunshot wounds, to wit:

- The body of the deceased is in a state of rigor mortis. The body is dressed in a hospital gown with the name "RAFAEL S. TUMBOKON MEMORIAL HOSPITAL" printed in front. The head has a bandage wrapped around the head. The right forearm has a small piece of plaster at the medial side at the level of the wrist.

- Gunshot wound of entrance, 1 cm. in diameter and 17 cms. Deep, located at the posterior right parietal region of the head, directed anteriorly and to the left.

- 1 pellet, measuring 1 cm. in diameter, flattened and with irregular rough edges, was found at the left frontal region of the brain.

as per Postmortem Examination Report issued by Dr. Gliceria A. Sucgang, Rural Health Physician, Altavas, Aklan, hereto attached as Annex "A" and forming an integral part of this Information, which gunshot wounds directly caused the death of said ROSEMELYN DE PEDRO, as per Certificate of Death issued by the same physician, likewise attached hereto as Annex "B".

That on the same incident and with the single act of the above-named accused, another victim, VIVIAN DOMINGO was hit, thereby inflicting upon the latter gunshot wounds, to wit:

- Left shoulder with metallic foreign body

- Left arm, lateral and posterior thru and thru

- Left hand, 3[rd] finger proximal 3[rd] with fracture of proximal phalanx
- Abdomen, hypogastric area left inferolateral portion with metallic foreign body abdominal wall.

as per Medico-Legal report on Physical Injuries issued by Dr. Victor A. Santamaria, Medical Officer IV of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as Annex "G" and forming an integral part of this Information; the accused having thus performed all the acts of execution which would produce the felony of Murder but did not produce the same for causes other than their own spontaneous desistance, that is, the timely and able medical attendance rendered to the victim which prevented her death.

That as a result of the criminal acts of the accused, the heirs of the victim Rosemelyn De Pedro and private offended party Vivian Domingo suffered actual and compensatory damages in the amount of SEVENTY FIVE THOUSAND PESOS (P 75,000.00).

CONTRARY TO LAW.

Kalibo, Aklan, Philippines, September 29, 1999.[3]

The other accused, Gerry, went into hiding. Hence, only Anthony was arraigned on November 22, 1999. With the assistance of his counsel, he pleaded not guilty.[4]

The plaintiff-appellee, through the Solicitor General, presented its version of the facts as follows: On July 18, 1999, around 8:00 p.m., Nida de Pedro Domingo, her two children, and seven nephews and nieces were at home in Barangay Cabugao, Altavas, Aklan watching television. Their three dogs suddenly started to bark so Nida asked her niece, Rosemelyn de Pedro, to turn on the electric bulb that hang at the nearby mango tree beside the national road. When Rosemelyn did not budge, Nida herself turned on the lights, opened the bamboo window, and looked out of the window. She saw Anthony and Gerry, her brothers-in-law, standing under the mango tree. Without warning, Anthony and Gerry fired their pugakhang (homemade shotgun), hitting Nida in the right eyebrow. Rosemelyn, who was seated near the door with her back to the window, slumped on the floor with a wound in her head. Nida's daughter, Vivian, who was then combing her hair in front of the mirror, was hit on the left shoulder, left arm, left middle finger, and abdomen. When Vivian cried that she was hit, Nida immediately closed the window and shouted for help. The two accused fled towards Linayasan.[5]

Prior to the incident, Nida's older brother, Leopoldo de Pedro, was on his way to Nida's house to fetch his grandchildren. He was about 12 meters away from the house when the dogs barked. He saw the light and heard an explosion which he mistook for thunder until he saw accused-appellants standing near the mango tree and holding a shotgun. Leopoldo ducked behind a pile of soil. He saw the two escaped to Linayasan.[6]

Leopoldo, a certain Bobong, and Nonie were the first to respond to Nida's cries for help. Leopoldo testified that after the two accused left, he entered the house of Nida and saw his niece Rosemelyn lying on the floor while Vivian was assisted by other people. The victims were brought to the hospital.[7] Leopoldo, Bobong, and Nonie went to the police station to report the matter while Vivian stayed in the Dr. Rafael S. Tumbokon Memorial Hospital for five days. Rosemelyn died due to cerebral hemorrhage.[8]

For the defense, Anthony testified that in the afternoon of July 18, 1999, he left his house with his two children and proceeded towards the house of his sister, Teresita Domingo, located in Cabugao, Altavas, Aklan, about half a kilometer away. Anthony's son stayed long at his sister's place as they were still going to Alfredo Dalida, Sr.'s house across the river.[9]

In the evening, Alfredo was engaged in a drinking session with his friends in a hut located in Barangay Cabugao, Altavas, Aklan. Gerry allegedly passed by the hut on his way to the house of his parent-in-law. Gerry refused the group's invitation to join the drinking session. Soon, Gerry's brother, Anthony, arrived at the hut. Alfredo

accompanied Anthony to the former's house across the river of Dalipdip. Anthony wanted to talk to Alfredo's wife regarding the medical check-up of Anthony's wife in Manila who was due to arrive the following day. Since Anthony's children fell asleep while watching television, the Dalida spouses invited Anthony to pass the night in their house. Anthony and his children slept in the middle of the house which had no partition. Anthony alleged that he spent the entire night at the Dalida's.

The morning after the incident, Anthony learned that Ronnie Domingo alias "Kana" was the initial suspect. Anthony denied the charges and alleged that he had never been to the house of Nida since he was charged with killing Nida's brother, Tenorio de Pedro. Anthony said that he even avoided passing there since the de Pedros had said that they will kill him. He remained in Altavas and continued farming until he was arrested three months after the incident.[10]

Ronnie supported Anthony's defense and stated that he was the initial suspect in the shooting incident. He testified that on July 18, 1999, around 4:00 p.m., he was engaged in a drinking session at the store near councilwoman Gloria Marcelino's house. Because of drunkenness, he fell asleep at Gloria's place around 6:00 p.m. Around 7:00 p.m., he was awakened by Nida's shouts that it was "Kana" who shot her daughter and her niece. Ronnie was surprised at this accusation. Gloria told Nida not to suspect Ronnie because he was at her house sleeping at that time.[11]

On April 23, 2001, the court a quo found Anthony guilty of murder with frustrated murder. The fallo of the decision reads:

WHEREFORE, the Court finds the accused ANTHONY C. DOMINGO GUILTY beyond reasonable doubt of the complex crime of MURDER WITH FRUSTRATED MURDER, and hereby imposes upon him the penalty of death.

Further, the Court hereby orders the afore-named accused to pay the legal heirs of the victim ROSEMELYN DE PEDRO the following:

- P50,000.00 as civil indemnity ex delicto;
- P50,000.00 as moral damages; and
- P10,805.00 as actual damages supported with receipts only.

Further, the Court hereby orders that the cases against GERRY C. DOMINGO be ARCHIVED until his arrest.

With COSTS against Anthony C. Domingo.

SO ORDERED.[12]

In view of the imposition of the death penalty, the case was forwarded to the CA for review.[13]

In the appellant's brief, [14] Anthony reiterated his alibi. He also pointed out the inconsistencies in the testimonies of prosecution witnesses. For one, Nida claimed that the window was open at the time of the shooting which contradicts Vivian's testimony that the window was closed. Also, according to Anthony, the inaction of Gina de Pedro, Nida's niece, during the incident was contrary to human nature. Gina's allegation that there was only one shot also contradicts the prosecution's evidence showing four gunshot wounds on Vivian, two deformed pellets, and one plastic cap recovered from the crime scene. He also contended that since Leopoldo was not among the first to respond to Nida's cries for help, he could not have been at the crime scene and witnessed the attack. Lastly, Anthony attributed ill motive to the prosecution witnesses since they charged him of killing Tenorio, Nida's brother.

The Ruling of the CA

The CA found no merit in Anthony's contentions. In reviewing the testimonies of the witnesses, the appellate court found no inconsistencies that would question their credibility. For one, the window was initially closed as testified to by Nida, but she later opened it when Rosemelyn did not follow her order. The CA also held that Gina's inaction when the shot was fired was also understandable since she was in shock. Gina's testimony that there was only one fire does not contradict the physical evidence, since a single bullet of a shotgun can fire several pellets that can cause multiple injuries. As to whether Leopoldo de Pedro was at the crime scene, the CA found that Leopoldo stayed behind a pile of soil for three more minutes after the attack for fear that accused-appellants might see him. The fact that he was not among the first to arrive at Nida's side does not mean that he was not at the crime scene or that he did not witness the attack. The CA also dismissed Anthony's alibi and imputation of ill motive on the prosecution witnesses.

With regard to the damages, however, the CA found it appropriate to order the payment of exemplary damages in the amount of PhP 25,000 since treachery was proved. Furthermore, in view of Republic Act No. 9346, the imposition of the death penalty was proscribed. Thus, the trial court's judgment was amended as follows:

WHEREFORE, the Decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, dated 23 April 2003, in Criminal Case No. 5517 is UPHELD with modification only as to the penalty and award of civil damages. Accordingly, accused-appellant Anthony C. Domingo is hereby sentenced to suffer Reclusion Perpetua in lieu of death and is further ordered to pay the heirs of Rosemelyn De Pedro the amount of P25,000.00 as exemplary damages in addition to those awarded by the trial court.[15]

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND SELF-CONTRADICTORY TESTIMONIES OF THE PROSECUTION'S ALLEGED EYEWITNESSES.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal lacks merit.

We find no reason to disturb the findings of fact of the trial court. It is an established rule that findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted which would otherwise materially affect the disposition of the case.[16] In this case, we do not see any reason to depart from this rule.

The trial court gave credence to the testimony of the prosecution witnesses who positively identified Anthony as the culprit. Nida, Leopoldo, and Gina knew Anthony before the incident and ably recognized him at the time of the shooting. Anthony claims, however, that Nida and Gina could not have seen the attacker since the window was closed as testified by Vivian. Leopoldo could not have also seen the attacker since he was not the first to arrive at Nida's house.

We agree with the appellate court that there is no contradiction in the testimonies of Vivian and Nida. Before the shooting, the window was indeed closed, but when Nida heard the dogs barked, Nida opened the window. Nida testified as follows:

PROSECUTOR DEL ROSARIO:

Q: Mrs. Witness, do you remember where [you were] in the evening of July 18, 1999 at around 8:00 o'clock?

A: I was in the house.

x x x x

Q: What were you doing [in] your house?

A: I was watching T.V.

Q: Do you have companion in your house?

A: My children and some of my nephews and nieces.

Q: While you were watching T.V. was there any unusual incident that happened?

A: Yes, Sir.

Q: Please tell the Court what was that incident?

A: Our dog barked.

Q: After you heard your dog [barking], what did you do?

A: I asked Rosemelyn to switch on the light outside.

Q: [Was] Rosemelyn able to switch on the light as you instructed her?

A: She did not listen because she continued watching T.V.

Q: What did you do after Rosemelyn did not listen to you?

A: I was the one [who] stood up to switch on the light and to open the window.

Q: After you opened the window and switched the light, were you able to observe anything outside?

A: Yes, sir.

Q: Please tell the Court what you have observed?

A: I saw Gerry Domingo and Anthony Domingo outside.[17]

The Solicitor General also points out that at the time of the shooting, Vivian was facing the mirror and combing her hair. It was Gina and Nida who were near the window. Thus, the latter's testimonies carry more weight than Vivian's. Assuming that such a discrepancy exists, it is trivial and does not warrant the reversal of judgment. In *People v. Ave*, we held:

It is elementary that not all inconsistencies in the witnesses' testimony affect their credibility. Inconsistencies on minor details and collateral matters do not affect the substance of their declaration, their veracity, or the weight of their testimonies. Thus, although there may be inconsistencies on the testimonies of witnesses on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.[18]

In this case, Nida firmly stated that she saw accused-appellants fire at her. She testified as follows:

ATTY. IBUTNANDE:

Q: How long have you noticed the presence of Gerry Domingo and Anthony Domingo before you heard the gunfire?

A: Immediately after I opened the window, I saw them and thereafter I heard a gunfire.

Q: So, when they fired the gun you are still standing by the window, that is what you are trying to say?

A: The moment they fired and I was hit in my eye, I tried to sit on the chair.[19]

We further affirm the lower courts' reliance on the testimony of Leopoldo, specifically, that the latter was at the crime scene and witnessed the attack. He was not among the first to arrive at Nida's house because he hid behind a pile of soil for three minutes after the shooting incident. He testified as follows:

ATTY. IBUTNANDE:

Q: How long did you duck in that pile of soil before you stood up to go up of the house of your sister Nida Domingo?

A: Three (3) minutes, more or less.

Q: It took you three minutes, more or less, because you were afraid to show up by that pile of soil because you were afraid that you might be seen by Anthony Domingo and his companion, am I correct?

A: Yes, ma'am.[20]

Anthony further seeks to discredit Gina by pointing out her unnatural reaction to the shooting, i.e., that she remained standing by the open window during and even after the shooting incident. The 12-year-old girl was simply in shock, as observed by the appellate court. In *People v. Muyco*, we held:

Different people react differently to a given type of situation. There is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. One person's spontaneous or unthinking, or even instinctive response to a horrid and repulsive stimulus may be aggression, while another person's reaction may be cold indifference. A witness' inability to move, help or even to run away when the incident occurs is not a ground to label his testimony as doubtful and unworthy of belief. There is no prescribed behavior when one is faced with a shocking event.[21]

Also, Gina's testimony that she heard only one shot does not contradict the physical evidence of four gunshot wounds and two pellet caps recovered from the crime scene. The CA correctly held that a shotgun can fire a single bullet with several pellets that can cause multiple injuries or deaths.[22]

Anthony's alibi, that he was at Alfredo Dalida's house, has no merit. Alibi is the weakest of defenses. To exonerate an accused, one must show that he was at some other place at the time of the commission of the offense and that he was so far removed from the crime scene or its immediate vicinity that it could not have been possible for him to have committed the crime.[23] In this case, the trial court found that the house of Alfredo Dalida, Sr. was only 200 meters away from the crime scene. Such short distance makes it physically possible for Anthony to be at the scene of the crime. The Court has patiently reiterated the requisites for alibi to prosper, that is, the accused was not at the locus delicti when the offense was committed and it was physically impossible for him to be at the scene of the crime at the approximate time of its commission.[24] Anthony failed to comply with the time and distance requisites of alibi.

Anthony claims that Nida Domingo's initial suspect was Ronnie Domingo. He says that Nida went to the house of Gloria Marcelino after the incident to look for Ronnie. The Solicitor General points out, however, that at the time, Nida herself needed medical treatment for her injuries. Nida's daughter, Vivian, was also wounded and had to be rushed to the hospital. In rebuttal, Nida denied that she ever told Gloria that Ronnie shot Vivian and Rosemelyn. Considering these, we find that Anthony's claim is not worthy of belief.

Anthony further imputes ill motive on the prosecution witnesses, claiming that they blame him for the death of Nida's brother, Tenorio de Pedro; thus, their testimonies are not worthy of belief. It is doctrinal that the trial court's evaluation of the credibility of a witness and his or her testimony is accorded the highest respect because of the court's untrammelled opportunity to observe directly the demeanor of a witness and, thus, to determine whether he or she is telling the truth. It is also settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[25] In this case, both courts found that the eyewitnesses are credible. We do not see any reason to disregard such finding. We concur with the trial court's findings:

The Court cannot find any well-grounded basis that will indicate that these eyewitnesses were merely actuated by any improper motive.

It is utterly preposterous for these relatives of the victims who are crying for justice to merely pretend to have

seen the subject heinous event and then concoct a story that will allow the real culprits to remain free just to be able to callously implicate the innocent persons that they hate.

Moreover, considering the dangerous trait of accused Anthony C. Domingo and the circumstance that Gerry C. Domingo is still at large, it is highly improbable that they would dare hurl false accusations against them.[26]

The Solicitor General also notes that at the time of the incident, there was already a criminal case against Anthony for the death of Tenorio de Pedro; hence, there was no need for the relatives to prosecute him anew if only to get even with him.[27] More significantly, settled is the rule that motive is not essential to conviction when there is no doubt as to the identity of the culprit. Motive is not essential when there are reliable eyewitnesses who fully identified the accused as the perpetrator of the offense,[28] as in the case at bar.

With regard to damages, we raise the award of civil indemnity from PhP 50,000 to PhP 75,000; and moral damages from PhP 50,000 to PhP 75,000 for the death of Rosemelyn de Pedro, consistent with prevailing jurisprudence. We affirm the trial court's award of PhP 10,805 as actual damages based on the supporting receipts. The trial court held that the aggravating circumstances of treachery and dwelling were present, but failed to award any exemplary damages. While the appellate court was correct in adding exemplary damages, we deem it proper to raise the award from PhP 25,000 to PhP 30,000. Since the death penalty was proscribed by law, the sentence of reclusion perpetua was also correct.

WHEREFORE, the CA Decision dated January 31, 2007 in CA-G.R. CEB-CR-H.C. No. 00325 is AFFIRMED with MODIFICATION. Anthony C. Domingo is ordered to indemnify the victim's heirs with PhP 75,000 civil indemnity, PhP 75,000 moral damages, and PhP 30,000 exemplary damages. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 3-24. Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Arsenio J. Magpale and Romeo F. Barza.

[2] CA rollo, pp. 19-39. Penned by Judge Tomas R. Romaquin.

[3] Id. at 6.

[4] Id. at 21.

[5] Rollo, p. 6.

[6] Id. at 6-7.

[7] CA rollo, p. 27.

[8] Rollo, p. 7.

[9] CA rollo, p. 57.

[10] Id. at 58.

[11] Id. at 58-59.

[12] Id. at 38-39.

[13] People v. Mateo, G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640; Resolution dated September 14, 2004.

[14] CA rollo, pp. 50-71.

[15] Rollo, p. 23.

[16] *People v. Viñas, Sr.*, G.R. Nos. 112070-71, June 29, 1995, 245 SCRA 448, 453; *People v. Pija*, G.R. No. 97285, June 16, 1995, 245 SCRA 80, 84.

[17] Rollo, p. 14; TSN, June 20, 2000, pp. 3-4.

[18] G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 243-244 (citations omitted).

[19] Rollo, p. 13; TSN, June 20, 2000, p. 8.

[20] *Id.* at 15; TSN, May 24, 2000, p. 11.

[21] *People v. Roncal*, G.R. No. 94795, May 6, 1997, 272 SCRA 242.

[22] See *People v. Castillo*, G.R. No. 116748, June 2, 1997, 273 SCRA 22.

[23] *People v. Abundo*, G.R. No. 138233, January 18, 2001, 349 SCRA 577.

[24] *People v. Botona*, G.R. No. 115693, March 17, 1999, 304 SCRA 712, 736.

[25] *People v. Ausa*, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 610-611.

[26] CA rollo, p. 88.

[27] *Id.* at 114.

[28] *People v. Devaras*, No. L- 48009, February 3, 1992, 205 SCRA 676.

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