

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HERMINIANO MARZAN Y OLONAN, APPELLANT.

G.R. No. 189294. February 21, 2011

Ponente: BRION, J.

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BRION, J.:

We decide, through this Resolution, the appeal filed by appellant Herminiano Marzan y Olonan from the decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No 00123.

On May 10, 1996, appellant Herminiano Marzan y Olonan[1] was accused of murder[2] in the Regional Trial Court (RTC), Branch 20, Tacurong, Sultan Kudarat,[3] under the following Information:

That in the afternoon of February 22, [1996] at Sitio Valdez, Barangay Romualdez, Municipality of President Quirino, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, attack, assault and strangle one JOSEPH SARMIENTO, an 8[-]year old boy, which directly caused his instantaneous death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659 with the aggravating circumstances of taking advantage of superior strength.[4]

Appellant, upon arraignment, pleaded not guilty.

The antecedent facts and developments are summarized below:

At about 4:45 p.m. of February 22, 1996, while farmer Samuel Basalio was gathering grasses near a creek in Sitio Valdez, Barangay Romualdez, he saw from about 40 meters away, the appellant and eight-year old Joseph Sarmiento (victim) walking towards the creek. About 20 minutes later, Basalio saw the appellant walking alone from the creek going towards the rice field. When the appellant saw Basalio, he stared at him with a "dagger" look, and returned to the creek.[5]

At 5:00 a.m. the next day, February 23, 1996, Kagawad Dominador Regino saw the appellant who told him that he was going to General Santos City.[6] Later that morning, Elizabeth Sarmiento, the mother of the victim asked for assistance to look for her missing son.[7] Eventually, Officer-In-Charge Barangay Captain Amado Tomas was informed about the missing child. At 11:30 a.m., Amado went to Makar Port with the victim's uncle (Antonio Delfinado) after receiving a report that the missing child could be there with the appellant. At the port, Amado sought the assistance of the maritime police in looking for the appellant. The appellant was indeed at the port but ran upon seeing them. The maritime police gave chase and caught him.[8] Meanwhile, the body of the victim was found at the creek.[9] A postmortem examination revealed that the victim died from strangulation.[10] Antonio testified that he spent P10,000.00 for the victim's funeral and burial, but failed to present any receipt.[11]

The appellant denied the charge against him. While admitting that he was with the victim at 1:00 p.m. of February 22, 1996, he claimed that at 4:00 p.m., the victim asked permission to go to the barangay proper of Romualdez

and he allowed him to go.[12]

In its March 20, 1998 decision, the RTC convicted the appellant of murder based on eight pieces of circumstantial evidence that he was seen at about 4:45 p.m. of February 22, 1996 with the victim going towards the creek; (3) evidence that he was seen leaving evidence, namely: (1) the admission of the appellant that he was with the victim at about 4:00 p.m. of February 22, 1996; (2) alone, at about past 5:00 p.m. of February 22, 1996, coming from the creek going towards the direction of Barangay Katiku; (4) the report made to the barangay officials and to the police station in the morning of February 23, 1996 that the victim was missing; (5) evidence that the appellant was seen leaving at about past 5:00 a.m. of February 23, 1996, on board a passenger jeep going to Tacurong; (6) evidence that he was seen at about 2:00 p.m. of February 23, 1996 at the Makar Port by Amado and Antonio; (7) evidence that he ran away upon seeing Amado and Antonio at the Makar Port but was caught by the maritime police; and, (8) the discovery of the dead body of the victim at about past noon of February 23, 1996 at the creek where the said victim and the appellant had been seen together in the afternoon of February 22, 1996. The RTC appreciated the qualifying circumstance of treachery because the victim's weakness due to his tender age resulted in the absence of any danger to the appellant. The trial court sentenced the appellant to reclusion perpetua, and to pay P50,000.00 as civil indemnity to the heirs of the victim and P10,000.00 as actual damages to Antonio Delfinado for the funeral and burial expenses.[13]

On intermediate appellate review, the Court of Appeals affirmed the judgment of the RTC but modified the appellant's civil liability by awarding P50,000.00 as moral damages and P25,000.00 as temperate damages in lieu of actual damages.[14] From the appellate court, the case came to us for final review.

We affirm the conviction of the appellant.

In convicting the accused, the RTC enumerated no less than eight pieces of circumstantial evidence against the appellant. After due consideration, we are satisfied that the evidence adduced against the appellant constitute an unbroken chain that could only lead to the conclusion that the appellant was the perpetrator of the crime.

Significantly, this is not the first case where we convicted the accused on a similar set of facts and based solely on circumstantial evidence. In *People v. Raymundo Corfin*,^[15] we upheld the conviction of the accused based on evidence showing that: (1) the accused was the last person seen with the victim; (2) the accused and the victim were seen together near a dry creek; (3) the accused was seen leaving the place alone; and (4) the body of the victim was later found in the dry creek.

We duly considered the appellant's defense of denial — a defense that is inherently weak unless supported by other evidence.^[16] Denial is negative and self-serving and cannot be given greater evidentiary weight over the testimony of a credible witness who positively testified that the appellant was at the locus criminis and was the last person seen with the victim.^[17] Significantly, the appellant failed to support his denial by any supporting evidence. The RTC correctly appreciated treachery as a qualifying circumstance since a child, by reason of tender years, could not significantly defend himself against the strangulation that he was subjected to.^[18] Beyond reasonable doubt, the presented evidence, collectively considered, point to no other conclusion than the appellant's guilt of the crime of murder. Since neither aggravating nor mitigating circumstances attended the commission of the crime, the penalty of reclusion perpetua was properly imposed.

The lower court's error in considering and imposing the penalty was in its failure to appreciate the full civil liability of the appellant. Since the killing of the victim was attended by treachery, his heirs are additionally entitled to exemplary damages in the amount of P30,000.00.^[19]

WHEREFORE, the May 27, 2008 decision of the Court of Appeals in CA-G.R. CR-HC. No. 00123 is hereby

AFFIRMED with MODIFICATION. Appellant Herminiano Marzan y Olonan is found guilty of murder as defined and penalized in Article 248 of the Revised Penal Code, and is sentenced to reclusion perpetua. He is further ordered to pay the heirs of Joseph Sarmiento P50,000.00 as civil indemnity ex delicto, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00 as exemplary damages.

SO ORDERED.

[**]Brion, Acting Chairperson, Bersamin, [***]Abad, Villarama, Jr., and Sereno, JJ., concur.
Carpio Morales, J., (Chairperson) on Wellness Leave.

[**] Designated Acting Chairperson effective February 16, 2011, per Special Order No. 295 dated January 24, 2011.

[***] Designated additional Member of the Third Division effective February 16, 2011, per Special Order No. 296 dated January 24, 2011.

[1] Alias "Gingo" and "Emen."

[2] SeeREVISED PENAL CODE, Article 248.

[3] Docketed as Criminal Case No. 1479.

[4] CA rollo, p. 5.

[5] TSN, September 5, 1996, pp. 2-12.

[6] TSN, September 30, 1996, pp. 11-17.

[7] TSN, September 20, 1996, pp. 2-23.

[8] TSN, September 20, 1996, pp. 2-23.

[9] TSN, September 19, 1996, p. 7.

[10] TSN, September 6, 1996, p. 6.

[11] TSN, October 14, 1996, pp. 2-25.

[12] TSN, October 28, 1996, pp. 23-24.

[13] Id. at 17-56.

[14] Dated May 27, 2008. Decision penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justice Rodrigo F. Lim, Jr. and Associate Justice Edgardo T. Lloren of the Twenty-Third Division of the Court of Appeals. Rollo, pp. 4-14.

[15] G.R. No. 131478, April 11, 2002, 380 SCRA 504.

[16] People v. Teodoro, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 320; and People v. Mateo, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 390.

[17] People v. Corfin, supra note 7, at 514; and People v. Salas, G.R. No. 115192, March 7, 2000, 327 SCRA 319, 331.

[18] People v. Talavera, G.R. No. 139967, July 19, 2001, 361 SCRA 433, 443; and People v. Gonzales, G.R. No.

130507, July 28, 1999, 311 SCRA 547, 564.

[19] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and *People v. Gidoc*, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

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