

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX LINGASA, JORGE BI-AY, AND “JOHN DOE,” ACCUSED, ELISEO BI-AY, JR. Y SARINTAS ALIAS “GIDEON,” ACCUSED-APPELLANT.

G.R. No. 192187. December 13, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

Challenged in this appeal is the July 16, 2009 Decision[1] of the Court of Appeals (CA) which affirmed the March 27, 2003 Decision[2] of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental (RTC), finding accused Eliseo Bi-ay, Jr. y Sarintas alias "Gideon" guilty beyond reasonable doubt of the crime of murder.

On March 31, 1997, an information for Murder was filed against accused Eliseo Bi-ay, Jr. (Eliseo) and his co-accused, Jorge Bi-ay and Alex Lingasa, which reads as follows:

That on or about the 26[th] day of December, 1996, in the Municipality of Cauayan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in company of their other co-accused, whose true name is still unknown and herein designated only as "JOHN DOE," armed with a bolo, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault, and hack one RODRIGO CLARO, thereby inflicting multiple fatal hack wounds upon the body of the latter which caused his death.

CONTRARY TO LAW.[3]

When arraigned on April 3, 2000, Eliseo pleaded not guilty to the charge. Trial proceeded but only with respect to him as his co-accused were then at-large.

The respective positions of the parties were succinctly recited in the subject decision of the CA as follows:

On December 26, 1996, at around 7:00 in the evening, the victim Rodrigo Claro, together with his son Baby Boy Claro, were in the house of the victim's father, Francisco Claro, in Sitio, Barangay Caliling, Cauayan, Negros Occidental. While Rodrigo and Francisco were talking with each other, accused Jorge Bi-ay, Alex Lingasa, and appellant Eliseo Bi-ay, Jr. alias "Gideon" arrived. Accused Jorge Bi-ay, being the eldest in the group, then approached Francisco near the side of the house and asked for coffee. Francisco readily accommodated his visitors by getting coffee and sugar from the store of his younger sister nearby his house, and boiled some water. When the coffee was ready, accused Jorged [sic] requested the victim Rodrigo to serve coffee to his two companions, accused Alex and appellant Eliseo, who were waiting outside, which Rodrigo acceded.

Rodrigo then went out of the house and while carrying the two (2) cups of coffee, he noticed that his 10 year-old son, Baby Boy Claro, was following him. He turned his back and told his son to stay behind. When he was about to proceed, appellant Eliseo who was ahead of him, suddenly hacked him on the nape which caused

him to lose his balance and fall to the ground. Accused Alex followed suit and stabbed Rodrigo at the back by thrusting a bladed instrument. Accused Jorge also went towards Rodrigo and stabbed him.

Witnessing the vicious assault on his father, Baby Boy Claro ran and shouted to his grandfather for help who then went out from his house with a bolo. Within ten (10) meters away, Francisco saw appellant delivering hacking blows on his son who was then lying on the ground face up, while accused Jorge and Alex immediately withdrew and fled as Francisco nearly approached them. Thereafter, appellant also ran away after all of them took turns in hacking the victim.

By the time Francisco finally reached his bloodied son, the victim already succumbed to the multiple stab wounds he sustained which caused his untimely death.

After the incident, Dr. Lorna V. Transmontero, Municipal Health Officer of Cauayan, Negros Occidental conducted an autopsy and yielded the following post mortem findings:

- Hacked wound at the forehead mid portion 3 cm. in diameter.
- Hacked wound at the L side of the mouth 4 inches in diameter.
- Hacked wound at the R side of the lower portion of the ear 4 inches in diameter.
- Hacked wound at the L nipple upper portion 1 inch in diameter.
- Hacked wound at the L side of the hypochondrium 1 inch in diameter.
- Hacked wound at the R side of the R nipple upper portion 1 inch in diameter.
- Hacked wound at the posterior portion of the neck 2 inches in diameter.
- Hacked wound at the posterior portion of the R upper arm 2 inches in diameter.
- Hacked wound at the posterior portion of the R lower arm 2 inches in diameter.
- Hacked wound at the lower portion of the R leg 2 inches in diameter.
- Hacked wound at the L upper leg 2 inches in diameter.

On the other hand, appellant Eliseo denies the accusation against him and interposed the defense of alibi. He claims that on December 26, 1996, at around 5:00 in the afternoon, he and Jerry Siblag were in Sitio Kalapisan, Barangay Inayawan, Cauayan, Negros Occidental, to rent a sound system from Uldarico Alipan to be used in celebrating the birth anniversary of his deceased grandmother. Together with Uldarico, they left the latter's house and brought the sound system to his father's house at Sitio Kantyang, about seven (7) kilometers away, and arrived at around 7:00 in the evening. He stayed at the house of his father the entire evening and never left the place.[4]

On March 27, 2003, the RTC rendered a decision finding the accused guilty beyond reasonable doubt of murder, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Eliseo Bi-ay, Jr. alias "Gideon" guilty beyond reasonable doubt of the crime of murder as charged qualified by treachery and hereby sentences him to a penalty of imprisonment of reclusion perpetua and to indemnify the heirs of Rodrigo Claro the amount of P50, 000.00 by reason of his death and to pay the costs.

It is ordered that said accused be immediately remitted to the National Penitentiary.

Let this case be placed in the archives to be revived as soon as accused Alex Lingasa is apprehended.

The case against accused Jorge Bi-ay who is already deceased is DISMISSED.

SO ORDERED.[5]

Aggrieved, Eliseo appealed the RTC Decision to the CA assigning this lone error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY AS PRINCIPAL IN THE COMMISSION OF THE CRIME CHARGED WHEN HE IS ONLY LIABLE AS AN ACCOMPLICE.

The CA noted that Eliseo raised the defense of denial and alibi during the trial of the case at the RTC but, on appeal, he argued that he could only be liable as an accomplice, and not as a principal. In his Brief,[6] Eliseo assailed the RTC for finding him guilty as principal by direct participation in the commission of the crime of murder against the victim. He claimed that the prosecution failed to show clear proof that he conspired with his co-accused in the killing of the victim. His alleged cooperation in the assault on the victim was not indispensable, thus, he could only be held liable as an accomplice. Moreover, the credibility of the prosecution witnesses was doubtful because of the glaring inconsistencies and lapses in their narration of their version of the incident.

On the other hand, the prosecution counters that the role of the accused as principal by direct participation in the execution of the crime was clearly established. Moreover, the questioned discrepancies and inconsistencies in the prosecution witnesses' testimonies are minor and trivial.

On July 16, 2009, the CA rendered a decision affirming with modification the RTC Decision, the dispositive portion of which reads:

WHEREFORE, premises considered the assailed Decision of the Regional Trial Court, 6th Judicial Region, Branch 61, Kabankalan City, Negros Occidental, in Criminal Case No. 97-1893, finding accused-appellant Eliseo-Biay, Jr. y Sarintas alias "Gideon," guilty beyond reasonable doubt of Murder, is hereby AFFIRMED with MODIFICATION. Appellant is hereby directed to pay the heirs of Rodrigo Claro the amounts of P50,000.00 as moral damages, P25,000.00 as exemplary damages, and P25,000.00 as temperate damages in addition to the P50,000.00 as civil indemnity awarded by the trial court.

No costs.

SO ORDERED.[7]

Hence, this petition raising this lone

ISSUE

WHETHER OR NOT THE ACCUSED-APPELLANT ELISEO-BI-AY, JR. y SARINTAS alias "GIDEON" IS GUILTY BEYOND REASONABLE DOUBT OF MURDER.

The accused argues that the facts established by the prosecution failed to show the existence of conspiracy in the killing of the victim. It was rather proven that he did not have any direct participation in the slaying because his initial hacking of the victim did not mortally wound him. The victim died after he was fatally stabbed in the back by his co-accused. Hence, he can only be liable as an accomplice because his participation was not indispensable compared with those of his co-accused.

Moreover, the accused claims that Francisco Claro (Francisco), testified on direct examination that he saw all the accused hacking his son. On cross-examination, however, his testimony was to the effect that he saw the other assailants fleeing away from the scene of the crime and the accused was the only one holding a weapon and stabbing the victim.

The Court finds no merit in the appeal.

It is a well-entrenched doctrine that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.[8] The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sign, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien." [9]

This rule admits of exceptions, however, such as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts.[10]

In the case at bench, the Court has not come across any misapprehension of facts. The prosecution witnesses, Francisco and Baby Boy Claro (Baby Boy), saw with their own eyes the brutal killing of the victim. The Court finds no indication that either Francisco or Baby Boy was lying.

Thus, in the absence of any of these exceptions warranting the reversal of the decisions of the courts below, the general rule applies. In addition, the Court notes that the trial court's findings have been affirmed by the appellate court which, therefore, makes said findings generally conclusive and binding upon this Court.

Strangely, the accused interposed inconsistent defenses, as noted by the CA. In the RTC, he claimed denial and alibi. On appeal, he put up the defense that his participation in the murder was merely that of an accomplice instead of that of a principal by direct participation. Clearly, his change of defense strategy rendered his defense impotent.

Indeed, the accused is guilty as principal by direct participation. By his own admission, he delivered the first blow on the unwary victim. He initiated the deadly assault by hacking the hapless victim on the nape, causing the latter to immediately lose his balance and fall to the ground. Right after his initial attack, his co-accused rushed towards the poor and helpless victim and stabbed him several times in the back until he died. As confirmed by the autopsy report of Dr. Lorna V. Transmontero, the Municipal Health Officer of Cauayan, Negros Occidental, the victim died of multiple stab wounds inflicted on several parts of his body.

Considering the above circumstances, the Court cannot hold the accused liable as a mere accomplice because his active and direct involvement in the brutal killing of the victim was too obvious.

For said reason, it is not even important to find out if conspiracy attended the commission of the crime. The conviction of the accused was not because of any conspiracy. He was convicted because he was positively identified by the eyewitnesses, Francisco and Baby Boy, as one of the assailants who actively and directly participated in the killing of Rodrigo Claro.

At any rate, the records clearly prove that there was conspiracy in the commission of the crime. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Where all the accused acted in concert at the time of the commission of the offense, and it was shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established.[11]

In the case at bench, the initial hacking by the accused followed by the multiple stabbing by his co-accused proves that they acted in concert at the time of the brutal killing. The fact that each one of them carried a deadly bladed

weapon shows that they acted pursuant to the singular purpose of killing the victim. It is not important who delivered the fatal blow. In conspiracy, it matters not who among the accused actually killed the victim. The act of one is the act of all. Each of the accused is equally guilty of the crime committed.[12]

On the alleged inconsistency or discrepancy in the testimony of Francisco, the Court finds none. The alleged inconsistency is more apparent than real. As pointed out by the CA, what he meant was that while he was still approaching them, he witnessed the accused ganging up on his son. When he was already there, he saw the accused continuously stabbing him while his companions were running away. Thus the Court considers innocuous whatever discrepancies there were in the testimony of Francisco.

Truth-telling witnesses are not expected to give flawless testimonies, considering the lapse of time and the treachery of human memory. The Court has stated time and again that minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimonies on the whole are coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed.[13] Instead, they may even serve to strengthen their credibility as they negate any suspicion that their testimonies have been fabricated or rehearsed.

WHEREFORE, the July 16, 2009 Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 4-19. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justice Stephen C. Cruz and Associate Justice Rodil V. Zalameda.

[2] CA rollo, pp. 17-23.

[3] Rollo, p. 5.

[4] Id. at 6-7.

[5] CA rollo, p. 23.

[6] Rollo, pp. 62-73.

[7] Id. at 19.

[8] *People of the Philippines v. Jerry Bantiling*, 420 Phil. 849, 862-863 (2001).

[9] *People of the Philippines v. Ernesto Cruz, Jr. y Concepcion*, G.R. No. 168446, September 18, 2009, 600 SCRA 449, 464.

[10] *People of the Philippines v. Johnny Bautista y Bautista*, G.R. No. 188601, June 29, 2010.

[11] Id.

[12] *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 455.

[13] *People v. Jose de la Cruz*, 452 Phil. 1080, 1095 (2003).

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