

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DINNES OLASO AND ROLLY ANGELIO, ACCUSED. ROLLY ANGELIO, APPELLANT.

G.R. No. 197540. February 27, 2012

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the decision[1] dated February 24, 2011 of the Court of Appeals (CA) in CA-G.R. CR HC No. 03770. The CA affirmed with modification the decision[2] dated August 1, 2008 of the Regional Trial Court (RTC), Branch 122, Caloocan City, in Criminal Case No. C-71776, convicting Rolly Angelio (appellant) of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.[3] The CA modified the RTC decision by ordering the appellant to indemnify the heirs of Narciso Patingo (victim) in the amounts of P75,000.00 as civil indemnity ex delicto, P50,000.00 as moral damages, P25,000.00 as temperate damages and P25,000.00 as exemplary damages.[4]

The Facts

The appellant and one Dinnes Olaso[5] were charged with murder under the following information:

That on or about the 25[th] day of May 2004, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding with (sic) one another, without any justifiable cause, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and stab with bladed weapons on the vital parts of his body one NARCISO PATINGO Y CAMAYMAYAN, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.

CONTRARY TO LAW.[6] (emphasis supplied)

Only the appellant was apprehended and when arraigned, he pleaded not guilty to the charge. Trial on the merits thereafter ensued. The prosecution's case was anchored on the eyewitness testimony of the victim's brother, Jimmy Patingo (eyewitness), who saw the appellant and Olaso flag down the tricycle driven by the victim. According to the eyewitness, the appellant rode at the back of the driver's seat while Olaso went inside the tricycle. The appellant suddenly embraced the victim while Olaso repeatedly stabbed him. Both the appellant and Olaso fled when they saw the eyewitness approaching. The victim died on his way to the hospital. The eyewitness testified that he incurred expenses in the amount of P120,000.00 for the burial and wake of the victim.

The autopsy report showed that the victim suffered stab and incise wounds located mostly on the left portion of his body.[7] Two stab wounds were inflicted on his heart.[8] The victim died due to loss of blood secondary to multiple stab wounds in the trunk.[9]

The appellant denied any participation in the stabbing incident. He claimed that he merely directed Olaso to the victim when he was asked about the identity of the driver of the tricycle that Olaso was then looking for. The appellant admitted that Olaso was his childhood friend but denied any knowledge of the motive behind the

stabbing and why he (the appellant) became involved in the case.

In its decision, the RTC found the appellant guilty beyond reasonable doubt of murder based on the qualifying circumstance of treachery. The RTC also ruled that there was conspiracy between the appellant and Olaso to kill the victim. The RTC sentenced the appellant to suffer the penalty of reclusion perpetua and ordered him to indemnify the heirs of the victim in the amount of P50,000.00.[10]

The CA, on appeal, affirmed the appellant's conviction with modification of the imposed civil liability. The CA rejected the appellant's argument that the inconsistency between the sworn affidavit (that he and Olaso stabbed the victim) and the testimony of the eyewitness (that it was only Olaso who stabbed the victim) created doubt as to his participation in the stabbing. The CA held that the testimony of the eyewitness was only more detailed with respect to the appellant's participation than what was stated in the sworn affidavit. The CA observed that both the sworn affidavit and the testimony of the eyewitness established the collective effort of the appellant and Olaso to kill the victim.[11]

In addition, the CA ruled that the RTC correctly appreciated the attendant conspiracy and treachery in the victim's killing, explaining that the overt acts of the appellant and Olaso demonstrated their clear intent to kill the victim. The CA further held that the appellant's participation in embracing the victim while Olaso repeatedly stabbed him was indispensable in the commission of the crime as it left the victim defenseless and unable to resist the attack.[12]

With respect to the award of damages, the CA increased the civil indemnity ex delicto from P50,000.00 to P75,000.00. The CA also awarded P25,000.00 as temperate damages in lieu of actual damages, pursuant to Article 2224 of the Civil Code, as amended. Likewise, the CA awarded P50,000.00 as moral damages, holding that the award was mandatory in a murder case, and P25,000.00 as exemplary damages, since the killing was attended with treachery.

Hence, the present appeal.

The Issues

The appellant attacks his conviction by raising two issues involving the appreciation of the testimony of the eyewitness on the extent of his participation and the nature of the crime committed.

The Office of the Solicitor General (OSG) maintains the credibility of the narration made by the eyewitness against whom no ill-motive was established. The OSG insists that the extent of the appellant's participation as co-conspirator in the killing of the victim was clearly proven by the evidence. Likewise fully established was the treacherous manner in the way the two men ganged up and killed the victim through their concerted efforts.

The Court's Ruling

We find no reason to overturn the conviction of the appellant.

The factual findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.[13] When the credibility of the eyewitness is at issue, we give due deference and respect to the assessment made by the RTC, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.[14] Thus, once a guilty verdict has been rendered, the appellant has the burden to clearly prove on appeal that errors in the appreciation of the evidence committed by the lower courts.

We agree with the CA's finding giving credence to the eyewitness' account which firmly and positively identified the appellant as one of the perpetrators of the crime. The records failed to show any ill-motive on the part of the eyewitness to falsely testify against the appellant. On the other hand, the appellant draws attention to

the inconsistent statements made by the eyewitness in his sworn affidavit and in his court testimony regarding his participation in the crime. “It is settled that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit [the said witness] since ex parte affidavits are generally incomplete, and are generally subordinated in importance to testimony in open court.”[15] In other words, the existence of discrepancies between the sworn affidavit and the testimony of the eyewitness in court does not render his account of the antecedent events unreliable.

In this case, the inconsistencies pointed out are too trivial to have any material bearing in the determination of the appellant’s guilt. We take note that the eyewitness’ sworn affidavit and court testimony implicated the appellant in the killing of the victim. Moreover, both statements of the eyewitness can be reconciled by a scrutiny of the court testimony which only provided a more detailed account of the antecedent events and of the appellant’s actual participation in killing the victim.

We also find that the inconsistencies pointed out to be inconsequential, given the presence of conspiracy between the appellant and Olaso in killing the victim. “Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.”[16] The presence of conspiracy may be inferred from the circumstances where all the accused acted in concert at the time of the commission of the offense.[17] Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution.[18] Moreover, when there is conspiracy, it is not important who delivered the fatal blow since the act of one is considered the act of all.[19] It matters not who among the accused actually killed the victim as each of the accused is equally guilty of the crime charged.[20]

As testified to by the eyewitness, the overt acts of the appellant and Olaso showing their conspiracy to kill the victim are: (1) the appellant and Olaso flagged down the tricycle being driven by the victim; (2) the appellant seated himself at the back of the driver’s seat while Olaso went inside the tricycle; (3) the appellant and Olaso simultaneously assaulted the victim – the appellant embracing the victim while Olaso stabbed him; and (4) both men immediately fled the scene after the stabbing. The above circumstances plainly show the common design and the unity of purpose between the appellant and Olaso in executing their plan to kill the victim.

On the issue of the nature of the killing, we find that the CA correctly appreciated the qualifying circumstance of treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[21] To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed.[22]

The records show that the victim was attacked while driving his tricycle. Similarly, the autopsy findings show the lack of defensive wounds on the victim’s body which indicated how sudden and unexpected the attack had been and how the unsuspecting victim was unable to put up any defense. These same records also show that the attack was the result of deliberate and careful planning between the appellant and Olaso, as demonstrated by the evidence showing: (1) the designation of the respective roles that the two men would play in committing the crime; and (2) the act of carrying a weapon to be used against the victim. Treachery can be clearly inferred under the circumstances of the perpetrators’ plan which ensured the execution of the killing without risk of any possible harm to the appellant and Olaso.

Accordingly, we find that the records amply support with moral certainty the appellant’s guilt for the crime of murder. Article 248 of the Revised Penal Code (Code), as amended, provides:

[a]ny person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder

and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery x x x.

Murder was committed, considering the use of treachery in a killing that does not fall within the definition of parricide under Article 246 of the Code. Thus, the RTC and the CA correctly imposed the penalty of reclusion perpetua on the appellant, absent any attendant mitigating or aggravating circumstances.[23] In this regard, we also uphold the CA's award of P50,000.00 as moral damages for the death of the victim.[24] However, we modify the other awards given by the CA to conform to prevailing jurisprudence.

First, the award of civil indemnity is reduced from P75,000.00 to P50,000.00. We held in *People of the Philippines v. David Maningding*[25] that when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the proper amount should be P50,000.00 as civil indemnity.

Second, we increase the award of temperate damages from P25,000.00 to P30,000.00 in accordance with current jurisprudence.[26]

And lastly, we increase the award of exemplary damages from P25,000.00 to P30,000.00 since the killing was attended with treachery.[27]

WHEREFORE, we AFFIRM the decision dated February 24, 2011 of the Court of Appeals in CA-G.R. CR HC No. 03770 finding appellant Rolly Angelio guilty beyond reasonable doubt of murder. We MODIFY the awards of damages in that appellant Rolly Angelio is ORDERED to PAY the heirs of the victim Narciso Patingo the following amounts:

- 1) P50,000.00 as civil indemnity;
- 2) P50,000.00 as moral damages;
- 3) P30,000.00 as temperate damages; and
- 4) P30,000.00 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga (retired) and Mariflor P. Punzalan Castillo; rollo, pp. 2-15.

[2] Penned by Presiding Judge Calixtro O. Adriatico; CA rollo, pp. 13-19.

[3] Supra note 1, at 14.

[4] Ibid.

[5] At large.

[6] Supra note 1, at 5.

[7] Supra note 2, at 15.

[8] Ibid.

[9] Ibid.

[10] Id. at 19.

[11] Rollo, pp. 5-6.

[12] Id. at 9-10.

[13] People of the Philippines v. Alvin del Rosario, G.R. No. 189580, February 9, 2011.

[14] Ibid.

[15] People v. Mationg, 407 Phil. 771, 788 (2001).

[16] People v. Bi-Ay, Jr., G.R. No. 192187, December 13, 2010, 637 SCRA 828, 836.

[17] Ibid.

[18] Ibid.

[19] Id. at 836-837.

[20] Ibid.

[21] REVISED PENAL CODE, Article 14, paragraph 16, as amended.

[22] People of the Philippines v. Bingky Campos and Danny “Boy” Acabo, G.R. No. 176061, July 4, 2011.

[23] The second paragraph of Article 63 of the Code, as amended, provides:

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[24] People of the Philippines v. David Maningding, G.R. No. 195665, September 14, 2011.

[25] Ibid., citing People v. Combate, G.R. No. 189301, December 15, 2010, 638 SCRA 797, also cited in People of the Philippines v. Allan Gabrino, G.R. No. 189981, March 9, 2011; and People v. Sanchez, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[26] The People of the Philippines v. Melanio Galo, alias “Dodo,” etc., et al., G.R. No. 187497, October 12, 2011.

[27] People of the Philippines v. Arnold Pelis, G.R. No. 189328, February 21, 2011.

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