

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODELIO LLOBERA Y OFIZA, ACCUSED-APPELLANT.

G.R. No. 203066. August 05, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

Questioned in the present notice of appeal is the Decision dated November 11, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04389,[1] which affirmed with modifications the Decision dated November 13, 2009 of the Regional Trial Court (RTC), Branch 15, Malolos City, in Criminal Case No. 680-M-06,[2] finding accused-appellant Rodelio Llobera[3] y Ofiza[4] guilty beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages.

In an Information[5] dated February 20, 2006 and filed on March 7, 2006, accused-appellant was charged with the murder of Cristituto Biona, Jr., as follows:

That on or about the 22nd day of March, 2005, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an improvised shotgun (sumpak) and with intent to kill one Cristituto Biona, Jr. y Billones, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of an improvised shotgun the said Cristituto Biona, Jr. y Billones, hitting him on his abdomen, thereby inflicting upon him mortal wound which caused his death.

Contrary to law.

Upon arraignment, accused-appellant, assisted by counsel de oficio, pleaded not guilty to the crime charged.[6]

The prosecution, in presenting its case, offered the testimonies of Betty dela Cruz (Betty)[7] and Rosebert Biona (Rosebert), relatives of the victim who witnessed the shooting incident firsthand.

Betty, an aunt by affinity of the victim, testified that on March 22, 2005, at around 11:00 p.m., a commotion took place in front of her house as certain persons threw stones at each other ("nagbatuhan").[8] When the commotion was over, she and her kin, including the victim, went out of the house to find out what happened.[9] It was then that accused-appellant, who suddenly emerged from a nearby house armed with an improvised shotgun, shot the victim on the left side of his body.[10] Betty testified that she is familiar with accused-appellant as the latter is her barangaymate and she always sees him when she passes by his house.[11]

Rosebert, a cousin of the victim, corroborated Betty's testimony. He recounted that, at the time in question, he was beside the victim as they were talking to each other when accused-appellant suddenly appeared and shot the victim.[12] He testified that he was able to positively identify accused-appellant at the time of the shooting because the place where the shooting occurred was illuminated by the moon, the lights from the neighbors' houses, and the lamp gasera at his uncle's house.[13]

The defense, for its part, presented accused-appellant who testified that on March 22, 2005, at around 10:00 p.m., he, his wife, their children, and certain visitors, one of whom was his cousin, Roderick Soriano (Roderick), were in their house in Barangay Mojon, San Jose del Monte, Bulacan, planning a swimming event.[14] His visitors left at around 11:15 p.m., and, thereafter, he and his family slept.[15] Accused-appellant maintained that it takes one and a half hours to reach the scene of the crime from his house; thus, he could not have been at the scene of the crime at the time the crime supposedly happened.[16] These statements were corroborated by Roderick when he testified.

After trial, the RTC rendered a judgment of conviction, viz.:

WHEREFORE, this court finds the accused Rodelio Llobrera y Otiaza GUILTY beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the deceased Cristituto Biona, Jr. y Billones the following sums of money[,] to wit:

- 1.) P60,000.00 as civil indemnity;
- 2.) P50,000.00 as moral damages; and
- 3.) P25,000.00 as exemplary damages.

SO ORDERED.[17]

The RTC reasoned that accused-appellant's denial and alibi cannot prevail over the positive identification of Betty and Rosebert.[18] Besides, according to the RTC, accused-appellant's claim of physical impossibility has no basis because, as attested to by accused-appellant himself, it takes only one and a half hours to reach the scene of the crime coming from accused-appellant's house.[19]

The RTC also ruled that treachery attended the killing of the victim for the prosecution's evidence shows that accused-appellant suddenly and unexpectedly appeared and shot the victim who did not sense any danger upon him.[20]

Accused-appellant appealed before the Court of Appeals, assigning the following errors:

I.
THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.
THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION.

III.
THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.[21]

After a review of the case, the Court of Appeals affirmed the conviction and merely modified the award of damages. The appellate court gave full credence to the positive identification of Betty and Rosebert, especially in the absence of any ulterior motives on their part.[22] Moreover, a review of Roderick's testimony showed that while it took an hour and a half to reach the scene of the crime from accused-appellant's house, that is by public transportation. Should one travel by private car, it would only take about fifteen minutes to traverse said distance. The appellate court then rejected accused-appellant's claim of physical impossibility.[23]

The appellate court also affirmed the finding of treachery. It held that accused-appellant's mode of attack was such that the victim appeared not to have seen him prior to, during, or after the attack, leaving him no chance to defend himself.[24]

Thus, the Court of Appeals held:

WHEREFORE, the appeal is DENIED for lack of merit. The Decision dated 13 November 2009 of the Regional Trial Court of Malolos City, Branch 15, in Criminal Case No. 680-M-06, is AFFIRMED with the following MODIFICATIONS: (1) the award of civil indemnity is increased to P75,000.00, (2) temperate damages is awarded in the amount of P25,000.00, and (3) the award of exemplary damages is deleted.

SO ORDERED.[25]

Accused-appellant is now before the Court, adopting the arguments he raised before the Court of Appeals.[26] Specifically, accused-appellant questions his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt, the disregard of his version of events, and the appreciation of treachery.[27]

Accused-appellant avers that Betty and Rosebert probably misidentified him. For one, contrary to Betty's claim, he and Betty were not barangaymates, as he resides in Barangay Mojon, while Betty resides in Barangay Minuyan. While accused-appellant admits that he used to visit Barangay Minuyan every Sunday, the probability that Betty would chance upon him as to make her familiar with his identity and physical characteristics is very low. For another, Rosebert was merely vacationing in Barangay Minuyan when the shooting incident transpired. Not being a resident of Barangay Minuyan, Rosebert is not familiar with the locals residing in Barangay Minuyan and in the nearby barangays as to enable him to pinpoint accused-appellant as the one who shot the victim. All in all, accused-appellant argues that Betty and Rosebert probably misidentified him as the perpetrator of the crime, especially since there were other suspects.[28]

Accused-appellant also questions the appreciation of treachery in the case at bar. He claims that while the prosecution alleged that the victim was suddenly shot by accused-appellant, it failed to establish that accused-appellant contemplated on the means or method to ensure the victim's killing without affording the latter a chance to defend himself.[29]

We dismiss the appeal.

Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act (R.A.) No. 7659, defines the crime of Murder -

ART. 248. Murder.- Any 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, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

"The elements of murder that the prosecution must establish are[:] (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [RPC]; and (4) that the killing is not parricide or infanticide." [30]

All these elements have been proven in the case at bar. The death of Cristituto Biona, Jr. is evidenced by a certificate of death duly presented in court.[31] Also, accused-appellant and the victim not being related to each other and the victim not being an infant, the killing here does not come within the definition of parricide or of infanticide.

As to accused-appellant's culpability, the clear and categorical testimonies of the prosecution witnesses obviate any doubt that on March 22, 2005, accused-appellant shot the victim with a shotgun, causing the latter a fatal wound which brought about his untimely death.

Betty resoundingly identified accused-appellant in open court as the one who shot the victim, viz.:

Q

This Cristituto Biona, where is he now?

A

[H]e is already dead.

Q

What was the caused (sic) of his death?

A

He was shot, sir.

Q

[W]ho shot him?

A

Rodel, sir.

Q

This Rodel, for how long have you known him prior to March 22, 2005?

A

More than a year, sir, because I always passed his house and I used to see him.

Q

Is he your barangaymate?

A

Yes, sir.

Q

If present in Court today[,], could you point this Rodel whom you claimed shot Cristituto Biona, Jr.[?]

INTERPRETER:

Witness pointing to a detention prisoner who when asked of his name answered Rodel Llobrera.[32]

Betty and Rosebert, both eyewitnesses to the shooting incident, categorically identified accused-appellant as the perpetrator of the crime. Betty testified:

Q

Considering that it was night time, how were you able to identify Rodel Llobrera as the one who shot Cristituto

Biona?

A

It was so near, sir, and the distance is like the door of this Courtroom, sir.

FISCAL:

7 meters, your Honor, from the witness.

Q

What illuminated the place at that time?

A

The moon, sir.

xxxx

Q

Considering that you were there and Cristituto Biona was here, how were you able to see Rode) Llobrera approached (sic) Cristituto Biona while he was on the side[?]

A

I would clearly see because when the 3 were talking I was looking at them illumined by the brightness of the moon.[33]

Betty's testimony was corroborated by Rosebert who, at that time, was in an opportune spot to clearly see the shooter. Rosebert recounted:

Q

Now, Mr. [W]itness, on this 11:00 o'clock of March 20, 2005, where were you then?

A

I was beside Cristituto Biona, sir.

Q

When you said Cristituto Biona [you] are referring to the deceased whose case is being tried today?

A

Yes, sir.

Q

What [were] you doing at that time?

A

We were talking about the holy week because we were planning about the grotto.

Q

What happened next when you were talking to each other?

A

Suddenly the accused appear[ed] and shot my cousin, Cristituto Biona.

INTERPRETER:

Witness again pointing to the accused.

FISCAL:

Q

What happened when he shot Cristituto Biona?

A

There was a shot and I heard my cousin said "ah" and then he fell down.

Q

For how many times your cousin was shot?

A

Only one (1).

Q

What part of his body was hit?

A

At the side of his body, sir.

xxxx

Q

Now, how far was Rodel Llobrera from the first time you saw him?

A

It was near, sir. It was about 5 meters far from me when he shot Cristituto Biona.

Q

When from the time he emerged from the side of your house up to the time he fired the shot[.] what was the lapsed (sic) of time, [M]r. [W]itness, between the emerging of Rodel Llobrera and the shooting of your cousin Cristituto Biona?

A

A few moment[s] when Rodel Llobrera appeared and shot my cousin because we were talking, sir.

xxxx

Q

Considering that it was evening at that time, you said more [or] less 11:00 o'clock in the evening how were you able to recognize Rodel Llobrera?

A

Because the moon was so bright.

Q

Aside from the moon was there any light which illuminate[d] the place?

A

Only the lights of our neighbor and the lights coming from the house of my uncle.

Q

What kind of light?

A

It is only lamp "gasera." [34]

During cross-examination, Rosebert further clarified his location vis--a-vis the victim and the shooter:

COURT:

Q

How near [were] you from Cristituto when he was shot?

A

About one (1) arm['s] length when he was shot from where I was standing.

Q

You said that you saw the accused Rodel shot (sic) Cristituto five (5) meters away, was the accused Rodel and Cristituto facing each other, when the [latter] was shot?

A

Yes, sir.

Q

Are you sure?

A

Yes, sir.

Q

What part of the body was Cristituto shot?

A

At the side, your Honor.

INTERPRETER:

Witness pointing to his side.

COURT:

Q

How about you[,] where were you facing at that time Cristituto was shot?

A

Cristituto was ahead of me and he was shot at the side, your Honor.

Q

Where were you facing at the time Cristituto was shot?

A

I was facing the person who shot Cristituto Biona.

Q

In the direction where the accused was at the time he allegedly shot Cristituto, is that what you mean?

A

Yes, your Honor.[35]

Notably, the trial court, which was in the best position to observe the candor and demeanor of the witnesses, gave full credence to Betty's and Rosebert's testimonies. "On this point, the Court has consistently abided by the rule that the trial court is in a better position to adjudge the credibility of witnesses, especially if its decision is affirmed by the [Court of Appeals], unless there is a showing that it had overlooked, misunderstood or misapplied some fact[s] or circumstance[s] of weight and substance that would have affected the result of the case. The Court finds no reason to depart from the assessment of the RTC, as affirmed by the [Court of Appeals], as this is supported by the records of the case.[36]

Accused-appellant's contention that Betty and Rosebert merely misidentified him is specious. Although Betty resides in Barangay Minuyan and accused-appellant resides in Barangay Mojon and they are, strictly speaking, not barangaymates, the fact is that accused-appellant goes to Barangay Minuyan every Sunday to visit his parents.[37] Accused-appellant's constant presence in Barangay Minuyan might have prompted Betty to inaccurately conclude that accused-appellant resides in the same barangay, but what is apparent is that, on a number of occasions prior to the shooting incident, Betty was already familiar with accused-appellant and his physical appearance.

As to Rosebert's familiarity with accused-appellant, although the former was merely a visitor in Barangay Minuyan, the antecedent events show that he had a good glimpse of accused-appellant prior to the shooting incident. Rosebert testified:

Q

Mr. [W]itness, so you do not know the accused prior to [M]arch 22, 2005?

A

No, sir.

COURT:

Q

You never saw his face even before that date of March 22, 2005?

A

I used to see his face but we do not know his name, your Honor.

Q

When for the first time did you see that face of the accused?

A

Only on that date of the shooting of my cousin, sir.

Q

But you said you saw his face even before the shooting incident, is that true?

A

On that day I saw his face, he was playing basketball. When we arrived at the place of our uncle at 2:00 p.m. he was playing basketball, sir?[38]

These testimonies are further strengthened by the fact that no ulterior motives were attributed to Betty and Rosebert. "The rule is that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full credence." [39]

Additionally, accused-appellant's defense of denial is unconvincing. "[D]enial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight." [40]

Moreover, accused-appellant's defense of alibi is also unconvincing. "For the defense of alibi to prosper, 'the accused must prove[:] (a) that he was present at another place at the time of the perpetration of the crime[;] and (b) that it was physically impossible for him to be at the scene of the crime' during its commission. 'Physical impossibility refers to distance and the facility of access between the situs criminis and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.'" [41] As testified to by Roderick and even by accused-appellant himself, the commute time from accused-appellant's house to the scene of the crime is only an hour and a half by means of public transport or fifteen minutes by means of private transport. Thus, there is no physical impossibility in the case at bar.

As to the finding of treachery, we affirm the rulings of the RTC and the Court of Appeals. The RPC, in Article 14(16), defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.

"There are two (2) conditions that must concur for treachery to exist, to wit: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. 'The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim [with] no chance to resist or escape.'" [42]

"The mere suddenness of the attack does not amount to treachery. The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape. Thus, even frontal attack can be treacherous when it is sudden and unexpected[,] and the victim is unarmed.,[43]

In the case at bar, treachery is evident. For one, "[t]he use of a xxx shotgun against [an] unarmed [victim] is undoubtedly treacherous, as it denies the [victim] the chance to fend off the offender." [44] For another, the fact that accused-appellant hid first and then blindsided the victim shows his conscious effort to adopt a deliberate attack which affords no warning to the victim.

As narrated by Betty:

Q

You said in your statement that Rodel Llobrera suddenly appear[ed] "bigla nalang sumulpot[,] " where did you come from when you said "bigla nalang sumulpot?"

A

He was hiding behind the house, sir.

Q

Whose house?

A

Our neighbor, sir.

Q

How did you know that he was hiding in that house?

A

Because he came behind that house when he shot Cristituto.

Q

What was the exact position of Cristituto when he was shot by Rodel Llobrera?

A

He was standing sideways.

Q

In relation to his body "na nakatagilid[,] " what was the relative position of Rodel Llobrera when [he] fired his shotgun directed to Cristituto Biona?

A

He was facing the victim and when he shot the victim[,] the victim turned side (sic), sir "tagilid."

Q

Madam witness, just for clarification, you said that Llobrera was hiding in a house[,] where did he come from, from what direction, at the side of the victim, in front of the victim [or] at the back of the victim before he delivered the shot?

A

At the side of the victim sir.[45]

The penalty for murder is reclusion perpetua to death.[46] There being no mitigating or aggravating circumstances attendant to the crime, the trial court and the appellate court correctly imposed the penalty of reclusion perpetua, following Article 63(2) of the RPC.[47] Such shall be without eligibility for parole pursuant to Section 3 of R.A. No. 9346.

As to the award of the damages, "[w]hen death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." [48]

In accordance with prevailing jurisprudence,[49] we affirm the award of P75,000.00 as civil indemnity, increase the award of moral damages to P75,000.00, and reinstate the RTC's award of exemplary damages but increase the amount to 1130,000.00. In line also with jurisprudence,[50] we additionally award temperate damages in the amount of P25,000.00.

WHEREFORE, premises considered, the present appeal is DISMISSED. Accused-appellant Rodelio Llobera y Ofiza is convicted of Murder, sentenced to reclusion perpetua without eligibility of parole, and ordered to indemnify the heirs of Cristituto Biona, Jr. in the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P25,000.00 as temperate damages.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Sesonando E. Villion and Amy C. Lazaro-Javier concurring; CA rollo, pp. 76-92.

[2] Penned by Judge Alexander P. Tamayo; id. at 7-10.

[3] Also referred to as Llobrera in other documents.

[4] Also referred to as Otiaza in other documents.

[5] Records, p. 1.

[6] Id. at 24.

[7] Also referred to as Betty dela Cruz Viola and Betty Mangupas in other documents.

[8] TSN, May 9, 2007, p. 11.

[9] Id. at 14.

[10] Id. at 14-18.

[11] Id. at 7.

[12] TSN, June 19, 2007, p. 5.

[13] Id. at 7.

[14] TSN, July 29, 2008, pp. 5-6.

- [15] Id. at 6-7.
- [16] Id. at 8.
- [17] Supra note 2, at 9-10.
- [18] Id. at 9.
- [19] Ibid.
- [20] Ibid.
- [21] Brief for the Accused-Appellant; CA rollo, pp. 29-30.
- [22] Supra note 1, at 85.
- [23] Id. at 88.
- [24] Id. at 88-90.
- [25] Id. at 91-92.
- [26] Manifestation; rollo, p. 39.
- [27] Supra note 21.
- [28] Id. at 30-31.
- [29] Id. at 37.
- [30] *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.
- [31] Records, p. 6.
- [32] TSN, May 9, 2007, pp. 6-7.
- [33] Id. at 13-21.
- [34] TSN, June 19, 2007, pp. 5-7.
- [35] Id. at 11-12.
- [36] *People v. Maglente*, G.R. No. 201445, November 27, 2013, 711 SCRA 142, 154-155.
- [37] TSN, August 26, 2008, pp. 2, 12.
- [38] TSN, June 19, 2007, p. 9.
- [39] *People v. Invencion*, 446 Phil. 775, 787 (2003).
- [40] *People v. Dela Rosa*, G.R. No. 201723, June 13, 2013, 698 SCRA 548, 556.
- [41] *People of the Philippines v. Virgilio Amoray Viscarra*, G.R. No. 190322, November 26, 2014, citing *People v. Mosquerria*, 414 Phil. 740, 749 (2001). and *People v. Trayco*, 612 Phil. 1140, 1161 (2009).
- [42] *People v. Nelmidia*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, citing *People v. Barde*, G.R. No. 183094, 22 September 2010, 631 SCRA 187, 215.
- [43] *People v. Watamama*, G.R. No. 188710, June 2, 2014, 724 SCRA 331, 339-340.

[44] *People v. Labiaga*, G.R. No. 202867, July 15, 2013, 701 SCRA 214, 225.

[45] TSN, May 9, 2007, pp. 15-17.

[46] Art. 248, RPC.

[47] Art. 63. Rules for the application of indivisible penalties. xxx.

xxxx

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

[48] *People v. Nelmidia*, *supra* note 42, at 437.

[49] *People v. Las Piñas*, G.R. No. 191723, July 23, 2014, 730 SCRA 571, 602.

[50] *People v. Gunda*, G.R. No. 195525, February 5, 2014, 715 SCRA 505, 512.

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