

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROLLY ADRIANO Y SAMSON, LEAN ADRIANO @ DENDEN, ABBA SANTIAGO Y ADRIANO, JOHN DOE AND PETER DOE, ACCUSED, ROLLY ADRIANO Y S...

G.R. No. 205228. July 15, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

This is an appeal of the Decision[1] of the Court of Appeals dated 30 May 2011 in CA-G.R. CR-HC No. 04028, which affirmed the Decision[2] of the Regional Trial Court dated 7 April 2009, convicting accused-appellant Rolly Adriano y Santos (Adriano) for the crime of Homicide (Crim. Case No. 13159-07) for the killing of Ofelia Bulanan (Bulanang) and for the crime of Murder (Crim. Case No. 13160-07) for the killing of Danilo Cabiedes (Cabiedes) in "People of the Philippines v. Rolly Adriano y Sales."

Adriano was charged with two (2) counts of Murder. The two (2) sets of Information read:

Crim. Case No. 13159-07

On or about March 13, 2007, around 8:00 o'clock (sic) in the morning, in Malapit, San Isidro, Nueva Ecija, within the jurisdiction of this Honorable Court, the above-named accused, conniving together, with intent to kill, treachery and abuse of superior strength, willfully shot several times with assorted firearms Ofelia Bulanan, hitting her on the different parts of her body, resulting in her death to the damage of her heirs.[3]

Crim. Case No. 13160-07

On or about March 13, 2007, around 8:00 o'clock (sic) in the morning, in Malapit, San Isidro, Nueva Ecija, within the jurisdiction of this Honorable Court, the above-named accused, conniving together, with intent to kill, treachery and abuse of superior strength, willfully shot several times with assorted firearms Danilo Cabiedes, hitting him on the different parts of his body, resulting in his death to the damage of his heirs.[4]

Version of the Prosecution:

On 13 March 2007, at around 8:00 a.m., Police Officer 1 Matthew Garabiles (PO1 Garabiles) and PO2 Alejandro Santos (PO2 Santos), in civilian clothes, were on their way to Camp Olivas, Pampanga, riding a motorcycle along Olongapo-Gapan National Road.[5]

While they were at Barangay Malapit San Isidro, Nueva Ecija, a speeding blue Toyota Corolla (Corolla) with plate no. WHK 635, heading towards the same direction, overtook them and the car in front of them, a maroon Honda CRV (CRV) with plate no. CTL 957.[6]

When the Corolla reached alongside the CRV, the passenger on the front seat of the Corolla shot the CRV and caused the CRV to swerve and fall in the canal in the road embankment. Four (4) armed men then suddenly alighted the Corolla and started shooting at the driver of the CRV, who was later identified as Cabiedes. During

the shooting, a bystander, Bulanan, who was standing near the road embankment, was hit by a stray bullet. The four armed men hurried back to the Corolla and immediately left the crime scene. PO1 Garabiles and PO2 Santos followed the Corolla but lost track of the latter.[7]

Later, both Cabiedes and Bulanan died from fatal gunshot wounds: Cabiedes was pronounced dead on arrival (DOA) at the Good Samaritan General Hospital due to three (3) gunshot wounds on the left side of his chest while Bulanan died on the spot after being shot in the head.

During the investigation, the police learned that the Corolla was registered under the name of Antonio Y. Rivera (Rivera). Upon inquiry, Rivera admitted that he is the owner of the Corolla but clarified that the Corolla is one of the several cars he owns in his car rental business, which he leased to Adriano. Later that day, Adriano arrived at Rivera's shop with the Corolla, where he was identified by PO2 Santos and PO1 Garabiles as one of the four assailants who alighted from the passenger's seat beside the driver of the Corolla and shot Cabiedes. He was immediately arrested and brought to the Provincial Special Operations Group (PSOG) headquarters in Cabanatuan City.[8]

In examining the crime scene, the Nueva Ecija Provincial Crime Laboratory Office recovered one (1) deformed fired bullet from a .45 caliber firearm and five (5) cartridges from a .45 caliber firearm.[9]

Version of the Defense

Adriano testified that on 13 March 2007, at about 6:00 a.m., at the time of the incident, he was at his house in Dolores, Magalang, Pampanga, washing the clothes of his child. After doing the laundry, he took his motorcycle to a repair shop and left it there.[10]

At about 8:00 a.m., Adriano went to the house of his friend, Ruben Mallari (Mallari), to ask for a lighter spring needed to repair his motorcycle. After having coffee in Mallari's house, Adriano went home and brought his child to his mother. On his way to his mother's house, he met his brother-in-law, Felix Aguilar Sunga (Sunga). After leaving his child at his mother's house, Adriano went to the cockpit arena to watch cockfights, where he saw his friend, Danilo Dizon (Dizon). After the fights, he left the cockpit at about 2:00 p.m. and went home and took a rest.[11]

After resting, Adriano picked-up his motorcycle and proceeded to a store and stayed there. At around 5:00 p.m., he went back home. After a while, he received a call from a certain Boyet Garcia (Garcia), who borrowed the Corolla from him, which he rented from Rivera.[12]

At 8:00 p.m., he met with Garcia to get the Corolla back. After dropping Garcia off, Adriano went to Rivera to return the Corolla, where he was arrested by police officers, thrown inside the Corolla's trunk, and brought to a place where he was tortured.[13]

The other defense's witnesses, Lucita Tapnio (Tapnio), Mallari, Sunga, and Dizon corroborated Adriano's testimony.[14]

When arraigned, Adriano pleaded not guilty. The other accused, Lean Adriano alias "Denden," Abba Santiago y Adriano, John Doe, and Peter Doe remained at large.

During trial, the prosecution presented eight (8) witnesses: (1) PO1 Garabiles, (2) PO2 Santos, (3) Police Senior Inspector Roger V. Sebastian, (4) SPO2 Alejandro Eduardo, (5) PO2 Jay Cabrera, (6) PO3 Antonio dela Cruz, (7) Adelaida Cabiedes, widow of Cabiedes, and (8) Ricky Flores.

On the other hand, the defense presented Adriano, Tapnio, Sunga, Mallari, and Dizon as witnesses.

Ruling of the Lower Courts

After trial, the RTC convicted Adriano. The RTC rejected Adriano's defense of alibi on the ground that it was not supported by clear and convincing evidence. According to the RTC, Adriano's alibi cannot prevail over the testimonies of credible witnesses, who positively identified Adriano as one of the perpetrators of the crime. Also, contrary to the allegations of the defense, the RTC gave full credence to the testimony of prosecution witnesses, PO1 Garabiles and PO2 Santos. The RTC determined that the defense failed to show proof that will show or indicate that PO1 Garabiles and PO2 Santos were impelled by improper motives to testify against Adriano.

The RTC found as proven the assessment of damages against the accused. Thus did the RTC order Adriano to pay the heirs of Cabiedes the amount of P222,482.00 based on the following: (1) One Hundred Thousand Pesos (P100,000.00) as funeral expenses; (2) Sixty Thousand Pesos (P60,000.00) as expenses for the food served during the burial; (3) Twelve Thousand Four Hundred Eighty Two Pesos (P12,482.00) as groceries used and served during the wake; and Sixty Thousand Pesos (P60,000.00) for the parts and service repair of the CRV.[15]

The dispositive portion of the RTC Decision dated 7 April 2009 reads:

WHEREFORE, finding accused ROLLY ADRIANO guilty beyond reasonable doubt of Murder, as charged, for the death of Danilo Cabiedes, there being no aggravating or mitigating circumstance that attended the commission of the crime, he is hereby sentenced to suffer the penalty of reclusion perpetua. Accused Rolly Adriano is also ordered to indemnify the heirs of Danilo Cabiedes in the amount of Php50,000.00 and to pay the sum of Php222,482.00 as actual damages.

And finding ROLLY ADRIANO also guilty beyond reasonable doubt of Homicide, as charged, for the death of Ofelia Bulanan, likewise, there being no aggravating or mitigating circumstance that attended the commission of the offense, he is further sentenced to suffer an indeterminate penalty of imprisonment from Eight (8) years and One (1) day of prision mayor medium, as minimum, to Seventeen (17) years and Four (4) months of reclusion temporal medium, as maximum, and to indemnify the heirs of Ofelia Bulanan in the amount of Php50,000.00.[16]

On appeal to the Court of Appeals, Adriano alleged that the RTC erred when it failed to appreciate his defense of alibi, as well as the testimonies of the other defense's witnesses. Adriano contended that the RTC erred when it gave credence to the testimony of the prosecution witnesses which are inconsistent and contradictory. In detail, Adriano referred to the following particulars: 1) whether the culprits started shooting when the victim's vehicle was still in motion; 2) which side of the vehicle did the shooters alight from; 3) the identity of the culprit who triggered the fatal shot; 4) whether the trip of PO1 Garabiles and PO2 Santos going to Camp Olivas, Pampanga was official business; 5) the precise distance of the assailants' vehicle from that of the two (2) eyewitnesses; and 6) the precise minutes of the shooting incident.

The Court of Appeals rejected Adriano's attempt to becloud the testimony of the prosecution witnesses. According to the Court of Appeals, the prosecution witnesses' positive identification of Adriano as one of the perpetrators of the crime cannot be overcome by minor inconsistencies in their testimony. The Court of Appeals ruled that these trivial differences in fact constitute signs of veracity.

On the defense of alibi, the Court of Appeals affirmed the ruling of the RTC that Adriano's claim that he was in Dolores, Magalang, Pampanga at the time of the incident does not convince because it was not impossible for Adriano to be physically present at the crime scene, in Barangay Malapit, San Isidro, Nueva Ecija, which can be reached by car in less than an hour.[17] The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the appeal is DENIED. The decision of the Regional Trial Court of Gapan City, Nueva Ecija, Br. 36, in Crim. Case Nos. 13159-07 and 13160-07 is AFFIRMED subject to the Modification that the award

of Fifty Thousand Pesos (Php50,000.00) as civil indemnity to the heirs of Danilo Cabiedes is INCREASED to Seventy-Five Thousand Pesos (Php75,000.00). In addition, the Accused-Appellant is ORDERED to pay the heirs of Danilo Cabiedes the amount of Seventy-Five Thousand Pesos (Php75,000.00) as moral damages; and the heirs of Ofelia Bulanan the amount of Fifty Thousand Pesos (Php50,000.00) as moral damages.

SO ORDERED.[18]

Our Ruling

In cases of murder, the prosecution must establish the presence of the following elements:

- That a person was killed.
- That the accused killed him.
- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.
- The killing is not parricide or infanticide.

In the case at bar, the prosecution has established the concurrence of the elements of murder: (1) the fact of death of Cabiedes and Bulanan; (2) the positive identification of Adriano as one of perpetrators of the crime; and (3) the attendance of treachery as a qualifying aggravating circumstance and use of firearms and abuse of superior strength as generic aggravating circumstances.

Death of Cabiedes

The present case is a case of murder by ambush. In ambush, the crime is carried out to ensure that the victim is killed and at the same time, to eliminate any risk from any possible defenses or retaliation from the victim[19] ambush exemplifies the nature of treachery.

Paragraph 16 of Article 14 of the Revised Penal Code (RPC) 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. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[20] The "essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself." [21]

Clearly, treachery is present in the case at bar as the victims were indeed defenseless at the time of the attack. Adriano, together with the other accused, ambushed Cabiedes by following the unsuspecting victim along the national highway and by surprise, fired multiple shots at Cabiedes and then immediately fled the crime scene, causing Cabiedes to die of multiple gunshot wounds. When the Corolla swerved into the CRV's lane, Cabiedes was forced to swiftly turn to the right and on to the road embankment, finally falling into the canal where his CRV was trapped, precluding all possible means of defense. There is no other logical conclusion, but that the orchestrated ambush committed by Adriano, together with his co-accused, who are still on the loose, was in conspiracy with each other to ensure the death of Cabiedes and their safety. The means of execution employed was deliberately and consciously adopted by Adriano so as to give Cabiedes no opportunity to defend himself or to retaliate.[22]

All these circumstances indicate that the orchestrated crime was committed with the presence of the aggravating circumstances of treachery, which absorbs the aggravating circumstance of abuse of superior strength, and use of

firearms. Indeed, Cabiedes had no way of escaping or defending himself.

Death of Bulanan

We refer back to the settled facts of the case. Bulanan, who was merely a bystander, was killed by a stray bullet. He was at the wrong place at the wrong time.

Stray bullets, obviously, kill indiscriminately and often without warning, precluding the unknowing victim from repelling the attack or defending himself. At the outset, Adriano had no intention to kill Bulanan, much less, employ any particular means of attack. Logically, Bulanan's death was random and unintentional and the method used to kill her, as she was killed by a stray a bullet, was, by no means, deliberate. Nonetheless, Adriano is guilty of the death of Bulanan under Article 4 of the Revised Penal Code,[23] pursuant to the doctrine of *aberratio ictus*, which imposes criminal liability for the acts committed in violation of law and for all the natural and logical consequences resulting therefrom. While it may not have been Adriano's intention to shoot Bulanan, this fact will not exculpate him. Bulanan's death caused by the bullet fired by Adriano was the natural and direct consequence of Adriano's felonious deadly assault against Cabiedes.

As we already held in *People v. Herrera*[24] citing *People v. Hilario*,[25] "[t]he fact that accused killed a person other than their intended victim is of no moment." Evidently, Adriano's original intent was to kill Cabiedes. However, during the commission of the crime of murder, a stray bullet hit and killed Bulanan. Adriano is responsible for the consequences of his act of shooting Cabiedes. This is the import of Article 4 of the Revised Penal Code. As held in *People v. Herrera* citing *People v. Ural*:

Criminal liability is incurred by any person committing a felony although the wrongful act be different from that which is intended. One who commits an intentional felony is responsible for all the consequences which may naturally or logically result therefrom, whether foreseen or intended or not. The rationale of the rule is found in the doctrine, '*el que es causa de la causa es causa del mal causado*', or he who is the cause of the cause is the cause of the evil caused.[26]

As regards the crime(s) committed, we reiterate our ruling in *People v. Nelmidia*. [27] In the aforesaid case, we ruled that accused-appellants should be convicted not of a complex crime but of separate crimes of two counts of murder and seven counts of attempted murder as the killing and wounding of the victims were not the result of a single act but of several acts.[28] The doctrine in *Nelmidia* here is apt and applicable.

In *Nelmidia*, we distinguished the two kinds of complex crime: compound crime, when a single act constitutes two or more grave or less grave felonies, and complex crime proper, when an offense is a necessary means for committing the other. Moreover, we also made a distinction that "when various victims expire from separate shots, such acts constitute separate and distinct crimes,"[29] not a complex crime.

As borne by the records, the Nueva Ecija Provincial Crime Laboratory Office recovered six (6) cartridges of bullets from a .45 caliber firearm. This does not indicate discharge by a single burst. Rather, separate shots are evidenced. One or more of which, though fired to kill Cabiedes, killed Bulanan instead. There is thus no complex crime. The felonious acts resulted in two separate and distinct crimes.

Finally, we ask, may treachery be appreciated in *aberratio ictus*?

Although Bulanan's death was by no means deliberate, we shall adhere to the prevailing jurisprudence pronounced in *People v. Flora*, [30] where the Court ruled that treachery may be appreciated in *aberratio ictus*. In *Flora*, the accused was convicted of two separate counts of murder: for the killing of two victims, Emerita, the intended victim, and Ireneo, the victim killed by a stray bullet. The Court, due to the presence of the aggravating circumstance of treachery, qualified both killings to murder. The material facts in *Flora* are similar in the case at

bar. Thus, we follow the Flora doctrine.

Also, contrary to the defense's allegation that Bulanan's death was not established, a perusal of the records would reveal that Bulanan's fact of death was duly established as the prosecution offered in evidence Bulanan's death certificate.[31]

On the alibi as defense, time and again, we have ruled alibis like denials, are inherently weak and unreliable because they can easily be fabricated.[32] For alibi to prosper, the accused must convincingly prove that he was somewhere else at the time when the crime was committed and that it was physically impossible for him to be at the crime scene.[33] In the case at bar, Adriano claimed he was in Dolores, Magalang, Pampanga at the time of incident. Adriano's claim failed to persuade. As admitted, Dolores, Magalang, Pampanga was only less than an hour away from the crime scene, Barangay Malapit, San Isidro, Nueva Ecija. Hence, it was not physically impossible for Adriano to be at the crime scene at the time of the incident.

It is likewise uniform holding that denial and alibi will not prevail when corroborated not by credible witnesses but by the accused's relatives and friends. Therefore, the defense's evidence which is composed of Adriano's relatives and friends cannot prevail over the prosecution's positive identification of Adriano as one of the perpetrators of the crime.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. In the case at bar, as the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter. There being no aggravating or mitigating circumstance present, the lower penalty should be imposed, which is reclusion perpetua, in accordance with Article 63, paragraph 2 of the Revised Penal Code.

To recover actual or compensatory damages, basic is the rule that the claimant must establish with a reasonable degree of certainty, the actual amount of loss by means of competent proof or the best evidence obtainable.[34] Documentary evidence support the award of actual damages in this case. The RTC computed the amount of actual damages as P222,482.00. However, a perusal of the records reveals that the amount of award of actual damages should be P232,482.00 as duly supported by official receipts.[35] Therefore, we hereby increase the award of actual damages from P222,482.00 to P232,482.00.

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 04028 is AFFIRMED with MODIFICATIONS. Appellant-appellant ROLLY ADRIANO y SAMSON is found GUILTY beyond reasonable doubt of MURDER (Criminal Case No. 13160-07) for the killing of DANILO CABIEDES and is hereby sentenced to suffer the penalty of reclusion perpetua. Accused- appellant ROLLY ADRIANO y SAMSON is ordered to pay the heirs of DANILO CABIEDES the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy Five Thousand Pesos (P75,000.00) as moral damages, Thirty Thousand Pesos (P30,000.00) as exemplary damages, and Two Hundred Thirty Two Thousand Four Hundred Eighty Two Pesos (P232,482.00) as actual damages.

Accused-appellant ROLLY ADRIANO y SAMSON is also found guilty beyond reasonable doubt of the crime of MURDER (Criminal Case No. 13159-07) for the killing of OFELIA BULANAN and is hereby sentenced to suffer the penalty of reclusion perpetua. Accused-appellant ROLLY ADRIANO y SAMSON is ordered to pay the heirs of OFELIA BULANAN in the amount of the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy Five Thousand Pesos (P75,000.00) as moral damages, Thirty Thousand Pesos (P30,000.00) as exemplary damages, and Twenty Five Thousand Pesos (P25,000.00) as temperate damages in lieu of actual damages.

All monetary awards shall earn interest at the rate of 6% per annum from the date of finality until fully paid.

SO ORDERED.

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

[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Rodil V. Zalameda, concurring; CA rollo, pp. 142-161.

[2] Penned by Presiding Judge Arturo M. Bernardo; records, pp. 267-281.

[3] CA rollo, pp. 143-144.

[4] Id. at 144.

[5] Records, p. 271.

[6] Id.

[7] Id.

[8] Id. at 271-272.

[9] Exhibit "W", id. at 157.

[10] Id. at 277.

[11] Id.

[12] Id. at 277-278.

[13] Memorandum for the Accused; id. at 232.

[14] Id. at 294-295.

[15] Exhibits "O," "P," "Q," and "R," respectively, records, pp. 149-152.

[16] Id. at 280-281.

[17] CA rollo, p. 17.

[18] Id. at 160.

[19] *People v. Obosa*, 388 Phil. 445, 461 (2000).

[20] *People v. Dolorido*, 654 Phil. 467, 476 (2011), citing *People v. Reyes*, 350 Phil. 683, 693 (1998).

[21] Id. at 476-477, citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[22] *People v. Padlan*, 352 Phil. 991, 1010 (1998).

[23] Art. 4. Criminal liability. - Criminal liability shall be incurred:

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

[24] 422 Phil. 830, 857 (2001).

[25] 407 Phil. 15, 27 (2001).

[26] *People v. Herrera*, supra note 24, citing *People v. Ural*, 155 Phil. 116, 123 (1974).

[27] G.R. No. 184500, 11 September 2012, 680 SCRA 386.

[28] *Id.* at 427.

[29] *Id.*, citing *People v. Gaffud, Jr.*, 587 Phil. 521, 534 (2008); *People v. Orias*, 636 Phil. 427, 447 (2010).

[30] 389 Phil. 601 (2000).

[31] Exhibit "L," Fonnal Offer of Evidence, records, p. 126.

[32] *People v. Robles*, 573 Phil. 577, 587 (2008).

[33] *People v. Mosquera*, 414 Phil. 740,749 (2001).

[34] *PNOC Shipping and Transport Corp. v. CA*, 358 Phil. 38, 53-54 (1998).

[35] Exhibits "O" (P100,000.00 as funeral expenses); "P" (P60,000.00 as expenses for the food served during the burial); "Q" (P12,482.00 as groceries used and served during the wake); and "R" (P60,000.00 for the parts and service repair of the CRV), amounting to the total sum of (P232,482.00), records, pp. 149-152.

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