PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REGGIE VILLARIEZ ALIAS “TOTI,” APPELLANT.

G.R. No. 211160. September 02, 2015

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is an appeal assailing the Decision[1] dated 20 November 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 00882. The CA affirmed with modification the Decision[2] dated 22 August 2007 of the Regional Trial Court (RTC) of Roxas City, Branch 17, in Criminal Case No. C-4770. The CA convicted appellant Reggie Villariez alias "Toti" (Villariez) of the crime of murder qualified by treachery and sentenced him to suffer the penalty of reclusion perpetua.

The Facts

On 22 September 1995, Villariez, together with his two brothers, Amado Villariez (Amado) and Tomas Villariez (Tomas), was charged in an Information for murder, defined and penalized under Article 248[3] of the Revised Penal Code. The Information states:

> That on July 3, 1995, at around 3:30 o'clock in the afternoon at the compound of the Catholic Cemetery in Brgy. Casanayan, Pilar, Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with guns of unknown caliber and with intent to kill, conspiring and confederating with one another, did then and there willfully, unlawfully and without any warning or provocation shot from behind one ENRIQUE OLIMBA, thereby inflicting upon the latter a fatal gunshot wound in the body causing the instantaneous death of said Enrique Olimba.
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> The crime was committed with the qualifying aggravating circumstances of treachery and known premeditation.
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> That because of the death of said ENRIQUE OLIMBA, his heirs are entitled to death indemnity of P50,000.00 plus other damages in consonance with the provisions of the New Civil Code of the Philippines.
>
> CONTRARY TO LAW.[4]

On 20 July 1995, warrants of arrest were issued against the three accused brothers - Villariez, Amado, and Tomas. Amado and Tomas surrendered and posted bail. On 26 August 1995, Amado was shot dead and the case against him was dismissed. On 17 November 1995, Tomas was arraigned and pleaded not guilty.

On 29 January 1997, the prosecution filed a Motion to Dismiss Tomas from the case. Perla Olimba (Perla), the wife of the victim Enrique Olimba (Enrique), executed an Affidavit of Desistance because of the insufficiency of evidence to prove Tomas' guilt beyond reasonable doubt. On 30 January 1997, the motion was granted by the RTC.

On 6 October 1999, the RTC ordered the issuance of an alias warrant of arrest against Villariez. On 14 February 2003, the alias warrant of arrest was returned to the RTC after Villariez was arrested. On the same day, Villariez was taken into custody by the provincial warden of the Capiz Rehabilitation Center.

On 5 May 2003, Villariez was arraigned and pleaded not guilty.

On 20 August 2003, at the pre-trial conference, the following facts were admitted by the parties: (1) the name and identity of Villariez; (2) the name and identity of the victim, Enrique; (3) that on 3 July 1995, at about 3:30 p.m., a shooting incident occurred in the premises of the Catholic Cemetery of Barangay Casanayan, Pilar, Capiz, where the victim was present and died as a result; (4) that Villariez knows Enrique since they are second cousins; (5) that Villariez is a brother of co-accused Amado and Tomas; and (6) that Villariez was arrested on 14 February 2003.

On 25 March 2004, Villariez posted a personal bail bond and was released from custody.

During the trial, the prosecution presented the following witnesses: (1) Dr. Florentino Bermejo (Dr. Bermejo), postmortem examiner; (2) Perla; (3) Randy Olimba (Randy), son of the victim; (4) Ana Olimba (Ana), daughter of the victim; and (5) Antonio Bacto, Chief of Police of Capiz.

Ana testified that on 3 July 1995, she, together with her family -parents Enrique and Perla and sibling Randy, attended the burial of Perla's uncle in the cemetery of Barangay Casanayan, Pilar, Capiz. At around 3:30 in the afternoon, while praying the novena before the burial, Ana, who was on top of a tomb and about eight meters from her father, heard a gun explode. When she turned to look at her father, she saw him spinning. Ana then shouted to her mother that her father was shot. Ana ran towards her father and saw Villariez waving a gun, accompanied by his brothers Amado and Tomas. Ana held her father's head with her dress drenched in blood. She asked her father the identity of the person who shot him. At the brink of death and with a voice she could hardly hear, her father uttered the name "Toti." Thereafter, she ran towards the road and told her mother to bring her father to the hospital. She also saw Villariez and his two brothers pointing their guns to people who were scampering away. The three then fled on a motorcycle.

Randy testified that he was two to three meters away from his father prior to the shooting. He saw Villariez and the latter's two brothers Amado and Tomas position themselves behind his father's back. Thereafter, he saw Villariez, with a short firearm, shoot his father. When the three started running away, he rose and followed them. Randy saw Amado ride a motorcycle while Tomas and Villariez passed by the rice fields. He then saw Villariez waving the short firearm he was carrying to some tricycle drivers. Afterwards, Randy saw Villariez riding on a motorcycle.

Perla testified that while attending the burial of her uncle, she heard an explosion. She went out and saw Villariez and his two brothers run away from the place where her husband was lying. Then she saw Ana cradling the head of her husband who was lying on the ground. Randy approached Perla and told her that Toti was the one who shot his father. Perla went to the Barangay Captain to inform him that Villariez shot her husband. Perla then returned to the cemetery. There, she found her husband already dead. Thereafter, Perla, Ana and Randy brought Enrique's body to their house and summoned Dr. Bermejo.

Dr. Bermejo, the Rural Health Physician of Pilar, Capiz, performed the postmortem examination on Enrique's cadaver. Dr. Bermejo testified that the victim's cause of death was severe hemorrhage, antecedent to a gunshot wound with the entrance of the bullet at the back. He further testified that both the victim and assailant were possibly standing when the incident happened.

The defense, on the other hand, presented (1) Villariez; (2) Tomas; and (3) Reynaldo Jalbuna (Jalbuna), Villariez's friend and co-worker.

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Villariez testified that he was at the Casanayan Cemetery attending the burial of his uncle at around 3:30 in the afternoon of 3 July 1995. He was with Jalbuna, his friend for more than 10 years. His elder brother Tomas was also present and was standing about 20-30 meters ahead of them. Around 200 people attended the burial and while they were praying, he heard a sudden outburst and saw a person fall down. The person was later identified as Enrique, the husband of his second cousin Perla. Everyone scurried away to different directions. Together with Jalbuna, Villariez then proceeded to Balasan, Iloilo.

Jalbuna testified that he was Villariez's co-worker and at the time of the incident they were employed by Vice Mayor Samson Vedro of Balasan, Iloilo. Jalbuna corroborated Villariez's testimony and stated that he was with Villariez in the afternoon of 3 July 1995 attending the funeral of Villariez's relative. They saw Tomas at the funeral but Tomas did not see them. When the shooting incident occurred, Jalbuna saw people running away. They followed everyone else and left the cemetery. They then headed back to work in Balasan, Iloilo.

Tomas testified that he, together with his brother Amado, attended the burial of his uncle on 3 July 1995. He did not see his brother Villariez during the burial. Tomas stated that he was about 10 meters away when he saw the man who shot Enrique but he did not recognize the lone gunman. He further said that Perla could not have seen the shooting incident since her husband was way behind her and that their two children, Randy and Ana, were not present during the burial.

In its Decision dated 22 August 2007, the RTC found Villariez guilty beyond reasonable doubt of the crime of homicide. The RTC found that the seething righteous indignation of the prosecution's witnesses against Villariez could have arisen only from their unadulterated knowledge of the identity of their kin's assailant. The RTC also gave weight to the positive identification of Villariez by Randy and found no reason to disregard the testimony of Ana on her father's dying declaration that it was "Toti" who shot him. The RTC, however, found that the prosecution failed to establish the existence of the qualifying circumstances of treachery and taking advantage of strength. Thus, it held Villariez liable for the crime of homicide, punishable by reclusion temporal. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of homicide, and he is hereby sentenced to suffer the indeterminate prison term of 6 years and 1 day of Prision Mayor, as minimum, to 12 years and 1 day of Reclusion Temporal, as maximum, and to pay the heirs of the victim of the amount of P70,000.00 as civil indemnity, P100,000.00 as moral damages and P50,000.00 as funeral and wake expenses, and pay the costs.
>
> SO ORDERED.[5]

On 20 September 2007, Villariez filed an appeal with the CA. Villariez raised the following errors of the RTC:

> I
> THE COURT A QUO GRAVELY ERRED IN DRAWING FACTUAL CONCLUSIONS FROM THE NEBULOUS AND DOUBTFUL TESTIMONIES OF PERLA OLIMBA, RANDY OLIMBA AND ANA OLIMBA, WIDOW, SON AND DAUGHTER, RESPECTIVELY OF THE DECEASED, THAT IT WAS THE ACCUSED-APPELLANT WHO SHOT THE LATTER;
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> II
> THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE ALLEGED STATEMENT OF THE DECEASED TO HER DAUGHTER, ANA OLIMBA, AFTER THE SUBJECT SHOOTING INCIDENT AS A DYING DECLARATION; AND
>
> III
> THE COURT A QUO GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FOR

> THE FAILURE OF THE PROSECUTION WITNESSES TO IDENTIFY HIM BEYOND REASONABLE DOUBT AS THE PERSON WHO SHOT TO DEATH THE DECEASED.[6]

The Ruling of the CA

In its Decision dated 20 November 2012, the CA affirmed with modification the decision of the RTC. The CA found that Randy's testimony leaves no doubt that Villariez committed the crime. Randy's eyewitness account was amply supported by the postmortem examination which revealed that the entrance wound, located at Enrique's back, caused his father's death. The CA also stated that the close relationship of the Olimbas' with Villariez, being Perla's second cousin, assured the certainty of the identification of Enrique's killer. The CA found the Olimbas' testimonies deserving of full faith and credit absent any ill motive on their part to testify against Villariez. Further, the positive identification of Randy was fully supported by the dying declaration of his father pointing to Villariez as the person who shot him. The CA also appreciated the qualifying circumstance of treachery since the shooting was swift, sudden and unforeseen which placed Villariez at a position which afforded him no risk arising from a defense which the victim might have made.

The dispositive portion of the decision states:

> WHEREFORE, premises considered, the Appeal is DENIED. The Decision dated August 22, 2007 of the Regional Trial Court (RTC), Branch 17, Roxas City in Criminal Case No. C-4770, is hereby AFFIRMED with MODIFICATION that the accused-appellant Reggie Villariez alias "Toti" is hereby found guilty beyond reasonable doubt of "Murder" qualified by treachery defined and penalized by Article 248 of the Revised Penal Code and is hereby meted the penalty of "RECLUSION PERPETUA."
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> He is further ordered to pay the heirs of Enrique Olimba, 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. Finally, interest on all these damages assessed at the legal rate of 6% from date of finality of this Decision until fully paid is imposed.
>
> SO ORDERED.[7]

The Issues

Villariez now comes before the Court assailing the decisions of the RTC and CA for (1) failure of the prosecution to amend the Information charging that he committed the crime alone and not in conspiracy with his conspirators-brothers; and (2) giving credence to the dying declaration made by Enrique which should be held inadmissible.

The Ruling of the Court
The appeal lacks merit.

We agree with the RTC and CA in ruling that the prosecution fully established Villariez's guilt for killing Enrique. Both the RTC and CA gave full faith and credence to the testimonies of the prosecution witnesses. Randy gave a frank and categorical eyewitness account that Villariez was the one who shot his father. Randy's account was corroborated by Dr. Bermejo's postmortem examination which revealed that the victim's cause of death was a gunshot wound to the back. Also, no ill motive was imputed to the prosecution witnesses to falsely accuse and testify against Villariez. The assertion of the accused that the witnesses were biased since they were related to the victim deserves scant consideration. Mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime, to accuse

somebody other than the real culprit.[8] Further, Villariez's defense of denial failed to cast doubt on the positive identification made by the prosecution witnesses and this defense, being inherently weak, cannot prevail over such positive identification of the accused as the perpetrator of the crime.

Villariez insists that since the prosecution failed to amend the Information charging that he committed the crime alone, and not in conspiracy with his brothers, then the prosecution violated his constitutional right to due process for not informing him of the true nature, cause and circumstance of the commission of the crime for which he was tried and convicted.

We disagree.

In the present case, the Information charged Villariez, together with his brothers, of inflicting upon Enrique a fatal gunshot wound in the body causing the latter's instantaneous death.

The commission of the specific acts charged against Villariez constitutes the offense charged in the Information. The prosecution's failure to establish conspiracy due to the death of a co-conspirator and the dismissal of the case against another co-conspirator does not defeat the conviction of the accused for the offense charged and proven during the trial.

In US v. Vitug,[9] the Information charged that the accused committed the specific acts therein attributed to him, and that he committed those acts in conspiracy with his co-accused. We ruled that the commission of the specific acts charged against the accused constituted the offense charged, and the failure to establish the conspiracy in no way prevented conviction of the accused for the offense charged and proven.

Villariez's allegation that the dying declaration made by the victim should be held inadmissible deserves scant consideration. We agree with the finding of the CA that all the requisites necessary to admit Enrique's dying declaration to his own daughter Ana were all present. The relevant portions state:

> Statements identifying the assailant, if uttered by a victim on the verge of death, are entitled to the highest degree of credence and respect. Persons aware of an impending death have been known to be genuinely truthful in their words and extremely scrupulous in their accusations. The dying declaration is given credence on the premise that no one who knows of one's impending death will make a careless and false accusation. Hence, not infrequently, pronouncements of guilt have been allowed to rest solely on the dying declaration of the deceased victim.
>
> For a dying declaration to be admissible in evidence, the following requisites must concur: (1) the dying declaration must concern the cause and surrounding circumstances of the declarant's death; (2) at the time of making his declaration, the declarant was under a consciousness of impending death; (3) the declarant must have been competent to testify as a witness; and (4) the declaration was offered in a criminal case for homicide, murder or parricide in which the declarant was the victim.
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> These requisites are all present in the case at bar.
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> First. Enrique's utterance pertains to the identity of the one who shot him.
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> Second. Contrary to the allegation of accused-appellant, it was established that the declarant Enrique, was under a consciousness of his impending death. In the case at bench, although he made no express statement showing that he was conscious of his impending death, it was clear however, considering the fatal quality of his injury and that he was barely heard by Ana when he uttered accused-appellant's name, that his death was imminent, x x x.
>
> Third. Declarant Enrique would have been competent to testify had he survived.

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Last. His dying declaration is offered in a criminal prosecution for murder where he was the victim.[10]

Further, we agree with the CA in appreciating treachery as a qualifying circumstance. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim, depriving the victim of any chance to defend himself. Here, Randy witnessed that it was Villariez who shot his father at the back. Enrique, deep in thought while listening to the burial service, was unprepared and had no means to put up a defense. Enrique was shot unexpectedly which insured the commission of the crime without risk to Villariez. This treacherous act qualified the killing to murder.

In sum, we find no cogent reason to depart from the decision of the CA. Villariez is guilty beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of reclusion perpetua. As for damages, the CA, in conformity with recent jurisprudence," properly awarded these amounts: (1) P75,000 as civil indemnity; (2) P75,000 as moral damages; (3) P30,000 as exemplary damages; and (4) P25,000 as temperate damages. Moreover, the amounts of damages awarded are subject to interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

WHEREFORE, we DISMISS the appeal. We AFFIRM the Decision dated 20 November 2012 of the Court of Appeals in CA-G.R. CR No. 00882.

SO ORDERED.

Brion, Del Castillo, Mendoza, and Leonen, JJ., concur.

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[1] Rollo, pp. 3-28. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando and Maria Elisa Sempio Dy concurring.

[2] CA rollo, pp. 39-42. Penned by Judge Edward B. Contreras.

[3] Article 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;
x x x x (Emphasis supplied)

[4] Rollo, p. 4.

[5] CA rollo, p. 42.

[6] Id. at 25.

[7] Rollo, p. 27.

[8] People v. Romero, 459 Phil. 484, 499 (2003).

[9] 28 Phil. 232, 237 (1914).

[10] Rollo, pp. 20-22.

[11] People v. Encinas, G.R. No. 205308, 11 February 2015; People v. Sevillano, G.R. No 200800 9 February 2015.

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