PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNABE P. PALANAS ALIAS “ABE”, ACCUSED-APPELLANT.

G.R. No. 214453. June 17, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Bernabe P. Palanas alias "Abe" (Palanas) assailing the Decision[2] dated January 16, 2014 of the Court of Appeals (CA) in CA-G.R. CR HC No. 04925, which affirmed the Decision[3] dated October 20, 2010, of the Regional Trial Court of Pasig City, Branch 157 (RTC) in Criminal Case No. 133352-H finding Palanas guilty beyond reasonable doubt of the crime of Murder under the Revised Penal Code (RPC).

The Facts

An Information[4] was filed before the RTC charging Palanas of the murder of SPO2 Ramon Borre y Orio (SPO2 Borre), viz.:

On or about March 26, 2006, in Pasig City, and within the jurisdiction of this Honorable Court, the accused [Palanas], acting in conspiracy with one male person who is at-large, whose true identity and whereabout[s] are still unknown acted as co-principal in the killing of one SPO2 Ramon Borre y Orio, committed as follows: said male person, armed with a gun, with intent to kill and with the qualifying circumstances of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shot one SPO2 Ramon Borre y Orio on his head and different parts of his body which directly caused his death, and thereafter, took the firearm of the said victim, boarded a motorcycle driven by the accused who thereafter, drove the motorcycle away from the scene of the crime.

Contrary to Law.[5]

The prosecution presents the following version of the facts:

At around 6:40 in the morning of March 26, 2006, SPO2 Borre took his five (5)-month-old grandson outside his residence at Block 14, Kenneth Street corner Eusebio Avenue, Pasig City. PO3 Leopoldo Zapanta (PO3 Zapanta), who slept at SPO2 Borre's residence, was watching television when four (4) successive gunshots rang out. PO3 Zapanta looked through the open door of SPO2 Borre's house and saw two (2) men armed with .38 caliber revolvers standing a meter away from SPO2 Borre. He saw Palanas deliver the fourth shot to SPO2 Borre, but he could not identify the other shooter. Thereafter, the two (2) assailants fled on a motorcycle.[6]

PO3 Zapanta, together with SPO2 Borre's stepson Ramil Ranola (Ramil), brought SPO2 Borre to the Pasig City General Hospital. On the way to the hospital, SPO2 Borre told Ramil and PO3 Zapanta that it was "Abe," "Aspog," or "Abe Palanas" - referring to his neighbor, Palanas -who shot him. This statement was repeated to his wife, Resurreccion Borre (Resurreccion), who followed him at the hospital. At around 11 o'clock in the morning of even date, SPO2 Borre died due to gunshot wounds on his head and trunk.[7]

For his part, Palanas interposed the defense of denial and alibi. He claimed that on March 25, 2006 he was in Parañaque City attending to the needs of his sick father. The next day, he went to a baptism in Tondo, Manila and stayed there from morning until 9 o'clock in the evening, after which he returned to his father in Parafiaque City. He maintained that he was not aware of the death of SPO2 Borre until he was informed by a neighbor that Resurreccion was accusing him of killing her husband. He also denied any knowledge why Resurreccion would blame him for SPO2 Borre's death.[8]

The RTC Ruling

In a Decision[9] dated October 20, 2010, the RTC convicted Palanas of the crime of Murder and sentenced him to suffer the penalty of reclusion perpetua, and ordered him to pay the heirs of SPO2 Borre the amounts of: (a) P50,000.00 as civil indemnity; (b) P25,000.00 as exemplary damages; (c) P50,000.00 as moral damages; and (d) P2,464,865.07[10] as actual damages.[11]

The RTC found that the prosecution had established beyond reasonable doubt that Palanas and his companion were the ones who killed SPO2 Borre through the positive identification of the eyewitnesses to the incident. Moreover, SPO2 Borre's statements that Palanas shot him constituted an ante mortem statement and formed part of the res gestae, and, thus, admissible as evidence against Palanas. It further opined that treachery attended SPO2 Borre's killing as he had no inkling that the attack would take place, and that he was in no position to mount any feasible defense.[12] The RTC, however, did not appreciate evident premeditation because of the absence of the following elements: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[13]

On the other hand, the RTC gave no credence to Palanas's defense of alibi. It observed that it was not physically impossible for Palanas to be at the locus criminis as his own witness even stated that the distance between Pasig City and Paranaque City could be traversed in less than one (1) hour.[14]

Dissatisfied, Palanas appealed his conviction to the CA.[15]

The CA Ruling

In a Decision[16] dated January 16, 2014, the CA affirmed the RTC's ruling with modification increasing the amounts awarded to the heirs of SPO2 Borre to P75,000.00 as civil indemnity, and P30,000.00 as exemplary damages.

The CA found all the elements of the crime of Murder to be present, giving probative weight to the dying declaration of SPO2 Borre that it was Palanas who shot him. It also found the presence of treachery as SPO2 Borre was in no position to defend himself when he was successively shot.[17]

Aggrieved, Palanas filed the instant appeal.[18]

The Issue Before the Court

The issue for the Court's resolution is whether or not Palanas's conviction for the crime of Murder should be upheld.

The Court's Ruling

The appeal is bereft of merit.

Murder is defined and penalized under Article 248 of the RPC, as amended by Republic Act No. (RA) 7659,[19] as follows:

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> 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.
>
> x x x x x x x x x

Treachery is a well-established concept in criminal law. "There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[20] There are two (2) conditions therefore that must be met for treachery to be appreciated: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the means of execution was deliberately or consciously adopted.[21]

The essence of treachery is that the attack comes without warning in a swift, deliberate, and unexpected manner, granting the victim no chance to resist or escape. The attack must be sudden and unexpected rendering the victim unable and unprepared to put up a defense.[22]

With the foregoing in mind, the Court agrees with the findings of the RTC and the CA that Pal anas killed SPO2 Borre, and that the qualifying circumstance of treachery attended the same. The records show that SPO2 Borre was outside carrying his grandson when two (2) assailants shot him. During the attack, SPO2 Borre had no opportunity to raise any meaningful defense against his assailants; and consequently, he suffered multiple gunshot wounds on his head and trunk, causing his death.[23]

The CA is also correct in admitting SPO2 Borre's statements on his way to the hospital as evidence, both as a dying declaration and as part of the res gestae.

For a dying declaration[24] to constitute an exception to the hearsay evidence rule,[25] four (4) conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration was made, the declarant is conscious of his impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the declarant is the victim.[26] On the other hand, a statement to be deemed to form part of the res gestae,[27] and thus, constitute another exception to the rule on hearsay evidence, requires the concurrence of the following requisites: (a) the principal act, the res gestae, is a startling occurrence; (b) the statements were made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances.[28]

In the case at bar, SPO2 Borre's statements constitute a dying declaration, given that they pertained to the cause and circumstances of his death and taking into consideration the number and severity of his wounds, it may be reasonably presumed that he uttered the same under a fixed belief that his own death was already imminent.[29] This declaration is considered evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation.[30] Verily, because the declaration was made in extremity, when the party is at the point of death and when every motive of falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth, the law deems this as a situation so solemn and awful as creating an obligation equal to that which is imposed by an oath administered in court.[31]

In the same vein, SPO2 Borre's statements may likewise be deemed to form part of the res gestae. "Res gestae refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its

character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The test of admissibility of evidence as a part of the res gestae is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony."[32] In this case, SPO2 Borre's statements refer to a startling occurrence, i.e., him being shot by Palanas and his companion. While on his way to the hospital, SPO2 Borre had no time to contrive the identification of his assailants. Hence, his utterance was made in spontaneity and only in reaction to the startling occurrence. Definitely, such statement is relevant because it identified Palanas as one of the authors of the crime. Therefore, the killing of SPO2 Borre, perpetrated by Palanas, is adequately proven by the prosecution.[33]

On the other hand, the Court does not find credence in Palanas's defense of alibi. It is axiomatic that alibi is an inherently weak defense,[34] and may only be considered if the following circumstances are shown: (a) he was somewhere else when the crime occurred; and (b) it would be physically impossible for him to be at the locus criminis at the time of the alleged crime.[35] In this case, the RTC correctly observed that aside from the admission that travel from Paranaque City to Pasig City only takes about one (1) hour, the incident occurred on a Sunday when traffic is not usually heavy. Moreover, Palanas had access to a motorcycle that allowed him to travel faster on the date and time of the incident.[36] Under the circumstances, there is the possibility that Palanas could have been present at the locus criminis at the time of the shooting. Accordingly, his defense of alibi must fall.

Anent the proper penalty to be imposed upon Palanas, Section 3 of RA 9346[37] provides that "[p]ersons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." Pursuant thereto, Palanas should be sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole.[38]

Finally, to conform with prevailing jurisprudence, the Court increases the amounts of damages awarded to the heirs of SPO2 Borre, as follows: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; and (c) P30,000.00 as exemplary damages,[39] all with interest at the rate of six percent (6%) per annum from the date of finality of judgment until the same are fully paid.[40]

WHEREFORE, the appeal is DENIED. The Decision dated January 16, 2014 of the Court of Appeals in CA-G.R. CR HC No. 04925 finding accused-appellant Bernabe P. Palanas alias "Abe", GUILTY beyond reasonable doubt of the crime of Murder as defined and punished under Article 248 of the Revised Penal Code is hereby AFFIRMED WITH MODIFICATION, in that he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, and ordered to pay the heirs of SPO2 Ramon Borre y Orio the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P2,464,865.07 as actual damages, all with legal interest at the rate of six percent (6%) per annum from the finality of judgment until full payment.

SO ORDERED.

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

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[1] See Notice of Appeal dated January 30, 2014; rollo, pp. 19-21.

[2] Id. at 2-18. Penned by Associate Justice Elihu A. Ybanez with Associate Justices Japar B. Dimaampao and Melchor Quirino C. Sadang concurring.

[3] CA rollo, pp. 27-41. Penned by Pairing Judge Nicanor A. Manalo, Jr.

[4] Id. at 11-12.

[5] Id.

[6] Rollo, p. 3

[7] Id. at 3-4.

[8] CA rollo, pp. 31-32.

[9] Id. at 27-41.

[10] Id. at 41. The RTC provided a breakdown of the amount awarded as actual damages:

Medical Expenses

P4,968.50

Funeral Expenses

P64,000.00

Attorney's Fees:

Acceptance Fee

P15,000.00

Total Appearance Fee

P27,500.00

Unrealized Earnings and Income

P2,353,396.57

TOTAL:

P2,464,865.07

[11] Id.

[12] See id. at 36-39.

[13] Id. at 36.

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[14] Id. at 38-39.

[15] See Notice of Appeal dated February 18,2011; id. at 42.

[16] Rollo, pp. 2-18.

[17] See id. at 11-16.

[18] See Notice of Appeal dated January 30, 2014; id. at 19-21.

[19] Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES" (approved on December 13, 1993).

[20] Item 16, Article 14 of the RPC.

[21] See People v. Umawid, G.R. No. 208719, June 9, 2014. citing People v. Lacaden, 620 Phil. 807, 824 (2009).

[22] See People v. Warriner, G.R. No. 208678, June 16, 2014.

[23] Rollo, pp. 3-5.

[24] Section 37, Rule 130 of the Rules of Court provides:

> Section 37. Dying declaration. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

[25] "Evidence is hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce." (See Espineli v. People, G.R. No. 179535, June 9, 2014.) See also Section 36, Rule 130 of the Rules of Court.

[26] People v. Salafranca, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 512.

[27] Section 42, Rule 130 of the Rules of Court provides:

> Section 42. Part of res gestae. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.

[28] People v. Villarico, Sr., 662 Phil. 399, 418 (2011).

[29] People v. Cerilla, 564 Phil. 230, 240 (2007).

[30] Id., citing People v. Cortezano, 425 Phil. 696, 715 (2002).

[31] Id. at 241, citing United States v. Gil, 13 Phil. 530, 549 (1909); People v. Saliling, 161 Phil. 559, 572-573 (1976).

[32] See People v. Gatarin, G.R. No. 198022, April 7, 2014, citing People v. Salafranca, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 514.

[33] See id.

[34] People v. Arnistoso, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 394, citing People v. Abulon, 557 Phil. 428, 447 (2007).

[35] People v. Agcanas, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847.

[36] CA rollo, pp. 38-39.

[37] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES" (approved on June 24, 2006).

[38] See People v. Arguta, G.R. No. 213216, April 22, 2015. See also People v. Gani, G.R. No. 195523, June 5, 2013, 697 SCRA 530, 540.

[39] People v. Serenas, 636 Phil. 495, 512-513 (2010).

[40] See People v. Balute, G.R. No. 212932, January 21, 2015.

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