

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MICHAEL A. BELLUDO AND JOHN DOE, ACCUSED.

G.R. No. 219884. October 17, 2018

Ponente: A. REYES, JR., J.

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A. REYES, JR., J.:

Nature of the Case

Before this Court is an appeal[1] from the August 14, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 05937, which affirmed with modification the October 24, 2012 Decision[3] of the Regional Trial Court (RTC), Branch 27 of Naga City, in Criminal Case No. 2008-0412, finding accused-appellant Michael A. Belludo (Belludo) guilty beyond reasonable doubt of the crime of Murder.

The Facts

In an Information dated November 27, 2008, Belludo was charged with Murder of one Francisco "Paco" Ojeda (Ojeda) committed as follows:

That on or about August 12, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [accused-appellant] with intent to kill, with treachery, did, then and there, willfully, unlawfully and feloniously shoot with a handgun FRANCISCO "PACO" OJEDA while the latter was walking near BBS Radio Station, Balatas, Naga City, thereby hitting his head and inflicting upon him serious mortal and fatal wounds which directly caused his instantaneous death, to the damage and prejudice of herein complaining witness ARLENE P. RODRIGUEZ, common law wife of the deceased and his other heirs.

ACTS CONTRARY TO LAW.[4]

Upon motion of the public prosecutor, the case was submitted for reinvestigation regarding the inclusion of an additional accused, the motorcycle driver who allegedly participated in the commission of the offense charged. On February 28, 2009, the prosecution filed a Manifestation with Motion to Admit Amended Information which the trial court admitted in its Order dated April 29, 2009.[5] The Amended Information reads thusly:

That on or about August 12, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Michael A. Belludo, conspiring and confederating with his co--accused John Doe, with intent to kill, and with treachery, did, then and there, willfully, unlawfully and feloniously shoot with a handgun FRANCISCO "PACO" OJEDA while the latter was walking near BBS Radio Station, Balatas, Naga City, thereby hitting his head and inflicting upon him serious mortal and fatal wounds which directly caused his instantaneous death, and thereafter escape aboard a waiting motorcycle being driven by his co-accused John Doe, to the damage and prejudice of herein complaining witness ARLENE P. RODRIGUEZ, common law wife of the deceased, and his other heirs.

ACTS CONTRARY TO LAW.[6]

As John Doe's identity and whereabouts remained unknown, only Belludo stood trial. Upon arraignment, he

pleaded not guilty. Thereafter, trial on the merits ensued.

Version of the Prosecution

During trial, the prosecution presented an eyewitness, Allan Ladia (Ladia), Arlene Rodriguez (Rodriguez), who is the common-law wife of the victim, and members of the Philippine National Police (PNP) who conducted the investigation of the case and arrested Belludo.

The prosecution's version may be synthesized as follows:

On August 12, 2008 at around 3:00 a.m., Ladia and his son Albert were collecting scraps near BBS radio station along Balatas Road, Naga City, when they suddenly heard a gunshot. Right away, his son pointed his finger in front of them and told him: "Pa, may binadil sa inutan" ("Pa, someone has just been shot in front of us"). Ladia immediately looked up and saw a man, approximately fifteen to twenty meters away, tucking a gun on his waist. The man then boarded a motorcycle being driven by another person wearing a helmet. The motorcycle turned around fronting Ladia and his son then quickly proceeded towards Magsaysay Street which was in the opposite direction from where they were located at that time. When the man and the driver of the motorcycle passed by them, his son uttered: "Pa, iyo nayan ang nagbadil" ("That is the man who fired the shot"). At once, Ladia told his son to keep quiet. He then saw the victim lying on the side of the road near an acacia tree. Thereafter, they directly went home and told his wife what he witnessed.[7] Ladia recognized the person whom he saw on August 12, 2008 tucking a gun on his waist and identified him in court as herein accused-appellant, Belludo.[8]

Meanwhile, Rodriguez was awakened by the horrible news that her common-law husband, Ojeda, was shot near BBS radio station in Balatas Road. Rodriguez immediately proceeded to the said place where she saw Ojeda lying prostate on the ground, his head oozing with blood. When she embraced the unmoving body of Ojeda, she knew that it was too late for medical intervention.[9]

On even date, Police Officer 3 Rodel Llamado (PO3 Llamado) of the Philippine National Police Peñafrancia Precinct No. 2 received a phone call that there was a shooting incident in front of BBS radio station. Accordingly, he went to the crime scene and conducted his investigation. He interviewed possible witnesses and according to a radio announcer of BBS radio station, he heard a gunshot and when he went outside, he saw a person about to board a motorcycle near the victim. PO3 Llamado also received a call from a concerned citizen informing him that he witnessed the incident and that the police should investigate a person called alyas "Odo." Upon following-up on the lead, PO3 Llamado verified that "Odo" resides in Barangay Lerma, Naga City and ascertained the latter's identity who turned out to be Belludo.[10]

PO3 Jose Luis Caparoso (PO3 Caparoso) of Naga City Police Station IV testified that he talked to Ladia who positively identified Belludo in a police line-up as the perpetrator of the crime. A separate police line-up was viewed by Ladia's son who also pointed to Belludo as the culprit.[11]

Based on the post-mortem examination conducted on the victim's body by Dr. Vito Borja (Dr. Borja), the health officer of Naga City, the immediate cause of death was cardiac pulmonary arrest, secondary to the laceration of the occipital lobe of the brain, left side and secondary to gunshot wound. Dr. Borja also testified that he found pellets and one plastic remnant which is part of a bullet on the base of Ojeda's head.[12]

Version of the Defense

As for the defense, it presented Belludo as its sole witness whose defenses were predicated on denial and alibi. His version of the events is that at the date material to this case, he was at the billiard hall located at the Central Business District of Naga City where he worked as a spotter. He opened the hall for business at 5:00am until

10:00 pm of the same day.

In October 2008, he was arrested by a police officer at the billiard hall regarding a complaint of a Barangay Kagawad that he allegedly punched. To his shock, however, upon arrival at the police station, he was shown ammunitions and was told that they were found in his possession. At this point, he was being forced to confess to the killing of Ojeda. Subsequently, he was included in a police line-up wherein a man wearing a helmet pointed at him. He was then brought to Tabuco police station where he was charged with the killing of Ojeda.[13]

The Ruling of the RTC

On October 24, 2012, the RTC rendered a Decision finding Belludo guilty as charged. It gave full credence to Ladia's testimony finding that his identification of Belludo is positive, straightforward, and unequivocal.[14] As for Belludo's defenses of denial and alibi, the trial court brushed them aside as they were not supported by any other evidence and did not outweigh the positive evidence established by the prosecution.[15]

Furthermore, the RTC ruled that the victim's killing was attended by the qualifying circumstance of treachery because the gunshot wound was located at the back of his head.[16] The dispositive portion of the RTC decision reads:

WHEREFORE, the prosecution having proven the guilt of the [accused-appellant] MICHAEL A BELLUDO beyond reasonable doubt for the felony of Murder, he is hereby CONVICTED and sentenced to suffer the penalty of of (sic) reclusion perpetua – imprisonment for twenty years and one day to forty years. The accused is further directed to pay the heirs of the victim Francisco "Paco" Ojeda the following amount: Pesos: Seventy Five Thousand (P75,000) as civil indemnity for the death of the victim; Pesos: Fifty Thousand as moral damages; Pesos: One Hundred Nine Thousand Six Hundred Sixty (P109,660) as actual damages; and the cost of suit.

SO ORDERED.[17]

Belludo thereafter interposed an appeal, arguing that the trial court erred in convicting him of the crime of Murder despite the prosecution's failure to prove his guilt beyond reasonable doubt.[18]

The Ruling of the CA

In its August 14, 2014 Decision, the CA affirmed the decision of the RTC with modification as regards the amount of damages awarded. It rejected the twin defense of denial and alibi raised by Belludo finding that the totality of the prosecution's evidence had sufficiently established his guilt beyond reasonable doubt.[19]

The CA further ruled that treachery was correctly appreciated by the trial court, noting that "in shooting the victim near his head at a close range, appellant clearly purposely employed it to insure the latter's death." [20] The CA, thus, disposed of the case as follows:

WHEREFORE, in the light of all the foregoing, the herein impugned Decision is hereby AFFIRMED subject to the following MODIFICATION: (1) the amount of moral damages is increased from [P]50,000.00 to [P]75,000.00; and (2) that temperate damages and exemplary damages are awarded to the heirs of the victim in the amounts of [P]25,000.00 and [P]30,000.00, respectively.

The damages herein awarded are subject to the legal interest of 6% per annum from the date of finality of this Decision until fully paid. The rest of the assailed Decision stands.

SO ORDERED.[21]

Aggrieved, Belludo brought the case before Us, raising the same arguments he had at the CA.

The Issue

The sole issue in this case is whether the CA erred in affirming Belludo's conviction for the crime of Murder.

The Ruling of the Court

The appeal is partly meritorious.

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 Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.[22] Treachery was alleged in the information as qualifying circumstance for the charge of murder.

Belludo's appeal mainly hinges on his argument that the prosecution failed to sufficiently establish his identity as the culprit who killed the victim, Ojeda.[23] In this regard however, both the trial court and the CA correctly ruled that Belludo's culpability was sufficiently established.

The prosecution was able to prove beyond reasonable doubt that Ojeda was killed and that it was Belludo who killed him. Ladia did not waver in his identification of Belludo and was able to give a detailed narration of what he saw during the incident. As aptly noted by the appellate court:

Applying the totality of circumstances test, this Court has no reason to doubt the correctness of Allan Ladia's identification of accused. His view towards the accused during the incident was unobstructed. He was fifteen meters away from the accused and the accused went nearer to the witness after tucking the gun at his waist. He had no ill-motive to falsely testify against the accused. His testimony during the trial is straightforward and he was unshaken by the cross-examination of the defense counsel. He never wavered in his identification of the accused and even when asked clarificatory questions by the court.[24]

Belludo's defenses of denial and alibi cannot be sustained as they failed to outweigh a positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter.[25] Likewise, as pointed out by the trial court, Belludo failed to prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of the commission.[26]

Nevertheless, while We agree with the RTC and the CA that Belludo killed the victim, We do not, however, concur in their ruling that treachery was present as said finding is not supported by evidence.

Well-settled is the rule that treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[27] For treachery to be appreciated as a qualifying circumstance, it must be shown to have been present at the inception of the attack.[28] Two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[29]

In the case at bar, no circumstantial evidence has been shown to prove that the attack on the victim came without warning, and that he had absolutely no opportunity to defend himself or to escape.[30] The lower court failed to consider that Ladia had no knowledge of how the attack had been initiated or carried out. The crime was already a *fait accompli* when he saw Belludo tucking a gun to his waist.[31]

Furthermore, evidence on record does not prove that there was any conscious or deliberate effort on the part of Belludo to adopt any particular means, method or form of attack to ensure the commission of the crime without affording the victim any means to defend himself. The fact that a gun was fired does not mean that the mode of attack was consciously and deliberately employed. The use of a gun, by itself, does not necessarily imply treachery.[32]

It must also be observed that except for the RTC's presumption that Belludo was behind Ojeda at the time of the shooting due to the location of the gunshot wound he sustained, no other proof was submitted and considered by the trial court before drawing the conclusion that treachery was employed in Ojeda's killing. In fact, the RTC did not fully discuss its appreciation of the circumstance of treachery. It merely held:

The gunshot wound as reflected in the Autopsy Report and as testified by Dr. Borja is at the "left Occipital bone of the skull lacerating the Occipital lobe of the brain." This means that when the accused shoot the victim, he was positioned behind or at the rear of the victim, thus, considering that the [victim] was jogging and unarmed, he was not able to put up a defense.[33]

Verily, the gap in the prosecution's evidence cannot be substituted by mere suppositions, as the trial court apparently did. Treachery cannot be appreciated absent any particulars as to the manner in which the aggression commenced or how the act unfolded and resulted in the death of the victim. Treachery cannot be presumed, but must be proven positively. Any doubt as to its existence must be resolved in favor of accused-appellant.[34]

Thus, with the removal of the qualifying circumstance of treachery, the Court downgrades the conviction to the crime of homicide. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor with a range of six (6) years and one (1) day to twelve (12) years.[35]

The Court thus imposes imprisonment from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum.[36]

Anent the civil liabilities, consistent with the Court's pronouncement in *People vs. Jugueta*,[37] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of P50,000.00 each. Lastly, as correctly ruled by the CA, all the monetary awards shall earn an interest at the legal rate of six percent (6%) per annum from the date of finality of the Court's Resolution until fully paid.

IN VIEW OF THE FOREGOING, the appeal is PARTLY GRANTED and the Court of Appeals' Decision dated August 14, 2014 in CA-G.R. CR HC No. 05937 is hereby MODIFIED.

Accused-appellant MICHAEL A. BELLUDO is found guilty beyond reasonable doubt of HOMICIDE, and SENTENCES him to suffer the indeterminate penalty of EIGHT YEARS AND ONE DAY OF PRISION MAYOR, as minimum, to 14 YEARS, EIGHT MONTHS AND ONE DAY OF RECLUSION TEMPORAL, as maximum; to pay to the heirs of the late Francisco "Paco" Ojeda: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; and (c) P50,000.00 as temperate damages, plus interest on all damages hereby awarded at the rate of 6% per annum from the finality of the decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

[1] Rollo, pp. 27-28.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Noel G. Tijam and Agnes Reyes Carpio, Sixth (6th) Division; rollo , pp. 2-26.

[3] Penned by Judge Leo L. Intia; CA rollo , pp. 55-69.

- [4] As cited in the CA decision; rollo, p. 3.
- [5] Id.
- [6] Id. at 4.
- [7] Id. at 16.
- [8] Id. at 4-5.
- [9] CA rollo, p. 40.
- [10] Id. at 6-7.
- [11] Id. at 7
- [12] Id. at 6.
- [13] Id. at 44-45.
- [14] CA rollo, p. 68.
- [15] Id.
- [16] Id.
- [17] Id. at 69.
- [18] Id. at 38.
- [19] Rollo, pp. 19-20.
- [20] Id. at 18.
- [21] Id. at 25.
- [22] People of the Philippines v. Roger Racal @ Rambo, G.R. No. 224886, September 4, 2017.
- [23] CA rollo, pp. 50-51.
- [24] Id. at 67.
- [25] People v. Baldomar, 683 Phil. 393, 397 (2012).
- [26] CA rollo, p. 68.
- [27] Cirera v. People, 739 Phil. 25, 45 (2014), and People v. Paracale, 442 Phil. 32, 51 (2002).
- [28] People v. Paracale, 442 Phil. 32, 52 (2002).
- [29] People v. Lagman, 685 Phil. 733, 745 (2012) and People v. Torres, 671 Phil. 482, 489 (2011).
- [30] Supra note 28, at 52.
- [31] CA rollo, pp. 60-61.
- [32] Supra note 28, at 53.
- [33] CA rollo, p. 68.
- [34] People v. Paracale, 442 Phil. 32, 54 (2002).

[35] People of the Philippines v. Duran, Jr. y Mirabueno, G.R. No. 215748, November 20, 2017.

[36] People of the Philippines v. Nestor "Tony" Caliao, G.R. No. 226392, July 23, 2018.

[37] 784 Phil. 806, 852-853 (2016).

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