

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIUS CAPONGOL Y MAICO AND ARWIN BIO Y VILLEZA, ACCUSED-APPELLANTS.

G.R. No. 239783. January 12, 2021

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

On appeal[1] before this Court is the Decision[2] dated 19 December 2017 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 08752, affirming with modification as to damages the Decision[3] dated 28 July 2016 of Branch 257, Regional Trial Court (RTC) of Parañaque in Crim. Case No. 13-0929, convicting accused-appellants, Julius Capongol y Maico (Capongol) and Arwin Bio y Villeza (Bio) (accused-appellants, collectively), for the crime of murder.

Antecedents

In an Information dated 16 August 2013, accused-appellants were charged with murder for the death of Josephine Sarmiento y Belarmino (Josephine), viz:

That on or about the 20th day of May 2013, in the City of Parañaque City (sic), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring and confederating, together with three (3) John Does, whose true names and whereabouts are still unknown, and all of them mutually helping and aiding one another, with intent to kill did then and there willfully, unlawfully and feloniously, attack, assault, shot and employ personal violence upon the person of one JOSEPHINE SARMIENTO y BELARMINO, who was hit in the lower jaw and upper chest, thereby inflicting upon her mortal wounds which directly caused her death, the said killing having been attended by the qualifying circumstances of treachery and evident premeditation, which qualify such killing to Murder.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellants pleaded not guilty to the charges.[5] After the termination of pre-trial proceedings, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Peter Robert M. Sarmiento,[6] Josephine's husband; (2) PCI Benjamin Venancio Lara (PCI Lara),[7] the medico-legal officer who conducted autopsy on the victim's cadaver; (3) SPO4 Charlie Bayoca (SPO4 Bayoca),[8] one of the police officers who arrested the accused-appellants; (4) SPO2 Rudy Dimson (SPO2 Dimson);[9] and (5) Jhonie Carl R. Honrubia (Honrubia),[10] the eyewitness to the crime.

Version of the Prosecution

At around 3 o'clock in the afternoon of 20 May 2013, Josephine was dining at Pancake House in Parañaque City when accused-appellants entered the restaurant. Capongol approached the bar area and ordered iced tea, while Bio sat at a table near the door, opposite Josephine's table. Suddenly, Capongol shot Josephine twice, one in the head,

and another on the chest. Bio acted as a lookout.

Version of the Defense

Accused-appellants denied the charges.[11] Capongol testified that on 20 May 2012, he was at his house in Kapatiran Subdivision, Molino, Cavite. He cooked for his siblings and watched television all day. He denied being a hired killer. He also claimed that he did not know Josephine. He admitted to knowing Bio, who happened to be his co-accused in another case in Tagaytay.

Meanwhile, Bio[12] testified that on the day of the crime, he was in Calbayog City, Western Samar to attend a fiesta. Five (5) days later, he went to Montalban, Rizal. On 04 June 2013, he went to Tagaytay upon his cousin's invitation. While on his way there, he was arrested at a police checkpoint. He alleged that the police mauled and forced him to admit to crimes he did not commit. Likewise, he claims he does not know Josephine, and only met Capongol when they were both arrested and detained in Tagaytay. He denied that he was a hired killer.

Ruling of the RTC

On 28 July 2016, the RTC convicted accused-appellants for the crime of murder. The RTC sentenced them to suffer the penalty of reclusion perpetua and ordered them to pay Josephine's heirs Php75,000.00 as moral damages.[13]

The RTC ruled that accused-appellants are hired killers, who conspired to kill Josephine.[14] It found Honrubia's positive identification of accused-appellants and candid narration of how the shooting occurred to be credible.[15] The RTC noted that both accused-appellants were also charged for the murder of the Registrar of Deeds of Tagaytay City. Capongol was likewise an accused in a separate murder case in Las Piñas.[16]

The trial court concluded that the crime was attended by evident premeditation and treachery, which qualified the crime to murder. [17]

Ruling of the CA

On 19 December 2017, the CA affirmed, with modifications as to the damages, accused-appellants' conviction. In addition to moral damages, both accused-appellants were order to pay Josephine's heirs, Php75,000.00 as civil indemnity and Php30,000.00 as exemplary damages. It also imposed legal interest at the rate of 6% per annum on all of the monetary awards from the date of the judgment until full payment.[18]

The CA agreed with the RTC that Honrubia positively identified accused-appellants as the perpetrators of the crime, and sufficiently narrated each of their participation in killing Josephine.[19] It concluded that while Bio did not actually shoot Josephine, his behavior at the crime scene showed that he was one with Capongol in consummating the crime.

The appellate court did not give weight to the accused-appellants defense of alibi.

Hence, this appeal.

Issues

Accused-appellants claim that:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITIES OF THE ASSAILANTS BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE MATERIAL INCONSISTENCIES AND IMPROBABILITIES IN THE TESTIMONY OF THE LONE EYE WITNESS.[20]

Issue

Ultimately, the controversy boils down to whether or not the CA correctly affirmed accused-appellants' conviction for the crime of murder.

Ruling of the Court

Initially, this Court would address the sufficiency of the allegations in the Information.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.[21]

In *People v. Solar*,[22] this Court made a pronouncement that in a criminal Information, the State must specify in detail the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now include in the Information the specific acts and circumstances constituting the attendant circumstances in the crime committed.

In this case, the Court notes that the Information merely alleged "with evident premeditation and treachery"[23] without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.[24]

Ordinarily, the non-allegation of a detail that aggravates an accused's liability serves to bar the introduction or consideration of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.[25] Nonetheless, this Court finds the defect in the allegations of the Information, in the case at bar, insufficient to cause the downgrade of the accused-appellant's conviction due to his failure to timely assert his right in the proceedings before the RTC and CA.

There are various procedural remedies available to an accused who believes that the Information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.[26] Likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective Information.[27] In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

In this case, it does not appear that accused-appellants raised any objection to the sufficiency of the allegations in the Information at any stage of the proceedings. Not only did accused-appellants fail to move for a bill of particulars or to quash the Information before the arraignment, they also participated in the trial. It is now too late in the proceedings to invalidate the Information without unduly prejudicing the State, which was also deprived of

the opportunity to amend the Information[28] or submit a bill of particulars in the trial court.[29]

We now proceed to review the propriety of accused-appellants' conviction.

In reviewing criminal cases, this Court's duty is to determine not only on whether the elements of a crime were committed but also on whether assailants were legally and credibly identified.[30] After this Court's perusal of the records of this case, this Court affirms Capongol's conviction, but acquits Bio for the crime of murder.

There is no litmus test to eyewitness identifications since it is intrinsically linked with the complexities and frailties of human behavior recognizing the dangers of absolute reliance to eyewitnesses, jurisprudence has advanced the "totality of circumstances" test, which encourages courts to look into various factors to determine the veracity of an eyewitness' identification of the accused. In the past, some of the factors considered by courts as crucial in adjudging the identification of the perpetrators are the following:

- the witness' opportunity to view the malefactor at the time of the crime;
- the witness' degree of attention at that time;
- the witness' specialized skills or extraordinary capabilities;
- the accuracy of any prior description given by the witness;
- the degree of certainty demonstrated by the witness at the moment of identification;
- the length of time between the crime and the identification made by the witness;
- the suggestiveness of the identification procedure undergone by a witness.[31]

In this case, both the RTC and CA relied heavily on the testimony of the prosecution's witness Honrubia who identified accused-appellants as Josephine's killers. However, what is clear from the records is that while Honrubia positively identified Capongol, the same is not true for Bio.

The prosecution witness positively identified Capongol

Contrary to accused-appellants' contention, Honrubia, who was the on-duty cashier at the Pancake House restaurant, was consistent in pointing Capongol as the gunman who shot Josephine. In his sworn statement, Honrubia narrated:

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Q Maari mong (sic) bang ikuwento o isalaysay sa akin ang iyong nakitang ins[i]dente sa loob ng PANCAKE House?

A Opo sir, ganito po yun habang nakaduty po ako ang natatandaan ko po ay yung grupo nila Josephine B[.] Sarmiento ang tanging kustomer namin at siya ay may kasamang dalawang babae at sila ay nakaupo sa lamesa malapit sa Bar Area namin [nang] may pumasok na dalawang lalaki na nagpanggap din customer at ang isa po ay lumapit sa akin para umorder ng inumin[,] ang isa ay umupo sa tapat ng mesa nila mam Josephine Sarmiento.

Q Ano ang sumunod na nangyari na iyong nasaksihan?

A Habang naglilinis ako sa loob ng Bar Area at may lumapit ang isang lalaki at umorder sa akin ng dalawang iced tea at nagtanong siya ng dalawang iced tea na for take-out pero ang tinuturo niya ay yung pang Bottomless na iced tea na di pwedeng pang-take out, kaya inalok ko siya ng ice tea na regular house iced tea na pwedeng pang take-out. At napansin ko ding nagbilang siya ng pera sa harap ko kung kayat hinanda ko yung inorder niyang take-out, pero paglingon ko sa kanya ay nandun na siya nakaupo sa mesa at ang kasama niya, pagkalipas ng ilang minuto narinig ko na may pumutok paglingon ko nakita ko na binaril ng lalaking naka kulay pula[ng] damit si Mam Josephine.

xxx

Q Meron akong ipakitang mga larawan sayo maari mong bang tingnan o tukuyin kung meron bang tingnan o tukuyin kung meron kang nakilala sa kanila?

(Herein investigator presented to herein witness photographs taken from the arrested suspects of Tagaytay PNP in the ambush slay of Atty. Reynaldo Aquino on June 4, 2013.

A Opo sir.

(After presentation of photographs herein witness pinpointed one of the 4 male suspects identified as one JULIUS CAPONGOL y MAICO as the gunman who wearing red T-shirt during the incident.

Q Gaano ka kasigurado na ang itinuro mong tao ang sinasabi mong bumaril kay mam Josephine?

A Sigurado po ako sir dahil magkaharap lang kami at siya ang umorder sa akin ng iced tea.[32]

When further asked by the Court during his cross-examination, Honrubia ably explained why he was able to recall Capongol, viz:

xxx

Q

Bakit nakasigurado ka, makasiguro ka na si Capongol yung naka kulay pula ang damit na unang beses mo lang siyang nakita, may trabaho ka noong pumasok siya, cashier ka, ang attention mo nandoon sa cashier, kaya mo siya naka-usap dahil lang may in-order siya at sandali lang, habang nag uusap kayo hindi naman nakatutok ang mata mo sa kanya palagi, basta nakipag-usap ka lang sa kanya?

A

Ganun po kasi ako sa customer kasi ang inorder niya po ay hindi akma doon sa dapat i-take out kaya ko po siya natandaan. Bottomless po kasi is take out ang gagawin niya, so ngayon sinuggest ko po sa kanya yung hindi bottomless that's why po matagal na conversation namin. Kung masusulit niya ang bottomless, i-dine in niya na lang kaysa itake-out. Dahil kung gusto niya one glass lang yung blend iced tea for take-out. That's why po medyo matagal ang interval namin ng pag-uusap ng harapan.[33]

xxx

Based on the foregoing, this Court is convinced that Honrubia credibly identified Capongol as the one who shot Josephine. Capongol was identified by Honrubia from a series of photos. Likewise, there is nothing in the records that indicates the police singled out accused-appellants and suggested to the witness that they are guilty of the crime charged. More importantly, it is apparent that throughout the rigorous examination conducted by the counsel, as well as the questions put forth by the trial court, Honrubia remained sure that it was Capongol who shot Josephine.

Further, the fact that Honrubia was not able to identify Capongol in open court did not affect his credibility. A physical courtroom identification is essential only when there is a question or doubt on whether the one alleged to have committed the crime is the same person who is charged in the Information and subject of the trial.[34] In the case at bar, Capongol never denied that he is the person indicted in the Information, much less offered proof that he is not the same person being charged with the offense.

Moreover, Capongol was not present during Honrubia's testimony, nor even at pre-trial[35] when Bio admitted his identity as the person charged in the Information. Evidently, Capongol should not be allowed to benefit from his absence, particularly when his identity as Josephine's killer had been sufficiently established by the prosecution.

There is sufficient doubt as to the identity of Capongol's purported lookout

While Honrubia was candid and consistent about the appearance and identity of Capulong, he was uncertain about the identity of Capulong's companion and alleged lookout.

In the first place, there was no mention of Bio in his sworn statement.[36] Also, Honrubia's doubt as to Capulong's co-conspirator was further made obvious during his testimony, viz:

xxx

COURT

Q

Iyan ang pinag-uusapan natin dito yung tao na naka-kulay pula ang damit na si Capongol?

A

Opo.

Q

Itong isa na kasama ni Capongol na sinasabi mo na hindi mo nalaman kung ano ang kulay ng damit, hindi kayo nag-usap?

A

Hindi po.

Q

Kaya hindi mo masyadong napansin yung mukha niya dahil hindi kayo nag-usap, tama ba?

A

Opo.

Q

At nasa likuran siya ni Capongol?

A

Opo.

xxx

Q

So ibig sabihin, habang nag-usap kayo ni Capongol na naka-kulay pula ang damit, kung natingnan mo yung isa glance lang, saglit lang?

A

Opo.

Q

Mga segundo lang?

A

Tama po.

Q

Dahil hindi naman siya ang kausap mo?

A

Correct po.

Q

Saka umalis siya, nakaupo siya sa lamesa?

A

Tama po.

Q

At saka isang beses mo lang siyang nakita?

A

Tama po.

xxx

Q

Sang-ayon ka ba sa sasabihin ko na kung nakilala mo yung isa dahil naka-usap mo harap-harapan, hindi ka masyadong nakasigurado doon sa taong kasama niya na glance lang ang pagkakita mo at malayo pa, naka-up, tama ba na hindi ka masyadong sigurado doon sa pangalawa yung hindi naka kulay pula ang damit nakita mo siya glance lang?

A

Opo, glance lang.

Q

At nakaupo siya doon sa malayo?

A

Opo.

xxx

Q

Kung siguradong sigurado ka na si Capongol yung naka-kulay pula ang damit dahil siya ay nakipag-usap sa iyo hindi ka siguradong-sigurado ng katulad kay Capongol kay Arwin Bio dahil hindi siya nakausap mo at malayo-layo siya sa iyo, tama ba Judge?

A

Tama po pero n-ano ko lang siya narecognize ko rin ang mukha niya that time.

Q

Pero hindi kasing sigurado kay Capongol?

A

Hindi ganun kasigurado kay Capongol talaga. Your Honor, mas focus ako.[37]

xxx

From Honrubia's own testimony, he only glanced at the alleged lookout for a few seconds, and his focus was on Capongol because the latter had ordered iced tea. Evidently, the brief period to view the supposed conspirator, while his attention was elsewhere, coupled with the length of the entire ordeal, engenders reasonable doubt on whether it was indeed Bio who was with Capongol at the time of the shooting. Under the circumstances, Bio's acquittal is in order.

The qualifying circumstance of treachery was established

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 ensure 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 (2) 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.[38] 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.[39]

The uniform finding of the RTC and CA that Capongol suddenly and unexpectedly shot Josephine inside the restaurant remains undisputed. The fact that Capongol casually entered and ordered iced tea before firing successive shots could not have forewarned Josephine of the harm that Capongol was about to inflict upon her. That alevosia or treachery attended the killing of the victim was apparent from the fact that Capongol deliberately made it appear that he was a regular customer, thereby ensuring that Josephine would not suspect or put on a

defense against the attack.

Nevertheless, there is a need to modify the penalty imposed by the RTC and affirmed by the CA. The RPC punishes murder with reclusion perpetua to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly affirmed the RTC's imposition of reclusion perpetua. Pursuant to A.M. 15-08-02-SC, however, the phrase "without eligibility for parole" appended in the RTC's sentence should be deleted.

As to damages, this Court affirms the award of Php75,000.00 each as civil indemnity and moral damages. However, in accordance with prevailing jurisprudence,[40] this Court increases the award for exemplary damages from Php30,000.00 to Php75,000.00. Further, this Court imposes an additional Php50,00.00 as temperate damages, in lieu of actual damages since the record is bereft of any documentary evidence of burial or funeral expenses.

Finally, the Court affirms the imposition of legal interest on all monetary awards at the rate of 6% per annum reckoned from the finality of this decision until fully paid.

WHEREFORE, the Appeal is hereby PARTIALLY GRANTED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 08752 dated 19 December 2017 is hereby AFFIRMED with the following modifications:

The conviction of accused appellant JULIUS CAPONGOL y MAICO for the crime of murder is AFFIRMED. He is sentenced to suffer the penalty of reclusion perpetua, and to pay the heirs of Josephine B. Sarmiento: (a) Php75,000.00 as civil indemnity; (b) Php75,000.00 as moral damages; and (c) Php75,000.00 as exemplary damages, and (d) Php50,00.00 as temperate damages in lieu of actual damages. All such monetary awards shall earn interest at the rate of 6% per annum from the finality of the decision until fully paid.

ARWIN BIO y VILLEZA is ACQUITTED on the ground of reasonable doubt. We hereby ORDER HIS IMMEDIATE RELEASE unless he is being held for other lawful causes.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Peralta, C.J., (Chairperson), Caguioa, Inting,[*] and Gaerlan, JJ., concur.

[*] Associate Justice Inting designated as additional Member per Raffle dated 26 June 2019 in lieu of Associate Justice Carandang who took no part due to her prior participation before the Court of Appeals.

[1] Rollo, p. 15.

[2] Id. pp. 2-14; penned by Associate Justice Jane Aurora C. Lantion and concurred by Associate Justices Rosmari D. Carandang (now a member of this Court) and Zenaida T. Galapete-Laguilles of the Third (3[rd]) Division, Court of Appeals, Manila.

[3] Records, Vol. I, pp. 179-184; penned by Judge Rolando G. How.

[4] Id. at 1.

[5] Id. at 71-72.

- [6] TSN dated 05 August 2014.
- [7] TSN dated 18 June 2015, pp. 1-16
- [8] Id. at 17-21.
- [9] TSN dated 26 April 2016.
- [10] TSN dated 11 December 2014.
- [11] TSN dated 29 September 2015.
- [12] TSN dated 08 December 2015.
- [13] Records, Vol. I, pp. 179-184.
- [14] Id. at 183.
- [15] Id.
- [16] Id.
- [17] Id. at 182.
- [18] Rollo, p. 14
- [19] Id. at 7-11.
- [20] Id. at 5.
- [21] See *Reyes v. People*, G.R. No. 232678, 03 July 2019 [Per CJ Peralta].
- [22] G.R. No. 225595, 06 August 2019 [Per J. Caguioa].
- [23] *Supra* at note 2.
- [24] See *People v. Petalino*, G.R. No. 213222, 24 September 2018 [Per CJ Bersamin].
- [25] *People v. Valdez*, G.R. No. 175602, 18 January 2012, 679 Phil. 279 (2012) [Per CJ Bersamin].
- [26] *Romualdez v. Sandiganbayan*, G.R. No. 152259, 29 July 2004, 479 Phil. 265 (2004) [Per J. Panganiban].
- [27] See *People of the Philippines v. Sandiganbayan*, G.R. No. 160619, 09 September 2015, 769 Phil. 378 (2015) [Per J. Jardeleza]; *Los Baños v. Pedro*, G.R. No. 173588, 22 April 2009, 604 Phil. 215 (2009) [Per J. Brion].
- [28] Section 4 Rule 117 of the Rules of Court.
- [29] *Enrile v. People of the Philippines*, G.R. No. 213455, 11 August 2015, 766 Phil. 75 (2015) [Per J. Brion].
- [30] See *People v. de Guzman*, G.R. No. 192250, 11 July 2012, 690 Phil. 701 (2012) [Per J. Mendoza].
- [31] See *People v. Nuñez*, G.R. No. 209342, 04 October 2017, 819 Phil. 406 (2017) [Per J. Leonen].
- [32] Records, Vol. I, p. 140-141.
- [33] TSN dated 11 December 2014, p. 233.
- [34] See *Montelibano v. Yap*, G.R. No. 197475, 06 December 2017 [Per J. Martires].
- [35] Records, Vol. 1, p. 80.

[36] Id. at 140-141.

[37] TSN dated 11 December 2014, pp. 235-244.

[38] People v. Jaurigue, G.R. No. 232380, 04 September 2019 [Per J. Perlas-Bernabe].

[39] Id.

[40] People v. Jugueta, G.R. No. 202124, 05 April 2016 [Per J. Peralta].

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