

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WENNIE PESPENIAN, ACCUSED-APPELLANT.

G.R. No. 242413. September 04, 2019

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Two armed assailants as against an unarmed victim and companions constitute taking advantage of superior strength.

The Case

This is an ordinary appeal from the June 22, 2018 Court of Appeals (CA) Decision[1] in CA-G.R. CR-HC No. 02160, affirming the January 22, 2015 Regional Trial Court (RTC) Decision[2] in Criminal Case No. DNO-2932, finding the accused guilty beyond reasonable doubt of murder.

The Facts

In an Information[3] dated February 4, 2003, accused Wennie Pespenian[4] (Pespenian) and Ireneo Salili (Salili) were charged with Murder. Pespenian was arrested and detained, while Salili remains at large.[5] During arraignment, Pespenian pleaded not guilty.[6] A warrant of arrest was issued for the arrest of Salili.[7] Thereafter, pre-trial and trial followed.

The prosecution presented three witnesses: 1) Alejandro Pilota (Pilota), the victim's companion; 2) Neri Valenzona (Valenzona), another companion of the victim; and 3) Dr. Eufemia P. Maratas (Dr. Maratas), Municipal Health Officer of Pilar, Camotes.[8]

Pilota testified that at 7 p.m. of January 2, 2003, he was at Joel Manza's (Manza) house with Brigido Colminas (Colminas), Valenzona, and many others to have dinner as it was the last night of prayers for Manza's late wife. After dinner, Pilota, Colminas and Valenzona left. Pilota and Valenzona accompanied Colminas on his way home, because they heard from the other guests that Pespenian and Salili were planning to take Colminas' life.[9]

On their way, they met the two accused. Pespenian stabbed Colminas several times on the left and right chest down to his foot using an eight-inch knife, while Salili was holding a pistol and stayed behind Pespenian.[10]

Pilota saw the whole incident and the identity of the assailants as he was holding a flashlight four meters away from Colminas. He and Valenzona were stunned with the attack and were unable to help Colminas. Thereafter, Pespenian and Salili chased them, prompting them to run away.[11]

Valenzona corroborated Pilota's testimony. The attack happened about 15 meters away from Colminas' house. He saw Pespenian stabbed Colminas while Salili pointed a gun at the latter. When Colminas fell, Pespenian and Salili went after him and Pilota. They ran away and hid to avoid getting assaulted.[12]

The last prosecution witness was Dr. Maratas, who testified that she conducted a post mortem examination on Colminas' body on January 3, 2003, and issued a post mortem report. She confirmed that Colminas had multiple

stab wounds which caused massive bleeding that led to his death. Colimas had 18 wounds all over his body, found on his cheeks, forearm, chest, abdomen, right knee, and right foot.[13]

For his defense, Pespenian testified that at around 7:30 p.m. on January 2, 2003, he was with Salili fishing. Once done, they went home. On their way, they encountered Colminas, who was holding a knife. Salili and Colminas grappled for the knife. Pespenian feared for his life and left to go home. The following day, he learned that Colminas died, and he was arrested instead of Salili, because he had fled. He said there were no other witnesses to the incident.[14]

The RTC Decision

On January 22, 2015, the RTC convicted Pespenian of Murder, imposed the penalty of reclusion perpetua, and ordered him to pay Colminas' heirs P75,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00 as exemplary damages.[15]

The RTC ruled the presence of aggravating circumstance of taking advantage of superior strength, which pertains to the inequality of forces between the victim and the aggressors. It was purposely selected to facilitate the commission of the crime. Here, the accused were armed with a knife and a gun, while Colminas had nothing to defend himself. The accused took advantage of their weapons and their number against an unarmed victim, which is an aggravating circumstance.[16]

Aggrieved, Pespenian appealed to the CA.

The CA Decision

On June 22, 2018, the CA affirmed with modification the RTC's decision. The CA increased the award of moral damages to P75,000.00, exemplary damages to P75,000.00, and temperate damages to P50,000. The CA retained the P75,000.00 civil indemnity. All monetary awards shall earn an interest of 6% per annum from the date of finality of the decision until fully paid.[17]

Unsuccessful, Pespenian appealed his conviction before the Court.

The Issue Presented

The sole issue for resolution is whether or not the CA erred in affirming Pespenian's conviction for murder.

The Court's Ruling

The Court affirms the conviction.

In his Brief, Pespenian alleges that the prosecution witnesses failed to identify him as Colminas' assailant because the place of incident was dark and there was no showing that the witnesses saw his face. The Court is not convinced.[18]

First, Pespenian admitted during his direct examination that he and Salili encountered the victim, Colminas, on their way home. He narrated that Colminas was holding a knife, and fought over it with Salili. However, he left them out of fear.[19]

Direct Examination of Pespenian - TSN dated October 1, 2010, pp. 8-10

Q:

You mentioned awhile ago that after fishing you went home, did you arrive to your house?

A:

No.

Q:

Why?

A:

We met the victim there at the road.

Q:

Meaning to say, you met Brigido Colminas at the road when you were on your way home?

A:

Yes, ma'am.

Q:

And when you met, what happened next?

A:

He approached us.

Q:

And after that what happened?

A:

That's the time that the incident happened because he approached us.

Q:

What did he do when he [approached] you and Ireneo Salili?

A:

I saw Brigido Colminas was carrying a knife.

Q:

You mentioned awhile ago that Brigido Colminas approached you and he was then during that time carrying a knife. So, when [he] approached you, what happened next?

A:

Ireneo Salili and Brigido Colminas were grappling each other [for] the knife.

x x x x

Q:

What did you do when you saw them grappling with each other with a knife?

A:

I left them and I proceeded my way to my home.

Q:

You did not bother to pacify?

A:

No, I did not because I was already afraid.

Pespenian's admission puts him on the crime scene while a crime was being committed. His admission contradicts his claim that the prosecution witnesses did not see him because it was dark.

Second, it was established during the examination of the prosecution witnesses that the place where the incident took place was not totally dark. There was illumination coming from the flashlight, which helped the witnesses see the attackers. The witnesses were only four meters away from Colminas as he was being assaulted. The witnesses knew the accused as they lived near each other. Pespenian even admitted during his cross examination that he knew Pilota and Valenzona as they were neighbors.[20] In sum, the light, the distance, and the familiarity with the accused aided the prosecution witnesses to identify them.

The following excerpts support the conviction of the accused. The details narrated below prove that the witnesses saw the faces of the accused, the weapons used, and their participation in the crime.

Direct Examination of Pilota - TSN dated September 3, 2004, pp. 5-11

Pros. Macias:

Did you and your companion reach the house of Brigido Colminas?

Witness:

We did not reach the house of Brigido Colminas, Ma'am.

Pros. Macias:

What was the reason why you and your companion did not reach the house of Brigido Colminas?

Witness:

Because Wennie Pespenian and Ireneo Salili waylaid us.

Pros. Macias:

After that, what happened?

Witness:

Wennie Pespenian kept on stabbing.

Pros. Macias:

Who was being stabbed by Wennie Pespenian?

Witness:

Brigido Colminas.

Pros. Macias:

What part of the body of Brigido Colminas was stabbed by Wennie Pespenian?

Witness:

He had many wounds.

Court Interpreter:

The witness is pointing to his left and right chest down to his foot.

Pros. Macias:

Did you see how many times Wennie Pespenian stabbed Brigido Colminas?

Witness:

I saw him [stab] Brigido Colminas but I was not able to count, how many times.

Pros. Macias:

While Wennie Pespenian stabbed Brigido, where was Ireneo Salili?

Witness:

He was there following Wennie Pespenian.

Pros. Macias:

What do you mean when you say that Ireneo Salili was following Wennie Pespenian?

Witness:

Because they were walking together... (The answer of witness was interrupted by Pros. Macias.)

Pros. Macias:

My question is: where was Ireneo Salili when Wennie Pespenian kept on stabbing Brigido Colminas?

Witness:

He was very near him and following him.

Pros. Macias:

What was the distance of Ireneo Salili when Wennie Pespenian stabbed Brigido Colminas?

Witness:

One meter distance.

Pros. Macias:

What was he doing that time?

Witness:

He was there following Wennie Pespenian because while the victim was being stabbed, he was re-treating.

Court to the Witness:

What was Ireneo Salili doing when he saw Wennie Pespenian stabbed Brigido Colminas?

Witness:

He was behind Wennie Pespenian.

Court to the

Witness: What was he doing?

Witness:

I did not see him do anything.

Pros. Macias:

Did you see the weapon used by Wennie Pespenian in stabbing Brigido Colminas?

Witness:

I saw it.

Pros. Macias:

What was it?

Witness:

A knife.

Pros. Macias:

Can you tell the Honorable Court the length of that knife?

Witness:

Around 8 inches.

Pros. Macias:

When Wennie Pespenian was stabbing Brigido, what happened to Brigido?

Witness:

He fell down.

Pros. Macias:

How far were you from Wennie Pespenian and Brigido Colminas when the incident happened?

Witness:

Around 4 meters distance.

Pros. Macias:

How about your other companion? What was his distance from Brigido?

Witness:

Around that distance also, x x x x

Pros. Macias:

How were you able to recognize that it was Wennie Pespenian who stabbed Brigido Colminas?

Witness:

We had a flashlight that time.

Pros. Macias:

Since there were two of you who accompanied Brigido Colminas, who among the two of you held the flashlight?

Witness:

I was the one, Ma'am.

Pros. Macias:

Aside from a knife, were there any other weapons that you saw being brought by the accused?

Witness:

We saw Ireneo held a pistol.

Pros. Macias:

Is the accused Wennie Pespenian and accused Ireneo Salili here today?

Witness:

Only Wennie Pespenian is here, Ma'am.

Cross Examination of Pilota - TSN dated March 18, 2005, pp. 6-8

Atty. Atillo:

Such that you cannot easily ascertain the identities of persons you see there unless you are very near the person.

Witness:

I recognized them because we are bringing a flashlight.

Atty. Atillo:

Who among the three of you brought flashlight?

Witness:

Me, Sir. x x x x

Atty. Atillo:

That flashlight you used in illuminating the place did not clearly illuminate the place because you were behind them.

Witness:

I directed the light at the sides.

Atty. Atillo:

Why did you direct the light at the sides not at the front?

Witness:

Because they were walking [ahead] at the side.

Atty. Atillo:

Have you met Ireneo Salili prior to January 2, 2003 incident?

Witness:

Yes Sir, because he is living near our house,

x x x x

Atty. Atillo:

Are you also a friend of Wennie Pespenian, one of the accused in this case?

Witness:

We know each other, Sir. Unlike Brigido Colminas, we are not so close associates.

Direct Examination of Valenzona - TSN dated April 15, 2005, pp. 4-8

Q:

Did Brigido Colminas reach his house?

A:

No, Ma'am.

Q:

What was the reason, if you know, why Brigido Colminas was not able to reach his house?

A:

He was waylaid by Wennie Pespenian.

Q:

Aside from Wennie Pespenian, who else waylaid him?

A:

Ireneo Salili.

x x x x

Q:

Can you please tell the Honorable Court what actually happened at that time while you were on your way to the house of Brigido Colminas?

A:

He was waylaid by Wennie Pespenian.

Q:

You said that Brigido Colminas was waylaid by the accused in this case, will you please tell this Honorable Court how the accused Wennie Pespenian waylaid him?

A:

He stabbed him many times.

Q:

Who stabbed him?

A:

Wenie Pespenian stabbed Brigido Colminas.

Q:

Can you still remember how many times did Wenie Pespenian stab Brigido Colminas?

A:

Many times.

Q:

How about Ireneo Salili, what was his participation?

A:

He pointed a gun.

Q:

To whom?

A:

To Brigido Colminas.

xxxx

Q:

After Brigido Colminas was stabbed by Wenie Pespenian several times, what happened to Brigido Colminas?

xxxx

A:

He fell to the ground,

Q:

How did you recognize Wenie Pespenian and [Ireneo] Salili at that time?

A:

Because they were beamed with a flashlight.

Q:

Are you familiar with them, Wenie Pespenian and Ireneo Salili?

A:

Yes, Ma'am.

Q:

Is Wenie Pespenian present in this courtroom today?

A:

Yes, Ma'am.

xxxx

Q:

What about Ireneo Salili, is he present in the courtroom today?

A:

No, Ma'am, he is not present.

Q:

Mr. Witness, what was the instrument used by Wenie Pespenian in stabbing Brigido Colminas?

A:

A knife.

Q:

Can you still remember the length of that knife?

A:

More or less, eight (8) inches in length.

Q:

Can you please tell the Honorable Court what part of the body of Brigido Colminas was hit?

A:

He was hit on his arm, breast, and leg, but I could not recall if left or right.

From the foregoing stenographic notes and the Post Mortem Examination Report,[21] the elements of murder are sufficiently established that: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) the killing is not parricide or infanticide.[22]

Here, the accused Pespenian was positively identified by the two prosecution witnesses to have stabbed Colminas that resulted to his death. The killing was not parricide as the victim and the accused were not ascendants or descendants of each other, and neither is it infanticide as the victim is an adult.

The only element left for discussion is whether the killing was attended by the qualifying circumstance of taking advantage of superior strength in Article 248 of the Revised Penal Code.

In his Brief, Pespenian avers that the prosecution failed to adduce evidence to prove that he purposely sought the advantage or deliberately used it, in the attack. He asserts that Colminas was not defenseless as he had two companions who were supposed to protect him.[23]

The Court is not persuaded.

Here, the RTC determined the presence of qualifying circumstance of taking advantage of superior strength.

The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked." The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated.

In the instant case, accused, in perpetrating the crime was armed with a knife and his co-accused Ireneo Salili with a gun, while Brigido Colminas had nothing to defend himself.

As testified by the witness, accused Wennie was stabbing Brigido many times while his co-accused Ireneo Salili was pointing a gun at Brigido. The two (2) accused therefore took advantage that they were both armed in attacking their unarmed and defenseless victim. Such intention is evidenced by the 18 stab and incised wounds combined, which can be found in the different parts of the body of the accused on account of the attack made.[24]

The CA had a similar pronouncement.

There is abuse of superior strength when the perpetrators of a crime deliberately used excessive force, thereby rendering the victim incapable of defending himself. The notorious inequality of forces creates an unfair advantage for the aggressor.

In the case at bench, accused-appellant and his co-accused evidently armed themselves with deadly weapons. Accused-appellant used a knife and with it stabbed Colminas inflicting no less than eighteen (18) wounds upon the latter. Co-accused Salili, for his part, held a gun, which he pointed towards Colminas' direction. On the other hand, Colminas was unarmed. While Colminas had companions at that time, they were similarly unarmed and were overwhelmed by fear of assailants. Accused-appellant and co-accused clearly exploited their superior advantage in number and weapons to ensure the attainment of their hideous plan, i.e., death to Colminas.[25]

The Court further observes that the prosecution witnesses testified that Pespenian and Salili ran after them after the stabbing incident. This shows that the assailants knew that they had the upper hand because they were armed, and they demonstrated their superiority by going after the unarmed witnesses.

Well-settled is the rule that findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court.[26] We have reviewed the case and we see no compelling reason to reverse the conviction. The trial court and the appellate court were unanimous in their findings of fact and conclusions of law. Their rulings were based on evidence on record, law, and jurisprudence.

WHEREFORE, premises considered, the June 22, 2018 Court of Appeals Decision in CA-G.R. CR-HC No. 02160 is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Penned by Associate Justice Gabriel R. Robeniol, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring; rollo, pp. 4-18.

- [2] Penned by Presiding Judge Jerry B. Dicdican; CA rollo, pp. 46-51.
- [3] That on or about the 2nd day of January, 2003, at about 7:30 o'clock in the evening, more or less, at Barangay Cawit, Municipality of Pilar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and a handgun of unknown caliber, conspiring, confederating and mutually helping with one another, with deliberate intent to kill, by means of treachery and evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab Brigido Colminas with the use of a knife, hitting the latter on the different parts of his body, thereby resulting to the instantaneous death of the said victim; records, p. 1.
- [4] Also referred to as "Wenie Pespenian" in some parts of the rollo.
- [5] Records, pp. 10-14.
- [6] Id. at 18-19.
- [7] Id. at 24.
- [8] Id. at 160.
- [9] Transcript of Stenographic Notes (TSN), September 3, 2004, pp. 3-11.
- [10] Id.
- [11] Id.
- [12] TSN, April 15, 2005, pp. 4-9.
- [13] TSN, April 8, 2005, pp. 3-8.
- [14] TSN, October 1, 2010, pp. 4-12.
- [15] CA rollo, pp. 51. 16
- [16] Id. at 50.
- [17] Rollo, p.17.
- [18] CA rollo, pp. 37-39.
- [19] TSN, October 1, 2010, pp. 8-10.
- [20] TSN, November 5, 2013, p. 4.
- [21] Records, p. 79; Folder of Exhibits, p. 3, Exhibit "B."
- [22] *People v. Gervero*, G.R. No. 206725, July 11, 2018.
- [23] CA rollo, p. 42.
- [24] Id. at 50.
- [25] Rollo, pp. 14-15.
- [26] *People v. Urmaza y Torres*, G.R. No. 219957, April 4, 2018.

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