

THIRD DIVISION

[G.R. No. 186493, November 25, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REYNALDO
HERNANDO Y AQUINO, APPELLANT.**

R E S O L U T I O N

NACHURA, J.:

On appeal is the August 22, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02375 which affirmed the decision^[2] rendered by Branch 6 of the Regional Trial Court (RTC) of Baguio City, finding appellant Reynaldo Hernando y Aquino (appellant) guilty beyond reasonable doubt of murder.

The facts, summarized by the trial court and borne out by the records, are as follows:

On April 13, 2004 at about 5:45 p.m., Alain James Dirige (Dirige) was driving his sedan type taxi along Harrison Road, Baguio City. At the intersection of Harrison Road and Claudio Street, his taxi was flagged down by a woman. Dirige, thus, veered his taxi towards the side of the road. When he looked at his rear to see if the woman would board his taxi, he saw a long-haired man wearing a black shirt, standing behind the woman with a gun pointed at the latter's head, near the left ear. Suddenly, Dirige heard a gunshot and saw a burst of gunfire. The woman fell to the pavement face down with blood oozing from her head. The gunman, on the other hand, immediately left the crime scene.^[3]

Dirige was momentarily stunned by the shooting incident he saw. When he recovered from shock, he drove his taxi away from the scene of the crime, and went home.^[4]

Police officers arrived at the crime scene after a few minutes and found the lifeless body of the woman, who was identified as Atty. Victoria Mangapit Sturch (Atty. Sturch). They conducted an on-the-spot investigation and an inquiry of the shooting incident.^[5] They interviewed Rhea David (David), another eyewitness, who was in a store, located only 3 meters away from the crime scene.^[6] David gave her description of the gunman, and a cartographic sketch was made based on her description.^[7]

The following day, April 14, 2004, police officers went to David and showed her pictures. She pointed to one of the pictures as that of the gunman.^[8] The person in the picture turned out to be appellant.

On April 17, 2004, Dirige finally went to the police station to give his account of the shooting incident. The police officers showed him mug shots and a video footage.

From these mug shots and video footage, Dirige identified the gunman,^[9] who was named by the police officers as herein appellant.

Hence, on April 20, 2004, appellant was charged with murder in an Information^[10] which reads:

That on or about the 13th day of April, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a gun and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot VICTORIA STURCH Y MANGAPIT, thereby inflicting upon the latter a gunshot wound of (sic) the head, which injury directly caused her death.

That the qualifying circumstances attended the commission of the crime, to wit: (1) treachery as the shooting of the victim by the accused was sudden and unexpected and the victim was not in a position to defend herself (2) evident premeditation and (3) taking advantage of superior strength as the attack was made by the accused who was armed with a handgun upon the victim, a woman, who was merely standing at the time of attack.

CONTRARY TO LAW.

When arraigned on May 5, 2004, appellant, with the assistance of counsel *de parte*, entered a plea of not guilty. Trial on the merits then ensued.

The prosecution presented Dr. John Tinoyan,^[11] who had autopsied Atty. Sturch, and the police officers who conducted the investigation, namely: Police Officer (PO) 2 Daniel Bandoc,^[12] Police Senior Inspector Lorenzo Sabug,^[13] Police Inspector Disosdado Danglose,^[14] Senior Police Officer 4 Bernard Carabacan,^[15] and PO2 Rico Saro.^[16] The two eyewitnesses - Dirige^[17] and David^[18] - also took the witness stand, positively identifying appellant as the gunman. Ver Espino,^[19] son of Atty. Sturch, likewise, testified to prove the damages incurred by reason of the death of his mother.

Appellant's defense consists of denial and alibi. He averred that on April 9, 2004, he went to Sual, Pangasinan for a vacation. He intended to stay in Sual for only two days, but because his friend died, he extended his stay until noon of April 13, 2004. He, along with his father, left Sual, Pangasinan at 1:30 p.m. and reached their home in Hamada Subdivision, Baguio City at around 7:00 p.m. At around 7:30 p.m., appellant left home and reported for work at Nikki's Bar.^[20]

Appellant's testimony was corroborated by his father, Ernesto Hernando,^[21] and by his friends - George Tormento,^[22] Jomar Haligao,^[23] Bobby Orqueza,^[24] and Edlen Abarra.^[25]

Appellant also presented Jennifer Gabaen^[26] and Meriam Pacdayan^[27] (Pacdayan) to prove his innocence. Pacdayan's testimony tended to establish that Atty. Sturch

was shot by Eddie Boy Padilla, upon the order of Robbie Imperial.^[28]

The trial court, however, disbelieved appellant's defense and rendered judgment convicting him. According to the trial court, the narrations of the eyewitnesses were vivid, spontaneous and credible, and were in harmony with the autopsy report submitted by Dr. Tinoyan. It also found no bias or ill motive on the part of Dirige and David to falsely testify against appellant. The trial court further held that there was no physical impossibility for appellant to be present at the scene of the crime. Thus, appellant's defense of alibi could not prevail over the positive identification by Dirige and David.

The decretal portion of the RTC decision reads:

WHEREFORE, the Court finds the accused Reynaldo Hernando y Aquino **guilty** beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as charged in the information and hereby sentences him to suffer the penalty of **Reclusion Perpetua**, to indemnify the heirs of the deceased Victoria Sturch the sum of P50,000.00 as civil indemnity for her death; P208,000.00 as actual damages; and P50,000.00 as moral damages for the pain and anguish suffered by the heirs for her death; all indemnifications are without subsidiary imprisonment in case of insolvency, and to pay the costs [of suit].

The accused Reynaldo Hernando, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the [R]evised Penal Code.

SO ORDERED.^[29]

The appellant filed an appeal before the CA, arguing that the court *a quo* erred:

1. In convicting the accused-appellant notwithstanding the fact that his guilt was not established beyond reasonable doubt;
2. In dismissing the defense of the accused-appellant despite having been established by clear and convincing evidence; and
3. In sentencing him to suffer the penalty of *Reclusion Perpetua*, to indemnify the heirs of the deceased the sum of P50,000.00 as civil indemnity, P208,000.00 as actual damages, and P50,000.00 as moral damages and to pay the costs.^[30]

On August 22, 2008, the CA rendered the assailed Decision,^[31] affirming appellant's conviction, *viz.*:

WHEREFORE, premises considered, the appealed decision dated June 13, 2006 of the RTC, Branch 6, Baguio City in Criminal Case No. 22987-R is hereby AFFIRMED.

SO ORDERED.^[32]

Appellant is now before us, questioning his conviction. On April 13, 2009,^[33] this Court required the parties to submit supplemental briefs within thirty (30) days. On June 5, 2009, the *People*, through the Office of the Solicitor General, manifested that it would no longer file a supplemental brief.^[34] On the other hand, appellant, to this date, has not yet filed his supplemental brief. Thus, for failure to comply with the April 13, 2009 Resolution, the Court deems as waived the filing of appellant's supplemental brief and considers this case submitted for resolution.

Appellant insists that both the trial court and the CA erred in convicting him of the crime charged. Essentially, he claims that the prosecution's evidence does not satisfy the quantum of proof necessary for conviction. He vigorously assails his out-of-court identification by the eyewitnesses.

It is understandable for appellant to assail his out-of-court identification by the prosecution witnesses. This is so because the eyewitness identification is vital evidence and, in most cases, decisive of the success or failure of the prosecution.^[35]

In *People v. Teehanke, Jr.*,^[36] we explained the procedure for out-of-court identification and the test to determine its admissibility:

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **line-ups** where a witness identifies the suspect from a group of persons lined up for the purpose. x x x. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz.*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Applying the totality-of-circumstances test, we find the eyewitnesses' out-of-court identification to be reliable. *First*, Dirige and David were very near the place where Atty. Sturch was shot; thus, they had a good view of the gunman. *Second*, no competing event took place to draw their attention from the incident. Nothing in the records shows the presence of any distraction that could have disrupted the witnesses' attention at the time of the shooting incident, or that could have prevented them from having a clear view of the face of the gunman. *Third*, David immediately gave the description of the gunman, while Dirige gave his description four days after the shooting incident, giving sufficient explanation why it took him four days to go to the police station. *Finally*, there was no evidence that the police had supplied or even suggested to Dirige and David that appellant was the suspected gunman.

We, therefore, fail to see any flaw that would invalidate the eyewitnesses' identification. We entertain no doubt as to the positive identification made by these

two prosecution witnesses, who had the opportunity to vividly see the physical features of appellant. As aptly observed by the CA:

Dirige and David were able to positively and categorically identify accused-appellant Hernando as the one responsible for the fatal shooting of victim Sturch along Harrisom Road, Baguio City on that tragic day of April 13, 2004. Dirige and David corroborated each other on the claim that the victim was taller than accused-appellant Hernando and accused-appellant Hernando stood behind the victim while the latter was waiting for a taxicab when accused-appellant Hernando pointed and fired a gun almost below her left ear. Dirige further recalled that accused-appellant Hernando had high eyebrows, wore a black shirt and ran towards the side walk in front of BPI.^[37]

Even assuming *arguendo* that appellant's out-of-court identification was irregular as appellant claims, this identification did not foreclose the admissibility of the independent eyewitnesses' in-court identification. It must be stressed that in convicting appellant of the crime charged, the courts *a quo* did not rely solely on the out-of-court identification. Dirige's August 18, 2004 testimony^[38] and David's September 13, 2004 testimony^[39] clearly show that they positively identified appellant independently of the previous identification they made at the police station. Their testimonies, including their identification of appellant, were positive, straightforward, and categorical.

In *People v. Rivera*,^[40] this Court, in rejecting a similar contention, held:

Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification."^[41]

In the face of the credible and reliable positive identification made by Dirige and David, appellant's defense of alibi is absolutely unavailing. The defense of alibi, being inherently weak, cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime.^[42]

Appellant's assertion that he arrived in Baguio City only on April 13, 2004 at 7:00 p.m. cannot be given much credence since there was no evidence presented showing that appellant was still in Dagupan City at the time of the commission of the crime. The witnesses presented by appellant only proved that appellant and his father left Sual, Pangasinan at 1:30 p.m. on August 13, 2004; and arrived home at 7:00 p.m. Appellant's witnesses, however, were unanimous in saying that the travel