

FIRST DIVISION

[G.R. No. 229823, February 27, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ROGER ACABO, ACCUSED-APPELLANT.

DECISION

DEL CASTILLO, J.:[*]

On appeal is the August 30, 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 02082 which affirmed with modification the June 22, 2015 Judgment^[2] of the Regional Trial Court (RTC), Branch 32, Dumaguete City, finding Roger Acabo (appellant) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

Appellant and Pael Acabo (Pael) were charged with murder in an Information dated November 20, 2014 which reads:

That in the morning of September 19, 2014 at Sitio Talatala, Barangay Siit, Municipality of Siaton, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused ROGER ACABO and PAEL ACABO, conspiring, helping and mutually aiding one another, with treachery, evident premeditation and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot and wound ALBERTO OYHOC PALTINGCA with the use of a short firearm of an unknown caliber, with which said accused were then armed and provided, inflicting upon the said victim fatal injuries on the different parts of his body that caused his untimely death, to the damage and prejudice of his surviving heirs.

CONTRARY to Article 248 of the Revised Penal Code.^[3]

Appellant was arraigned and pleaded not guilty while his co-accused, Pael, remained at large. Trial, thereafter, ensued.

Version of the Prosecution

Witness Josephine Enrera (Josephine) testified that at around 6:00a.m. of September 19, 2014, while on her way uphill to *Sitio* Talatala, Siit, Siaton to sell seashells, she met Alberto Paltingca (Alberto) who was also going uphill to pasture his cow.^[4] Suddenly, two men appeared and waylaid them.^[5] Josephine recognized their assailants as appellant, who was her neighbor, and Pael.^[6] She saw appellant shoot Alberto's legs with a handgun, causing Alberto to stumble and fall backwards.^[7] Immediately thereafter, Pael pointed a gun at her and pulled the trigger but the gun did not fire, thereby providing her an opportunity to run and hide behind the bushes.^[8] She then saw appellant run after Alberto and shoot him the second time.

[9] Alberto, who was shot on his armpits, fell down and rolled downhill.[10] At this time, appellant and Pael ran towards the stream and escaped.[11] Josephine shouted and cried for help.[12] She ran home confused and told her children about what happened.[13] It was only in the afternoon that she was able to relay to Romeo Paltingca (Romeo), Alberto's brother, what she witnessed.[14]

Dr. Mitylene Besario Tan (Dr. Tan), the Municipal Health Officer of Siaton, Negros Oriental, examined the cadaver of Alberto. She testified that Alberto sustained a gunshot wound on the upper left arm penetrating the lateral side of the chest and another gunshot wound on the upper right thigh exiting below the gluteal region.[15] Dr. Tan opined that the cause of Alberto's death was the gunshot wound on the upper left arm that could have hit the heart causing hypovolemic shock, secondary to massive bleeding.[16]

Jennifer Paltingca (Jennifer), Alberto's wife, testified that at around 11:00 a.m. of September 19, 2014, she went looking for her husband who would usually come home at 8:00a.m. after pasturing their cow.[17] She went uphill and there she saw her husband lying in a pool of blood beside the road.[18] She stated that the expenses incurred for the wake and burial of Alberto was shouldered by Alberto's sister, Mary Ann Gomial (Mary Ann). [19]

Romeo, Alberto's brother, testified that he assisted Jennifer in calling for help when the latter saw the lifeless body of her husband.[20] He also narrated that Josephine went to his house at 4:00p.m. and told him who killed Alberto.[21] On cross-examination, Romeo stated that he heard gunshots from afar at around 7:00 a.m. before he sent his children to school.[22]

The Chapel Manager of Siaton Funeral Homes, Anthony E. Elma, also testified that Alberto's sister, Mary Ann, paid the total amount of P33,000.00 as premiums for the funeral plan used for the burial of Alberto.[23] Mary Ann was likewise presented as witness to confirm that she paid for the funeral plan she assigned to her brother.[24]

Version of the Defense

Appellant interposed the defense of denial and alibi, alleging that on September 19, 2014, he was working in a construction project in Tunga Tunga, Dauin, Negros Oriental. He narrated that he was on duty the previous day, rendered overtime work until 10:00 p.m. and thereafter slept in his bunkhouse situated near the construction site.[25] He woke-up at around 5:00 a.m. of September 19, 2014, prepared his breakfast, washed his clothes, and waited for the alarm to signal the start of their work at 8:00 a.m.[26] He admitted knowing Alberto whom he met a couple of times and averred that he had no disagreement with Jennifer and Romeo. [27]

To corroborate appellant's testimony, the defense presented Engr. Jay Te (Engr. Te), appellant's employer; Gregorio Erolon (Gregorio), the foreman in Engr. Te's construction project; Stephen Jun Titu (Stephen), the timekeeper of the construction project; and Mario Campos (Mario) and Miguel Astrorias (Miguel), appellant's co-workers.

Engr. Te testified that appellant had been his employee for about 10 years and that appellant reported for work in the construction site on September 19, 2014 based on their daily time record (DTR).^[28] Gregorio, on the other hand, testified that he monitored the attendance of the construction workers and made entries in the DTR, which entries were verified by Stephen.^[29] Both Gregorio and Stephen stated that appellant reported for work on September 19, 2014;^[30] however, Gregorio, on cross-examination, admitted that he did not actually see appellant report for work at 8:00a.m. of September 19, 2014.^[31] Both also admitted that the DTR did not show the particular time a worker reports for work and that it was not signed by the workers.^[32] Both Mario and Miguel testified that they saw appellant in his bunkhouse near the construction site on September 19, 2014 before they reported for work at 8:00 a.m.^[33]

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged. It lent credence to Josephine's positive identification of the appellant as the person who killed Alberto. It appreciated the attendant aggravating circumstances of treachery and abuse of superior strength, having found that "[Alberto], as revealed by the nature, condition and location of the gunshot wounds sustained by him, proved that he was an easy prey of [appellant] x x x."^[34] Appellant's defenses of denial and alibi were disregarded by the RTC because the evidence of the defense failed to prove that appellant reported for work at the time the crime was committed, thereby failing to show that it was impossible for him not to be at the crime scene.

The dispositive portion of the RTC's Judgment reads:

WHEREFORE, after considering all evidences, the Court finds accused ROGER ACABO, GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with accessory penalties provided by law; and the accused is also ordered to pay the heirs of the deceased victim, the following sums:

- 1) Seventy-five Thousand Pesos (P75,000.00) as civil indemnity ex delicto;
- 2) Funeral expenses in the amount of Thirty Three Thousand Pesos Php.33,000.00 (Php.560.00 per month x 60 payments);
- 3) Fifty Thousand Pesos (P50,000.00) as moral damages;
- 4) Fifty Thousand Pesos (P50,000.00) as exemplary damages;
and
- 5) Sixty Thousand Pesos (P60,000.00) as temperate damages.

^[35]

Ruling of the Court of Appeals

On appeal, the CA agreed with the RTC that appellant killed Alberto with treachery. Like the RTC, the CA gave full credence to Josephine's categorical, spontaneous, and straightforward testimony that clearly narrated the killing of Alberto and positively identified appellant as the assailant visa-vis appellant's weak defenses of alibi and

denial. While the CA was doubtful whether the aggravating circumstance of abuse of superior strength attended the killing, it found that treachery qualified the killing to murder.

The CA, however, modified the monetary awards granted. It increased the award of moral damages from P50,000.00 to P75,000.00; decreased the amount of exemplary damages from P50,000.00 to P30,000.00; and deleted the award of temperate damages considering that the trial court had already awarded P33,000.00 as funeral expenses representing actual damages.

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant appeal is DENIED. The assailed 22 June 2015 Judgment of Branch 32 of the Regional Trial Court of Dumaguete City in Crim. Case No. 2015-22724 is hereby AFFIRMED with MODIFICATION. Moral damages awarded to the heirs of Alberto Paltingca is INCREASED to P75,000.00, while exemplary damages is DECREASED to P30,000.00. The award of civil indemnity *ex delicto* in the amount of P75,000.00 and the award of funeral expenses in the amount of P33,000.00 are RETAINED. The grant of temperate damages is DELETED.

The aggregate amount of the monetary awards stated herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.

SO ORDERED.^[36]

Hence, appellant instituted this present appeal, arguing in his Appellant's Brief^[37] that the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Appellant argues that the testimony of Josephine, as the alleged lone eyewitness, was unreliable, incredible and uncorroborated. Appellant finds Josephine's account of events as highly improbable, specifically her statement that immediately after Alberto was shot, she escaped and ran uphill towards the culprits' path. This, according to appellant, runs counter to human experience which dictates that a person, when confronted with a life-threatening incident, would run away from the source of threat. Next, appellant finds it absurd that the culprits did not prevent Josephine from escaping when in the first place, they also tried to shoot her. Appellant, thus, maintains that credence should be given to his alibi which was corroborated by five other witnesses.

Appellant likewise contends that the evidence of the prosecution failed to prove the attendance of the qualifying circumstances of treachery and abuse of superior strength. First, it cannot be said that Alberto was completely defenseless since he was armed with a bolo (which was tucked in his waist) at the time of the attack. Second, there was no concrete proof that there were two persons who attacked Alberto. Pael was not brought to trial and his identity was not sufficiently proven by the prosecution.

Our Ruling

After a careful review of the records of the case, we find the appeal to be devoid of merit. The Court finds no reason to reverse the CA in affirming the ruling of the RTC finding appellant guilty beyond reasonable doubt of the crime of murder.