

SECOND DIVISION

[G.R. No. 223512, July 24, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO ALMOSARA,* ACCUSED-APPELLANT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision dated January 28, 2016^[1] of the Court of Appeals in CA-G.R. CR-HC No. 07177 affirming the trial court's verdict of conviction^[2] for murder against appellant with modification of the monetary awards.

The Information

Appellant Antonio Almosara, together with his father, Adolfo Almosara was charged with murder under the following Information:

That on or about the 6th day of December, 2000 in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapons (sic), conspiring and confederating together with Anthony Almosara y Buenaflor and Ronnie Almosara who are still at large and all of them mutually helping and aiding one another with intent to kill, with treachery, and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously stab one Arnulfo Cabintoy y Oliar with said bladed weapon on the different parts of his body, thereby inflicting upon the latter mortal wounds which caused his instantaneous death

Contrary to law.^[3]

Meantime, Adolfo Almosara died, hence, the case as to him was dismissed.^[4]

But as to appellant Antonio Almosara, the case proceeded. On arraignment, appellant pleaded not guilty.^[5] Thereafter, trial ensued.

Maria Cabintoy, Gregorio Cabintoy, Marife Cabintoy, Wilfredo Almazen, SPO1 Felipe Matias, and Dr. Felimon Porciuncula, Jr. testified for the prosecution. On the other

hand, appellant alone testified for the defense.

Version of the Prosecution

On December 6, 2000, siblings Gregorio and Marife Cabintoy were inside their residence at Sitio Quarry in Antipolo City.^[6] Right outside, their father Arnulfo Cabintoy was drinking with appellant Antonio, Anthony, Rodolfo (Adolfo), and Ronnie, all surnamed Almosara.^[7]

After the drinking spree, Arnulfo advised appellant to go to sleep. Appellant irritably engaged in a heated exchange with Arnulfo.^[8] Shortly after, appellant and his relatives left.^[9]

Suspecting that the Almosaras might return and retaliate, Arnulfo thought of his son who was then in the basketball court. He asked his wife Maria to fetch their son.^[10]

Not long after, the Almosaras, now armed with bolos, had returned. At that point, Arnulfo was gathering stones he thought of using to defend himself and his family should the Almosaras be back.^[11]

After a while, the Almosaras came back. For his part, appellant went straight to and pinned down Arnulfo and right then and there repeatedly stabbed Arnulfo. While Arnulfo was already lying prostrate on the ground, Anthony joined in and stabbed Arnulfo once in the stomach. Ronnie and Adolfo also joined in and stabbed Arnulfo a total of six (6) times in the back.^[12] Thereafter, the Almosaras ran away.^[13]

Meanwhile, Maria had returned from the basketball court and saw many people gathering around their house. Some restrained her from getting inside. Then she saw her husband lying face down on the ground. He was full of blood. She heard people talking that the persons responsible were her husband's drinking buddies.^[14]

Wilfredo Almazen who lived nearby saw appellant, Adolfo, and another person passing by the road fronting his house. The three (3) were wearing bloodied clothes and holding bolos. Shortly after, Maria came to him asking for his help as barangay chairman for the arrest of the Almosaras. He readily obliged. He first went to Arnulfo's house where he saw Arnulfo's lifeless body. Then he went to chase appellant who was already fleeing at that time. He was able to catch appellant whom he immediately brought to the police headquarters.^[15]

SPO1 Felipe Matias, on the other hand, pursued and also succeeded in getting hold of Adolfo.

Dr. Filemon Porciuncula, Jr. conducted an autopsy on Arnulfo's body.^[16] He found incise wounds in Arnulfo's left nape and right arm, and abrasions on the left forehead, right knee, and left hand. They were all non-fatal wounds. He also found stab wounds in the left chest and four (4) stab wounds in the left side of the back. Three (3) of these stab wounds were fatal.^[17] He concluded that Arnulfo died of hemorrhagic shock or loss of blood due to multiple stab wounds. His findings were reflected in his Medico Legal Report No. M-878-00.^[18]

Version of the Defense

Appellant testified that on December 6, 2000, Arnulfo invited him to drink in his house at Sitio Quarry Tagbak, Barangay San Jose, Antipolo City. He met Ronnie for the first time there.^[19]

While they were drinking, Ronnie and Arnulfo got into a heated argument. When he tried to pacify them, Arnulfo got enraged and snapped at him to mind his own business. Arnulfo also punched him so he ran away. But Arnulfo chased and poked him with a two-foot *tubo*. Fortunately, he did not get hit. When Arnulfo hit him another time, he was able to wrest the *tubo* from the latter. He used it to hit Arnulfo back. While he and Arnulfo were grappling for the *tubo*, Ronnie rushed in and repeatedly stabbed Arnulfo with a bladed weapon. He then left and ran away.^[20] But Chairman Almazen caught up and warned him he would be indicted for the killing of Arnulfo. He was brought to the police station where Arnulfo's wife Maria pointed him out as her husband's assailant. He readily denied the charge.^[21]

The Trial Court's Ruling

By Decision dated September 2, 2014,^[22] the trial court found appellant guilty as charged, *viz*:

WHEREFORE, premises considered, accused Antonio Almosara y Perez is found GUILTY of the crime of MURDER and is sentenced to suffer the maximum sentence under the law and is hereby sentenced to the penalty of RECLUSION PERPETUA. He is also ordered to pay the heirs of the deceased Cristito Manasan y Cervantes (sic) Php75,000.00 in Exemplary Damages, Php50,000.00 in Moral Damages and Php40,600.00 in Actual Cost with costs against suit. Damages representing unearned income of the deceased is not justified as no supporting document was ever presented in this case.

Accused Antonio Almosara y Perez is hereby ordered committed to the National Bilibid Prisons (sic) for immediate service of his sentence.

SO ORDERED.^[23]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of murder despite the alleged inconsistencies in the testimonies of the prosecution witnesses. His arguments may be summed up as follows:^[24]

(1) Gregorio and Marife's testimonies failed to paint a coherent picture of the incident. Both said they shouted for the Almosaras to stop, yet, Gregorio did not

notice his sister was also present at that time. Gregorio testified only he and their neighbor Kris witnessed the incident.^[25]

(2) Marife and Gregorio gave inconsistent statements whether it was Ronnie or Anthony who stabbed their father right after appellant delivered the initial blow.^[26]

(3) Gregorio's act of going inside their home and doing nothing even after his father already got stabbed was contrary to human experience.^[27]

Appellant further negates the presence of treachery in the commission of the crime. According to him, there was no proof he consciously adopted said mode of attack to facilitate the killing. Too, the fact that per Gregorio's testimony, Arnulfo was also armed with a bolo, indicated that Arnulfo was not without any means to defend himself.^[28] Also, the alleged quarrel between him and Arnulfo before the attack dispelled the presence of treachery.^[29]

Abuse of superior strength was not present here either. Gregorio and Marife themselves testified that appellant and his family did not simultaneously attack their father. They took turns in stabbing Arnulfo. Notably, no evidence was adduced showing a disparity between the built of Arnulfo and the individual builds of the Almosaras.^[30]

In the absence of treachery and abuse of superior strength, therefore, he should only be found liable for homicide.^[31]

Although the defense of denial is weak, the prosecution must not profit from the weakness of his defense but must rely on the strength of its own evidence.^[32]

The Office of the Solicitor General, through Assistant Solicitor General John Emmanuel F. Madamba and State Solicitor Ma. Jesusa Eleanor P. Siquijor-Magbanua, essentially countered:^[33]

(a) The testimonies of Gregorio and Marife were not only replete with details on how their father was attacked, the same were also given in a straightforward manner.^[34]

(b) The alleged inconsistencies in the testimonies of the children Gregorio and Marife as to who attacked their father first was an insignificant detail which cannot defeat their positive identification of appellant as one of the assailants. Besides, it is perfectly natural for witnesses to give varying details as one witness may notice a detail which the other did not. What matters is both Gregorio and Marife positively identified appellant as one of the slayers of their father.^[35]

(c) Gregorio and Marife were only six (6) years old and five (5) years old, respectively, when they witnessed up close their father's murder. They cannot, therefore, be expected to give an error-free narration of the events.^[36]

(d) As a six (6) year old boy, Gregorio cannot be expected to behave in a "natural way" like an adult. Besides, there is no showing that the prosecution witnesses were moved by any motive to falsely charge appellant with the slaying of Arnulfo.^[37]

(e) When the credibility of the witnesses is in issue, the trial court's factual findings and calibration of their testimonies are accorded high respect, if not conclusive effect.^[38]

(f) Treachery and abuse of superior strength qualified the killing of Arnulfo. Dr. Porciuncula, Jr. testified that Arnulfo was attacked from behind. Arnulfo was already lying prostrate on the ground when appellant and his family repeatedly stabbed him. Arnulfo was unaware of the imminent peril to his life and was rendered incapable of defending himself. While Arnulfo did have a bolo around his waist, he was rendered unable to draw it.^[39]

(g) Considering that treachery attended the killing, abuse of superior strength was deemed absorbed therein and may no longer be appreciated as a separate aggravating circumstance.^[40]

(h) The trial court properly rejected appellant's defense of denial. It was inexplicable for Arnulfo to continue hitting appellant when it was Ronnie who was supposedly stabbing Arnulfo. Most telling is this: when appellant got arrested, he did not point to Ronnie at all as the assailant.^[41]

(i) Denial cannot be accorded more weight than the categorical testimonies of the witnesses who positively identified appellant as the assailant himself.^[42]

The Court of Appeals' Ruling

By its assailed Decision dated January 28, 2016,^[43] the Court of Appeals affirmed with modification, thus:

WHEREFORE, premises considered, the instant Appeal is **DENIED** for lack of merit and the assailed 2 September 2014 Decision of the Regional Trial Court of Antipio City, Branch 73 is **AFFIRMED** with **MODIFICATIONS** as to the civil liability:

Accused-Appellant Antonio Almosara y Sy is hereby ORDERED to pay the heirs of Arnulfo Cabintoy y Oliar the following:

- 1) Temperate damages, in the amount of Php25,000.00;
- 2) Civil Indemnity, in the amount of Php75,000.00;
- 3) Moral Damages, in the amount of Php50,000.00;
- 4) Exemplary Damages, in the amount of Php30,000.00; and
- 5) 6% interest per annum to all monetary awards from the finality of the decision until fully paid.

SO ORDERED.^[44]