

EN BANC

[G.R. No. 194605, June 14, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO OANDASAN, JR., ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

This case involves a shooting incident that resulted in the deaths of two victims and the frustrated killing of a third victim. Although the trial court properly appreciated the attendance of treachery and pronounced the accused guilty of murder for the fatal shooting of the first victim, it erroneously pronounced the accused guilty of homicide and frustrated homicide as to the second and third victims on the basis that treachery was not shown to be attendant. The Court of Appeals (CA) concurred with the trial court's characterization of the felonies.

We disagree with both lower courts because treachery was competently shown to be attendant in the shooting of each of the three victims. Thus, we pronounce the accused guilty of two counts of murder and one count of frustrated murder.

Antecedents

Three informations were filed against the accused, two of which were for murder involving the fatal shooting of Edgardo Tamanu and Danilo Montegrigo, and the third was for frustrated homicide involving the near-fatal shooting of Mario Paleg.

The informations, docketed as Criminal Case No. 11-9259, Criminal Case No. 11-9260, and Criminal Case No. 11-9261 of the Regional Trial Court in Tuguegarao City (RTC), averred as follows:

Criminal Case No. II-9259^[1]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Edgardo Tamanu y Palattao, inflicting upon the latter a gunshot wound which caused his death.

Criminal Case No. II-9260^[2]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the

above-named accused armed with a gun, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Danilo Montegrigo, inflicting upon the latter a gunshot wound which caused his death.

Criminal Case No. II-9261^[3]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, with evident premeditation and with treacher[y], conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Engr. Mario Paleg y Ballard, inflicting upon the latter a gunshot wound.

That the accused had performed all the acts of execution which would have produce (sic) the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his own will.

The CA summarized the facts in its assailed judgment, to wit:

Ferdinand Cutaran, 37 years old, driver at Navarro Construction, testified that on July 29, 2003 between 8:00 to 9:00 in the evening, he and his companions Jose Ifurung, Arthur Cutaran and victim Danny Montegrigo were having a drinking spree outside the bunkhouse of Navarro Construction at Barangay Pena Weste, Gattaran, Cagayan. Suddenly, appellant who appeared from back of a dump truck, aimed and fired his gun at Montegrigo. Cutaran ran away after seeing the appellant shoot Montegrigo. He did not witness the shooting of the other two victims Edgar Tamanu and Mario Paleg. When he returned to the crime scene, he saw the bodies of Montegrigo, Tamanu and Paleg lying on the ground. Cutaran and his companions rushed the victims to Lyceum of Aparri Hospital.

As a result of the shooting incident, Danilo Montegrigo, 34, and Edgardo Tamanu, 33, died; while Mario Paleg survived. The Medical Certificate dated August 13, 2003 issued by Lyceum of Aparri Hospital disclosed that Paleg was confined from July 29-30, 2003 for treatment of a gun shot wound on his right anterior hind spine.

Prudencio Bueno, 68 years old, a checker at Navarro Construction and a resident of Centro 14 Aparri, Cagayan, stated that after having dinner with Cutaran and the others on the date and time in question, he went inside the bunkhouse to drink water. Suddenly, he heard successive gun reports (sic). When he peeped through a window he saw the accused approaching from the back of a dump truck holding something, and going to the table where they were eating. He confessed that he did not actually see the appellant fire his gun at the victims.

Dr. Nida Rosales, Municipal Health Officer of Gattaran, Cagayan testified that she conducted a post-mortem examination on the body of Montegrigo; that Montegrigo sustained a single gunshot wound below the ribs; and that the injury caused his death.

The accused-appellant raised the defense of denial and alibi. Accused-appellant, 38 years old, a native of Bulala Sur, Aparri, Cagayan, testified that from July up to October 2003, he was staying at his sister's house in Imus, Cavite. He was hired by SERG Construction, Inc. as a mason to work on a subdivision project in Rosario, Cavite. On that fateful day of July 29, 2003, he reported for work from 7:00 a.m. up to 5:00 p.m. To bolster his claim, he presented an Employment Certificate dated January 20, 2007 issued by Engr. Renato Bustamante of SERG Construction and a time record sheet dated July 29, 2003. He went back to Aparri in October 2003 after the completion of his project in Cavite. He further stated that he worked at Navarro Construction in February, 2003; that he had a previous misunderstanding with his former co-workers witnesses Cutaran and Bueno when he caught the two stealing sacks of cement from the company; that as a result, Cutaran and Bueno were transferred to another project and their employer assigned him as checker in replacement of Bueno; that the two planned to kill him as he prevented them from doing their fraudulent act; and that he resigned between the months of March and May 2003 because the two kept on disturbing him.

Fred Escobar, 48 years old, a resident of Pallagao, Baggao, Cagayan, testified that on July 29, 2003, he was having a drink with Montegrigo and three other men whom he did not know; that when he was about to go home at around 8:00 p.m., a stranger appeared and fired his gun at Montegrigo; that the assailant whom he did not know fired his gun several times. He asserted that appellant was not the assailant since the latter was shorter in stature.^[4]

Judgment of the RTC

On June 1, 2009, the RTC rendered its judgment,^[5] to wit:

WHEREFORE, the Court finds the accused Mariano Oandasan, Jr. *guilty beyond reasonable doubt as principal*:

a) in Criminal Case No. 11-9260, for Murder for killing Danilo Montegrigo and sentences accused with the penalty of reclusion perpetua and to pay the heirs of Danilo Montegrigo the sum of One Hundred Fifty Thousand Pesos (P150,000.00);

b) in Criminal Case No. 11-9259, for Homicide for killing Edgardo Tamanu and sentences accused with the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and to pay the heirs of Edgardo Tamanu the sum of Fifty Thousand Pesos (P50,000.00);

and

c) in Criminal Case No. 11-9261, for Frustrated Homicide for wounding Mario Paleg, and sentences the accused with the penalty of two (2) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.

SO ORDERED.^[6]

Decision of the CA

On appeal, the CA affirmed the judgment of the RTC through its decision promulgated on June 29, 2010,^[7] to wit:

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated June 1, 2009 of the RTC, Branch 6 of Aparri, Cagayan is **AFFIRMED with MODIFICATION** in that appellant is **ORDERED** to pay the heirs of Edgardo Tamanu the amounts of P75,000.00 as civil indemnity and P75,000.00 as moral damages, and Mario Paleg, the sum of P50,000.00 as moral damages.

SO ORDERED.^[8]

Hence, this ultimate appeal, with the accused still insisting on the reversal of his convictions.

Ruling of the Court

This appeal opens the entire record to determine whether or not the findings against the accused should be upheld or struck down in his favor. Nonetheless, he bears the burden to show that the trial and the appellate courts had overlooked, misapprehended or misinterpreted facts or circumstances that, if properly considered and appreciated, would significantly shift the outcome of the case in his favor. His failure to discharge this burden notwithstanding, the Court still reviewed the record conformably with the tenet that every appeal in a criminal case opens the record for review.^[9] Thus, after evaluating the record, the Court affirms the finding of his being criminally responsible for the killing of Montegrigo and Tamanu, and the frustrated killing of Paleg, subject to the rectification of the characterization of the felonies as to Tamanu and Paleg.

I

Denial and alibi do not overcome positive identification of the accused

There is no doubt that Prosecution witness Ferdinand Cutaran positively identified the accused as the person who had shot Montegrigo. Considering that Cutaran's credibility as an eyewitness was unassailable in the absence of any showing or hint of ill motive on his part to falsely incriminate the accused, such identification of the accused as the assailant of Montegrigo prevailed over the accused's weak denial and

alibi. As such, the CA properly rejected the denial and alibi of the accused as unworthy, and we adopt the following stated reasons of the CA for the rejection, to wit:

As for the defense of alibi, for it to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that the accused was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places. In the case at bar, appellant failed to prove the element of physical impossibility for him to be at the scene of the crime at the time it took place. His alibi that he was in Cavite and the employment certificate and time record sheet which he presented cannot prevail over the positive and categorical testimonies of the prosecution witnesses. Alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate. It is generally rejected when the accused is positively identified by a witness.^[10]

We reiterate that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who are categorical and consistent and bereft of ill motive towards the accused. Denial, unless substantiated by clear and convincing evidence, is undeserving of weight in law for being negative and self-serving. Moreover, denial and alibi cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.^[11]

II
Treachery also attended the shooting
of Tamanu and Paleg; hence, the accused
is guilty of two counts of murder and
one count of frustrated murder

The CA and the RTC appreciated the attendance of treachery only in the fatal shooting of Montegrigo (Criminal Case No. 11-9260). Although no witness positively identified the accused as the person who had also shot Tamanu and Paleg, the record contained sufficient circumstantial evidence to establish that the accused was also criminally responsible for the fatal shooting of Tamanu and the near-fatal shooting of Paleg. Indeed, the CA declared the accused as "the lone assailant" of the victims based on its following analytical appreciation, to wit:

The evidence in this case shows that the attack was unexpected and swift. Montegrigo and his friends were just drinking outside the bunkhouse when the appellant suddenly appeared from the back of a dump truck, walked towards their table and, without any warning, fired at Montegrigo. This shot was followed by more shots directed at Montegrigo's friends, Tamanu and Paleg. Indisputably, Montegrigo was caught off guard by the sudden and deliberate attack coming from the