

FIRST DIVISION

[G.R. No. 208351, October 05, 2016]

**BENJAMIN RUSTIA, JR., BENJAMIN RUSTIA, SR., AND FAUSTINO
"BONG" RUSTIA, PETITIONERS, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

BERSAMIN, J.:

In a criminal prosecution for murder qualified by the attendant circumstance of treachery, the means, method, or form of the attack must be shown to have been consciously and deliberately adopted by the offender before the same can be considered to qualify the killing. Otherwise, the killing amounts only to homicide.

The Case

This appeal is taken by all the accused from the decision promulgated on July 16, 2013 in CA-G.R. CR-H.C. No. 04864,^[1] whereby the Court of Appeals (CA) affirmed with modification the judgment rendered on November 25, 2010 by the Regional Trial Court (RTC) in Santiago City^[2] finding petitioner Benjamin Rustia, Jr. (Benjamin, Jr.) guilty as principal in the crime of murder qualified by treachery, and his co-petitioners Benjamin Rustia, Sr. (Benjamin, Sr.) and Faustino Rustia (Faustino) guilty as accomplices in the crime of murder.

Antecedents

The petitioners were charged with murder for the killing of the late Ambrocio Cristin (Ambrocio) under the amended information that reads:

That on or about the 14th day of June, 2008, at Brgy. Malvar, City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with malice aforethought and with deliberate intent to take the life of AMBROCIO CRISTIN, did then and there willfully, unlawfully, feloniously, and treacherously shot the defenseless victim [sic] AMBROCIO CRISTIN which mode of attack BENJAMIN RUSTIA JR consciously adopted, with an unknown firearm, inflicting gunshot wounds upon AMBROCIO CRISTIN being necessarily mortal, that eventually caused the death of the said AMBROCIO CRISTIN [sic]

That in the course of the killing of said AMBROCIO CRISTIN said Benjamin Rustia, Sr., and Faustino Rustia, knowing of the criminal design of Benjamin Rustia, Jr., concur with the latter in his purpose, did then and there willfully, unlawfully and feloniously cooperate in the execution of the crime of murder by their simultaneous and collective acts of grappling and restraining the victim until Benjamin Rustia, Jr., was able to wrest

possession of the gun from the victim thereby supplying both material and moral aid in the execution of the said crime of murder.

CONTRARY TO LAW.^[3]

The CA summarized the evidence adduced at trial as follows:

The prosecution presented Lilia Cristin ("Lilia" for brevity), Steve Pablo ("Pablo" for brevity), Ferdinand Samin ("Samin" for brevity), Rolando Sanchez Buenaventura ("Buenaventura" for brevity), and Dr. Jeffrey Demano ("Dr. Demano" for brevity), in order to prove the following:

On June 14, 2008, at around 1:30 in the afternoon, the victim Ambrocio Cristin ("victim" or "Cristin" for brevity) went to the Barangay Hall of Malvar, Santiago City to meet accused-appellants Rustia, Jr., Rustia, Sr., and Faustino, in order to talk to them about the land that victim Cristin had bought from a certain Agcaoile.

Since the Barangay Captain was out, accused-appellants and victim Cristin left the Barangay Hall. They were arguing.

Accused-appellant Rustia, Jr. suddenly restrained the victim Cristin on his waist. Accused-appellants Rustia, Sr. and Faustino helped accused-appellant Rustia, Jr. restrain both hands of the victim. They all "grappled", and fell on the ground.

When the victim was lying on the ground, accused-appellant Rustia, Jr. took the victim's gun that was tucked inside the victim's waist. Accused-appellant Rustia, Jr. then cocked the gun and pointed it at the victim Cristin. The latter immediately raised his arms to surrender, saying, "Madinak lumaban" (I will not fight). However, accused appellant Rustia, Jr. shot the victim Cristin. Accused-appellant Rustia, Jr. started to walk away, but returned and fired another shot at the victim. Accused-appellants Rustia, Jr., Rustia, Sr., and Faustino then boarded their tricycle, and left the place. The events were witnessed by [Buenaventura], Pablo and Samin.

Afterwards, the witnesses Buenaventura and Samin brought the victim Cristin to the Flores Hospital.

According to the victim Cristin's wife, Lilia when her husband was at the Flores Hospital, the victim was able to tell her that accused appellant Rustia, Jr. was the one who shot him.

Victim Cristin was then transferred to the De Vera Medical Center for further treatment.

As testified to by Dr. Demano, who was the doctor who examined the victim on June 18, 2008 at the De Vera Medical Center, the cause of death of victim Cristin was a gunshot wound on the victim's neck. According to Dr. Demano, the gunshot wound's entry point was at the anterior neck area, and the exit point was at the posterior area of the

skull at the back.

On June 24, 2008, the victim Cristin died as a result of that gunshot wound on his neck.

The defense, on the other hand, presented the sole testimony of accused-appellant Rustia, Jr., in order to prove the following:

On June 14, 2008 at about 2:00 in the afternoon, accused-appellant Rustia, Jr., together with his father, accused-appellant Rustia, Sr., and his brother, accused-appellant Faustino were at the Barangay Hall in Malvar, Santiago City to talk to the victim Cristin about the land of accused-appellant Rustia, Sr., which land was being occupied by the victim Cristin. The barangay captain was not around at that time.

Accused-appellant Rustia, Sr. talked to the victim Cristin in order for the latter to return the land of accused-appellant Rustia, Sr. However, victim Cristin refused to return the land, and got angry. He uttered "fukkenenam", which meant "vulva of your mother".

Accused-appellant Rustia, Jr. saw that victim Cristin had a gun tucked in his waist, so, he, together with his father, accused-appellant Rustia, Sr., and brother, accused-appellant Faustino "tried to avoid" the victim.

When accused-appellant Rustia, Sr. was about to leave the Barangay Hall, accused-appellant Rustia, Jr. saw the victim Cristin draw his gun. Accused-appellant Rustia, Jr. grabbed the victim Cristin, causing all of them to fall down. Rustia, Jr. and the victim Cristin grappled for the possession of the victim's gun. Accused-appellant Rustia, Jr. was able to take the victim's gun. Then, accused-appellant Rustia, Jr. shot the victim twice.

After having shot the victim Cristin, accused-appellants Rustia, Jr., Rustia, Sr., and Faustino left. Accused-appellant Rustia, Jr. then threw the gun.^[4]

On November 25, 2010, the RTC rendered judgment finding and pronouncing Benjamin, Jr. guilty as principal in murder, and Rustia, Sr. and Faustino guilty as accomplices in murder, disposing:

WHEREFORE in light of the foregoing considerations the Court finds the accused Benjamin Rustia, Jr. GUILTY beyond reasonable doubt of murder and hereby sentences him to the penalty of *reclusion perpetua*. The Court also finds the two other accused Benjamin Rustia, Sr. and Faustino Bong Rustia GUILTY as accomplices to the crime of murder and hereby sentences each of them to an indeterminate penalty of eight (8) years, eight (8) months and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. In addition the accused are ORDERED TO PAY jointly and solidarily, to the widow of the deceased Ambrocio Cristin the sum of One hundred three thousand two hundred eighty one pesos (P103,281.00) as actual damages; Twenty five thousand pesos

(P25,000.00) as temperate damages; Fifty thousand pesos (P50,000.00) as death indemnity; Fifty thousand pesos (P50,000.00) as moral damages; and, Twenty five thousand pesos (P25,000.00) as exemplary damages.^[5]

Decision of the CA

On appeal, the petitioners assailed the adverse findings of the RTC, asserting that they had only acted in self-defense; that the RTC had is regarded Benjamin, Jr.'s testimony showing that Ambrocio had been reaching for the gun tucked in his waist; that Benjamin, Jr. had only reacted to defend himself by the instinct of self-preservation; and that Benjamin, Sr. and Faustino had not been sufficiently identified by the Prosecution's witnesses.

In its now assailed decision, the CA ruled that because Benjamin, Jr. had invoked self-defense, the burden of evidence had shifted to him; that such defense was not established because no unlawful aggression could be attributable to the victim; that even assuming that the victim had been perceived to have been about to draw his gun, as the petitioners insisted, that act by itself could not be considered an act of unlawful aggression because the danger from him had ceased once Benjamin, Jr. had successfully wrested the gun from the victim; that the victim had already raised his hands to indicate his surrender just before he had been shot; and that the number, location, and severity of the wounds inflicted on the victim further negated the claim of self-defense; that treachery had been attendant because the attack against the victim had been unexpected, precise, and sudden, rendering the victim unable to defend himself; and that Benjamin, Sr. and Faustino had been accomplices to the crime.

The CA modified the civil liability by deleting the temperate damages; and increasing the exemplary damages from P25,000.00 to P30,000.00.^[6]

Issues

In this appeal, the petitioners insist that:

I

THE AMENDED INFORMATION FAILS TO SPECIFICALLY ALLEGE THE FACTUAL CIRCUMSTANCES OR PARTICULAR ACTS THAT CONSTITUTE TREACHERY.

II

THE COURT OF APPEALS GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY

III

THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING PETITIONER BENJAMIN RUSTIA, JR. OF MURDER INSTEAD OF HOMICIDE.

IV