

## **FIRST DIVISION**

**[ G.R. No. 197546, March 23, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BAYANI DE LEON, ANTONIO DE LEON, DANILO DE LEON AND  
YOYONG DE LEON, ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**PEREZ, J.:**

For review is the conviction for the crime of Murder of accused-appellants BAYANI DE LEON (Bayani), ANTONIO DE LEON (Antonio), DANILO DE LEON (Danilo), and YOYONG DE LEON (Yoyong) by the Regional Trial Court (RTC),<sup>[1]</sup> in Criminal Case No. Q-02-113990, which Decision<sup>[2]</sup> was affirmed with modifications by the Court of Appeals.

The accused-appellants were charged with Robbery with Homicide under an Information which reads:

That on or about the 2<sup>nd</sup> day of March, 2002, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to gain, by means of violence and/or intimidation against [sic] person, did then and there wilfully, unlawfully and feloniously rob one EMILIO A. PRASMO, in the following manner, to wit: on the date and place aforementioned, while victim/deceased Emilio A. Prasmo was walking along A. Bonifacio Street, Barangay Sta. Lucia, Novaliches, this City, together with his wife and daughter in-law, accused pursuant to their conspiracy armed with sumpak, samurai, lead pipe and .38 cal. revolver rob EMILIO A. PRASMO and took and carried away P7,000.00, Philippine currency, and by reason or on the occasion thereof, with evident premeditation, abuse of superior strength and treachery, accused with intent to kill[,] attack, assault and employ personal violence upon EMILIO A. PRASMO by then and there shooting and hacking the victim with the use of said weapons, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Emilio A. Prasmo.<sup>[3]</sup>

When arraigned, all the accused-appellants entered a plea of not guilty except accused Antonio. Thus, the RTC ordered a reverse trial in so far as Antonio is concerned.

#### **Evidence of the Prosecution**

The prosecution presented Erlinda A. Prasmo (Erlinda), wife of the victim, Emilio Prasmo (Emilio), who testified that on 2 March 2002, while they were walking along

Sta. Lucia Street, Novaliches, on their way to RP Market, the accused-appellants, who are siblings, blocked their way. Accused-appellant Danilo, armed with a "*sumpak*", suddenly hit Emilio with a "*baka*" while accused-appellant Antonio, who was armed with a "samurai", hacked Emilio in the forehead and struck him with a lead pipe at the right back portion of his legs and middle back portion of his torso. Accused-appellant Danilo then took Emilio's money in the amount of P7,000.00 and thereafter aimed the "*sumpak*" at the lower portion of Emilio's chest and fired the same, causing Emilio to slump on the ground. Accused-appellant Yoyong also hit Emilio with a lead pipe at the back of the neck and middle portion of his back.

As accused-appellants attacked and mauled Emilio, Erlinda, seeing her husband sprawled motionless on the ground, shouted for help, but nobody dared to help because accused-appellant Bayani, armed with a gun, was shouting "*waking lalapit*". The accused-appellants immediately left and Emilio was brought to the FEU Fairview Hospital, where Emilio died.

Gina Prasmo, Emilio's daughter, testified that at the time of the incident, she was at their house when she was informed of the news. She immediately went to the hospital where she learned that her father was already dead.

The testimony of Dr. Editha Martinez, a medico-legal officer of the Medico-Legal Division, Philippine National Police Crime Laboratory, Camp Crame, Quezon City, was dispensed with because she was not the one who performed the autopsy on the cadaver of Emilio, but nevertheless, she identified such documents as Medico-Legal Report, Autopsy Report, Sketch of the head showing contusion, anatomical sketch showing the gunshot wound on the right portion of the chest, and the anatomical sketch of Emilio.

### **Evidence of the Defense**

Carmelita de Leon (Carmelita), sister of the accused-appellants, testified that on the evening of 1 March 2002, she was at her house when her brothers, accused-appellants Danilo and Antonio, arrived. Upon observing that the heads of Antonio and Danilo were bleeding, she was informed that Emilio and his son, Edgardo Prasmo (Edgardo), attacked and mauled them, which caused their injuries. They reported the incident to a "*tanod*" in the *barangay* hall, Julio Batingaw, who told them to return in the afternoon so they could have a meeting with Emilio and Edgardo. When they returned, Emilio and Edgardo did not appear.

In the evening, at around 7 o'clock, fifteen (15) men carrying firearms, who included Jerry and Edgar, sons of Emilio, stormed her house looking for accused-appellants and threatened to kill her if she will not disclose their whereabouts. To support her testimony, the defense offered in evidence the medical certificates for the injuries sustained by accused-appellants Antonio and Danilo dated 1 March 2002 and the entry in the *barangay* blotter book dated 2 March 2002, about the mauling of accused-appellants Antonio and Danilo.

The accused-appellants gave their testimonies that follow:

Jose de Leon, also known as Yoyong, was at the house of his brother-in-law, Willie Bandong, in Bagong Barrio, Caloocan City to discuss the schedule of the "*pabasa*". He stayed there between 8:00 to 9:00 o'clock in the evening. Danilo, at that time,

was with his mother in Pugad Lawin in Quezon City, to accompany his mother in doing her work as a "*manghihilot*". They left Pugad Lawin between 8:00 to 9:00 o'clock in the evening and went home. Bayani, a police civilian agent, at the night of the crime, was at the Police Station No. 5 in Fairview, Quezon City, talking to a police officer.

Antonio, in the morning of 2 March 2002, went to the *barangay* hall with his mother, Carmelita, and accused-appellant Danilo, to file a complaint against Emilio and Emilio's son, Edgardo, due to the mauling incident the previous evening. In the *barangay* hall, they were told to return in the afternoon so they could have a meeting with Emilio and Edgardo. They returned as told. Emilio and Edgardo did not.

On the way home, accused-appellant Antonio met Emilio, Erlinda, and Gina, Emilio's daughter, walking along A. Bonifacio Street. Emilio, upon seeing Antonio, immediately opened his jacket and tried to pull "something" out. Antonio then instantly tried to grab that "something" from Emilio. While grappling for the possession of that "something", which turned out to be a "*sumpak*", it fired.

Bernaly Aguilar, while on her way to the market in Sta. Lucia, witnessed a fight involving accused-appellant Antonio and another man, who were grappling for the possession over a "*baka*". After walking a few meters away from the incident, she heard a shot.

### **The Ruling of the Regional Trial Court**

According to the accused-appellants, Erlinda is not a credible witness and that her testimony is barren of probative value for having grave and irreconcilable inconsistencies, as opposed to accused-appellant Antonio's testimony which supposedly established the presence of all the essential requisites of self-defense. Accused-appellants referred to the inconsistency between Erlinda's court testimony and her *Sinumpaang Salaysay*. In her *Sinumpaang Salaysay*, she identified accused-appellant Antonio as the one who fired the "*sumpak*" at the lower chest of Emilio and took Erlinda's money. However, during her direct examination, she testified that it was accused-appellant Danilo who shot Emilio with a "*sumpak*" and thereafter, took his wallet.

Accused-appellants further argued that Erlinda could not have mistaken Danilo for Antonio, because she knew them both as they reside six (6) houses away from the house of the Prasmos and that accused-appellant Antonio has a distinctive feature — having a cleft palate or is "*ngongo*".

The RTC rejected accused-appellants' contentions. According to the RTC, Erlinda's narration of the incident is clear and convincing. While her testimony has some inconsistencies, they refer only to collateral and minor matters, which do not detract from the probative value of her testimony.

The trial court found established the circumstances of abuse of superior strength and treachery, abuse of strength absorbed by the aggravating circumstance of treachery.<sup>[4]</sup>

These requisites are obviously present in this case considering that the evidence shows that after Danilo suddenly fired at Emilio's lower portion of the chest accused Antonio and Yoyong ganged up on Emilio, with Antonio hitting him with a lead pipe on the right back portion of his legs and in the middle back torso and hacking him with a samurai, and accused Yoyong hitting also (sic) him with a lead pipe on the right back leg and middle portion of his back. Said action of the four (4) accused rendered it difficult for the victim to defend himself.<sup>[5]</sup>

However, citing *People v. Nimo*,<sup>[6]</sup> the RTC ruled that because robbery was not duly established, it cannot convict accused-appellants for robbery with homicide. It relied on the principle that in order to sustain a conviction for robbery with homicide, robbery must be proven as conclusively as the killing itself.<sup>[7]</sup> Thus, as opposed to the Information which charged the accused-appellants of the crime of Robbery with Homicide, the RTC found accused-appellants guilty beyond reasonable doubt of the crime of Murder by conspiracy. The dispositive portion of the RTC Decision reads:

THEREFORE, the Court finds accused BAYANI DE LEON, ANTONIO DE LEON, DANILO DE LEON and YOYONG DE LEON guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided by law and to jointly and severally indemnify the heirs of the late EMILIO PRASMO the amounts of P50,000.00 as indemnity for his death and P50,000.00 as moral damages.<sup>[8]</sup>

### **The Ruling of the Court of Appeals**

The Court of Appeals affirmed the conviction of the accused-appellants. Contrary to the accused-appellants' contention that the trial court committed a reversible error when it gave credence to Erlinda's testimony, the Court of Appeals considered Erlinda's recollection of the events as direct, positive and convincing manner, unshaken by a tedious and grueling cross-examination.<sup>[9]</sup>

With regard to the crime charged, the Court of Appeals agreed that the accused-appellants are guilty of the crime of Murder instead of Robbery with Homicide. As borne by the records, the only intent of the accused-appellants was to kill Emilio. The "accused-appellants had an axe to grind against Emilio x x x. The means used by the accused-appellants as well as the nature and number of wounds - debilitating, fatal and multiple — inflicted by appellants on the deceased manifestly revealed their design to kill him. The robbery committed by appellant Danilo [was on] the spur of the moment or [was] a mere afterthought."<sup>[10]</sup>

Also, the Court of Appeals found accused-appellant Danilo guilty of Robbery for unlawfully divesting Emilio of P7,000.00, which it considered as an action independent of and outside the original design to murder Emilio. The dispositive portion of the Court of Appeals Decision reads:

**WHEREFORE**, the appealed Decision dated May 25, 2007 of the Regional Trial Court of Quezon City, Branch 81 is hereby **AFFIRMED in toto with the added MODIFICATION** that accused-appellant Danilo de Leon is also found guilty beyond

reasonable doubt of the crime of Robbery defined under Article 293 and penalized under Article 294 (5) of the Revised Penal Code, and is sentenced to suffer the indeterminate penalty of two (2) years and seven (7) months of *prision correccional*, as minimum, to eight (8) years and ten (10) days of *prision mayor*, as maximum. He is ordered to return to the heirs of Emilio Prasmo the cash of P7,000.00, representing the amount he took from said victim."

Now, before the Court on automatic review, accused-appellants contend, by way of assignment of errors, that the appellate court gravely erred when:

1. it gave full credence to the inconsistent testimony of the alleged eyewitness Erlinda Prasmo; and
2. it disregarded the self-defense interposed by Antonio De Leon and the denial and alibi interposed by Bayani, Danilo, and Yoyong, all surnamed De Leon.<sup>[12]</sup>

### **Our Ruling**

The accused-appellants' attempt to discredit Erlinda's testimony must fail. Inconsistencies between the declaration of the affiant in her sworn statements and those in open court do not necessarily discredit the witness; it is not fatal to the prosecution's cause. In fact, contrary to the defense's claim, discrepancies erase suspicion that the witness was rehearsed or that the testimony was fabricated. As correctly held by the Court of Appeals, despite minor inconsistencies, Erlinda's narration revealed each and every detail of the incident, which gave no impression whatsoever that her testimony is a mere fabrication. As we already enunciated in previous rulings, "[i]t is a matter of judicial experience that affidavits or statements taken *ex parte* are generally incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight."<sup>[14]</sup>

Before us is a reversed trial. As one of the accused-appellants, Antonio, pleaded self-defense, he admitted authorship of the crime. At this juncture, the burden of proof is upon the accused-appellants to prove with clear and convincing evidence the elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself,<sup>[15]</sup> which the defense failed to discharge.

#### *Unlawful Aggression*

Unlawful aggression refers to an assault to attack, or threat in an imminent and immediate manner, which places the defendant's life in actual peril. Mere threatening or intimidating attitude will not suffice. There must be actual physical force or actual use of weapon.<sup>[16]</sup>

Applying the aforesaid legal precept, Emilio's act of pulling "something" out from his jacket while he was three (3) to four (4) meters away from accused-appellant Antonio cannot amount to unlawful aggression. Neither can the act of pulling "something" out amount to physical force or actual use of weapon, or even threat or