

FIRST DIVISION

[G.R. No. 194629, April 21, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DULAY, ACCUSED-APPELLANT.

D E C I S I O N

REYES, J.:

For review is the Decision^[1] dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03584 which affirmed the Decision^[2] dated September 30, 2008 of the Regional Trial Court (RTC) of Cabarroguis, Quirino, Branch 31, finding accused-appellant Dante Dulay (Dulay) guilty beyond reasonable doubt of the complex crime of Murder and Frustrated Murder.

The following are the antecedent facts:

[Dulay] entered a plea of "not guilty" to the indictment which reads as follows:

"That on or about 6:30 in the evening of December 30, 2002 in Ligaya, Aglipay, Quirino, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by using a grenade and by means of explosion, did then and there willfully and unlawfully and after removing the safety pin of the said grenade, throw it at the house of Orlando Legaspi Sr., producing a land explosion and as a consequence[,] the shrapnels hit ORLANDO LEGASPI SR. to [sic] the different parts of his body that caused his death.

That on the same occasion, said accused armed with the same grenade and by means of explosion did then and there willfully and unlawfully threw the grenade after removing its safety pin at the house of ORLANDO LEGASPI SR. causing loud explosion as the shrapnel of the grenade hit ORLANDO LEGASPI, JR. Thus accused performed all the acts of execution that would produce the crime of murder as a consequence but did not produce it because of timely medical assistance rendered unto ORLANDO LEGASPI JR. which prevented his death.

Acts contrary to law."

The records reveal that in the evening of 30 December 2002 at around 6:30, Orlando Jr. (or simply "Junior"), a child about six years of age, was outside the kitchen of their house located in Ligaya, Aglipay, Province of Quirino. His father, the late Orlando Sr., was also somewhere in the yard

and was asking Junior to hand him a chair. They had just finished dinner and were intending to watch the television later.

Wondering why the dog was barking loudly, Mrs. Engracia Legaspi peeped from inside the kitchen and noticed Dulay's dog in the vicinity. She surmised that its master, [Dulay], was also present. Junior's elder sister, Melanie went out to look for the dog-leash to transfer the mutt to another area.

Using the flashlight he was constantly prohibited from playing with, Junior directed a beam towards the grassy area where he discovered [Dulay] whom he recognized because of the characteristic "mumps" below his left ear. Melanie also saw [Dulay] as he was staring at Orlando Sr. Their uncle Dante suddenly threw something that resembled a ball, towards the cemented part of the yard. It turned out to be a grenade, and it landed about seven meters from where Junior and his father were. [Dulay] then went away on his bicycle towards the direction of his house, x x x.

When the grenade exploded, Junior was hurt in his pelvic area, while his father was fatally hit by shrapnel, causing his death. Melanie rushed to the succor of her bloodied father, barely noticing Junior who was likewise lying on the ground, but was still conscious and crying. Engracia hollered for help from the neighborhood. Because of the firecrackers in that New Year's Eve, people did not readily render assistance, until they realized the intensity of the explosion that shook the ground.

Police operatives who arrived at the crime scene instructed the assisting neighbors to locate the grenade fragments. In the early morning of 31 December 2002, three of the male neighbors continued the search and found a grenade safety lever, along with a torn-out pair of rubber shoes in the road near Dulay's house. Examining the rubber shoes which turned out to belong to the latter, the three men further recovered a grenade ring pin from inside the left shoe.

Orlando Sr. was rushed to the hospital but he expired shortly thereafter. His *Certificate of Death* states that he died of cardio-respiratory arrest due to hemorrhagic shock due to "transection of the right kidney, perforation of the duodenum, pancreas and stomach due to grenade blast injury."

[Dulay's] alibi consists of his purported trip from the house of his uncle Onofre Dulay in Gamis to his friend, Joel Ritualo in another barangay, Dibul. According to his story, he was Onofre's caretaker while the latter was in Manila. Since he had no electricity in Gamis, he went on a bike to Ritualo to have his Motolite battery recharged. While waiting for the recharging to finish, he went on a drinking spree with Ritualo and another man, Pepito Maluret, until around 7:30 p.m. when he bid the two liquor-companions goodbye. With the energized battery in tow, he left, but Ritualo insisted on accompanying him to the road as he was already drunk. Not long afterwards, Ritualo hailed the passenger jeepney that passed them which was driven by his uncle, witness Robert Daileg.

In convicting Dulay, the trial court noted that Junior had no ill-motive to testify falsely against his uncle. Against the self-serving alibi of the appellant, the prosecution witnesses positively identified the perpetrator because they were familiar with him, the court added.^[3] (Citations omitted)

The RTC found Dulay guilty beyond reasonable doubt of the complex crime of Murder with Attempted Murder. The dispositive portion of the RTC ruling is as follows:

WHEREFORE, in view of the foregoing consideration, the Court finds accused Dante Dulay **GUILTY** beyond reasonable doubt with the complex crime of Murder with Attempted Murder and is hereby sentenced to **Reclusion Perpctua**.

1. He is further ordered to pay the heirs **Orlando Legaspi Sr.**, the sum of [P]50,000[.00] as civil indemnity, and moral damages in the amount of [P]50,000.00[.]
2. Also he must pay [P]30,000[.00] pesos as moral damages to **Orlando Legaspi, Jr.**
3. [P]115,956[.00] as actual expenses/damage [s] for the hospitalization of the two victims, namely: **Orlando Legaspi, Sr.**, and **Orlando Legaspi, Jr.**

SO ORDERED[.]^[4]

On appeal, the CA affirmed the conviction with modification. The *fallo* of the judgment reads:

WHEREFORE, in view of the foregoing, the challenged *Decision* is **AFFIRMED** with **MODIFICATION**. Accordingly, the accused-appellant is convicted of the complex crime of murder and frustrated murder and is sentenced to suffer:

- 1) the penalty of *reclusion perpetua* without eligibility for parole;
- 2) the award of actual damages in the amount of [P] 115,956.00 for the hospital expenses of the two victims;
- 3) the award of civil indemnity for the death of Orlando Sr., in the increased amount of [P]75,000.00;
- 4) the award of moral damages in the respective amounts of [P]75,000.00 and [P]55,000.00 for Orlando Senior and Junior; [and]
- 5) the award of exemplary damages in the amount of [P]30,000.00 each for both Orlando Senior and Junior.

IT IS SO ORDERED.^[5]