

## SECOND DIVISION

[ G.R. No. 194068, July 09, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJIE  
CONSORTE Y FRANCO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Before the Court is an appeal from the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated 27 May 2010 in CA-G.R. CR HC No. 01806. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 67, Binangonan, Rizal, which found Benjie Consorte y Franco (appellant) guilty of Murder, sentenced him to suffer the penalty of *reclusion perpetua* and directed him to indemnify the heirs of Elizabeth Palmar (Elizabeth) the amounts of P50,000.00 as civil indemnity and P29,500.00 as actual damages. The CA, however, modified the judgment of the trial court in that, in addition to actual damages, appellant was further directed to pay moral and exemplary damages in the amounts of P50,000.00 and P25,000.00, respectively.

#### The Antecedents

As found by the CA, the facts of the case are as follows:

x x x [Appellant] was a former conductor of Elizabeth Palmar's jeepney plying [the route of] Antipolo, Teresa and Morong, Rizal. Sometime in June 2000, Elizabeth's residence was robbed and several personal belongings[,] including cash[,] were taken. Appellant was the only one who had access [to the] house, aside from [Elizabeth's] family. So [Elizabeth's] brother x x x tailed appellant and found out that the latter pawned her tv [sic] set to Frederic Francisco. She then sued appellant for robbery. x x x A hearing was scheduled on January 23, 2001, but on the night of January 22, 2001, Elizabeth was murdered.

On January 22, 2001, Jose Palmar, Elizabeth's husband, instructed Rolando Visbe to haul feeds from Morong, Rizal and deliver them to their piggery in x x x Binangonan, Rizal. As he [was driving] the jeepney, Rolando saw Elizabeth together with her 14-year old daughter Myrna and [her] 3-year old nephew "Big Boy." They went with him to deliver the feeds to [Binangonan]. On their way back to Morong, Rolando noticed appellant[,] who was wearing a hat. When they got near him, Rolando slowed down and asked appellant where he was going. Appellant did not reply. Rolando veered to the right to avoid hitting appellant. In the process, the jeepney ran over a stone, lost its balance, and rolled [into] a ditch. While struggling to release the vehicle, Rolando heard a gunshot. He looked around and saw appellant standing near the jeepney's left rear,

holding a handgun. Appellant immediately fled. He (Rolando) then heard Myrna x x x shouting "Ninong, may dugo si Nanay!" They rushed Elizabeth to Angono District Hospital. But due to her fatal gunshot wound on the forehead, she died x x x.

Aneline Mendoza, a resident of Greenpark, Cainta, Rizal, testified that on January 22, 2001, around 8:45 pm while on her way home, a stranger greeted her "magandang gabi po." He was carrying something wrapped in a black cloth which looked like a gun. She was somewhat frightened so she let him walk ahead of her. She saw him turn to a corner. Immediately after she entered her house, she heard a gunshot. She opened her window and saw the stranger, standing by the side of the jeepney. The [stranger] immediately ran toward the direction of Elizabeth's house. She also heard the driver saying "Putang ina, sinong bumartil?"<sup>[2]</sup>

Appellant was arrested the following day in Morong, Rizal while attending the hearing of the robbery case against him.<sup>[3]</sup> He was charged with murder under an Information which reads:

That on or about the night of the 22<sup>nd</sup> day of January 2001 in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon (hand gun), with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Elizabeth V. Palmar on the vital part of her body, thereby inflicting upon the latter mortal wound which directly caused her death.<sup>[4]</sup>

When arraigned, appellant pleaded not guilty to the charge against him. Trial thereafter ensued, during which, appellant interposed the defense of alibi. He claimed that at around 8 or 9 o'clock in the evening of 22 January 2001, he was at his brother's house in Antipolo. He had dinner with his brother's family and left at 10 o'clock in the evening, after his brother gave him P100.00 as fare. His sister-in-law corroborated his statement, testifying that appellant was at their house on the questioned date from 5 to 10 p.m.

### **The Ruling of the RTC**

The trial court found that the pieces of evidence presented by the prosecution leaves no doubt that it was indeed appellant who shot Elizabeth. According to the RTC:

Against the eyewitness testimony who [sic] positively identified the [appellant] as the perpetrator of the crime, the alibi of the defense will die. x x x

Other than himself[,], the accused presented only two witnesses, her [sic] sister-in-law and the forensic chemist. As for the testimony of her [sic] sister-in-law, she could not reason out why, the [appellant] who is

gainfully employed as a tricycle driver would be asking for a one hundred peso fare, just to appear at the hearing [the following day]. Her answers are full of open ends, which give [her testimony] little credence.

The testimony of the Forensic chemist is also not conclusive. She testified that the [appellant] tested negative for powder burns. On cross-examination, she testified that the lack or presence of nitrates in the hands of the [appellant] could be affected by several factors, like cloth or coverings on the hand that fired the gun; gun fired at a downward direction; wind velocity; efficiency of the gun; and finally[,] the kind of gun used[,] whether automatic or pistol.

x x x x

In a line of cases, the rulings on the weight and conclusiveness of [the] presence and absence of gunpowder in [sic] the hands of the accused is dependent entirely on the evidence presented [by] the prosecution as a whole. Absence or lack of trace of gunpowder in [sic] the hands of the apparent shooter does not necessarily equate that he did not fire a gun. This defense will not defeat what the two witnesses for the prosecution saw on the night of the shooting.<sup>[5]</sup>

x x x On the element of treachery, the rulings has [sic] been consistent that in order for the court to appreciate treachery it must be established by the prosecution that the victim did not have any opportunity to defend themselves (sic), or that the attack was so sudden or immediate that the victims were in no position to defend or protect themselves.

x x x x

In the case at bar, [appellant] took advantage of the situation when he shot the unsuspecting victim. The unexpected attack on the victim rendered her unable and unprepared to defend herself by reason of the suddenness and severity of the attack. [The] [f]acts [of this] case show that the victim [had] her back [to] her assailant when attacked, [and] she was not aware of any danger on her part. She was likewise cuddling a baby in [sic] her lap when the shot was fired. Clearly[,] she was in no position to make any defense.

The eyewitness testimony likewise sufficiently established that [appellant] consciously adopted the particular means, method or form of attack[.] [A]ccused was armed and stealthily performed the criminal act at nighttime at an unexpected time while the victim was defenseless. x x x Add to this scenario the fact that on January 23, 2005 [sic], the [appellant] and [the] victim will meet at the Municipal Trial Court hearing for the robbery case filed by the victim. This only shows that the [appellant] took into consideration these factors[,] hence he was bent on committing the crime on the day prior to the robbery hearing. [Appellant] therefore has set the time frame within when (sic) to commit [the] crime, and on the said day x x x he did not resist in perpetrating the crime.

There is no other construction in this picture other than [sic] the fact [that] the shooting was treacherous and well planned.<sup>[6]</sup>

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

The CA dismissed the appeal on the ground that appellant's attack on the credibility of prosecution witnesses Rolando Visbe and Aneline Mendoza has no merit. The CA pointed out that:

x x x Rolando and Aneline never wavered in their respective testimonies regarding appellant's presence in the situs criminis and his possession of the gun before and after the fatal shooting of Elizabeth Palmar. Although Visbe may have shouted "x x x, sinong bumartil?", it did not mean he did not recognize appellant. It was simply an instinctive reaction of one who heard a gunshot in the middle of nowhere and saw his companion fatally wounded. At any rate, Rolando did not ask any further question when right after the shooting, he saw appellant holding a gun beside the jeepney he was driving. Rolando saw appellant twice that night and it was not improbable for him to remember appellant. Precisely because of the unusual acts of violence committed right before his eyes, Rolando remembered with a high degree of reliability appellant's identity.

x x x x

True, Rolando and Aneline did not see appellant actually fire the gun on Elizabeth, but the circumstances surrounding the incident unerringly point to him as the perpetrator, viz:

**First.** Appellant had an axe to grind against Elizabeth for filing a robbery case against him. Elizabeth got murdered the night before the initial hearing of the case;

**Second.** Rolando saw appellant near the jeepney's left rear, holding a gun, right after he heard a gunshot;

**Third.** Right before the incident, Aneline saw appellant holding something in his hand wrapped in a black cloth, which looked like a gun;

**Fourth.** Immediately after Aneline entered her house, she heard a gunshot and when she peeped through the window, she saw appellant standing by the side of the jeepney where Elizabeth's lifeless body was sprawled. Shortly after, Aneline saw appellant running towards the direction of Elizabeth's house. x x x;

**Fifth.** Notably, appellant himself did not accuse Rolando and Aneline of any [ill] motive to falsely testify against him and cause his damnation for such a serious crime of murder. Although he claims their loyalty belonged to the victim and her family, loyalty does not equate with perjury, let alone, persecution of an innocent person [sic]. Settled is the rule that when there is no evidence to show any dubious reason or improper