

## FIRST DIVISION

[ G.R. No. 188969, February 27, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN ALVIN PONDIVIDA, ACCUSED-APPELLANT.**

### D E C I S I O N

**SERENO, C.J.:**

Before this Court is the 26 June 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA), which affirmed the 10 January 2008 judgment of conviction<sup>[2]</sup> of the Regional Trial Court (RTC) of Bulacan in Criminal Case No. 2678-M-2005. The RTC found accused John Alvin Pondivida, alias "Scarface," guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua*, as well as to pay civil indemnity and damages.

On 6 October 2005, the assistant provincial prosecutor of Malolos, Bulacan, charged accused-appellant Pondivida under the following Information:<sup>[3]</sup>

That on or about the 8<sup>th</sup> day of July 2005, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, armed with firearm, and with intent to kill one Gener Bondoc y Cudia, with evident premeditation, abuse of superior strength and treachery, did then and there, wilfully, unlawfully, and feloniously, attack, assault and shoot with their firearm the said Gener Bondoc y Cudia, hitting the latter on his body and head, thereby inflicting upon him mortal wounds which directly caused his death.

Contrary to law.

Rodelyn Buenavista, witness for the prosecution, testified that at 3:30 a.m. of 8 July 2005, she was roused from sleep by incessant knocking and the sound of someone kicking the front door of their house. She immediately woke her common-law partner, Gener Bondoc. His brother, Jover Bondoc (nicknamed Udoy), was also awake and was peeping through the door of one of the rooms. Outside he saw accused George Reyes, John Alvin Pondivida, and Glen Alvarico who was carrying an armalite rifle.

When Rodelyn answered the door, the three men asked for the whereabouts of "Udoy" and "Bagsik," both brothers of Gener. One of the men, later identified as accused George Reyes, searched the house and asked her who Gener was. Rodelyn merely replied that he was neither Udoy nor Bagsik, and that the persons they were looking for were not inside the house. In response, the men fired four shots,

prompting her to plead that her children were sleeping upstairs.

Rodelyn recounted that the three men seemed to be discussing something near the well outside their house for a considerable period, before Reyes again approached them. He asked Gener to step outside the house to “have a conversation” with them, but Gener declined, stating that they were armed. Rodelyn again reminded Reyes that there were children inside the house and tried to prevent him from entering and going up the stairs.<sup>[4]</sup>

While Reyes was talking to Rodelyn, Pondivida and Alvarico suddenly entered through the window of the house and chased Gener. Both Reyes and Alvarico shot at Gener. Rodelyn heard the gunshots, but when she approached Gener to investigate, he was already sprawled on the floor with blood oozing from a wound in his head. Police later ascertained that both Pondivida and Alvarico had climbed the guava tree outside the house to gain access to the window located at the second floor. Jover further testified that both he and his brother Bagsik had an earlier altercation with a gasoline station employee who happened to be a friend of the assailants.<sup>[5]</sup>

Pondivida fled to Olongapo City for five months, but was apprehended upon returning to Obando, Bulacan. Co-accused Alvarico and

Reyes were never located and are currently at large. The RTC found accused-appellant Pondivida guilty beyond reasonable doubt of murder; imposed the penalty of *reclusion perpetua*; and ordered him to pay P50,000 as civil indemnity, P50,000 as moral damages, P25,000 as exemplary damages, P10,000 as actual damages, and the costs of suit.<sup>[6]</sup> On intermediate appellate review, the CA affirmed the findings of the trial court, but clarified that the aggravating circumstance of abuse of superior strength was absorbed in the element of treachery in murder.<sup>[7]</sup>

Accused-appellant comes before this Court arguing that the prosecution’s case was not proven beyond reasonable doubt, and that there was insufficient evidence to establish conspiracy among the accused. Both he and the Solicitor General manifested that their respective positions were already thoroughly discussed in the Briefs they had filed with the appellate court, and that they were thus no longer filing supplemental briefs.

After a judicious review of the records, this Court finds no cogent reason to disturb the findings of either the RTC or the CA. Accused-appellant Pondivida admitted in the Brief he submitted to the CA that on the evening of 8 July 2005, he went with Glen Alvarico and George Reyes to the house of Gener Bondoc; that he, Pondivida, was the one who knocked on the door; that he and his companions were able to enter the house; and that both Glen Alvarico and George Reyes shot the victim.<sup>[8]</sup> Thus, his argument – that Rodelyn Buenavista’s failure to witness the actual shooting constituted reasonable doubt of his guilt – is unconvincing. His admissions place him at the scene of the crime and confirm that he was with Reyes and Alvarico when they shot the victim. The RTC may still take cognizance of Rodelyn’s eyewitness testimony on all the events, except the actual shooting, and properly appreciate it as positive identification through circumstantial evidence.

In *People v. Caliso*,<sup>[9]</sup> the Court stated:

The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde*, to wit: (a) that by direct evidence, through an eyewitness to the very commission of the act; and (b) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

x x x. **Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime.** There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.<sup>[10]</sup> (Emphases in the original)

Thus, while witness Rodelyn admittedly failed to see the actual shooting, her account properly falls under the second type of positive identification described above. To require her positive identification of accused-appellant as the actual shooter is absurd. She last witnessed her common-law husband held at gunpoint in their own house by the accused and his companions, a fact admitted by accused-appellant himself. Direct evidence is not the only means to prove commission of the crime.