

## FIRST DIVISION

[ G.R. No. 201723, June 13, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PERCIVAL DELA ROSA Y BAYER, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**REYES, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated November 3, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03742, which affirmed the Decision<sup>[2]</sup> dated November 19, 2008 of the Regional Trial Court (RTC) of Caloocan City, Branch 129, in Criminal Case No. C-64944 finding Percival Dela Rosa y Bayer (Dela Rosa) guilty of the crime of Murder.

Accused-appellant Dela Rosa and his co-accused Jaylanie Tabasa (Tabasa) were charged in an Information<sup>[3]</sup> for Murder, which reads:

That on or about the 18<sup>th</sup> day of November, 2001 in Caloocan City[,] Metro Manila and within the jurisdiction of this Honorable Court, the above named accused, conspiring together and mutually aiding with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, hit on the face with fistic blow and stab with a bladed weapon one JOJIE MAGDUA hitting the latter on the chest, thereby inflicting upon him serious physical injuries, which caused his death (DOA) at Nodado Gen. Hospital this City.

Contrary to law.<sup>[4]</sup>

During arraignment, Dela Rosa, assisted by counsel *de officio*, pleaded not guilty to the charge. Tabasa remains at large.

During trial, the prosecution presented witnesses Marcelino Samson, Jr. (Samson), Dr. Jose Arnel Marquez (Dr. Marquez) and Zoilo Magdua (Zoilo). Samson testified on the surrounding circumstances of the incident; Dr. Marquez, on the autopsy he conducted and his post-mortem report; and Zoilo, the victim's father, on the events immediately after the incident and the damages suffered by the bereaved family of the victim.

The defense, on the other hand, presented Dela Rosa as its lone witness.

Based on the parties' respective evidence, it was established that on the night of November 18, 2001, prosecution witness Samson was talking to the victim Jojie

"Jake" Magdua (Magdua) along Phase 9, Package 7, Block 31, Lot 30 in *Barangay Bagong Silang*, Caloocan City. They were then approached by Dela Rosa and Tabasa and without warning, the latter boxed Magdua while the former pulled out a knife and stabbed Magdua on the chest. Magdua ran towards the upper portion of the path where they were talking while Samson shouted for help. Dela Rosa and Tabasa, however, chased Magdua and were able to overtake him. Tabasa, again, boxed Magdua and Dela Rosa stabbed Magdua on the nape.<sup>[5]</sup>

Magdua was later brought by friends to Nodado General Hospital. Unfortunately, he was already dead upon arrival at the hospital. Samson, meanwhile, informed Magdua's uncle of the incident. He also went to the police station to report the incident.<sup>[6]</sup>

Dr. Marquez, Medico Legal Officer of the Philippine National Police Crime Laboratory of Caloocan City, conducted the autopsy and reported that Magdua's cause of death is hemorrhagic shock as a result of a stab wound on the neck.<sup>[7]</sup>

The RTC convicted Dela Rosa for Murder, as follows:

WHEREFORE, in view of the foregoing, the Court finds accused **PERCIVAL DELA ROSA**, guilty of Murder, qualified by treachery, and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**, to indemnify the heirs of the victim in the amount of Php50,000.00, as indemnity ex-delicto, to pay exemplary damages in the amount of Php100,000.00.

The period of his preventive imprisonment shall be credited in the service of his sentence.

Costs de oficio.

Let an alias Warrant of arrest be issued against **JAYLANIE TABASA Y MABUEL**.

In the interim, this case with respect to said accused is ordered Archived.

**SO ORDERED.**<sup>[8]</sup>

In convicting Dela Rosa, the RTC found that Dela Rosa and Tabasa conspired with each other in treacherously assaulting Magdua with the common criminal intent of killing him. Evidence showed that Magdua was unarmed when Tabasa boxed him and Dela Rosa stabbed him on the chest and thereafter, at the back of his neck. The RTC also found that treachery attended the commission of the crime as Magdua was merely conversing with his friend Samson at the time he was attacked by Dela Rosa and Tabasa, catching him unarmed and off-guard. The RTC gave weight and credence to the positive identification made by Samson, pointing at Dela Rosa as one of the assailants. According to the RTC, Samson's testimony was categorical and consistent and there was no badge of any evil motive that would prevail over Dela Rosa's defense of alibi. The RTC, however, found lack of evident premeditation as the prosecution failed to establish that Dela Rosa and Tabasa planned the crime

before it was committed.<sup>[9]</sup>

On appellate review, Dela Rosa assailed the credibility of the eyewitness Samson. He argued that the lighting condition of the *locus crimini* made it impossible for Samson to positively identify Magdua's assailants and that Samson could not even recall how many times the victim was stabbed. He also contended that the material inconsistencies in Samson's testimony place his guilt in serious doubt. His argument was that while Samson testified that it was him who stabbed Magdua, Dr. Marquez testified that it was possible that two (2) different persons inflicted the stabbed wounds on Magdua's chest and back. Finally, he questioned the RTC's appreciation of the qualifying circumstance of treachery.<sup>[10]</sup>

Despite these protestations, the CA gave full weight and credit to Samson's testimony. The CA ruled that Dela Rosa failed to show that the lighting conditions made it impossible for Samson to identify him and, in fact, Samson stated that the light coming from the Meralco post enabled him to see the face of Dela Rosa.<sup>[11]</sup> The CA further ruled that the totality of the evidence adduced by the prosecution, both testimonial and documentary, clearly established the elements of murder<sup>[12]</sup> -- the autopsy and post-mortem report established the fatal injuries sustained by Magdua; the positive identification made by Samson pointed to Dela Rosa as one of the perpetrators of the crime and the one who inflicted the fatal injury on Magdua; and that treachery attended the commission of the crime.<sup>[13]</sup> The CA agreed with the RTC that Magdua was defenseless when Dela Rosa and Tabasa ganged up on him. Thus, the CA affirmed Dela Rosa's conviction as follows:

**WHEREFORE**, premises considered, the Decision dated November 19, 2008 of the Regional Trial Court of Caloocan City, Branch 129 in Criminal Case No. C-64944 is hereby **AFFIRMED IN TOTO**.

No costs.

**SO ORDERED.**<sup>[14]</sup>

Dissatisfied, Dela Rosa brought his conviction for review to this Court, anchored on the sole issue of whether the CA erred in affirming the RTC's judgment convicting Dela Rosa for Murder.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. An appeal, however, throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.<sup>[15]</sup>

In this case, the CA did not commit any error in affirming the RTC's conclusion that the prosecution was able to establish Dela Rosa's guilt beyond reasonable doubt.