

## SECOND DIVISION

[ G.R. No. 197039, June 05, 2013 ]

**PEOPLE PHILIPPINES, OF THE PLAINTIFF-APPELLEE, VS. ARIEL CALARA Y ABALOS, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

Before us on appeal is the Decision<sup>[1]</sup> of the Court of Appeals affirming the judgment<sup>[2]</sup> of the Regional Trial Court, Second Judicial Region, Branch 35, Santiago City, Province of Isabela, in Criminal Case No. 35-4781 finding Ariel Calara y Abalos (appellant) guilty of the crime of murder.

Appellant was charged with murder under the following Information:

That on [or] about March 6, 2004 at Santiago City Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, with malice aforethought and with deliberate intent to take the life of SGT FRANCISCO DULAY, willfully, unlawfully and feloniously suddenly unexpectedly, and treacherously attack the latter with a bladed weapon (colonial knife) and as a result thereof, suffered Irreversible hypovolemic shock due to an Intratoracic hemorrhage/bleeding, secondary to stabbing which caused the immediate death of said Sgt. FRANCISCO DULAY.<sup>[3]</sup>

The facts, as narrated by prosecution witnesses, follow.

On 6 March 2004 at around 1:00 a.m, the victim, Francisco Dulay (Francisco), was fatally stabbed at a *lugawan* along Maharlika Highway in Santiago City, Isabela, while he was about to board a tricycle.<sup>[4]</sup> This stabbing incident was witnessed by the victim's brother, Dante Dulay (Dante) and cousin Fernando Porquillano (Fernando), who were both with him at that time. Dante narrated that he saw appellant stab Francisco at the back shoulder.<sup>[5]</sup> Dante identified appellant as the perpetrator through the latter's distinguishing tattoo mark on his right arm. Dante also heard someone say the name "Aying" which later was identified to be appellant's nickname.<sup>[6]</sup> During the cross-examination, Dante revealed that as Francisco was stabbed, he was simultaneously hit on the nape with a stone. He however could not identify the person who hit him, except that appellant had two (2) companions at that time. Dante felt dizzy afterwards and upon regaining his stance, he saw Francisco lying on the street. Appellant, together with his two (2) companions, immediately fled the scene.<sup>[7]</sup> Dante denied that they had a drinking spree prior to the incident.<sup>[8]</sup>

Fernando recounted that he was seated on the tricycle after eating at a *lugawan* when he was suddenly boxed by an assailant.<sup>[9]</sup> Fernando could not identify his assailant because the latter ran away with the person who hit Dante on the nape.<sup>[10]</sup> Thereafter, he saw appellant stab Francisco.<sup>[11]</sup>

Francisco was immediately brought to the hospital where he expired.

The death certificate shows that he died from irreversible *hypovolemic* shock due to an *intratoracic hemorrhage* or bleeding second degree to stabbing.<sup>[12]</sup>

Dr. Romanchito Bayang conducted an autopsy on Francisco's body. In his Post-Mortem Report, he discovered two (2) stab wounds—first, on the victim's head, which appears to be superficial;<sup>[13]</sup> and second, at the back of the chest of the victim, which was six inches deep and fatal.<sup>[14]</sup>

Francisco's wife, Delia Dulay, testified on the expenses and damages incurred as a result of the death of her husband.

Appellant, on the other hand, denied killing Francisco and presented a different version of the incident. Appellant claimed that on 6 March 2004, he was accompanied by his friends, Albert Cauian, alias "Dugong" and Guiller Salvador, to the *lugawan* to court a girl. When they got to the *lugawan*, appellant saw Francisco giving him a dirty look. He left the *lugawan* but abruptly returned to buy cigarettes. He even went up to Francisco to ask for a light before he boxed the latter. A commotion ensued and appellant had a fistfight with Dante.<sup>[15]</sup> Appellant saw Francisco attempt to stab him but Dugong intercepted the attack and stabbed Francisco first.<sup>[16]</sup> Appellant insisted that it was Dugong who killed Francisco. Appellant went home after the incident. He initially denied being in the *lugawan* when asked by his mother, but he later on admitted his presence when pressed by his uncle, who actually saw him in the *lugawan*.<sup>[17]</sup>

On 12 March 2009, the trial court rendered judgment finding appellant guilty of murder. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this Court finds accused Ariel Calara y Abalos GUILTY beyond reasonable doubt of the offense of murder and hereby sentenced to suffer the penalty of imprisonment for a period of TWENTY (20) years and ONE (1) day to FORTY (40) years. The accused is likewise adjudged civilly liable and ordered to pay the heirs of the victim Sgt. Francisco Dulay the following damages:

- 1) Death indemnity Php. 50,000.00;
- 2) Actual damages Php. 109,300.00;
- 3) Moral damages Php. 100,000.00;
- 4) Exemplary damages Php. 100,000.00; and
- 5) Loss of earning capacity Php. 3,227,360.00.<sup>[18]</sup>

Appellant filed an appeal before the Court of Appeals assigning in his

Brief the following errors allegedly committed by the trial court:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III.

THE COURT A QUO GRAVELY ERRED IN AWARDING P109,300.00 ACTUAL DAMAGES, [P]100,000.00 MORAL DAMAGES, P100,000.00 EXEMPLARY DAMAGES, AND [P]3,227,360.00 LOSS OF EARNING CAPACITY.<sup>[19]</sup>

The Office of the Solicitor General (OSG) filed its Brief and refuted the allegations of appellant. The OSG dismissed the alleged inconsistencies as minor details which should not affect the integrity of the eyewitnesses' testimonies. The OSG defended the presence of treachery by the mere fact that Francisco was stabbed from behind. And finally, the OSG supported the award of damages, which amounts are duly supported by law and evidence.

In a Decision dated 26 November 2010, the Court of Appeals affirmed with modification the decision of the trial court. The dispositive portion reads:

WHEREFORE, premises considered, the assailed decision dated March 12, 2009 of the RTC, Branch 35, Santiago City in Criminal Case No. 35-4781 is hereby AFFIRMED with MODIFICATION in that the award of moral damages is reduced from P100,000.00 to P50,000.00 while exemplary damages is likewise reduced from P100,000.00 to P25,000.00.

The loss of earning capacity is reduced to P3,220,355.00. The rest of the decision stand[s].<sup>[20]</sup>

On 15 December 2010, appellant filed a notice of appeal. In a Resolution dated 5 September 2011, the Court directed the parties to file supplemental briefs, if they so desire. Both parties manifested that they were no longer filing their supplemental briefs.<sup>[21]</sup>

Appellant is appealing for the reversal of his conviction. He denies stabbing Francisco and instead points to a certain Dugong as the perpetrator, but in the same breadth, he harps on the absence of treachery to qualify the crime to murder.

Appellant points out several inconsistencies and incredulities in the testimonies of Dante and Fernando. Appellant notes that Dante and Fernando contradicted themselves when they initially testified that Francisco was paying the bill at the *lugawan* when he was stabbed, but later stated that Francisco was about to board the tricycle when stabbed. Appellant finds it impossible for Dante not to see the actual weapon when he testified that he saw appellant approach and stab the victim. Appellant doubts if Dante and Fernando were able to witness the whole incident when the former admitted to have been knocked out after he was hit in the nape with a stone, and the latter was only less than two (2) meters away from the location of Francisco. Appellant submits that Dante did not witness the actual stabbing because the latter could not even identify what the appellant was wearing at the time of the incident, contrary to his later testimony that he was able to take a good look at appellant before the stabbing incident.

The supposed inconsistency on what the victim was precisely doing when he was stabbed is inconsequential as it relates to a minor and peripheral detail. The paying of the bill preceded the boarding of the tricycle and that explains why Dante mentioned it in his direct testimony. As a matter of fact, Dante corrected himself when confronted with this matter and maintained that Francisco was stabbed when he was about to board the tricycle. This statement was corroborated by Fernando when he himself recounted that the victim was stabbed when he was about to ride the tricycle.

The failure of the witnesses to remember the weapon used in the crime, as well as the apparel worn by the assailant is insignificant. Witnesses are not expected to remember every single detail of an incident with perfect or total recall. What is vital in their testimonies is not their knowledge of the weapon used, but that they saw appellant stab the victim. As a matter of fact, the presentation of the murder weapon is not even indispensable to the prosecution of an accused.<sup>[22]</sup>

The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant.<sup>[23]</sup>

The purported inconsistencies aside, Dante and Fernando were steadfast in pointing to appellant as the person who stabbed Francisco. Dante was able to identify appellant by his tattoo mark and upon hearing someone call out his name at the time of the stabbing, thus:

- Q. Do you know the cause of death of your brother?  
A. He was stabbed to death, sir.  
Q. Do you know where he was stabbed?  
A. At the highway, sir, near the Market, at the Lugawan.  
Q. Were you present when he was stabbed?  
A. Yes, sir.  
COURT:  
Q. You were present and you saw him stabbed?  
A. Yes, Your Honor.  
Q. Who stabbed him?  
A. Ariel, Your Honor.