

SECOND DIVISION

[G.R. No. 187536, August 10, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL BOKINGO ALIAS "MICHAEL BOKINGCO" AND
REYNANTE COL, ACCUSED-APPELLANTS.**

D E C I S I O N

PEREZ, J.:

For review is the Amended Decision^[1] dated 14 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00658, finding appellants Michael Bokingco^[2] (Bokingco) and Reynante Col (Col) guilty as conspirators beyond reasonable doubt of the crime of Murder and sentencing them to suffer the penalty of *reclusion perpetua*.

On 31 July 2000, an Information^[3] was filed against appellants charging them of the crime of murder committed as follows:

That on or about the 29th day of February, 2000 in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, armed with a claw hammer and with intent to kill by means of treachery, evident premeditation, abuse of confidence, and nighttime, did then and there willfully, unlawfully and feloniously attack, assault and maul NOLI PASION, by hitting and beating his head and other parts of his body with said hammer, thereby inflicting upon said NOLI PASION fatal wounds on his head and body which caused his death.

^[4]

On arraignment, Bokingco entered a guilty plea while Col pleaded not guilty. During the pre-trial, Bokingco confessed to the crime charged.^[5]

The victim, Noli Pasion (Pasion) and his wife, Elsa, were residing in a house along Mac Arthur Highway in Balibago, Angeles City. Pasion owned a pawnshop, which formed part of his house. He also maintained two (2) rows of apartment units at the back of his house. The first row had six (6) units, one of which is Apartment No. 5 and was being leased to Dante Vitalicio (Vitalicio), Pasion's brother-in-law, while the other row was still under construction at the time of his death. Appellants, who were staying in Apartment No. 3, were among the 13 construction workers employed by Pasion.^[6]

The prosecution's evidence show that at around 1:00 a.m. on 29 February 2000, Vitalicio was spin-drying his clothes inside his apartment when Pasion came from

the front door, passed by him and went out of the back door.^[7] A few minutes later, he heard a commotion from Apartment No. 3. He headed to said unit to check. He peeped through a screen door and saw Bokingco hitting something on the floor. Upon seeing Vitalicio, Bokingco allegedly pushed open the screen door and attacked him with a hammer in his hand. A struggle ensued and Vitalicio was hit several times. Vitalicio bit Bokingco's neck and managed to push him away. Bokingco tried to chase Vitalicio but was eventually subdued by a co-worker. Vitalicio proceeded to his house and was told by his wife that Pasion was found dead in the kitchen of Apartment No. 3. Vitalicio went back to Apartment No. 3 and saw Pasion's body lying flat on the kitchen floor. Pasion and Vitalicio were brought to the hospital. Pasion expired a few hours later while Vitalicio was treated for his injuries.^[8]

Elsa testified that she was in the master's bedroom on the second floor of the house when she heard banging sounds and her husband's moans. She immediately got off the bed and went down. Before reaching the kitchen, Col blocked her way. Elsa asked him why he was inside their house but Col suddenly ran towards her, sprayed tear gas on her eyes and poked a sharp object under her chin. Elsa was wounded when she bowed her head to avoid the tear gas.^[9] Col then instructed her to open the vault of the pawnshop but Elsa informed him that she does not know the combination lock. Elsa tried offering him money but Col dragged her towards the back door by holding her neck and pulling her backward. Before they reached the door, Elsa saw Bokingco open the screen door and heard him tell Col: "*tara, patay na siya.*"^[10] Col immediately let her go and ran away with Bokingco. Elsa proceeded to Apartment No. 3. Thereat, she saw her husband lying on the floor, bathed in his own blood.^[11]

PO3 Quirino Dayrit (PO3 Dayrit) was stationed at Police Station No. 4 in *Barangay* Salakot, Balibago, Angeles City. At 1:20 a.m. of 29 February 2000, he received a phone call regarding the incident. He, together with a certain P/Insp. Maniago, proceeded to Apartment No. 3 and conducted an investigation. He noticed a pool of blood on the cemented floor of the kitchen. He also saw a claw hammer with a green lead pipe handle approximately 13 inches long near the kitchen sink. A lead pipe measuring 40 inches and a chisel were also found in the nearby construction site. The police went to Angeles University Medical Center afterwards. PO3 Dayrit saw Pasion lying in one of the beds while Vitalicio was still loitering around the emergency room. He approached Vitalicio and Elsa who both informed him of the incident.^[12] He prepared a police report on the same day narrating the result of his investigation.^[13]

Evelyn Gan, the stenographic reporter of Prosecutor Lucina Dayaon, jotted down notes during the preliminary investigation. She attests that Bokingco admitted that he conspired with Col to kill Pasion and that they planned the killing several days before because they got "fed up" with Pasion.^[14]

The necropsy report prepared by Dr. Joven G. Esguerra (Dr. Esguerra), contained the following findings:

1. Marked pallor of lips and nailbeds
2. Body in rigor mortis

3. Contusion with hematoma, right medial infraorbital region extending to the right of the root of the nose.
4. Contusion with hematoma, left post-auricular region.
5. Contusion with hematoma, right angle of mandible.
6. Contusion with hematoma, right mandibular region.
7. Contusion with hematoma, left occipital region.
8. Contusion with hematoma, right fronto-parietal region.
9. Contusion with hematoma, right supraorbital region.
10. Abrasions, linear, confluent, proximal third, right leg anterior 2 ½ x 6 ½ cm.
11. Contusion with hematoma, left shoulder, level of head of left humerus.
12. Stab wound, anterior chest along the anterior median line, 7 cm above the nipple line, 0.8cm length, 0.5 cm wide and 1 cm deep, hitting and puncturing the manubrium sterni, not entering the thoracic cavity. Both extremities round.
13. 2 stab wounds, non-penetrating, anterior chest, 13 cm to the left of the anterior median line, 3 cm below injury (12) 14 cm the right of the anterior median line 4 ½ on below injury (12). Wound 0.8 cm in length, both extremities round.
14. Lacerated wound, semi-lunar shape, 3 cm length, left shoulder.
15. Lacerated wound, right eyebrow area, C-shaped 2 ½ cm length.
16. Lacerated wound, lateral angle, right eye, 0.8 cm length.
17. Lacerated wound, right supraorbital region, medial aspect, 2 cm length.
18. Lacerated wound, semi-lunar, 5 cm length, occipital region 5 cm length involving all layers of the scalp with brain tissue seen on the gaping wound.
19. Lacerated wound, 4 cm length, C-shaped 2 ½ cm to the right of injury (18) 1 ½ cm below, wound involving the whole scalp.
20. Lacerated wound, left post-auricular region, C-shaped 4 cm length, 3 cm length.
21. Lacerated wound left post-auricular region, region of the squamous part of the left temporal bone, C-shaped (2) 3.5 cm and 4 cm lengths.
22. Lacerated wound, right mandibular region 4 cm length, 1 cm wide.
23. Lacerated wound, stellate, 5.5 x 5 x 5 cm, right fronto-parietal region with brain tissue out of the gaping wound.
24. Lacerated wound, right submandibular region 0.3 x 3.5 cm.
25. Lacerated wound, right cheek 0.8 cm length.
26. Depressed, complete fracture, occipital bone right with stellate linear extensions, with gaping, with brain tissue maceration.
27. Skull fracture, right fronto-parietal region, depressed, complete, C-shaped with linear extensions, with gaping of bone with brain tissue maceration and expulsion.
28. Hemorrhage, massive, subdural and epidural.
29. Brain tissue damage.^[15]

Dr. Esguerra concluded that the injuries sustained by Pasion on his skull proved fatal.^[16]

Appellants testified on their own behalf. Bokingco recalled that he was sleeping in Apartment No. 3 at around 1:20 a.m. on 29 February 2000 when he was awakened by Pasion who appeared to be intoxicated. The latter wanted to know why he did not see Bokingco at the construction site on 28 February 2000. When Bokingco replied that he just stayed at the apartment the whole day, Pasion suddenly hit him in the head. This prompted Bokingco to take a hammer and hit Pasion. They both struggled and Bokingco repeatedly hit Pasion. Bokingco escaped to Manila right after the incident. He was subsequently arrested in Mindanao on 11 June 2000.^[17] During the cross-examination, Bokingco admitted that he harbored ill feelings towards Pasion.^[18]

Col confirmed that he was one of the construction workers employed by Pasion. He however resigned on 26 February 2000 because of the deductions from his salary. He went home to Cainta, Rizal, where he was apprehended and brought to Camp Olivas. Upon reaching the camp, he saw Bokingco who pointed to him as the person who killed Pasion. He insisted that he doesn't know Bokingco very well.^[19]

On 16 December 2004, the trial court rendered judgment^[20] finding appellants guilty beyond reasonable doubt of murder, viz:

WHEREFORE, the Court finds accused MICHAEL BOKINGO alias MICHAEL BOKINGCO and REYNANTE COL guilty beyond reasonable doubt of the crime of MURDER, defined and penalized in Art. 248 of the Revised Penal Code, and there being the two aggravating circumstances of nighttime and abuse of confidence to be considered against both accused and the mitigating circumstance of voluntary plea of guilty in favor of accused Bokingo only, hereby sentences each of them to suffer the penalty of DEATH. Each accused is ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00) to pay the heirs of the victim Seventeen thousand six hundred pesos (P17,600.00) as actual damages, Fifteen thousand pesos (P15,000.00) as attorney's fees, Twenty five thousand pesos (P25,000.00) as exemplary damages, and to pay the costs. ^[21]

In its Decision dated 24 July 2008, the Court of Appeals affirmed the findings of the trial court but reduced the penalty to *reclusion perpetua* in view of Republic Act No. 7659, thus:

WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION. Accused-appellant REYNANTE COL is found GUILTY as conspirator beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery and evident premeditation and with the attendant aggravating circumstances of nighttime and abuse of confidence, with no mitigating circumstances. The proper imposable penalty would have been death. However, pursuant to Republic Act No. 9346, appellant is sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is further ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00); Fifty thousand pesos

(P50,000.00) as moral damages; Twenty five thousand pesos (P25,000.00) as exemplary damages; Twenty five thousand pesos (P25,000.00) as temperate damages; Fifteen thousand pesos (P15,000.00) as attorney's fees; and to pay the costs. [22]

Appellants filed a Motion for Reconsideration [23] and called the appellate court's attention on the omission to rule on Bokingco's fate when it rendered the challenged decision. Appellants also noted the absence of other evidence, aside from Bokingco's admission, to prove that conspiracy existed in the instant case. Appellants maintained that the admission made by Bokingco cannot be used as evidence against his alleged co-conspirator. Appellants also took exception to the findings of the lower courts that the aggravating circumstances of treachery, evident premeditation, nighttime and abuse of confidence attended the commission of the crime. [24]

The Court of Appeals merely modified its Decision by including the criminal liability of Bokingco in its dispositive portion of its Amended Decision, which reads:

WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION. Accused-appellants MICHAEL BOKINGCO and REYNANTE COL are found GUILTY as conspirators beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery and evident premeditation and with the attendant aggravating circumstances of nighttime and abuse of confidence, with no mitigating circumstances. The proper imposable penalty would have been death. However, pursuant to Republic Act No. 9346, the accused-appellant are sentenced to suffer the penalty of *Reclusion Perpetua* without the possibility of parole (in accordance with Section 3 of the said law). Each of the accused-appellants is further ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00); Fifty thousand pesos (P50,000.00) as moral damages; Twenty five thousand pesos (P25,000.00) as exemplary damages; Twenty five thousand pesos (P25,000.00) as temperate damages; Fifteen thousand pesos (P15,000.00) as attorney's fees; and to pay the costs. [25]

Appellants filed a notice of appeal. In its Resolution dated 26 October 2009, this Court required the parties to submit their Supplemental Briefs within 30 days from notice thereof if they so desire. [26] Appellants manifested that they are no longer filing a Supplemental Brief and are adopting their arguments in the Appellant's Brief submitted before the Court of Appeals. [27] The appellee likewise manifested that it is dispensing with the filing of a Supplemental Brief. [28] The instant case was thus submitted for deliberation.

In seeking the reversal of the Court of Appeals' Amended Decision, two issues were raised: 1) whether the qualifying circumstances were properly appreciated to convict appellant Bokingco of murder and 2) whether appellant Col is guilty beyond reasonable doubt as a co-conspirator.