

FIRST DIVISION

[G.R. No. 177983, March 30, 2010]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE JADAP, ACCUSED-APPELLANT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For automatic review is the Decision^[1] of the Court of Appeals, Mindanao Station in CA-G.R. CR-HC No. 00244 Min which affirmed with modification, an earlier Decision^[2] of the Regional Trial Court (RTC) of Misamis Oriental, Cagayan de Oro City, Branch 18 in Criminal Case No. 2001-649, finding accused-appellant Dante Jadap guilty of murder under Article 248 of the Revised Penal Code in relation to Republic Act No. 7659.

On July 3, 2001, an Information^[3] was filed against Jadap charging him with the crime of murder as follows:

That on or about February 20, 2001 at 9:30 o'clock in the evening more or less at Raagas Beach, Bonbon, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with .38 caliber revolver which he was then conveniently provided, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shot one Robert Alisbo y Roxas, represented by his father Rodrigo Alisbo y Topic, hitting the right side of his body, thereby inflicting fatal or mortal wounds of the latter which is the direct and immediate cause of his death.

Contrary to and in Violation of Article 248 of the Revised Penal Code in relation to R.A. 7659.

When arraigned on April 1, 2002, Jadap pleaded not guilty.^[4] At the pre-trial conference, the parties admitted the following facts:

1. That Robert Alisbo y Roxas died of gunshot wound on the spinal column on May 25, 2001 as shown in the death certificate marked as Exhibit "A";
2. That there was no quarrel between the victim and accused Dante Jadap immediately before and during the incident of February 20, 2001 at 9:30 o'clock in the evening at Raagas Beach, Bonbon, Cagayan de Oro

City.

x x x. Exhibit "D" certification from the firearms/explosives security agencies and guards section to prove that the accused is not a licensed firearm holder of any caliber of firearm x x x.^[5]

At the trial, the prosecution presented the following witnesses: (a) Rollie Arciso (Arciso), the victim's friend; (b) Police Superintendent Gregorio R. Bautista of the Firearms and Explosives/Security Agencies and Guards Section, Philippine National Police, Regional Office 10, Cagayan de Oro City; (c) Dr. Ryan R. Mortiz, the victim's attending physician; (d) Diosdado Aton, Jr. (Aton), an eyewitness to the shooting incident; and (e) Rodrigo Alisbo, the victim's father.

For the defense, Jadap himself and his friend, Marito Ramayan, took the witness stand.

On January 21, 2003, the trial court rendered a decision finding Jadap guilty of murder qualified by treachery with the aggravating circumstance of the use of unlicensed firearm. The dispositive portion of its decision reads:

WHEREFORE, after taking into account of all the foregoing, the Court finds accused **DANTE JADAP GUILTY beyond reasonable doubt [of the crime of murder]**, punishable under Article 248 of the Revised Penal Code in relation to R.A. 7659. After taking into account the aggravating circumstance of the use of unlicensed firearm without any mitigating circumstance, the said accused is hereby sentenced and **SO ORDERED** to suffer the supreme penalty of **DEATH by lethal injection, including its accessory penalties**. He is further directed and **SO ORDERED** to pay the parents of the victim the sum of Seventy-Five Thousand (P75,000.00) Pesos, as indemnity for the death of the victim; Fifty Thousand (P50,000.00) Pesos, as moral damages; One Hundred One Thousand Eight Hundred (P101,800.00) Pesos, as refund for the medical and burial expenses; and the sum of P720,000.00, as loss of earning.

Pursuant to Section 22 of R.A. 7659 and Section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.^[6]

The record of this case was forwarded to this Court for automatic review in view of the penalty imposed.

In our Resolution^[7] dated January 13, 2004, we accepted the appeal and directed the Chief of the Judicial Records Office to send notices to the parties to file their respective briefs. The Court also required the Director, Bureau of Corrections, to confirm the detention of Jadap at the National Penitentiary.

Jadap filed his Appellant's Brief^[8] on June 11, 2004, while the People, through the Office of the Solicitor General, filed its Appellee's Brief^[9] on October 8, 2004.

Pursuant to our pronouncement in *People v. Mateo*,^[10] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this case was referred for appropriate action and disposition to the Court of Appeals where it was docketed as *CA-G.R. CR-HC No. 00244 Min.*

The evidence for the prosecution is summarized by the Office of the Solicitor General, as follows:

At 8:00 o'clock in the evening of February 20, 2001 Robert Alisbo, the victim, with his friends Rollie Arciso, Jeffrey Arciso, Gomer Tormes, Junifel Pilaro, Diosdado Aton, Jr., Ferlin Alberca, and Lenderico Sabanal went swimming at Raagas Beach Resort, Bonbon, Cagayan de Oro City. Around 9:00 o'clock in the evening, they were in an open cottage in the beach resort drinking a gallon of *tuba* with Robert Alisbo and Rollie Arciso sitting near each other on a bench. They could well see one another because the place was lighted by a fluorescent light which was approximately 2.5 meters away from them. Around 9:30 p.m., [accused-appellant] Dante Jadap suddenly appeared from nowhere behind Robert Alisbo and Rollie Arciso. Without provocation from the latter's group, [accused-appellant] took out a .38 caliber revolver and shot Roberto Alisbo, hitting him on the right side of his body (TSN, June 3, 2002, pp. 6-9, 13).

Then, [accused-appellant] pointed the gun at the friends of Robert Alisbo and fired it twice, causing them to immediately scamper away. However, Rollie Arciso, Lenderico Sabanal, and Ferlin Alberca stayed, taking cover under the cottage's table. [Accused-appellant] hit Ferlin Alberca and Lenderico Sabanal who was injured on his left leg. Thereafter, accused-appellant casually walked away towards Bayabas, a nearby barangay (ibid., p. 10).

Seeing Robert Alisbo prostrate on the ground, Rollie Arciso immediately went to the house nearby of Barangay Kagawad Raagas to seek assistance. Accordingly, Raagas called the police and using the police car brought Robert Alisbo and Lenderico Sabanal to the hospital (ibid., p. 11).

Four days later, on February 24, 2001, Dr. Ryan R. Mortiz operated on the victim but to no avail. Although Roberto Alisbo was discharged from the hospital on March 10, 2001, the lower portion of his body remained incapacitated. He died thereafter. According to Dr. Mortiz, the bullet entered the victim's chest area through the right side of the body, about 6" below the nipple. There was no exit wound, and the slug was found on the spinal cord, damaging the right lung, chest cavity and spinal cord which caused the victim's death (TSN, June 13, 2002, pp. 6-8).

Meanwhile, on the fatal night of February 20, 2001, the police investigated the crime scene and interrogated Rollie Arciso about the incident. The police was able to recover from the crime scene two slugs

of a .38 caliber pistol. Thereafter, the police, accompanied by Rollie Arciso, went to Mahayahay and Bayabas, the adjoining barangays of Bonbon to look for [accused-appellant] but they did not find him. The following morning, Rollie Arciso had the incident entered in the police blotter of Carmen Police Station.

Sometime in December 2001, [accused-appellant] was finally found and arrested by the police (TSN, December 10, 2002, p. 30).

Police Supt. Gregorio R. Bautista of the Firearm and Explosive Division of the Philippine National Police, Region X, Cagayan de Oro City, affirmed that [accused-appellant] was not a licensed firearm holder (TSN, June 5, 2002, p. 45).

The father of the deceased, Rodrigo Alisbo, incurred hospital, medical, and burial expenses for the victim in the total amount of P101,800.00 (Exhibit "C" and "C-1"). At the time of his death, Robert Alisbo was only 20 years old and was working as a mason with a monthly income of P3,000.00 (TSN, June 24, 2002, pp. 2-8).^[11]

On the other hand, Jadap's Brief presents a different story:

MARITO RAMAYAN averred that he lives within a hundred meters from the site of the shooting although he was asleep on the night that the incident happened. In the morning of the next day, when he learned of the alleged shooting incident, he went to check out the site and saw that several *tuba* gallons strewn all over the place. He had not seen the [accused-appellant] at that place for a long time prior to the incident. (October 22, 2002, pp. 26-33; December 10, 2002, pp. 22-25).

Accused **DANTE JADAP** was a former police officer who was discharged from the service due to absence without leave. After his resignation, he stayed at Bayabas, Cagayan de Oro which is about a kilometer away from Bonbon, Cagayan de Oro, with his children as he was separated *de facto* from his wife. But when he returned to Cagayan de Oro from Manila, where he was following up his reinstatement, he left his two (2) children under the care of his wife. He only goes to the area of Bonbon, Cagayan de Oro whenever his wife calls him to fetch their children. His wife was studying. On the night of February 20, 2001, he was at home attending to his two children. He never knew that he was charged of murder until the time his wife turned him over to the police due to a misunderstanding. (TSN, December 10, 2002, pp. 26-40).^[12]

On August 17, 2006, the Court of Appeals promulgated the herein challenged decision affirming for the most part the decision of the trial court with modification only as to the penalty imposed. The penalty was lowered from death to *reclusion perpetua* and the award of civil indemnity in the amount of P75,000.00 was reduced to P50,000.00. Also, additional awards of P50,000.00 each as exemplary damages and temperate damages were imposed. However, the Court of Appeals deleted the

award of P101,800.00 as a refund of the medical and burial expenses for lack of evidence. The amount of P50,000.00 for moral damages and P720,000.00 for loss of earning capacity were affirmed. Pertinently, the Court of Appeals decision reads in part:

WHEREFORE, the decision appealed from is **affirmed** but the penalty is reduced to *reclusion perpetua*. Further, the amount of damages are modified in that appellant is ordered to pay the parents of Robert Alisbo (a) Php50,000.00 as civil indemnity *ex delicto*; (b) Php720,000.00 for loss of earning capacity; (c) Php50,000.00 for temperate damages; (d) Php50,000.00 for moral damages; and (e) Php50,000.00 as exemplary damages.^[13]

Thereafter, the Court of Appeals elevated the instant case to this Court in view of the penalty imposed. In our Resolution^[14] dated August 1, 2007, we required the parties to simultaneously submit their respective supplemental briefs. On October 5, 2007, the People filed a Manifestation^[15] stating that it is no longer filing a supplemental brief since the arguments raised by Jadap have already been discussed in its brief dated October 8, 2004. Jadap likewise filed his Manifestation^[16] on October 17, 2007 adopting his Appellant's Brief and Reply as Supplemental Brief.

Jadap raised this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The present appeal has no merit.

The pivotal issue being factual and evidentiary, the credibility of the witnesses assumes immense importance. Well-settled is the rule that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the facts must be given great weight on appeal, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.^[17]

We find no reason to deviate from the trial court's assessment, as affirmed by the Court of Appeals, of the witnesses' testimonies, to wit:

In the case at bar, although the crime occurred at past 9:30 in the evening, there was fluorescent light coming from the electric posts. No less than defense witness in the person of Marito Ramayan declared that the place of the incident was well-lighted because he used to pass by in