

THIRD DIVISION

[G.R. No. 173822, October 13, 2010]

**SALVADOR ATIZADO AND SALVADOR MONREAL, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

BERSAMIN, J.:

On May 4, 2000, the Regional Trial Court (RTC), Branch 52, Sorsogon, convicted the petitioners of murder.^[1] On December 13, 2005, the Court of Appeals (CA) affirmed their conviction in C.A.-G.R. CR-HC No. 01450, but modified the awarded damages.^[2]

The petitioners contest the CA's affirmance of their conviction in this appeal *via* petition for review on *certiorari*.

We affirm their conviction, but we reduce the penalty imposed on Salvador Monreal because the RTC and the CA did not duly appreciate his minority at the time of the commission of the crime. We order his immediate release from prison because he already served his sentence, as hereby modified. Also, we add to the damages to which the heirs of the victim were entitled in order to accord with the prevailing law and jurisprudence.

Antecedents

On June 20, 1994, the Office of the Sorsogon Provincial Prosecutor formally charged the petitioners and a certain Danilo Atizado (Danilo) with murder through the following information, to wit:

That on or about the 18th day of April 1994, at Barangay Bogña, Municipality of Castilla, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation, and without any justifiable cause or motive, with intent to kill, armed with handguns, attack, assault and shot one Rogelio Llona y Llave, a Sangguniang Bayan member of Castilla, Sorsogon, thereby inflicting upon him mortal and serious wounds which directly caused his instantaneous death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW. ^[3]

After the petitioners and Danilo pleaded *not guilty* to the information on November

7, 1994,^[4] the trial ensued.

The witnesses for the State were Simeona Mirandilla (Mirandilla), Major Saadra Gani (Major Gani), Dr. Wilhelmo Abrantes (Dr. Abrantes), Lawrence Llona (Lawrence), and Herminia Llona (Herminia).

Mirandilla narrated that on April 18, 1994 she and the late Rogelio Llona (Llona), her common-law husband, had attended the fiesta of *Barangay* Bonga in Castilla, Sorsogon; that at about 8 *pm* of that date, they had gone to the house of Manuel Desder (Desder) in the same *barangay*; that as they and Jose Jesalva (Jesalva), a *barangay kagawad* of the place, were seated in the sala of Desder's house, she heard "thundering steps" as if people were running and then two successive gunshots; that she then saw Atizado pointing a gun at the prostrate body of Llona; that seeing Atizado about to shoot Llona again, she shouted: *Stop, that's enough!*; that while aiding Llona, she heard three clicking sounds, and, turning towards the direction of the clicking sounds, saw Monreal point his gun at her while he was moving backwards and simultaneously adjusting the cylinder of his gun; that the petitioners then fled the scene of the shooting; that she rushed to the house of *barangay* captain Juanito Lagonsing (Lagonsing) to report the shooting; and that she and Lagonsing brought Llona to a hospital where Llona was pronounced dead.^[5]

Major Gani testified that the petitioners and Danilo were arrested on May 18, 1994,^[6] based on the warrant of arrest issued by Judge Teodisio R. Dino, Jr. of the Municipal Trial Court in Castilla, Sorsogon.

Dr. Abrantes confirmed that Llona died due to two gunshot wounds in the back that penetrated his spinal column, liver, and abdomen.^[7]

Lawrence and Herminia stated that the Llona family spent P30,000.00 for the funeral expenses of Llona.^[8]

Denying the accusation, the petitioners interposed *alibi*. The witnesses for the Defense were Monreal, Roger Villafe (Villafe), Merlinda Lolos, Joseph Lorenzana (Lorenzana), Jesalva, and Lagonsing.

The Defense showed that at the time of the commission of the crime, Atizado had been in his family residence in *Barangay* Tomalaytay, Castilla,

Sorsogon, because he had been sick of influenza, while Monreal and Danilo had been in the house of a certain Ariel also in *Barangay* Tomalaytay, Castilla, Sorsogon drinking gin; that the petitioners and Danilo had not been recognized to be at the crime scene during the shooting of Llona; and that the petitioners had been implicated only because of their being employed by their uncle Lorenzana, the alleged mastermind in the killing of Llona.

As stated, on May 4, 2000, the RTC convicted the petitioners but acquitted Danilo, viz:

WHEREFORE, premises considered, the Court finds accused Salvador Atizado and Salvador Monreal guilty beyond reasonable doubt of the

crime of murder, defined and penalized under Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery, the Court hereby sentences each of the accused to an imprisonment of *Reclusion Perpetua* and to pay the heirs of Rogelio Llona the sum of Fifty Thousand (P50,000.00) Pesos, Philippines currency, in solidum, as civil indemnity, without subsidiary imprisonment in case of insolvency; to reimburse the heirs of the victim the amount of P30,000.00 as actual expenses and to pay the cost.

Accused Danilo Atizado on reasonable doubt is hereby acquitted of the crime charged and he being a detention prisoner, his immediate release from the provincial jail is hereby ordered, unless he is charged of other lawful cause or causes.

Accused Salvador Atizado and Salvador Monreal being detained, shall be credited in full in the service of their sentence.

SO ORDERED.^[9]

The Court referred the petitioners' direct appeal to the CA pursuant to *People v. Mateo*.^[10]

On December 13, 2005, the CA affirmed the conviction, disposing:

WHEREFORE, the judgment of conviction is AFFIRMED. Accused-appellants Salvador Atizado and Salvador Monreal are hereby ordered to suffer the imprisonment of *Reclusion Perpetua*. Likewise, they are ordered to pay the heirs of Rogelio Llona the amount of: (a) P50,000.00 as civil indemnity; (b) P30,000.00 as actual damages; and (c) P50,000.00 as moral damages.

SO ORDERED.^[11]

After the CA denied their *motion for reconsideration*,^[12] the petitioners now appeal.

Issue

The petitioners submit that the RTC and the CA erred in finding them guilty of murder beyond reasonable doubt based on the eyewitness testimony of Mirandilla despite her not being a credible witness; that some circumstances rendered Mirandilla's testimony unreliable, namely: (a) she had failed to identify them as the assailants of Llona, because she had not actually witnessed them shooting at Llona; (b) she had merely assumed that they had been the assailants from the fact that they had worked for Lorenzana, the supposed mastermind; (c) the autopsy report stated that Llona had been shot from a distance, not at close range, contrary to Mirandilla's claim; (d) Mirandilla's testimony was contrary to human experience; and (e) Mirandilla's account was inconsistent with that of Jesalva's.

Ruling

The conviction of the petitioners is affirmed, subject to modifications in the penalty imposed on Monreal and in the amounts and kinds of damages as civil liability.

**I.
Factual findings of the RTC and CA
are accorded respect**

The RTC and CA's conclusions were based on Mirandilla's positive identification of the petitioners as the malefactors and on her description of the acts of each of them made during her court testimony on March 6, 1995,^[13] viz:

- q Who were you saying `we sat together'?
- a Kdg. Llona, Mr. Jose Jesalva and I was letting my 5 years old child to sleep.
- q Can you demonstrate or described before this Honorable Court the size of the sala and the house you wherein (sic)?
- a The size of the sale (sic) is about 3 x 3 meters.
- q Now, please show to this Honorable Court the relative position, the sitting arrangement of yours, Kgd. Llona and Kgd. Jesalva.
- a I was sitting on a long bench then my child was on my lap, then Kdg. Llona was infront of me, I was at the right side of Kdg. Llona
- q How about Kgd. Jesalva?
- a This Kgd. Jesalva was facing Kgd. Llona and Kgd. Llona was facing the door in otherwords, the door was at his back.
- q Was the door open?
- a Yes, sir.
- q Was the door immediately found... Rather was this the main door of the house?
- a That was the main door leading to the porch of the house.
- q And from the porch is the main stairs already?
- a Yes, sir.
- q Now, what were you doing there after dinner as you said you have finished assisting the persons in Bongga about the program, ... after that, what were you doing then?
- a I was letting my child to sleep and Kgd. Llona was fanning my child.
- q How about Kgd. Jesalva?
- a His head was stopping (sic) because of his drunkenness.
- q Can you tell this Honorable Court, while you were on that situation, if there was any incident that happened?
- a **There was a sudden thundering steps as if they were**

running and there were successive shots.

q **Simultaneously with these two (2) successive shots can you see the origin or who was responsible for the shots?**

a **Upon hearing the shots, I turned my head and saw Salvador Atizado.**

q **Who is this Salvador Atizado?**

a **He was the one who shot Kgd. Llona.**

q **Can you be able to identify him?**

a **(Witness identifying the person, and when asked of his name answered Salvador Atizado.)**

q So when you heard the shots, who was actually shot?

a Kgd. Llona, because after looking at the (3) persons I saw Kgd. Llona sliding downward.

q Then after that what happened?

a Then I stood immediately and I told the persons responsible 'stop that's enough', and I gave assistance to Kgd. Llona.

q Then after that what happened?

a My intention was to let Kgd. Llona push-up but I heard three (3) clicks of the trigger of the gun.

q Then what did you do when you heard that?

a **After which I turned my head suddenly then I saw this Salvador Monreal but at that time I do not know his name.**

q **Then what did you see of him?**

a **I saw this Salvador Monreal stepping backward and he was adjusting the cylinder of the gun.**

q Now, when you saw and heard Atizado three (3) clicks of the gun, can you see where the gun was pointed at?

a It was pointed towards me.

q So, there were three (3) shots that did not actually fired towards you?

a Yes, sir.

q **So when you said that you saw this man Monreal, can you still recognize this man?**

a Yes, sir.

q **Could you be able to point at him, if he is in Court?**

a **Yes, sir.**

q **Kindly please go down and tap his shoulder?**

a (witness going down and proceeded to the first bench and tap the shoulder of the person, the person tapped by the