

SECOND DIVISION

[G.R. No. 175978, February 12, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMUEL ALGARME Y BONDA @ "STINGRAY" (DECEASED) AND
RIZALDY GELLE Y BISCOCHO, ACCUSED-APPELLANTS.**

DECISION

BRION, J.:

We review in this appeal the September 7, 2006 decision of the Court of Appeals^[1] (CA) in CA-G.R. CEB-CR-HC No. 00239, affirming with modification the June 25, 2002 decision of the Regional Trial Court (RTC),^[2] Branch 60, Cadiz City. The RTC decision found accused-appellants Samuel Algarme y Bonda (*Samuel*) and Rizaldy Gelle y Biscocho (*Rizaldy*) guilty of the crime of robbery with homicide, and sentenced them to suffer the death penalty.

ANTECEDENT FACTS

The prosecution charged the appellants before the RTC with the special complex crime of robbery with homicide under an Information that states:

That on or about 2:45 a.m. of September 19, 1995 at Cadiz City Park, Cadiz City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and stab to death one Loreto Batarilan y Ladiona, a tricycle driver, in order to rob, steal, and take away a belt bag containing money and the wrist watch Seiko 5; and inflicting upon the person of Loreto Batarilan the following injuries, to wit:

Penetrating to perforating stab wounds:

*2 cm. at epigastric area

*1-2 cm. in the following areas of the back

=11th rib scapular line, right

=4 wounds at right scapular area

=4 wounds at left scapular area

=1 wound at interscapular area, left

=2 wounds infrascapular area, left

*1 wound supraclavicular area, left

*1 wound infra-suricular area, left

CAUSE OF DEATH: Cardio-pulmonary arrest due to hypovolemic shock secondary to Multiple Stab wounds, which directly caused the death of the said victim Loreto Batarilan, to the damage and prejudice of the heirs of the said victim in the amount, to wit:

P50,000.00 - as indemnity for the death of the victim.

ACT CONTRARY TO LAW.^[3]

The appellants pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Rudy Pepito (*Rudy*); Dr. Jimmily Aguilung (*Dr. Aguilung*); Norman Palma (*Norman*); Police Officer 3 Landolfo Acita (*PO3 Acita*); and Alicia Batarilan (*Alicia*). Rizaldy was the lone defense witness.

Rudy narrated that he slept at the Maricom Detachment Office located in Punta Cabahug, Cadiz City and rode a tricycle bound for Ceres Bus Terminal at around 2:45 a.m. of September 19, 1995 because his service vehicle broke down.^[4] As the tricycle passed by the Cadiz City Park, he saw a parked empty tricycle and an old man being stabbed by three (3) persons. Two (2) persons held the victim while the third one stabbed him. Rudy described the person who stabbed the victim to be "white and tall," while the other two (2) who held the victim were "short."^[5]

He further narrated that the victim was stabbed several times in front and at the back and cried for help as he was being stabbed. The driver of the tricycle he was riding, apparently afraid, increased the vehicle's speed as they passed the stabbing scene. When they reached the Ceres Bus Terminal, he (Rudy) immediately boarded a bus bound for Sagay.^[6] He returned to Cadiz on September 21, 1995 and told Cesar Ladiona (*Cesar*), a *barangay tanod*, that he saw a person being stabbed at the park in the morning of September 19. Cesar brought him to the Cadiz City Jail where he was asked whether he could recognize the assailants. He identified the person who stabbed the victim from among the prisoners in jail.^[7]

He testified on cross-examination that the tricycle he was riding was "very near" the scene of the stabbing incident,^[8] and that the park was very brightly lit that night.^[9] He stated that he did not immediately report the stabbing incident upon arriving at the Ceres Bus Terminal because he was afraid and because the Ceres bus bound for Sagay was already leaving.^[10] When he reported the stabbing incident to Cesar on September 21, 1995, Cesar asked him if he could identify the assailants. He replied that he could, but only through their faces. Cesar then brought him to the city jail^[11] where the Chief of Police asked him to point out the persons responsible for the stabbing he reported. He recognized two (2) of the assailants from among the many prisoners inside the jail. He recalled that the prisoners were not brought out of their cell when he was asked to identify the assailants.^[12]

Dr. Aguilung, Medical Officer III at the Cadiz City Emergency Clinic, testified that he went to Cabahug Street near the City Hall in the morning of September 19, 1995 at the request of the police. At the place, he saw the body of an elderly male person sprawled on the ground, about 10 meters away from a parked empty tricycle.^[13] He found that of the 12 wounds inflicted on the victim's body, four (4) were fatal. The wounds could have been caused by a bladed weapon.^[14] According to Dr. Aguilung,

the victim's cause of death was "cardio-pulmonary arrest due to hypovolemic shock secondary to multiple stab wounds."^[15]

Norman, a tricycle driver residing in Cadiz City, narrated that he brought his passengers to Ester Pharmacy and *Villa Consing*, respectively, in the early morning of September 19, 1995; afterwards, he went to Cabahug Street and saw Melanie, the wife of a co-driver. Melanie asked him to look for her (Melanie's) husband. Melanie boarded his tricycle and requested to be brought to the Ester Pharmacy.^[16] On the way there, he saw Loreto Batarilan (*Loreto*) driving his own tricycle and trailing his; he also saw three (3) persons walking towards the direction of the Emergency Clinic. He identified two of them as Rizaldy and "Stingray" both of whom he had known for a long time. He went back towards the direction of the City Hall after Melanie alighted at the Ester Pharmacy.^[17] He saw Loreto's parked tricycle as he passed by the City Hall on Cabahug Street; he then saw Loreto's body full of blood lying on the street. He also saw Rizaldy, "Stingray," and a certain John Doe, about "two (2) extended arms length" away from the victim's body, walking towards the park carrying a belt bag.^[18] He recalled that there were no other persons in the park during that time. He went to the police headquarters to report the incident, but the headquarters was closed. He then went to the Ester Pharmacy and requested the security guard to call the police.^[19]

PO3 Acita, Duty Investigator at the Cadiz City Police Station, testified that at around 3:00 a.m. of September 19, 1995, the desk officer received a telephone call informing the police about a dead person found near the City Hall. Together with five (5) members of the Cadiz Police, he immediately went to Cabahug Street to verify the report. At the reported place, he saw the body of a person lying on the ground, full of blood. He likewise saw a tricycle parked near the City Park along Cabahug Street. He inspected the tricycle and saw blood stains on the driver's seat. Thereafter, he and the other members of the police requested Dr. Aguilung and a photographer to come to the crime scene.^[20]

Alicia, the victim's wife, declared on the witness stand that her husband was a tricycle driver; that her husband wore a Seiko watch when he left to ply his route in the early morning of September 19, 1995. He also carried a belt bag containing P1,200.00 plus loose change; the money was intended for the purchase of spare parts for the tricycle.^[21] She further narrated that she only learned of the death of her husband from her daughter in the morning of September 19, 1995. Only her children went to the crime scene. She added that her husband earned P200.00 a day.^[22]

The defense presented appellant Rizaldy who gave a different version of events.

Rizaldy testified that he did not know his co-accused, Samuel, prior to their arrest on September 21, 1995. At around 2:45 a.m. of September 19, 1995, he was watching a billiard game in front of his house on Mabini Street, Cadiz City.^[23] Police Officer Boy Cañedo (*PO Cañedo*) arrested him at around 9:00 a.m. of September 21, 1995. He was brought to the police station where PO Cañedo showed him a shirt and a black shorts, and asked whether he owned them. When he answered in the negative, PO Cañedo told him to go home. Thereafter, he was surprised to receive a notice from the prosecutor's office informing him that he was one of the accused in

the killing of Loreto. He and Samuel were brought to the City Prosecutor's Office where they were asked to secure the services of a lawyer and to file their counter-affidavits within 10 days. A certain Atty. Del Pilar came to him and advised him not to make a counter-affidavit.^[24] He insisted that he had slept in the house of the spouses Mercedes and Manuel Apuhin (*spouses Apuhin*) in the morning of September 19, 1995, and that Mercedes told him at around 7 a.m. that an old man had been killed in the park.^[25]

He admitted on cross-examination that Norman identified him at the police headquarters as one of the persons who had robbed and killed the victim.^[26] He stated that he had been staying since 1994 at the house of the spouses Apuhin as a household helper. He likewise stated that the Apuhin house was a two-minute walk from the Cadiz City Park.^[27]

The RTC convicted appellants Samuel and Rizaldy of the special complex crime of robbery with homicide in its decision of June 25, 2002, as follows:

WHEREFORE, in view of all the foregoing, this Court finds accused Samuel Algarme y Bonda and Rizaldy Gelle y Biscocho (all detained) GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as charged in the Information and there being an aggravating circumstance of treachery attendant thereto without any mitigating circumstance to offset the same, hereby sentences the accused to the penalty of DEATH.

The two accused are all hereby ordered immediately committed to the National Penitentiary for the execution of their sentence, and the Clerk of Court of this Court is hereby directed to immediately forward the entire records of this case to the Supreme Court for automatic review.

The two accused are further ordered to jointly and solidarily pay the heirs of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of indemnity for the death of LORETO BATARILAN, together with the amount of THREE THOUSAND PESOS (P3,000.00) representing the cash amount and the value of the wrist watch of the victim by way of reparation, and the amount of THREE HUNDRED SEVENTY-FOUR THOUSAND FOUR HUNDRED PESOS (P374,400.00) by way of the loss of the earning capacity of the victim, Loreto Batarilan, plus the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages, and the further amount of TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages. The award for the loss of earning capacity together with the moral and exemplary damages for which docket fees and legal fees, the Clerk of Court of this Court is hereby directed to charge as liens on the award of damages the said docket and other legal fees.

The case against alias "Stingray" who is still at-large is hereby ordered ARCHIVED to be immediately revived upon his arrest.

Costs against accused Samuel Algarme and Rizaldy Gelle.

SO ORDERED.^[28]

The RTC, after receiving an information that one of the appellants had escaped confinement and subsequently been killed in a shoot-out with the police, issued an Order directing the counsels for both the prosecution and defense, as well as the BJMP Warden and Chief of Police of PNP Cadiz City, to submit a report on the incident.^[29] They reported and confirmed that Samuel had indeed been killed on February 29, 1996 in a police shoot-out. Based on this confirmed development, the trial court issued an Order dated October 17, 2002 modifying the dispositive portion of its June 25, 2002 decision and dismissing the case against Samuel.^[30]

On appeal, we endorsed this case to the CA for appropriate action and disposition^[31] pursuant to our ruling in *People v. Mateo*.^[32] The CA, in its decision of September 7, 2006, affirmed the RTC decision with the modification that the death penalty imposed on Rizaldy be reduced to *reclusion perpetua*.

In his brief,^[33] the appellant argues that the RTC erred -

- 1. in giving credence to the positive identification by the two (2) prosecution witnesses pointing to him as the perpetrator of the crime charged;**
- 2. in finding that a conspiracy existed between him and his co- accused Samuel;**
- 3. in imposing the death penalty even if treachery had not been proven; and**
- 4. in convicting him of the crime charged even if its elements had not been proven beyond reasonable doubt.**

THE COURT'S RULING

We resolve to *deny* the appellant's appeal as his guilt has been proven beyond reasonable doubt, but we modify the lower courts' decision with respect to the crime committed, the penalty imposed, and the awarded indemnities.

Sufficiency of the Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings - including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings - are accorded great respect and even conclusive effect. In our review of cases, these factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite this enhanced persuasive effect, we nevertheless fully scrutinize the records (as we did in this case), since the penalty of *reclusion perpetua* that the CA imposed on the appellant demands no less than this kind of careful and deliberate consideration.^[34]

A distinguishing feature of the present case is the presence of a witness - Rudy - who, in his November 27, 1995 testimony, positively identified the appellants as the