

## SECOND DIVISION

[ G.R. No. 177827, March 30, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANSELMO BERONDO, JR. Y PATERES, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the November 7, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00386 entitled *People of the Philippines v. Anselmo Berondo, Jr. y Pateres* which held accused-appellant Anselmo Berondo, Jr. guilty of homicide. The CA Decision modified the September 23, 2003 Decision<sup>[2]</sup> in Criminal Case No. 11760-02 of the Regional Trial Court (RTC), Branch 8 in Malaybalay City, which held accused-appellant liable for murder.

#### **The Facts**

At around 11:30 p.m. of February 13, 1999, after joining the Miss Gay competition at New Danao, Sinaysayan, Kitaotao, Bukidnon, Herbert Nietes, Jr. walked home to Puntian, Quezon, Bukidnon. While on the way, he suddenly heard a gunshot from nearby. Feeling afraid, he ran towards the grassy area by the roadside to hide. After about five minutes, he saw accused-appellant, Julie Tubigon, and Jesus Sudario, each holding a knife, walk towards the road and take turns in stabbing a person who was already slumped on the ground. He recognized the three as they are his townmates. Thereafter, he ran away from the area and went to Bato-Bato, Sinaysayan, Kitaotao, Bukidnon, where he spent the night. The next day, he learned that the person stabbed was Genaro Laguna. He later testified that he did not reveal what he had witnessed to anyone because he was afraid of getting involved.<sup>[3]</sup>

At about the same time, Pedro Tero, who was also walking along the road towards Puntian, saw Tubigon shoot Laguna. After the victim fell, about five to six persons whom he did not recognize went near the victim. He then immediately ran away from the scene and no longer saw what had happened next to the victim. On the following day, he told a certain Hoseas Sagarino what he saw but did not report it to the authorities.<sup>[4]</sup>

Two years after the incident, Nietes and Tero admitted to Dolores, Laguna's widow, that they had witnessed the crime. They then reported the matter to the police and, accordingly, executed their respective sworn statements. Thereafter, an Information for robbery with murder was filed against accused-appellant, Tubigon, and Sudario. The Information reads:

That on or about the 13<sup>th</sup> day of February 1999, in the evening, at Purok 2, barangay West Dalurong, [Kitaotao], [Bukidnon], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to gain, did then and there willfully, unlawfully and criminally take, rob and carry away cash amounting to SIX THOUSAND FIVE HUNDRED PESOS [PhP 6,500], belonging to GENARO LAGUNA, to his damage and prejudice in the aforementioned amount;

That on the occasion of the said Robbery, the above name accused, acting on the same conspiracy, and to enable them to consummate their desire, with intent to kill by means of force and taking advantage of superior strength, armed with a firearm with an unknown caliber, did then and there willfully, unlawfully, and criminally attack, assault and shoot GENARO LAGUNA, inflicting upon his person multiple stab and gunshot wounds, which caused the instantaneous death of GENARO LAGUNA to the damage and prejudice of the legal heirs of GENARO LAGUNA in such amount as may be allowed by law.

Contrary to and in Violation of Article 294 in relation to Article 14 of the Revised Penal Code as amended by R.A. 7659.<sup>[5]</sup>

Trial proceeded only against accused-appellant because the two other accused remained at-large.

In his defense, accused-appellant denied any involvement in the killing of Laguna. He claimed that in the evening of February 13, 1999, he was with his wife and daughter watching the activities during the *Araw ng New Danao* (New Danao Day) at the Poblacion, New Danao, Sinaysayan. When the activities ended at about two o'clock in the morning of the next day, they went home together. Hours later, Geno Laguna, the victim's cousin, told him about the incident and together they proceeded to the place where the victim's body was found. Further, he alleged that prosecution witness Nietes was his daughter's former sweetheart. Their relationship became unfriendly after Nietes acted rudely against accused-appellant's daughter.<sup>[6]</sup>

On September 23, 2003, the RTC rendered a Decision, the dispositive part of which reads:

WHEREFORE, the accused ANSELMO BERONDO JR. y PATERES is found GUILTY beyond reasonable doubt as principal in the crime of MURDER under Article 248 of the Revised Penal Code and is sentenced to the penalty of *RECLUSION PERPETUA*. The accused is further ordered to pay the heirs of the deceased Genaro Laguna the amount of FIFTY THOUSAND PESOS (PhP50,000.00) as actual damages and civil indemnity in the sum of FIFTY THOUSAND PESOS (PhP50,000.00).

SO ORDERED.

The case was appealed to the CA.

### **The Ruling of the CA**

Affirming the decision of the trial court, the appellate court found credible Nietes' testimony pointing to accused-appellant as one of the persons who stabbed the victim. It dismissed the imputation of ill motive against Nietes and held that the clear and straightforward manner in which he testified is worthy of belief. Also, it held that Nietes' delay in reporting the crime was reasonable considering that eyewitnesses have a tendency to remain silent rather than imperil their lives or that of their family.

The CA, however, found that the prosecution failed to prove the attendance of the qualifying circumstance of abuse of superior strength. It held that no evidence was presented to prove that the three accused purposely took advantage of their numerical superiority. Thus, accused-appellant was held guilty only of homicide and not murder.

The CA also modified the award of damages. Finding that there was absence of proof of actual damages, the CA instead awarded temperate damages in the amount of Php 50,000.

The *fallo* of the November 7, 2006 CA Decision reads:

WHEREFORE, the Decision appealed from is modified. In lieu of murder, the Court finds appellant guilty beyond reasonable doubt of homicide and he is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. Appellant is further ordered to pay the heirs of Genaro Laguna the amount of fifty thousand pesos (Php 50,000.00) as temperate damages and fifty thousand pesos (Php 50,000.00) as civil indemnity.<sup>[7]</sup>

Hence, we have this appeal.

### **The Issues**

In a Resolution dated August 22, 2007, this Court required the parties to submit supplemental briefs if they so desired. On October 25, 2007, accused-appellant, through counsel, signified that he was no longer filing a supplemental brief. Thus, the following issues raised in accused-appellant's Brief dated November 16, 2004 are now deemed adopted in this present appeal:

#### **I.**

The court a quo gravely erred in convicting the accused-appellant of [homicide] despite the prosecution's failure to prove his guilt beyond reasonable doubt.

#### **II.**

The court a quo gravely erred in giving weight and credence to the incredible and inconsistent testimony of the prosecution witnesses.<sup>[8]</sup>

In essence, the case involves the credibility of the prosecution eyewitnesses and the sufficiency of the prosecution evidence.