

FIRST DIVISION

[G.R. No. 185726, October 16, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DARWIN BERNABE Y GARCIA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is an appeal from a Decision^[1] of the Court of Appeals (CA) dated July 10, 2008 in *CA-G.R.-CR-HC No. 02619* affirming with modification the decision^[2] of the Regional Trial Court of Las Piñas City, Branch 202 (RTC) in *Criminal Case No. 05-0683* finding accused-appellant Darwin Bernabe y Garcia a.k.a. "Bong" guilty beyond reasonable doubt of the crime of Murder.

The information,^[3] dated June 7, 2005, charged accused-appellant with Murder, to wit:

That on or about the 26th day of May, 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable motive, did, then and there, willfully, unlawfully and feloniously, with treachery, evident premeditation abuse of superior strength, and cruelty, assault, attack, hit the head of one JANN MICHAEL OLIVO Y FRANCIA with an iron pipe, causing the latter to fall unconscious, in which state said accused strangled the victim with a G.I. wire, directly causing the death of said JANN MICHAEL OLIVO y FRANCIA.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty and trial on the merits ensued.

The prosecution presented six witnesses, namely, Alvin Tarrobago (Alvin), and Jomar Butalid (Jomar), who both witnessed the commission of the crime; Dr. Ruperto Sambilon, Jr., the Medico Legal Officer who performed the autopsy on the victim's body; Nora Olivo, the victim's mother; SPO2 Roger Bato; and Prudencio Aristan. The following narration of events is culled from the testimonies of eyewitnesses Alvin and Jomar, as well as those of the other witnesses.

In the evening of May 25, 2005, accused-appellant invited Jomar, Alvin, and three girls known only as Kambal, Mandy, and Cherry to his house for a drinking spree. Accused-appellant allowed his guests to stay on and sleep in his bedroom.

At about 2:00 a.m. of May 26, 2005, Jomar was awakened by the voice of accused-appellant telling Alvin to join him in buying some cigarettes. Outside the house, they met the victim Jann Michael Olivo. While the three were walking along Chico Street, the victim told accused-appellant that he knew the latter. Accused-appellant poked a gun at the victim and ordered the latter to go with them to accused-appellant's house where he started questioning the victim why the latter was roaming around the house. Jomar, who was in the bedroom, heard accused-appellant strongly utter the words, "*Sino ang nagbayad sa iyo na subaybayan ako,*" to which the victim answered "*Walang nagutos sa akin na subaybayan ka.*" Then, Jomar heard some punching sounds and then he heard a person plead, "*Kuya Bong parang awa niyo na ho kahit dito na lang ako tumira sa inyo, huwag mo lang akong patayin.*" Accused-appellant replied, "*Hindi naman kita papatayin, aminin mo lang sa akin kung sinong nagbayad sa iyo para subaybayan ako. Sabihin mo lang sa akin at dodoblehin ko ang bayad.*"^[4]

Unable to go back to sleep, Jomar peeped outside the bedroom. He saw accused-appellant holding a piece of wood while the victim was sitting near the front door of the house. He also saw Alvin, who was seemingly frightened, seated near another room. Jomar stayed inside the bedroom from where he saw accused-appellant hit the victim thrice with the piece of wood until it broke. Accused-appellant then instructed the weakened victim to undress while he went to the kitchen to get a toothbrush and some lotion. Accused-appellant commanded the victim to bend over and the former then put lotion on the victim's butt. The victim shouted in pain as accused-appellant inserted the toothbrush into the victim's anus.^[5]

Accused-appellant continued to interrogate the victim and hit the latter two times with a metal pipe. He then ordered the victim to lie down and tied the latter's hands with a plastic straw. Accused-appellant got GI wire or "*alambre,*" placed a gray shirt over the victim's head, and then strangled the latter with the wire. While doing this, accused-appellant called out to Jomar and Alvin and ordered the two to hold the struggling victim's feet. When the victim stopped breathing, accused-appellant got hold of two sacks from his *bodega* or stockroom, put the lifeless body inside the sacks, placed it at a corner of the house, and covered it with "*yero*" or GI sheets. In the afternoon of May 26, 2005, accused-appellant and Alvin borrowed the sidecar of Prudencio Aristan (Aristan).^[6]

At dawn of May 27, 2005, accused-appellant commanded Alvin and Jomar to load the victim's body on the sidecar and dispose of the same. The two dumped the corpse in a water lily-filled vacant lot located on Guyabano St., Golden Acres Subdivision, Talon Uno, Las Piñas. Thereafter, accused-appellant threatened Alvin and Jomar that he will kill them if they report the incident to the police. Jomar and Alvin then went their separate ways and into hiding.^[7]

The victim's body was found at 11:30 a.m. on May 27, 2005 and brought to the Funeraria Filipinas where an autopsy was performed by Medico Legal Officer Dr. Ruperto J. Sambilon, Jr. The Autopsy Report^[8] contained the following findings:

Body in early to moderate state of decomposition, bloated and with eyeballs having prominent appearance and seemingly about to pop-out from the eye sockets.

Cyanosis, marked, head, neck and upper areas of the torso.

Lacerated wound, 3.0 cm., forehead, left aspect.

Ligature marks:

1. Neck, 55.0 cm. long circumference, oriented horizontally around the neck below the thyroid cartilage. Widest portion 0.7 cm. at the right side and the narrowest portion 0.3 cm. at the left antero-lateral aspect. Approximate depth 0.4-0.5 cm.
2. Left wrist area, two (2) in number. Upper one is 16.0 cm long and 2.5 cm. wide and 0.2-0.3 cm. deepest portion, almost completely surrounding the distal 3rd of the left forearm near the wrist joint; 12.0 cm. long and 1.0 cm. wide 0.2-0.3 cm. deepest portion, and almost completely [surrounding] the wrist.
3. Right wrist area, 16.0 cm. long, 1.0 cm. wide and approximately 0.2 cm. deepest portion, incompletely surrounding the wrist.

Fracture, windpipe (trachea), 2nd ring below the thyroid cartilage, complete, close.

Hemorrhage, moderate, soft tissues, surrounding fractured ring. Neck muscular layer, anterior to trachea.

Heart and lungs: with several Tardieu's spots noted in the subepicardial and subpleural layers.

Tracheal wall, markedly congested.

Brain, in moderate liquefaction.

Other visceral organs, congested.

Stomach, about 1/4 filled with yellowish fluid.

CAUSE OF DEATH: ASPHYXIA BY STRANGULATION (Words in brackets ours.)

On June 3, 2005, relatives of Jomar and Alvin arranged the surrender of the two minors to the authorities. Upon inquiry, they divulged what they witnessed and how they allegedly accidentally participated in the commission of the crime. They voluntarily offered themselves to help in the immediate arrest of accused-appellant.

[9] On June 4, 2005, Alvin and Jomar executed their respective *Sinumpaang Salaysay*. [10]

On or about 7:30 p.m. of June 3, 2005, accused-appellant was arrested on follow-up operation at his hideout on Camias St., Golden Acres Subdivision, Talon Uno, Las Piñas. Confiscated from the possession of the accused-appellant were: a) a black

nylon holster; b) one (1) live ammunition for a caliber .38 revolver; and c) a knife. The accused-appellant was brought to the Las Piñas Police Station for investigation and proper disposition.^[11]

The testimony of Dr. Ruperto J. Sambilon, Jr. was dispensed with in view of the stipulation of facts^[12] entered into by the prosecution and the defense, *viz*:

1. Dr. Sambilon was an expert witness;
2. He conducted an autopsy on the cadaver of the victim Jann Michael Olivo; and
3. Based on his findings, the cause of death of the victim was asphyxia by strangulation.

In lieu of the testimony of the victim's mother, Nora Olivo, the prosecution and the defense entered into the following stipulation of facts:^[13]

1. She is the mother of the victim, Jann Michael Olivo;
2. She can identify her affidavit and certain documents relative to the case;
3. Before the death of her son, Jann Michael Olivo, the latter was employed, as per Certification^[14] issued by his employer;
4. The witness will present several documents to prove the expenses incurred for the burial of the victim; and
5. The witness will present the death certificate^[15] and the certificate of live birth^[16] of the victim, as well as [a] picture of the victim.

Anent the testimony of SPO2 Roger Bato, the prosecution and the defense entered into the following stipulation of facts:^[17]

1. That the witness was a member of the arresting team who apprehended accused-appellant;
2. Upon investigation conducted, two persons by the name of Jomar Butalid and Alvin Tarrobago narrated the incident pertaining to the death of one Jann Michael Olivo;
3. In connection with the said investigation, Jomar Butalid and Alvin Tarrobago pointed to accused Darwin Bernabe as the one who killed Jann Michael Olivo; and

4. After investigation, the arresting team caused the arrest of the accused-appellant.

The defense made a counter-stipulation that SPO2 Bato had no personal knowledge of the alleged commission of the crime; that the arresting team was not armed with any warrant at the time of arrest; and that the accused-appellant was only arrested eight to nine days after the commission of the crime.

With regard to the testimony of Aristan, the prosecution and the defense entered into a stipulation^[18] that both accused-appellant and Alvin borrowed Aristan's pedicab in the afternoon of May 26, 2005.

The defense had another version of the facts. It presented as witnesses accused-appellant Darwin Bernabe, Amy Bandala, and Dr. Francisco Raura. Accused-appellant's account of the incident is as follows:

In the afternoon of May 25, 2005, accused-appellant was cleaning his backyard when Jomar and Alvin arrived and asked him if they could stay in his house. Since he had known the two for more than five (5) months already, accused-appellant allowed the two to stay on condition that they help him clean his backyard. He brought Alvin and Jomar along to the "*manukan*," which was five (5) streets away from his house, to visit his fighting cocks. After checking the food and medication of his roosters, he invited his caretaker, Noel Wagas, for a drinking session. Alvin and Jomar took some shots of liquor. At around 8:30 p.m., the two asked accused-appellant's permission to go back to the latter's house. Accused-appellant handed them the key to his gate and stayed behind.

Accused-appellant arrived home at around 2:00 a.m. of May 26, 2005 and found Alvin and Jomar having an argument with the victim, who was allegedly unknown to him at the time. He pacified the three and asked the name of the victim who introduced himself as Jann-jann. He told Alvin and Jomar to fix the problem and have Jann-jann leave his house. He then entered his bedroom where he saw three girls sleeping. He got mad and scolded Jomar and Alvin. He slept in another room until around 7:00 a.m. When he woke up, the victim was already gone, while the three girls were still sleeping. He found Jomar and Alvin fixing things on the table.

He went to the *manukan* to check on his roosters and returned home at around 1:00 p.m. to take his lunch. He rested until 5:00 p.m. and then instructed Alvin to borrow a sidecar in the nearby junkshop and to dispose of the garbage. Thereafter, he proceeded to his brother-in-law's house in *Manuyo II, Las Pinãs City* to borrow money for the vitamins of his fighting cocks. However, his brother-in-law was not there. After waiting for some time, accused-appellant went home. He arrived at his house at around 11:00 p.m. He invited Jomar and Alvin to drink. He noticed that Alvin was nervous. The following morning, he observed Jomar and Alvin pacing back and forth and having a conversation under the *aratiles* tree, but he did not hear what they were talking about.

According to accused-appellant, Jomar asked if he could borrow money because they were going to some place. He then told the two to sell the scraps in the stockroom and from the proceeds amounting to P500.00, he gave them P300.00, and kept the remaining P200.00. Jomar and Alvin left for Cavite between 7:00 to