

## THIRD DIVISION

[ G.R. No. 178546, April 30, 2008 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MUKIM  
ELING Y MAÑALAC, ACCUSED-APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Appellant Mukim Eling y Mañalac assails the Decision<sup>[1]</sup> of the Court of Appeals dated 13 July 2006 in CA-G.R. CR-HC No. 00191-MIN, affirming with modification the Decision<sup>[2]</sup> dated 1 October 2001 of the Regional Trial Court (RTC) of the Ninth Judicial Region, Branch 16, Zamboanga City, in Criminal Case No. 16315. The RTC found appellant guilty beyond reasonable doubt of the crime of Murder.

On 7 September 1999, an Information<sup>[3]</sup> was filed before the RTC charging appellant of Murder, the accusatory portion thereof, reads:

That on or about September 2, 1999, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a .45 Caliber pistol bearing Serial No. 652479, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously, suddenly and without any warning, assault, attack and shoot with the use of said weapon that he was then armed with, at the person of MOHAMMAD NUH TUTTOH y HAMIDUL, thereby inflicting upon the latter's person mortal gunshot wound on the fatal part of his body which directly caused his death, to the damage and prejudice of the heirs of said victim; furthermore, there being present an aggravating circumstance in that the crime charged herein was committed with the use of an unlicensed firearm.

On 22 October 1999, appellant was arraigned with the assistance of his counsel *de oficio*. He pleaded "Not Guilty." Thereafter, pre-trial was held, and trial ensued accordingly.

Evidence for the prosecution showed that at about 5:45 in the afternoon of 2 September 1999, the brother of the appellant, Alangan Sakandal (Sakandal) and the deceased Mohammad Nuh Tuttoh (Tuttoh) were seated beside each other on a platform or bench at the side of a small nipa hut owned by Tuttoh. The hut was located along the shoreline of Tictabon Island in Zamboanga City. It was situated roughly 10 meters away from Tuttoh's house. The hut has a wide door and walls made of bamboo slats with gaps in between. The walls did not reach up to the ceiling. The floor of the nipa hut was about one meter and 20 centimeters from the ground, while the platform or bench on which Tuttoh and Sakandal were seated was about one meter high from the ground. At that time, the appellant was inside the nipa hut. Crispin Kaluh was standing about four meters away from Tuttoh and

Sakandal. While Tuttoh and Sakandal were conversing, Sakandal heard a shot. He saw a pistol poised just above his shoulders. He grabbed the pistol, and it fell. He saw that the man holding the pistol with both hands was his brother, the appellant, who was inside the nipa hut. The appellant shot Tuttoh from behind. Tuttoh was hit on the nape and the bullet exited on his right cheek. After the pistol fell to the ground, the appellant ran away to the seashore. Sakandal took the pistol while Crispin Kaluh chased the appellant, held him, and tied his hands. Tuttoh was already dead when he was brought to the *nipa hut*, 10 meters away from his house. The cause of his death was discovered to be hemorrhage secondary to gunshot wound.

Sakandal testified that in the evening of 2 September 1999, he turned over the gun to Birri Ahagin (Ahagin), the right hand man of Tuttoh. It was a colt .45 cal. pistol with Serial No. 652479. Ahagin confirmed the testimony of Sakandal. According to Ahagin, after receipt of the gun from Sakandal, he filed a report with the Police Detachment and turned the gun over to SPO1 Amadol Nasihul at seven o'clock in the evening of the same day.

The prosecution also presented its eyewitness Crispin Kaluh (Kaluh) who testified that he is a seaweed farmer working at the seaweed farm owned by Tuttoh in Tictabon Island.<sup>[4]</sup> Kaluh further testified that at the time of the incident, he was five (5) arms' length away from Tuttoh.<sup>[5]</sup> He saw Tuttoh seated and conversing with Sakandal on the bench near the nipa hut. He suddenly heard a gunshot and saw Tuttoh fall down and die.<sup>[6]</sup> He testified that he saw the appellant shoot Tuttoh from inside the nipa hut.<sup>[7]</sup> Kaluh added that he saw Sakandal grab the pistol from the appellant which caused the latter to run away.<sup>[8]</sup> Kaluh chased the appellant. When he caught up with the appellant, he tied his hands.<sup>[9]</sup>

Forensic Chemist P/Sr. Inspector Mercedes Delfin Diestro testified that both hands of the appellant were found positive of gunpowder nitrates.<sup>[10]</sup>

Dr. Efren Apolinario, medico-legal doctor of the Zamboanga City Health Office, was presented by the prosecution as an expert witness.<sup>[11]</sup> He testified on the cause of death of Tuttoh, as well as on the postmortem examination he conducted on the cadaver of Tuttoh on the morning of 3 September 1999. He noted that Tuttoh's body sustained a gunshot wound measuring .8 to 1.2 cm. at the back occiput directed also on the right portion between the right upper and the right lower mandibular bone measuring 1.5 inches everted.<sup>[12]</sup> From the size of the wound, he approximated that the firearm used was a .45 caliber.<sup>[13]</sup> He issued a death certificate reflecting therein "hemorrhage secondary to gun shot wound neck, back" as the cause of death of the victim.<sup>[14]</sup>

SP02 Jesus Guray Ortega was presented by the prosecution to prove that the appellant had not applied for a license to possess the firearm, nor did he have a license to carry firearm or authorized to carry firearm outside his residence.<sup>[15]</sup>

Finally, the prosecution presented as witness, Tuttoh's mother, Jaihan Abu. She testified that Tuttoh was his only son. At the time of Tuttoh's death, he and his wife had five (5) children, and the wife was pregnant with child. The wife had given birth after the demise of Tuttoh. Jaiham Abu further testified that she incurred expenses

in connection with the death of her son in the total amount of P54,075.00. She said that in connection with Tuttoh's funeral, they spent 10 sacks of rice in the total amount of P8,500.00. They also slaughtered a cow, and bought cigarettes and fish.<sup>[16]</sup>

The appellant was presented as the sole witness for the defense. According to him, at about 5:45 in the afternoon of 2 September 1999, he was sleeping inside the nipa hut.<sup>[17]</sup> He woke up when he found himself being mauled by Tuttoh. According to the appellant, he was mauled by Tuttoh for the purported reason that he was having an affair with the latter's relative.<sup>[18]</sup> Tuttoh hit him on the nape.<sup>[19]</sup> They grappled for the pistol that was being held by Tuttoh.<sup>[20]</sup> While they were in that position, the pistol accidentally fired and Tuttoh was hit.<sup>[21]</sup> Afterwards, he surrendered to a person by the name of Bario.<sup>[22]</sup>

After trial, the RTC convicted the appellant of the crime of Murder. The RTC reasoned that Murder was committed by means of treachery because the victim, who was shot at the back with a .45 caliber pistol, was totally unaware.<sup>[23]</sup> The RTC also ruled that the attack was sudden and unexpected and Tuttoh had no chance whatsoever to defend himself or to escape.<sup>[24]</sup> It appreciated the presence of the aggravating circumstance of use of unlicensed firearm which was not offset by any mitigating circumstance.<sup>[25]</sup>

On 1 October 2001, the RTC decreed:

WHEREFORE, the Court finds accused MUKIM ELING y MAÑALAC GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, as principal, for the unjustified killing of Mohammad Nuh Tuttoh with the qualifying circumstance of treachery and aggravating circumstance of use of unlicensed firearm and SENTENCES said accused to suffer the penalty of DEATH and its accessory penalties; to pay the heirs of the victim P50,000.00 as indemnity for his death; P54,075.00 as actual damages; P50,000.00 as moral damages; P30,000.00 as exemplary damages; and to pay the costs.

Pursuant to the provision of Section 22 of R.A. No. 7659, amending Art. 47 of the Revised Penal Code, let the complete records of this case be forwarded to the Supreme Court for automatic review.<sup>[26]</sup>

With the imposition of the death penalty on appellant, the case was elevated to the Supreme Court on automatic review. Pursuant to the Court's ruling in *People v. Mateo*,<sup>[27]</sup> the case was transferred to the Court of Appeals.<sup>[28]</sup>

On 13 July 2006, the Court of Appeals affirmed with modification the appellant's conviction by the RTC. The Court of Appeals ratiocinated in this wise:

Culled from the records of this case, the prosecution substantially established that appellant was in fact the assailant and not the assailed. Its eyewitnesses gave an interlocking account of the facts, leading to no other conclusion than that appellant committed a treacherous assault on the person of the victim. Their testimonies, with intricate attention to details, were narrated in straightforward, categorical and candid manner,

thus, worthy of belief and credit.

Appellant was positively identified by no less than his older full-blood brother, Alangan Sakandal, as the one who shot the victim to death. The latter was seated beside the victim when appellant shot the victim from behind hitting the victim's nape. After the victim was shot, he tried to grab the gun from appellant. In the course of their struggle for its possession, the gun fell down. Appellant then fled towards the seashore.

[29]

The Court of Appeals similarly appreciated the finding of the RTC that the killing was qualified by treachery. It ruled that the appellant positioned himself without risk to himself from any defense which the victim might have made. However, it disagreed with the penalty of death imposed by the RTC. It argued that on 30 June 2006, Republic Act No. 9346, otherwise known as An Act Prohibiting the Imposition of Death Penalty in the Philippines, took effect. Citing Section 2<sup>[30]</sup> thereof, it downgraded the penalty from death to *reclusion perpetua* and awarded temperate damages in lieu of actual damages. It deleted the award of actual damages for the reason that no receipts were shown to support the claim of expenses incurred for the wake and the burial of the victim. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED for lack of merit and the Decision dated 1 October 2001 of the Regional Trial Court is hereby AFFIRMED WITH MODIFICATION that appellant Mukim Eling y Mañalac is found guilty beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua* in lieu of the death penalty pursuant to Section 2 (a) of R.A. No. 9346 and appellant is directed to pay the heirs of the victim the amount of P50,000.00 as civil indemnity; P50,000.00 as moral damages; P30,000.00 as exemplary damages; and P25,000.00 as temperate damages in lieu of actual damages.<sup>[31]</sup>

In his brief, the appellant raises the following assignment of errors, to wit:

#### I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

#### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER WHEN TRECHERY WAS NOT SUFFICIENTLY PROVEN BY THE PROSECUTION.

#### III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH WHEN THE AGGRAVATING CIRCUMSTANCE OF ILLEGAL POSSESSION OF FIREARMS WAS NOT DULY PROVEN.<sup>[32]</sup>

For our resolution are the following issues: (1) whether appellant's guilt was proven beyond reasonable doubt; (2) whether treachery was sufficiently proven; and (3) whether the aggravating circumstance of illegal possession of firearms was duly shown.

We are unable to depart from the factual findings of the Court of Appeals.

Appellant assails the full faith and credit given to the testimony of the witnesses for the prosecution, especially on the testimony of Sakandal. Appellant avers that Sakandal's testimony is marred by inconsistencies considering that he initially stated in categorical terms that he was sitting beside the victim when the latter was shot from behind. Sakandal later testified that he was passing behind the nipa hut where the appellant was sleeping when he saw the latter shoot the victim. We have consistently ruled that on matters involving the credibility of witnesses, the trial court is in the best position to assess the credibility of witnesses since it has observed firsthand their demeanor, conduct and attitude under grilling examination.

[33] The trial court has the best opportunity to observe the demeanor of witnesses while on the stand, it can discern whether or not they are telling the truth.[34] The unbending jurisprudence is that its findings on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal.[35] It is well to remind appellant that when the trial court's findings have been affirmed by the Court of Appeals, as in the case at bar, these are generally binding and conclusive upon this Court.[36] The jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result.[37] There are no cogent reasons to depart from the findings of the trial court and the Court of Appeals. The alleged inconsistency in the testimony of Sakandal does not negate his eyewitness account that he saw appellant shoot the victim. Even then, witnesses cannot be expected to give a flawless testimony all the time.

[38] Although there may be inconsistencies in minor details, the same do not impair the credibility of the witnesses, where, as in this case, there is no inconsistency in relating the principal occurrence and the positive identification of the assailant.[39] Moreover, minor inconsistencies serve to strengthen rather than diminish the prosecution's case as they tend to erase suspicion that the testimonies have been rehearsed, thereby negating any misgivings that the same were perjured.[40] Similarly, we note that the eyewitness Sakandal, who is appellant's brother, was shown to have no ill motive to falsely testify against the appellant. In fact, from the mouth of the appellant himself, it was confirmed that prior to the incident, he was in good relationship with his brother, Sakandal. Moreover, appellant also testified that they were very close to each other, and that they did not have any misunderstanding.[41] The same was also true with eyewitness Kaluh who testified against him. Kaluh was five arms' length away from the scene of the crime. Indeed, the testimonies of Sakandal and Kaluh are a positive identification of appellant as the assailant. These constitute direct evidence.[42] Sakandal and Kaluh are eyewitnesses to the very act of the commission of the crime and positively identified the appellant as the offender.