

FIRST DIVISION

[G.R. No. 177825, October 24, 2008]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENE ROSAS, ACCUSED-APPELLANT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Assailed before this Court is the decision^[1] dated November 29, 2006 of the Court of Appeals in *CA-G.R. CR-HC No. 00301* which affirmed the decision of the Regional Trial Court (RTC) of Kabacan, Cotabato, Branch 22, in Criminal Case No. 98-105, finding accused-appellant Rene Rosas guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of *reclusion perpetua*.

In the court of origin, accused-appellant was charged with the crime of Murder in an Information^[2] dated October 13, 1998. The crime was alleged to have been committed, as follows:

That on September 15, 1995, in the Municipality of Kabacan, Province of Cotabato, Philippines, the said accused, armed with a gun, with intent to kill did then and there, willfully, unlawfully, feloniously and with treachery, attack, assault and shot NESTOR ESTACIO, thereby hitting and inflicting upon the latter multiple gunshot wounds on the different parts of his body, which caused his instantaneous death.

CONTRARY TO LAW.

When arraigned on January 5, 1999, accused-appellant, assisted by counsel *de officio*, pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued, in the course of which the prosecution presented the testimonies of Dr. Crisostomo Necessario, Jr., Municipal Health Officer of Kabacan, Cotabato; Wilfredo Bataga, mayor of Kabacan, Cotabato; Antonio Palomar Bataga, Jr.; and Arceli Estacio, widow of the victim.

For its part, the defense presented accused-appellant himself and his girlfriend, Karen Nayona.

The prosecution's version of the incident is succinctly summarized by the Office of the Solicitor General in its Appellee's Brief,^[3] to wit:

On September 15, 1995, around eleven o'clock in the morning, Antonio Palomar Bataga, Jr. was outside the billiard hall along Aglipay Street near the public terminal and market of Kabacan, Poblacion, Kabacan, Cotabato. Around 15 meters away, he saw appellant Rene Rosas standing beside the post near a store across the street. Palomar knew appellant long before, as they were both into gambling. Thereafter, the victim,

Nestor Estacio, arrived alone on board his motorcycle. He stopped in front of the Salcedo Newsstand to buy a newspaper without switching off his motorcycle's engine. Before he could drive off, a Weena bus, which was leaving the Bus Terminal about that time, blocked his way. Then, appellant, who was coming from the left side behind the victim, shot the latter with a pistol at close range. After the victim fell on the ground, more gunshots were heard, which gunshots were fired at him to make sure that he was dead. After the shooting, appellant jumped into a motorcycle and escaped.

Meanwhile, around that same time and fifteen (15) meters away, in a *carinderia* located at the Bus Terminal in Poblacion, Kabacan, Cotabato, several gunshots were heard. Wilfredo Bataga, who was the owner of the said *carinderia* and also the commanding officer of the 39th Infantry Battalion assigned in Kabacan, Cotabato, immediately proceeded to where the gunshots came from. He saw appellant about to run and a dead body being carried by four persons into a tricycle. Wilfredo upon seeing that appellant was armed with a 45-caliber pistol, ran after the latter but lost him in the crowd.

On October 27, 1995, Wilfredo was handed with a cartographic sketch of the suspect made by the National Bureau of Investigation. He indorsed the cartographic sketch to the police of the Poblacion and reported the incident.

On August 5, 1998, around 5:30 in the afternoon, appellant was spotted a meter away in front of Wilfredo's house. Wilfredo upon seeing appellant took out his copy of the cartographic sketch and confronted appellant that it was his picture. Appellant answered "*Siguro ako nga.*" Appellant was then immediately arrested.

The post-mortem examination conducted by Dr. Crisostomo Necessario, Municipal Health Officer of Kabacan, Cotabato revealed that the victim sustained multiple gunshot wounds in the lumbar region (lower back area), a gunshot wound in the epigastric area (upper mid-portion of the abdomen near the chest) and the mid-left portion of the hypogastric area (left abdomen). Thereafter, Dr. Necessario issued a Medical Report attributing the victim's death to hypovolemic shock caused by gunshot wounds.

On the other hand, accused-appellant's version is hinged mainly on denial and alibi. He testified that in the morning of September 15, 1995, he was at his boarding house located along USM Avenue, Kabacan, Cotabato. The following day, he went home to Mintal Relocation in Davao City and came back to Kabacan, Cotabato on August 5, 1998. On that day, while accused-appellant was in a public market, a certain Dodong Rivera approached and informed him that he should talk to Mayor Wilfredo Bataga because a group of men was out to kill him. So, accused-appellant proceeded to the house of Mayor Bataga who showed him a cartographic sketch. When accused-appellant was asked if it was him on the sketch, he replied, "*Siguro, ako nga.*" He was then taken to the Kabacan Police Station where he was detained.

Karen Nayona, accused-appellant's girlfriend, merely corroborated his testimony

that he was in the boarding house at USM Avenue, Kabacan, Cotabato in the morning of September 15, 1995. Then, at around 11 o'clock in the morning, they met and went to a fastfood restaurant located along USM Avenue. There, she told accused-appellant that she was two months pregnant with his baby.

In a decision^[4] dated February 1, 2001, the trial court rendered its decision convicting accused-appellant of the crime of murder, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing and finding the accused Rene Rosas alias Boy Rosal guilty beyond reasonable doubt of the crime of murder qualified by treachery, judgment is hereby rendered sentencing the accused with penalty of *Reclusion Perpetua* and to pay the heirs of Nestor Estacio the sum of P50,000.00 for his death, P40,000.00 for funeral and burial expenses and P50,000.00 for moral damages.

SO ORDERED.

Pursuant to Section 3(c) of Rule 122 of the Revised Rules of Criminal Procedure,^[5] accused-appellant appealed his conviction to the Supreme Court *via* a notice of appeal.^[6]

On February 4, 2002, this Court accepted the appeal and docketed the same as G.R. No. 148879.^[7]

On September 22, 2004, conformably with our pronouncement in *People v. Mateo*^[8] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this Court resolved to refer the case to the Court of Appeals, whereat it was docketed as *CA-G.R. CR-HC No. 00301*, for appropriate action and disposition.^[9]

In its decision dated November 29, 2006, the Court of Appeals upheld the conviction of accused-appellant. The decretal portion of the decision reads:

WHEREFORE, the assailed decision is hereby **AFFIRMED**, with modification that the award for actual damages is **DELETED** for reasons already discussed; in lieu thereof, an award of temperate damages in the amount of Twenty Five Thousand (P25,000.00) Pesos is hereby **GRANTED**.

SO ORDERED.

From the Court of Appeals, the case was then elevated to this Court upon filing by accused-appellant of a notice of appeal on January 2, 2007.^[10] In its Resolution^[11] of July 23, 2007, the Court resolved to require both parties to submit their respective supplemental briefs, if they so desire. The parties, however, opted not to file supplemental briefs and manifested that they were merely adopting their briefs filed before the appellate court.

In this appeal, accused-appellant assigns the following errors:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT WITH MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS NOT ALLEGED WITH SPECIFICITY IN THE INFORMATION PURSUANT TO SECTION 8, RULE 110 OF THE REVISED RULES ON CRIMINAL PROCEDURE.^[12]

Accused-appellant insists that the prosecution failed to prove his guilt beyond reasonable doubt. He assails the credibility of the prosecution witnesses whose testimonies he pictured as inconsistent and fabricated. He also avers that the prosecution failed to establish his identity as the perpetrator of the crime as nobody actually saw him shoot the victim.

After a careful consideration of the evidence of this case, we find no reason to reverse the decision of the Court of Appeals which affirmed the RTC decision in Criminal Case No. 98-105.

Accused-appellant cites an inconsistency in the testimonies of prosecution witnesses Wilfredo Bataga and Antonio Palomar Bataga, Jr. While Wilfredo testified that he saw accused-appellant about to run from the crime scene after the shooting, Antonio, on the other hand, testified that accused-appellant jumped into a motorcycle and escaped after the incident. According to accused-appellant, their contradicting testimonies should not be accorded any weight and credence.

To our mind, the alleged inconsistency in the testimonies of the aforesaid prosecution witnesses is not sufficient to adversely affect the credibility of the prosecution witnesses. It merely pertains to accused-appellant's mode of escape, which cannot overcome the categorical and positive identification of accused-appellant by both witnesses as the person who shot the victim. It is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were fabricated and rehearsed.^[13] In the instant case, while prosecution witnesses Antonio and Wilfredo differ in their narration of minor details, they identified without equivocation the accused-appellant as the perpetrator of the crime. Antonio declared on the witness stand:

PROS. DIZON, JR.:

Q. By the way, do you know the accused in this case?

A. Yes, sir.

Q. Do you know Rene Rosas?

A. Yes, sir.

Q. Do you know the other name of Rene Rosas?

- A. Yes, sir.
- Q. Tell the Court what is the other name or the alias of Rene Rosas?
- A. Boy Rosal, sir.
- Q. Now, prior to 1995 have you known Rene Rosas?
- A. Yes, sir.
- Q. For how long did you know Rene Rosas prior to 1995?
- A. Long time ago, sir.
- Q. How come you know him?
- A. Because of our gambling activities.
- Q. By the way, do you gamble?
- A. Yes, sir.
- Q. Now, how about the victim here, Mr. Estacio, do you know him?
- A. Yes, sir.
- Q. How come you know him?
- A. Because he was an employee of the Municipal Hall, sir.
- Q. You said you were outside the Billiard Hall at 11:00 o'clock in the morning, now while you were there on September 15, 1995, was there any unusual incident that happened?
- A. Yes, there was, sir.
- Q. Tell the Court, what was that unusual incident that happened?
- A. The killing of Nestor Estacio, sir.
- Q. Now, did you see the killing of Nestor Estacio?
- A. Yes, sir.
- Q. Now, you said you saw the killing of Nestor Estacio, what was the weapon used in the killing of Mr. Estacio?
- A. Pistol, sir.
- Q. How long was that?
- A. Just a short pistol, sir.
- Q. Now, you said that Nestor Estacio was killed, did you see who killed Nestor Estacio?
- ATTY. BALAGOT:
Your Honor please, leading, Your Honor.
- PROS. DIZON, JR.:
He testified already, Your Honor please, that he saw.
- COURT:
Yes, he may answer.
- A. Yes, sir.
- Q. Please name him.
- A. Rene Rosas, sir.^[14]

Antonio Bataga, Jr. could not have made a mistake with respect to accused-appellant's identity considering that he knew accused-appellant long before he witnessed the shooting incident in 1995. Antonio who was in the vicinity of the crime scene would thus be able to unmistakably recognize accused-appellant when the incident happened at around 11 o'clock in the morning.

Antonio's testimony corroborated that of Wilfredo Bataga, thus:

- PROS. DIZON, JR.:
- Q. Why were you there, was there any incident of happening that occurred?
- A. When I heard several gunbursts, I immediately proceeded