

THIRD DIVISION

[G.R. NO. 176158, March 27, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROLANDO CABINAN, APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

Appellant Rolando Cabinan was charged with the crime of Murder in an Information^[1] that reads:

That on or about the 13th day of December, 2000 in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pill box and with intent to kill one Eleuterio Lucas, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault, and throw pill box on the said Eleuterio Lucas, hitting the latter on the head thereby inflicting serious physical injuries which directly caused his death.

Contrary to law.

When arraigned on June 15, 2001, appellant pleaded not guilty^[2] and trial on the merits ensued.

The facts:

On December 13, 2000, between 9:00 o'clock and 10:00 o'clock in the evening, victim Eleuterio Lucas was having a drinking spree at his residence in upper Bigte, Norzagaray, Bulacan with a group that included his brother, his bestfriend and Orlando Cabinan, brother of the accused-appellant. A commotion broke out after an altercation ensued between Eleuterio's bestfriend and Orlando Cabinan. Eleuterio tried to pacify them. Orlando then left the place and went to a nearby billiard hall where his brother, accused-appellant Rolando Cabinan, was playing billiards. Orlando told the accused-appellant about the fight and immediately, the two (2) brothers proceeded to the house of Eleuterio.

When the Cabinan brothers reached Eleuterio's house, Orlando had a fistfight with one of the guests of victim Eleuterio. Eleuterio again tried to diffuse the fight, but accused-appellant Rolando threw the bottle of gin he was holding, hitting Eleuterio on the head. The bottle exploded due to the impact. Accused-appellant ran away after the explosion. Victim Eleuterio, on the other hand, was rushed to the hospital, but because of the injuries he sustained, he still died at the East Avenue Medical Center in Quezon City.

Dr. Ivan Richard A. Viray, a medico-legal officer, conducted the autopsy on the cadaver of Eleuterio. Medico-legal Report No. MA-403-2000 embodying the results of his examination states that the cause of the victim's death is *"intracranial hemorrhage as a result of a blast injury, head."*

Only the accused-appellant testified for his defense. He alleged that on December 13, 2000, he was playing billiards at a billiard hall in Liwasan, Norzagaray, Bulacan when his brother Orlando, together with Roberto Policarpio, sought his help because of a mauling incident in Bigte. Immediately, they proceeded to the place of the incident and upon reaching the place, Roberto and Eleuterio engaged into a fistfight. Accused-appellant then saw a bottle of gin on the ground, picked up the bottle, and then threw it to the fighting duo. To his surprise, the bottle exploded. He then ran away from the scene of the fight.^[3]

On June 26, 2004, the Regional Trial Court of Malolos, Bulacan, Branch 11, rendered judgment,^[4] the dispositive portion of which reads:

WHEREFORE, this Court finds the accused, Rolando Cabinan, GUILTY beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the deceased the following sums of money, to wit:

1. P60,000.00 as civil indemnity;
2. P50,000.00 as moral damages;
3. P60,000.00 as actual damages.

SO ORDERED.^[5]

On appeal, the Court of Appeals affirmed with modification the Decision of the trial court, thus:

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court, Branch 11 of Malolos, Bulacan is hereby AFFIRMED with MODIFICATION in that in lieu of the awards made by the trial court in favor of the heirs of victim Eleuterio Lucas, accused-appellant is ordered to pay the heirs of the victim the following amounts:

- (a) P50,000.00 as civil indemnity;
- (b) P50,000.00 as moral damages;
- (c) P25,000.00 as temperate damages.

SO ORDERED.^[6]

Hence, this appeal.

Appellant prays for the reversal of his conviction alleging that the prosecution failed to prove his guilt beyond reasonable doubt. He claims he had no intention of killing the victim when he threw the gin bottle at him; that he wanted to diffuse the fight between Roberto and Eleuterio hence he threw the bottle, unaware that it contained

explosives; that the testimonies of prosecution witnesses were inconsistent in that Roberto Policarpio testified he was playing billiards with appellant before Eleuterio died, while the wife of the victim, Maribel Lucas, testified that Policarpio was with the group of her husband.

The appeal lacks merit.

The trial court's factual findings are conclusive and binding upon appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.^[7] In the instant case, we find no reason to disturb the findings of the trial court.

The prosecution witnesses positively identified appellant as the killer of Eleuterio. There was no indication that they were impelled by ill motives in their narration of the incident and in identifying appellant. Where there is nothing to indicate that a witness was actuated by improper motives on the witness stand, his/her positive declarations made under solemn oath deserve full faith and credence.^[8]

Although Policarpio testified that he was together with the appellant before the victim was killed, which testimony allegedly runs contrary to the declaration of Maribel that Policarpio and the victim were together before the incident, the same is only a minor inconsistency which does not detract from the fact that it was appellant who killed Eleuterio. Besides, witnesses cannot be expected to give a flawless testimony all the time. This is even more true if they are called to testify on details of a harrowing and frightening event which unfolded before their eyes.^[9] Thus, even if witnesses may have erred in some aspects of their testimonies, the same do not necessarily impair their testimonies nor corrode their credibility.^[10]

Appellant's claim that he did not intend to kill Eleuterio deserves scant consideration. The weapon used and the direction to which it was aimed, coupled with the location of the wound which is at the back of the head, unmistakably show an intent to kill.^[11] If appellant simply wanted to stop the two from fighting, he should have thrown the bottle elsewhere and not aimed it towards the head of the victim. We likewise find it incredible for appellant not to know that the bottle contained explosives. It is highly improbable that such explosive material was left lying around in the premises. We thus agree with the trial court's finding:

Accused himself admitted having thrown the explosive bottle albeit disclaiming knowledge of its contents and that it was specifically directed at the deceased, as according to him, it was merely his intention to pacify Policarpio and the deceased who were then exchanging fist blows. This Court finds this excuse of the accused flimsy because of the following considerations, to wit:

1. Accused came to the scene of the incident at the instance of his brother who summoned him at the billiard hall with the information that the deceased and his group had mauled him. In other words, accused did not materialize at the scene by accident. Instead, he went there purposely to help his brother, hence, the bottle was already in his possession at the time not that he merely picked it up