

SECOND DIVISION

[G.R. No. 174064, June 08, 2007]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. HENRY TOGAHAN, EMELDO LAURO, DANILO BALINDO (AT LARGE) AND MARCO TURGA (AT LARGE), APPELLANTS.

D E C I S I O N

TINGA, J.:

Appellants Henry Togahan (Togahan) and Emeldo Lauro (Lauro) assail the Decision^[1] of the Court of Appeals dated 5 May 2006, affirming with modification the Decision^[2] of the Regional Trial Court (RTC), Branch 28,^[3] Lianga, Surigao del Sur, dated 24 September 2003. The RTC had found appellants guilty beyond reasonable doubt for the murder of Ananias Villar, Sr. (Villar), and his son-in-law David Gene Richardson (Richardson).

On 13 September 2000, appellants, together with their co-accused Danilo Balindo (Balindo) and Marco Turga (Turga), were charged with two (2) counts of murder, in separate Informations^[4] filed by Prosecutor Zacharias P. Joven, the texts of which read:

Criminal Case No. L-1674

That on the 12th day of May 2000, at about 6:30 o'clock in the evening more or less, in Purok 1, Spring, [B]arangay Amaga, [M]unicipality of Barobo, [P]rovince of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with .38 caliber pistol, conspiring, confederating and mutually helping each other, with evident premeditation, treachery and intent to kill, did then and there willfully, unlawfully and felon[i]ously shot one Ananias Villar, Sr. with the use of said deadly weapon, as a result thereof the latter was hit and sustained the following wounds or injuries:

Gunshot wound[,] suprasternal area
Gunshot wound[,] left flank at the level of umbilicus
Gunshot wound[,] right upper quadrant parasternal
Lacerated wound[,] on left post auricular area

which wounds or injuries caused his instantaneous death to the damage and prejudice of his heirs in the following amount:

P50,000.00 as life indemnity of the victim
P15,000.00 as moral damages
P15,000.00 as exemplary damages.

CONTRARY TO LAW. (In violation of Article 248 of the Revised Penal Code).

Criminal Case No. L-1675

That on the 12th day of May 2000, at about 6:30 o'clock in the evening more or less, in Purok 1, Spring, [B]arangay Amaga, [M]unicipality of Barobo, [P]rovince of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with .38 caliber pistol, conspiring, confederating and mutually helping each other, with evident prem[e]ditation, treachery and intent to kill, did then and there willfully, unlawfully and felon[i]ously shot one David Gene Richardson, an [A]merican national, with the use of said weapon, as a result thereof the latter was hit and sustained the following wounds or injuries:

Gunshot wound[,] right lower quadrant
Hematoma[,] right leg lateral aspect
Abrasion, [l]inear right shoulder
Abrasion, linear lumbar area

which wounds or injuries caused his instantaneous death to the damage and prejudice of his heirs in the following amount:

P100,000.00 as life indemnity of the victim
P15,000.00 as moral damages
P15,000.00 as exemplary damages.

CONTRARY TO LAW. (In violation of Article 248 of the Revised Penal Code).

Custody only of appellants Togahan and Lauro was acquired. Their co-accused Balindo and Turga remained at large then and to this day. Upon being arraigned separately, both appellants pleaded not guilty.^[5] Trial on the merits ensued with the prosecution espousing the following narration of facts:

On 12 May 2000, at around 6:30 p.m., Magdalena Villar (Mrs. Villar), her daughter Vilma Villar-Richardson (Mrs. Richardson), son-in-law Richardson, grandchildren Kenneth, Kevin, Junelyn, Jovelyn and Michelle, and brother Pedro Castillo were all watching television in the living room of their residence in Spring, Amaga, Barobo, Surigao del Sur. Without warning, two armed men wearing bonnets suddenly arrived. At that time, the victim Villar, husband of Mrs. Villar, was in his room. When Villar heard the commotion, he went to the door and tried to prevent the armed men from entering, but he was shot twice, pulled towards the balcony and clubbed to death.^[6]

One of the armed men, later identified as Togahan, pointed a gun at Mrs. Richardson and pulled the trigger thrice. The gun did not fire however. The other man, later identified as Lauro, approached Richardson and likewise pointed a gun at him. When Mrs. Richardson heard gunfire, she asked the men: "Who are you, what do you

want?" To this, Lauro replied: "We are here for war."^[7] Mrs. Richardson told her husband to run away but the latter, in an attempt to protect his wife, struggled and tried to wrestle the gun away from Togahan instead. In the course thereof, Lauro shot Richardson then ran out of the house with Richardson's 3-year old son.^[8] Richardson, in spite of his wound, chased Lauro but was later found sitting on the mud, unable to talk and dying. The rest of the family had fled during the commotion and sought refuge. Villar and Richardson were brought to DO Plaza Memorial Hospital in Patin-ay, Prosperidad, Surigao del Sur but were dead upon arrival.^[9]

In her testimony, Mrs. Richardson narrated that during the struggle between her husband and Togahan for the gun, the mask of the latter was removed by Richardson; thus, she was able to recognize Togahan as the assailant who poked and tried to fire the gun at her. Mrs. Richardson was able to identify Lauro through his voice and physical appearance as the one who remarked "We are here for war."^[10] Lauro was alleged to be responsible for shooting her father, Villar, twice and also for shooting her husband, Richardson.

Eyewitness Lowelito Villar (Lowelito), grandson of victim Villar, testified that on the evening of the incident, he was in his home about fifteen (15) meters away from his grandparents' house when he heard a gun burst. He immediately ran towards the house of his grandparents and hid behind a coconut tree, also about fifteen (15) meters from victim Villar's house. He claims to have seen three (3) armed and masked men he identified as Togahan, Lauro and Balindo enter the victims' house. According to the witness, Lauro shot Richardson in the house whereas Lauro and Balindo shot and clubbed his grandfather in the balcony. After the attack, all the accused ran out of the house, removing their masks in the process. Witness Lowelito maintained that he had been friends with the accused for five (5) years and recognized them because of their physical features and movements and that he could see the events that transpired as there were fluorescent lamps lit inside and outside the house.^[11]

The prosecution likewise presented witnesses to fortify the charges of participation against appellants. Witness Rosemarie Enriquez, a former sweetheart of Togahan, testified that the pair of slippers recovered from the scene of the crime belonged to the latter.^[12] It was witness Federico Sayson, Barangay Kagawad of Purok 1, Spring, Amaga, Barobo, Surigao del Sur, who discovered the pair of slippers and a dirty white jacket about thirty (30) meters from the house of Villar.^[13]

SPO2 Santo Ocate, the firearm examiner of the Philippine National Police, Caraga Region who conducted the physical examination of two bullets recovered from the crime scene, testified that the bullets were discharged from a .38 caliber revolver.^[14]

Upon request of Mrs. Richardson, Dr. Edgar Savella, Medico-Legal Officer of the National Bureau of Investigation–Caraga Region, conducted an autopsy of the bodies of the victims. Dr. Savella testified that the gunshot wound sustained by Richardson on his abdomen was fatal and caused his death, the bullet having hit the sciatic artery on his right leg, as well as his vertebrae in the lumbar area.^[15] Villar, on the other hand, died of multiple gunshot wounds to his chest and abdomen.^[16] Dr. Savella found no indication of self-defense or struggle-related injuries on both Villar

and Richardson.^[17]

Dr. Tomas Centino testified that he conducted the examination of the bodies of the victims who were both clinically dead upon arrival at the DO Plaza Memorial Hospital.^[18] He likewise opined that the respective gunshot wounds sustained by Villar and Richardson were fatal and the immediate cause of their death.^[19]

To counter the prosecution, Togahan presented the defense of alibi. He testified that on 12 May 2000, at 6:30 p.m., he was in the home of his parents-in-law in Barangay Bahi, Barobo, Surigao del Sur, with whom he and his family lived. He averred that he was playing with his children at that time. Thereafter, he had supper with the entire family, retired with the household to the balcony from 7:00 to 9:00 p.m., and then went to sleep at 9:00 p.m.^[20] The following day, appellant maintains that he and his father-in-law repaired the gutter of their house.^[21] On 14 May 2000, appellant was allegedly fetched by his brother at 9:00 a.m. to visit their father who was seriously ill in Barangay Tagongon, Barobo, Surigao del Sur.^[22]

To corroborate Togahan's alibi, his father-in-law, Segundo Andalan, testified that on 12 May 2000, appellant helped him in repairing their house. Beginning around 6:30 p.m., the whole family had dinner, took their rest and then went to bed. He asserted that appellant did not leave their house that night. Their repair work on the house allegedly continued the next day. According to the witness, appellant's sister fetched him on 14 May 2000, at around 1:00 p.m. as their father was ill.^[23]

Similarly, Lauro denied the charges made against him. Appellant maintains that on 12 May 2000, he was in the home of his brother in Purok 4, Barobo, Surigao del Sur, helping the latter arrange stones on which their billiard table was to be placed. At around 6:30 p.m., appellant allegedly rested in the balcony of his brother's house with the latter's wife and neighbor while his brother prepared supper.^[24]

On rebuttal, the prosecution presented two witnesses, the first of whom negated the claims of Lauro that he had never set foot in Barangay Amaga, Barobo, Surigao del Sur. According to witness Restituto Basada, for about four (4) to five (5) years commencing in 1980, Lauro and his family lived on his property in the said barangay. However, Lauro later fled as Basada filed a case against the former for stoning him.^[25]

The second rebuttal witness of the prosecution, Luzviminda Villar Sabaysabay, was the daughter of victim Villar. She testified that in March and June 2001, they received letters from Togahan, requesting them to visit him in the provincial jail where he was then incarcerated. In Togahan's second letter, she claimed, he requested a visit to reveal to them that Lauro was one of his companions in killing Villar.^[26]

The RTC found appellants guilty of murder on both charges and sentenced each of them to suffer in each case the penalty of death and to indemnify the respective heirs of the victims in each case in the amounts of P50,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages and costs.^[27]

With the death penalty imposed on appellants, the case was elevated to this Court

on automatic review. However, pursuant to this Court's ruling in *People v. Mateo*,^[28] the case was transferred to the Court of Appeals.

On 5 May 2006, the appellate court rendered its decision affirming with modification appellants' conviction. In downgrading the penalty from death to *reclusion perpetua*, the Court of Appeals held that the RTC erred in appreciating the generic aggravating circumstances of dwelling and nighttime, both of which were not alleged in the Informations.^[29] Thus, there being no mitigating or aggravating circumstance attending the commission of the crimes, the appellate court imposed the penalty of *reclusion perpetua* upon appellants for each count of murder. The dispositive portion of the said decision states:

"**WHEREFORE**, in view of the above disquisitions, the decision under review is hereby AFFIRMED with MODIFICATION that the penalty is reduced to *reclusion perpetua* for each of the accused-appellants, and in line with recent jurisprudence the following amounts are awarded to the heirs of the victims in each case, to wit: P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.

Conformably to the ruling in *People vs. Mateo*, We refrain from entering judgment therein. The Division Clerk of Court is directed to elevate the records of this case to the Honorable Supreme Court for final disposition.

SO ORDERED."^[30]

In their brief,^[31] appellants challenge their conviction for murder, stressing that there is a great doubt as to the identities of the persons who perpetrated the crime.

The issue of whether or not appellants were in fact identified by the prosecution witnesses is a question of credibility. It is well-settled that factual findings of the trial court on credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court was in a better position to decide the question of credibility.^[32]

After an exhaustive review of the records, we find no reason to deviate from the trial court's assessment of the credibility of the witnesses. The trial court did not err in giving credence to the testimony of the prosecution witnesses that they were able to identify appellants and their co-accused as perpetrators of the crime.

Mrs. Richardson, in recounting her horrifying experience in the hands of the appellants, categorically identified appellants as the perpetrators of the vicious crimes, *viz*:

x x x
x

Court:
Few clarificatory question (sic) from the Court.