

EN BANC

[G.R. Nos. 138931-32, July 17, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSELITO DELA CRUZ Y DAMASO, APPELLANT.

D E C I S I O N

CALLEJO, SR., J.:

This is an automatic review of the Decision^[1] of the Regional Trial Court of Cabanatuan City, Branch 27, in Criminal Case No. 7966-AF, convicting appellant Joselito dela Cruz y Damaso of murder, sentencing him to suffer the death penalty and directing him to pay the heirs of the victim Romeo B. Domingo indemnity in the amount of P50,000 and actual damages in the amount of P56,607.

On December 22, 1997, an Information charging the appellant with murder was filed with the Regional Trial Court (RTC) of Cabanatuan City, docketed as Criminal Case No. 7966-AF, which reads:

That on or about the 19th day of December 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there, wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one **ROMEO B. DOMINGO**, by shooting the latter with the use of an unlicensed homemade shotgun, thereby inflicting upon him serious physical injuries which caused his death.

CONTRARY TO LAW.^[2]

Another Information was filed with the RTC, docketed as Criminal Case No. 7967-AF, charging the appellant with violation of Sec. 1, pars. 2 & 3 of Republic Act No. 8294 (Aggravated Illegal Possession of Firearm), which reads:

That on or about the 19th day of December, 1997, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously have in his possession, control and custody one homemade shotgun, without first securing the necessary license to possess firearm from the Firearms and Explosive Division of the Philippine National Police, and said unlicensed firearm was used in committing the crime of Murder.

CONTRARY TO LAW.^[3]

The trial of the two cases was consolidated in the RTC, Cabanatuan City, Branch 27.

On January 19, 1998, the appellant, assisted by counsel, was arraigned and entered a plea of not guilty to both charges.

The Evidence of the Prosecution^[4]

Romeo Domingo and appellant Joselito dela Cruz were not only neighbors but were also friends. Romeo called the appellant *Pareng* Lito. The latter had been to Romeo's house at Barangay Bakodbayan, Cabanatuan City many times. The appellant worked in a mango farm owned by Jun Reyes, located about five hundred meters away from Romeo's house. Rommel Domingo, Romeo's ten-year-old son, was also acquainted with the appellant as the latter and his father had frequent drinking sprees in their house. Rommel called the appellant *Kuya* Lito.

At around 3:00 p.m. of December 19, 1997, Romeo arrived home, quite inebriated. He told his wife Leonora that he and *Pareng* Lito had a drinking spree. He then slept and had dinner at 5:30 p.m. He went to the sala and watched television. At about 6:30 p.m., Leonora, Rommel and his sister had dinner. Afterwards, Rommel joined his father who was watching the television program *Mula sa Pusod*, while Leonora supervised her daughter in washing dishes in the kitchen. Rommel was seated at the third step of the stairs from the sala to the upper portion of their house, which was about half a meter away from his father. A 40-watt bulb illuminated the sala. The door of the house was open.

Rommel was startled when he heard a gunshot. He turned his head sideways and saw the appellant, armed with a handgun, about half a meter away from his father. Rommel was shocked to see his father fall to the floor, mortally wounded. The appellant then ran from the house through the door. Rommel rushed to his father's side. Romeo told his son to take care of his mother, and that he was shot by *Pareng* Lito. Rommel ran after the appellant. As he was scrambling to escape, the appellant stumbled and fell. Rommel had a full view of the appellant before the latter stood up and fled from the scene. In the meantime, Leonora rushed to the sala when she heard the gunshot. She saw Rommel sprawled on the floor, bloodied all over. She embraced her husband, who told her that he was shot by his *Pareng* Lito.

Barangay Tanod Jose Mateo was on patrol when he heard the gunshot. He rushed towards the direction of the gunfire, which led him to the house of Romeo. Jose saw the owner of the house sprawled in the sala, already dead. He learned from Rommel, who by then had returned to the house, that it was the appellant who had shot his father. The barangay tanods, including the barangay captain, arrested the appellant. He was brought to the barangay hall and was later turned over to the police sub-station. The barangay tanods asked permission from the overseer of the Reyes mango farm to conduct a search of the place in connection with the shooting. Barangay Tanod Remigio Agustin found a bag in a small canal in the farm, which contained a homemade shotgun^[5] with an empty shell. The gun had no serial number, and its bolt could not be pulled.

Rommel gave a sworn statement to SPO1 Marcelino V. Veneracion at 11:30 p.m. of December 19, 1997 where he identified the appellant as the assailant of his father.

^[6] On the same day, Medico-Legal Officer Dr. Jun B. Concepcion performed an

autopsy on Romeo's body and prepared an autopsy report, showing *inter alia* that the victim sustained multiple gunshot wounds and that five slugs were extracted from his body:

FINDINGS (PERTINENT ONLY):

Ht: 165cm in legth ([*sic*].

(+) Gunshot wounds, multiple, on the (L) supra-scapular area, as point of entry, (7), 5-6 inches away from mid-cervical vertebrae, 3-3cm in dia. with trajectory towards the (R) Ant. chest area, 1-slug through - through the rest non-through-through.

INTERNALLY: (+) Gunshot wounds, multiple, penetrating the (L) lung (apex & middle lobe).

(+) Gunshot wounds, multiple, penetrating the (R) lung

middle & basal). Extracted 4 - rounded materials embedded on it.

(+) Ribs & cervical vertebrae fractures. 2nd-3rd (ribs), (5th, 6th & 7th).

NOTE: Extracted 5 - slugs submitted to the investigator for exhibit.

CAUSED [*sic*] OF DEATH:

GUNSHOT WOUNDS, MULTIPLE, PENETRATING AT THE BACK.^[7]

According to the doctor's testimony, the nature and location of the wounds and the type of slug extracted from the body of the victim points to the possibility that a shotgun was used by the assailant.

The Appellant's Defense

The appellant denied killing Romeo. He testified that Romeo was his friend and that he had no motive for killing the latter. On December 19, 1997, he and Romeo had a drinking spree at the Reyes farm from 5:00 p.m. to 6:00 p.m. He was already drunk at about 6:20 p.m., and fell asleep in his house at Purok 1, Pantoc, Bakodbayan, Cabanatuan City, about five hundred meters away from Romeo's house. He was awakened when the members of the Bantay Bayan arrived to fetch him. He was told that they were ordered to bring him to Barangay Captain Nono Concepcion. The appellant was later arrested by policemen and brought back to his house. Members of the Bantay Bayan thereafter searched his yard for the gun used to kill Romeo, but no weapon was found. The appellant pointed out that aside from him, Romeo had other friends whose first names were Lito: Lito Manuel, Lito Edubane, Lito Sado, and Lito del Rosario, with whom he and Romeo used to have drinking sprees. Any one of them could have killed Romeo.

After due proceedings, the trial court rendered judgment acquitting the appellant for violation of Republic Act No. 8294 in Criminal Case No. 7967-AF and convicting him of murder in Criminal Case No. 7966-AF, the decretal portion of which reads:

WHEREFORE, premises considered, and in the absence of any mitigating circumstance and in the presence of the aggravating circumstance of dwelling, the Court finds and so holds the accused **JOSELITO DELA CRUZ y DAMASO** guilty beyond reasonable doubt of the crime of **MURDER** and sentences him to suffer the penalty of **DEATH** in Criminal Case No. 7966(AF), and for him to indemnify the heirs of the deceased offended party in the sum of P50,000.00, and the amount of P56,607.00, representing actual damages.

No moral damages are awarded as the same is subsumed in the civil indemnity for death (*People vs. R. Daen, G.R. No. 112015, 26 May 1995*).

To pay the costs of the suit.

In criminal Case No. 7967-AF, for Violation of Sec. 1, Pars. 1 & 3 of Republic Act 8294 (*Aggravated Illegal Possession of Firearm*), for insufficiency of evidence, the Court hereby orders the **ACQUITTAL** of the accused, without costs.

SO ORDERED.^[8]

On automatic appeal in Criminal Case No. 7966-AF, the appellant assails the decision of the trial court, contending that:

I

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF ROMMEL DOMINGO.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT TO THE ALLEGED DYING DECLARATION OF THE DECEASED ROMEO DOMINGO.

III

THE COURT A QUO ERRED IN FINDING THAT TREACHERY ATTENDED THE COMMISSION OF THE CRIME.

IV

THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.^[9]

The appellant avers that Rommel could not have seen him shoot and kill the victim because the boy was inside the room upstairs, while the victim was in the sala watching television. It took Rommel about two minutes to rush down from the room upstairs to the sala where his father was lying prostrate on the floor. By then, the assailant had already gone out of the house and fled to the open fields. For its part, the trial court gave credence and full probative weight to Rommel's testimony that

he was only half a meter away from his father when the shooting took place, and that he saw the appellant outside the house immediately after the shooting and even pursued the latter:

Rommel Domingo had known the accused for quite sometime as he had frequented their place in drinking sessions with his late father. As a matter of fact, the accused himself had admitted that he had frequented the victim's store in search of drinking companionship [*sic*] and idle banter. Addedly, there was sufficient lighting inside and outside the victim's residence. Inside the house hang a 40-watt electric bulb and the lit TV set provided adequate lighting that helped the son identify his father's attacker. Furthermore, the son pursued immediately the accused after he fired the fatal shot at the decedent. Outside, there was another electric bulb providing illumination that helped the son identify the accused who stumbled to the ground and whose side view of his face was viewed - for the second time - by the young witness.

Rommel Domingo is a credible witness for, aside from his youth and yet untarnished perception of truth, he had no ill-motive to ascribe something evil to the accused unless he, truly, was the author thereof.

The testimonies of witnesses Rommel Domingo and Leonora are credible as they are impressed with truth and logic aside from the fact that they have no ill-motive to so give such damning testimony against herein accused were it not, indeed, the truth. Even the accused had admitted that he could not see any ill-motive on the part of the victim's son for his testimony derogatory to him.

"When there is no evidence indicating that the principal witness for the prosecution was moved by any improper motive, the presumption is that he was not so moved, and his testimony is entitled to full faith and credit (People vs. Tidong, 225 SCRA 324.)"^[10]

The appellant's contention does not persuade. The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of their credibility and the probative weight of their testimonies, as well as its conclusions anchored on the said findings, are accorded by the appellate court high respect if not conclusive effect, unless the trial court ignored, misunderstood and misconstrued facts and circumstances of substance which, if considered, would warrant a reversal of the outcome of the case.^[11]

This Court finds no basis for deviating from the findings and conclusions of the trial court. The records show that an ocular inspection of the *situs criminis* was conducted in the presence of the appellant, his counsel and the public prosecutor, during which Rommel testified on his location relative to where his father was seated while they were watching television, before and after the latter was shot. Rommel testified that he was merely half a meter away from his father and saw the appellant immediately after the gunfire. The transcript of the stenographic notes taken during the ocular inspection reads:

COURT