

NINTH DIVISION

[CA-G.R. CR No. 35451, March 31, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERCIVAL "PERCY" GOMEZ,^[1] ACCUSED-APPELLANT.**

D E C I S I O N

LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated October 18, 2012^[2] in Criminal Case No.08-263842 of Branch 48, Regional Trial Court, Manila finding accused-appellant Percival "Percy" Gomez guilty beyond reasonable doubt of the crime of homicide.

THE ANTECEDENTS

On December 24, 2007, around 11:20 P.M., the victim, sixteen (16)-year old, Rafael Joseph Nino Esguerra @ Kulet, together with King Andrew Zamora, Mark Joseph Cajandoc @ Rambo, and four (4) other boys were walking along Revellen Street,^[3] Sta. Ana, Manila after hearing mass at the Sta. Ana Church, Sta. Ana, Manila. The group bought cigarettes from a bakery at Tejeron Street, corner Garido Street. Thereafter, King Andrew Zamora and another boy went ahead to a basketball court on Garido Street.^[4] While waiting for the others, King Andrew Zamora saw accused-appellant, who was then a barangay official, standing along Sampaguita Street. When their companions arrived, the group continued to walk home, turning right to Liwayway Street. Suddenly, a motorcycle driven by accused-appellant came speeding behind them. Accused-appellant alighted from the motorcycle, pulled a gun and fired a shot at the group. The group scampered straight to Liwayway Street. King Andrew Zamora hid behind a vehicle. Accused-appellant shouted "Kulet," then another shot was heard. King Andrew Zamora peeped and saw accused-appellant holding a gun. Mark Joseph Cajandoc saw that it was accused-appellant who shot the victim which caused the latter to fall on the ground. The victim died that night due to gunshot wound on the head.^[5] In an autopsy report conducted by Dr. Romeo T. Salen, it was indicated that the cause of his death was gunshot wound on the head.^[6]

The salient factual details are synthesized in the People's brief as follows:

At 11:20 in the evening of December 24, 2007, the victim Rafael Joseph Nino Esguerra @ Kulet (the "victim") was walking along Revellen Street together with King Andrew Zamora ("King Andrew"), Melchor Camacho ("Melchor"), John Paul Sison ("John Paul"), Mark Cencia ("Mark"), Mark Joseph Cajandoc @ Rambo ("Mark Joseph") and Edwin Zamora ("Edwin"). They were on their way home after hearing mass at the Sta. Ana Church.

They decided to stop and buy cigarettes from a bakery at Tejeron corner Garrido Street. After this, Andrew and John Paul went to the basketball court in Garrid Street, leaving the others at the bakery. While waiting, King Andrew saw the appellant, Percival Gomez, standing along Sampaguita Street.

They continued walking home when their companions arrived, turning right from Garrido to Liwayway Street. Suddenly, a speeding red Honda Wave motorcycle, driven by the appellant, came from behind them. Appellant was wearing a white sando, brown shorts, and eyeglasses.

Appellant alighted from the motorcycle and upon approaching them, pulled a gun, pointed it at them, and fired a shot. The group ran straight along Liwayway Street and King Andrew hid behind a vehicle and heard the appellant shout "Kulet" before hearing another shot being fired. King Andrew peeped and it was appellant whom he saw as the only person holding a gun.

Appellant then approached the group and when he was near, King Andrew ran away and heard Mark Joseph shout that he was hit. King Andrew told Mark Joseph to keep running until both of them ended up in King Andrew's home on Revellen Street where King Andrew's aunt accompanied them to the hospital. King Andrew later found out from his girlfriend that the victim Rafael Joseph Esguerra @ Kulet died that night due to a gunshot wound to the head.

x x x In turn, Mark Joseph testified that on the same night, he was on his way home together with victim Rafael Joseph Esguerra @ Kulet, Andrew, Onyok, Embok, and Dixon but he was not able to go home as there was a "barilan". He also testified that he was behind the victim when the latter was shot by the appellant and that after this, the victim fell to the ground. He narrated that the appellant called the victim "Kulet" and the victim paused to look behind when the appellant aimed the gun at him. He claimed he saw the victim running but that he was hit which caused him to fall to the ground. Mark Joseph also testified that he heard three shots and was also hit by a bullet at the back of his right leg.

Dr. Ramon Salen, who conducted the autopsy on the victim, testified that based on his findings, the cause of the victim's death was a gunshot wound to the head. The point of entry was at the back and the point of the exit was at the right eyebrow. He said that since there were no powder burns on the victim, it was probable that the barrel of the gun was two feet or more from the point of entry.^[7]

Accused-appellant was charged with homicide in an information which reads:

The undersigned accused PERCIVAL "PERCY" GOMEZ Y SELLADO of the crime of HOMICIDE committed as follows:

That on or about December 24, 2007, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one RAFAEL JOSEPH NINO ESGUERRA @ Kulet, by then and there shooting the latter with a gun hitting his head, thereby inflicting upon the said RAFAEL JOSEPH NINO ESGUERRA @ Kulet gunshot wound, which was the direct and immediate cause of his death thereafter.

Contrary to law.^[8]

On arraignment, accused-appellant pleaded "not guilty".^[9] During the pre-trial conference, the parties stipulated that "accused Percival `Percy' Gomez y Sellado is the person charged in the above case for the felony of Homicide."^[10]

During trial, the prosecution presented King Andrew Zamora and Mark Joseph Cajandoc, Carmen Esguerra (victim's mother), Dr. Romeo T. Salen and Nandy Vitalicio (public affairs Director of the Manila Broadcasting Company), as witnesses. The defense presented accused-appellant as its sole witness.

In a Decision dated October 18, 2012, the trial court convicted accused-appellant of homicide and sentenced him as follows:

WHEREFORE, the Court finds the accused Percival "Percy" Gomez guilty beyond reasonable doubt for the felony of Homicide and in conformity with law he's sentenced to suffer prison term of 8 years and 1 day as minimum to 10 years as maximum to prison mayor.

The accused is ordered to pay the heirs of the victim the following amounts viz:

1. P50,000.00 as moral damages;
2. P40,000.00 as exemplary damages; and
3. Costs.

SO ORDERED.^[11]

Hence, accused-appellant filed the present appeal which is premised on the following assignment of errors:

The Regional Trial Court of Manila, Branch 48 committed serious errors which need reversal and setting aside of its judgment in the appealed case, as follows:

1. In failing to consider that there was no real positive identification of the gun wielder whose gunshot caused the death of the victim but a dovetailed story to create an impression of positive identification viewed from the conflicting testimonies of the prosecution witnesses;

2. In failing to find that the prosecution's evidence was weak and was not able to satisfy the rule that the prosecution must rely on the strength of its own evidence, and apply the rule that in order to convict the accused, the same must be based beyond reasonable doubt, for a slightest doubt should result in the acquittal of an accused. In this particular case, the doubtful scenario made to appear by the prosecution's witnesses which failed to overcome the presumption of innocence of the accused were not properly considered and if considered would probably change the result from conviction to acquittal.^[12]

Both the Office of the Solicitor General (OSG) and the private prosecutor filed their separate appellee's briefs,^[13] praying for affirmance of the trial court's Decision dated October 18, 2012.

THE ISSUE

Whether the trial court erred in convicting accused-appellant of homicide.

THE COURT'S RULING

Accused-appellant argues that the trial court erred in convicting him of the crime of homicide, as he posits that prosecution witnesses King Andrew Zamora and Mark Joseph Cajandoc merely claimed that they saw accused-appellant holding a gun but did not actually see the alleged shooting of the victim by accused-appellant.^[14]

Also, accused-appellant claims that there were discrepancies in the testimonies of prosecution witnesses as to certain details of the incident, and their testimonies did not also jibe with their statements in their affidavits.^[15]

The arguments deserve scant consideration.

Basic are the elements of homicide which are: (1) a person was killed; (2) the accused killed him without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and, (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.^[16]

The following testimony of King Andrew Zamora is replete with essential details, particularly the manner by which accused-appellant perpetrated the crime. Thus:

Direct examination of King Andrew Zamora:

Q Mr. Witness, on December 24, 2007, at around 11:20 in the evening, where were you?

A I was walking on my way home coming from Sta. Ana, sir.

Q When you say "naglalakad" can you tell us what Street exactly where you were walking?

A Revellen Street, sir.

Q And this Revellen Street, can you tell us what City is this?

A Sta. Ana, Manila, sir.

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Q Now, you said that you were walking along Revellen Street, can you tell the court who were with you if any?

A Kulet, Melchor Camacho, John Paul Sison, Mark Cencia, Rambo and Edwin Zamora.

Q Now, this person you mentioned Kulet do you know his real name?

A Yes, sir.

Q And what is his real name?

A Rafael Joseph Nino Esguerra, sir.

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