

## **EIGHTH DIVISION**

**[ CA-G.R. No. CR-HC NO. 01117, March 24, 2014 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CRISPIN AURE Y RAQUEL AND ROMULO VILLENA Y PANIS,  
ACCUSED-APPELLANTS.**

### **D E C I S I O N**

**DIY, J.:**

On appeal is the Decision<sup>[1]</sup> dated November 9, 2009 rendered by Branch 13, Regional Trial Court (RTC) of Carigara, Leyte, 8th Judicial Region, in Criminal Case No. 4645 wherein both accused-appellants Crispin Aure and Romulo Villena<sup>[2]</sup> ("Crispin" and "Romulo", for brevity) had been found guilty of the crime of Murder. The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, with the aggravating circumstances of treachery, nighttime and superior strength (use of gun) the Court found accused CRISPIN AURE y RAQUEL and ROMULO VILLENAS y PANIS, GUILTY, beyond reasonable doubt of the crime of MURDER, as charged under the information. There being no mitigating circumstance, both accused are hereby sentenced to suffer the maximum penalty of RECLUSION PERPETUA, and ordered to pay the civil indemnity in the amount of Fifty Thousand Pesos (Php50,000.00) each, Fifty Thousand (P50,000.00) Pesos each as moral damages and exemplary damages in the amount of Twenty Five (Php25,000.00) Pesos each, to the heirs of Nazareno de Guzman; and

Pay the Cost.

SO ORDERED.

### ***The Antecedents***

On May 8, 2006, an Information<sup>[3]</sup> was filed with the Regional Trial Court, docketed as Criminal Case No. 4645. The accusatory charge reads:

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That on or about the 25th day of March, 2006, in the Municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another with deliberate intent with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shot [*sic*] one NAZARENO DE GUZMAN with the use of an unlicensed firearm which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wound, to wit:

Gunshot wound entrance about 0.5 cms. In diameter with contusion *[sic]* collar and inverted edges located at the fifth (5th) intercostal space, left mid-axillary line, directed straight about 12 cms. Into the thoracic cavity.

which wound cost the death of said Nazareno de Guzman.

CONTRARY TO LAW.

xxx

During arraignment, accused-appellant Romulo Villena proposed to plead guilty to the crime charged provided that his co-accused Crispin Aure would be released. However, said proposal was not appreciated by the court a quo. Instead the court a quo entered a plea of not guilty for both accused Crispin and Romulo.<sup>[4]</sup>

A pre-trial conference<sup>[5]</sup> was conducted on September 7, 2007. Thereafter, trial on the merits ensued.

### ***Version of the Prosecution***

To prove its case, the prosecution presented the following witnesses: Teresita D. Guzman ("Teresita", for brevity), Renato De Guzman ("Renato", for brevity), SPO1 Rufo Canendo, SPO4 Exposito Quebec, Dr. Crescente A. Uribe, and Chief Medico-Legal Officer PSI Angel A. Cordero.

The prosecution's version of the facts as culled from the records and testimony of its witnesses is as follows:

On March 25, 2006, at about 6:30 o'clock in the evening,<sup>[6]</sup> Nazareno De Guzman and his wife Teresita were having dinner inside their house located at Barangay San Vicente, Tunga, Leyte. Nazareno and Teresita were seated beside each other facing the window while their son Renato was just a meter away.<sup>[7]</sup> While Nazareno and Teresita were eating, gunshots were fired at them. The second shot hit Nazareno, causing him to fall to the ground.<sup>[8]</sup> Teresita saw Crispin holding a gun. She also saw him shoot Nazareno.<sup>[9]</sup> Teresita then lifted Nazareno up to let him stand and wake up but the latter no longer responded.<sup>[10]</sup> After Teresita learned that Nazareno already died, he told his eldest son Renato to ask help from Nazareno's brothers, Rico and Ronald.<sup>[11]</sup> Renato then ran out of the house and when he was already out of their house, Renato saw Romulo standing near their window.<sup>[12]</sup> Renato was able to get some help from Rico and Ronald, who later assisted them in taking his father to the hospital.<sup>[13]</sup> In court, Renato testified that he saw Crispin shoot his father.<sup>[14]</sup>

SPO1 Rufo Canendo, pursuant to the subpoena issued by the court a quo to bring the log book of PNP, Tunga, Leyte, identified the authenticity of the Certification issued by their office, which reflected entries no. 1147 and 1148 in their logbook, viz:<sup>[15]</sup>

ENTRY NO: 1147 TIME AND DATE: 252110H March 2006

## EVENTS/INCIDENTS

One Ronald Pore Y Panis, 19 yrs old, single and a resident of Brgy. San Pedro, Tunga, Leyte reported to this police stn [sic] and alleged that about 7:00 o'clock in the evening of March 25, 2016 his elder half brother Nazareno P. De Guzman was shot to death by unidentified person. He further alleged that his brother was inside his house situated at Brgy. San Vicente, Tunga Leyte taking his supper when he was shot by an unidentified assailant.

ENTRY NR: 1148 TIME AND DATE: 260730H March 2006

One Teresita De Guzman y Lausin, 36 yrs old, married and a res [sic] of Brgy. San. Vicente, Tunga, Leyte reported to this police stn [sic] alleging that on or about 6:30 o'clock in the evening of March 25, 2006 at the above-mentioned place while they were about to eat their supper and she was sitting beside her husband (Nazareno De Guzman), a certain Crispin Aure also of same place shot her husband three times with the use of a short firearm hitting the left side of his body. She further alleged that several days before the incidents her husband told her that should there be anything bad happened to him it should be Crispin Aure and his relatives who should be blamed for they are suspecting him as the one who killed Victor Villena months ago.

SPO4 Expedio Quebec testified in court that on March 25, 2006, he conducted an investigation at the house of the victim, Nazareno, together with a certain Gardi. That as a result of his investigation, a complaint was filed by their OIC, Police Inspector Efren Agda.<sup>[16]</sup>

Based on the Medico-Legal Autopsy Report,<sup>[17]</sup> the cause of death of Nazareno was "shock and hemorrhage, intrathoracic due to gunshot wound of the left chest hitting the lung and the vertebra".

### ***Version of the Defense***

The defense presented both accused-appellants, Crispin Aure and Romulo Villena, as well as Agnes Villena.

Both accused denied the commission of the crime and interposed the defense of alibi.

In the evening of March 25, 2006, at about 7 o'clock in the evening, Crispin arrived at the house of his mother located at Brgy. San Vicente, Tunga, Leyte, from Tacloban.<sup>[18]</sup> Upon arrival of Crispin at his mother's house, he changed his clothes because they were wet from the rain, and then ate some food. Thereafter, Crispin went upstairs and did not leave the house that night.<sup>[19]</sup>

On March 25, 2006, Romulo arrived at the house of his uncle, Felix Villena, located at Brgy. Tuba, Jaro, Leyte at about 9 o'clock in the morning.<sup>[20]</sup> Romulo was hired by his uncle Felix to process the coconuts into copra.<sup>[21]</sup> At around 4 o'clock in the afternoon on that same day, after Romulo finished his work, he and his uncle had a

drinking spree.<sup>[22]</sup> At about 9 o'clock in the evening, Romulo asked permission from his uncle if he could go home, but his uncle did not permit him to do. Romulo then spent the night at Felix's house and went home the next day.<sup>[23]</sup>

On November 9, 2009, the court *a quo* rendered the assailed Decision<sup>[24]</sup> finding accused-appellants guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, nighttime, and abuse of superior strength.

On December 1, 2009, a Notice of Appeal<sup>[25]</sup> was filed by both accused-appellants.

Accused-appellants filed their Appellants' Brief<sup>[26]</sup> on May 20, 2011 assigning the following errors - -

A.

THE COURT *A QUO* FAULTED IN RULING THAT THERE WAS CONSPIRACY BETWEEN ACCUSED-APPELLANTS.

B.

THE COURT *A QUO* IS LIKEWISE IN ERROR IN HANDING DOWN A CONVICTION BASED ON POSITIVE IDENTIFICATION.

C.

THE COURT *A QUO* ERRED IN APPRECIATING TREACHERY, NIGHTTIME, AND ABUSE OF SUPERIOR STRENGTH.

D.

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

In their Brief,<sup>[27]</sup> accused-appellants strongly assert that the prosecution failed to discharge the task of positively identifying accused-appellants as the assailants. They argue that it was improbable for Teresita and Renato to have identified the assailants since it was already evening when the killing of Nazareno took place and that the only source of illumination was a kerosene lamp.

Furthermore, both accused-appellants aver that the court *a quo* erred in ruling that the killing of Nazareno is qualified by treachery, nighttime, and abuse of superior strength. First, there is no clear showing that the attack upon the person of Nazareno was sudden. Second, nighttime was not alleged in the information. Third, mere use of firearm is not considered as an abuse of superior strength under the law. Fourth, even if nighttime and abuse of superior strength may be appreciated as aggravating/qualifying circumstances, the same are absorbed by treachery.

On the other hand, the People of the Philippines, through the OSG, refutes every argument raised by both accused-appellants and recommends that We affirm the challenged decision with the following modifications:

1. That the exemplary damages awarded be increased to the Thirty Thousand Pesos (Php30,000.00);
2. That in addition, temperate damages of Twenty Five Thousand Pesos (Php25,000.00) be awarded; and
3. That accused-appellants be directed to pay interest on all damages at the legal rate of six percent (6%) from the date of finality of this judgment until the amounts awarded shall have been fully paid.

### ***The Ruling of the Court***

The appeal is partially granted.

We are guided by the precept laid down by the following Supreme Court:

It would be a serious mistake to send an innocent man to jail where such kind of doubt hangs on to one's inner being, like a piece of meat lodged immovable between teeth.<sup>[28]</sup>

After a judicious study of the records at hand, We are fully convinced that there is sufficient ground to reverse or deviate from the findings of the court *a quo* only in so far as accused-appellant Romulo Villena is concerned.

At the outset, it is worthy to emphasize that no less than Section 14, Article III of the Constitution mandates:

Section 14. (1) x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx.

(Emphasis Ours)

The principal effect of the guarantee of presumption of innocence is that no person shall be convicted unless the prosecution has proved him guilty beyond reasonable doubt.<sup>29</sup> Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Nevertheless, the burden of proof still rests on the State. The accused, if he so chooses, need not present evidence. He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less.<sup>[30]</sup>

After a painstaking review of the records and the transcripts of stenographic notes, We are not fully convinced with moral certainty that accused-appellant Romulo Villena conspired with accused-appellant Crispin Aure in killing Nazareno. With a cloud of doubt continuously hovering, Our mind cannot rest easy.

This Court is even perplexed why the court *a quo* found accused-appellant Romulo Villena as a co-conspirator when as a matter of fact there was no mention in the testimony of the witnesses as to how accused-appellant Romulo Villena conspired