SPECIAL FOURTH DIVISION

[CA-G.R. CR. HC No. 05803, May 29, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSER BARRAMEDA Y VILLACARLOS, ACCUSED-APPELLANT.

D E C I S I O N

TOLENTINO, A.G., J.:

Challenged in this appeal is the decision dated June 30, 2012[1] of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, which found the appellant Jesser Barrameda guilty of murder and double attempted murder.

In an Information dated March 23, 2006, the appellant is charged with murder and double attempted murder, the accusatory portion of which states:

> "That on or about the 19th day of March 2006, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of a homemade shotgun (sumpak), with intent to kill, did then and there willfully, unlawfully and feloniously shoot with the said firearm one ARJAY BARRAMEDA, a four (4) year old minor, hitting the latter on his head, thereby inflicting upon him mortal gunshot wounds which directly caused his death, and as a further result of the same gunshot and in the furtherance of the same intent to kill, did then and there willfully, unlawfully and feloniously hit two (2) other persons, namely JONATHAN BARRAMEDA y VILLACARLOS and SEVA BAWAAN y BARRAMEDA, thereby inflicting gunshot wounds on different parts of their bodies, thus commencing the commission of two (2) counts of murder directly by overt acts, but did not perform all the acts of execution which should produce the crime of two (2) counts of Murder by reason of causes other than the accused's own spontaneous desistance, that is, the injuries sustained by the said victims were not fatal.
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> The crime charged herein is qualified by treachery and abuse of superior strength and aggravated by the use of an unlicensed high-powered firearm, dwelling and relationship, the deceased victim ARJAY BARRAMEDA being the accused's nephew, a relative within the third civil degree of consanguinity, while the other victims JONATHAN BARRAMEDA y VILLACARLOS and [S]EVA BAWAAN y BARRAMEDA are his older brother and younger sister, respectively.
>
> CONTRARY TO LAW."[2]

During his arraignment on August 3, 2006, the appellant, duly assisted by counsel *de oficio*, pleaded not guilty to the charges against him.[3]

The facts, as borne by the records follows:

On March 19, 2006, Jonathan Barrameda and his 4-year old son, went to the house of his sister, Seva Bawaan at Sitio Silihan, Barangay Mahabang Parang, Angono, Rizal.[4] There he met his brother, the appellant Jesser Barrameda and had an argument with him about money. The argument got heated[5] and as Jonathan was about to leave, the appellant pulled out a homemade shotgun (*sumpak*) and fired at his brother. He hit his brother, his sister, Seva and nephew, Arjay. His siblings were injured and Arjay was killed. Because of the ensuing commotion, the appellant fled[6] but he later surrendered to barangay Head Tanod James Mabalot and Deputy Tanod Bernardo Angeles. He likewise turned over to them the *sumpak*, a bolo and the shotgun shells he was carrying.[7]

Upon examination of Arjay's cadaver, Dr. Jose Arnel Marquez, the Medico-Legal Officer and the Police Chief Inspector of the Rizal Provincial Crime Laboratory Office, found out that he died of gunshot wounds in his head. Dr. Marquez further testified that Arjay sustained five (5) gunshot wounds, which came from a shotgun.[8]

On the other hand, the appellant's version, as stated in his Brief, follows:

> "On 19 March 2006, at around 9:00 o'clock in the morning, the accused Jesser Barrameda was sleeping inside the house of his sister, Seva Bawaan, at Sitio Silihan, Mahabang Parang, Angono, Rizal, when his brother, Jonathan Barrameda, arrived and shouted, '*Ano ka na dyan, para ka ng asong nagbigti, magpakamatay*'. The latter then asked for his money worth Four Thousand Four Hundred Pesos (P4,400.00), which he refused to give.
>
> Verily, Jonathan got mad and mauled the accused. The latter asked, '*Bakit mo ako sinasaktan?*'. Eventually, Jonathan got a *sumpak*, which he and the accused grappled for. Suddenly, the *sumpak* went off. Afterwards, Jonathan and Seva ran away, while the accused voluntarily surrendered to the barangay hall."[9]

After a full-blown trial, the RTC found the accused guilty of the crimes of Murder and Double Attempted Murder. The RTC ruled that the prosecution had credible eyewitnesses in Jonathan Barrameda and Seva Bawaan, siblings and other victims of the accused who saw him shot and hit Arjay and them. The fact that there were eyewitnesses against him and that the witnesses testified that he was in possession of the *sumpak* after the killing and that he surrendered it to them belie his incredible story that what happened was an accident. The RTC further held that the killing of a child is murder even if the manner of attack was not shown. Likewise, the use of an unlicensed *sumpak* is an aggravating circumstance that will be taken against him. The RTC also convicted the appellant for two (2) counts of attempted murder. The RTC held that the appellant shot at his siblings. The qualifying circumstance of treachery was proven beyond reasonable doubt because the use of the *sumpak* is a means which ensured that his unarmed siblings cannot retaliate or defend themselves.[10]

The dispositive portion of the RTC's decision states:

> "The foregoing considered, we find accused Jesser Barrameda **GUILTY** beyond reasonable doubt of the Murder of Arjay Barrameda and sentence

him to suffer a penalty of *Reclusion Perpetua* and order him to pay his heirs: 1. P50,000.00 as indemnity for his death; 2. P25,000.00 as temperate damages; 3. P100,000.00 as moral damages; 4. P100,000.00 as exemplary damages and 5. trial costs.

We also find accused Jesser Barrameda **GUILTY** beyond reasonable doubt of the Attempted Murder of Jonathan Barrameda and sentence him to suffer an indeterminate penalty of 4 years and 2 months of *Prision Correccional* and *Destierro* as minimum to 12 years of Prision Mayor as maximum and further order him to pay him: 1. P50,000.00 as moral damages and 2. P50,000.00 as exemplary damages. Finally, we also find accused Jesser Barrameda **GUILTY** beyond reasonable doubt of the Attempted Murder of Seva Bawaan and sentence him to suffer an indeterminate penalty of 4 years and 2 months of *Prision Correccional* and *Destierro* as minimum to 12 years of *Prision Mayor* as maximum and further order him to pay her: 1. P50,000.00 as moral damages and 2. P50,000.00 as exemplary damages."[11]

Hence, this appeal.[12] The accused-appellant assigned the following errors allegedly committed by the trial court, *viz*:

"I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION THAT THE STABBING WAS AN ACCIDENT.

III.

THE COURT *A QUO* GRAVELY ERRED IN FAILING TO APPRECIATE VOLUNTARY SURRENDER."[13]

The assigned errors, being interrelated, shall be discussed jointly.

The appeal is partly meritorious.

The appellant argues that the court *a quo* gravely erred in disregarding his testimony that Jonathan got mad at him when he refused to give the latter's money worth P4,400.00. In view of Jonathan's fury, it is more credible that it was the latter who initially got hold of the *sumpak*, and not him.[14]

The appellant claims that it was Jonathan who initially got hold of the *sumpak* and that they grappled for the possession of the same, deserves scant consideration for being self-serving and uncorroborated.

The RTC correctly ruled that the prosecution had a credible eyewitness in the person of Jonathan Barrameda. Jonathan categorically testified that the appellant pulled out the *sumpak* from under his pillow and fired the same, hitting him (Jonathan), his sister, Seva and his son, Arjay. As a result thereof, Jonathan and Seva were injured while Arjay was killed.

It is a fundamental rule that factual findings of the trial courts involving the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial.[15]

Moreover, the credible and straightforward testimony of Seva belies the appellant's claim. The relevant portion of Seva's testimony is quoted hereunder:

> "PROSECUTOR ARAGONES:
>
> Q- And while you were in your house at Sitio Silihan, Mahabang Parang, Angono, Rizal, what happened, if any?
>
> A- Kuya Jonathan was angry and he scolded Jesser.
>
> Q- Why was Jonathan angry?
>
> A- They were arguing about money.
>
> Q- Why were they arguing about money, do you know why?
>
> A- Jonathan was borrowing money from Jesser.
>
> Q- What happened when Jonathan was borrowing money from accused Jesser?
>
> A- Naniningil po eto, eh, siguro gipit siya, nagkasakitan sila ng salita, etong panganay po namin pinagalitan po siya.
>
> **Q- What happened after they had some verbal argument?**
>
> **A- I heard gunshot from a *sumpak*.**
>
> xxx xxx xxx
>
> **CROSS-EXAMINATION BY ATTY. MENDOZA**
>
> Q- Madam Witness, **before you hear (*sic*) that gunshot there was a heated argument between Jonathan and Jesser.**
>
> **A- Yes, Ma'am.**
>
> xxx xxx xxx
>
> **RE-DIRECT BY PROSECUTOR ARAGONES**
>
> Q- How did it happen that the shot came from the *sumpak*, that the *sumpak* was fired?
>
> A- I do not know, Ma'am.

Q- **Who was holding the *sumpak* during that time.**

A- Jesser."[16] (Emphasis supplied.)

From the foregoing, it is very clear that after the verbal argument between Jonathan and the appellant, Seva heard a gunshot. At the time Seva heard the gunshot, the appellant was the one holding the *sumpak*. As per the testimony of Seva, the appellant's claim that Jonathan was initially in possession of the *sumpak* and that his (appellant) act of struggling to get the *sumpak* is a lawful act to defend himself, [17] must fail. Necessarily, the appellant's claim that the fact that Arjay and Seva were purportedly shot after he and Jonathan grappled for the *sumpak*, is considered an accident,[18] must likewise fail.

"Accident" is an affirmative defense which the accused is burdened to prove, with clear and convincing evidence. The essential requisites for this exempting circumstance, are:

1. A person is performing a lawful act;
2. With due care;
3. He causes an injury to another by mere accident;
4. Without fault or intention of causing it.[19]

In this case, the appellant failed to prove by clear and convincing evidence that what happened was an accident. On the other hand, the prosecution clearly established beyond reasonable doubt that the appellant fired the *sumpak*, hitting Jonathan, Seva and Arjay, resulting in the latter's death. When the appellant fired the *sumpak*, he cannot be considered to be performing a lawful act with due care.

The appellant further contends that even assuming that he indeed fired the *sumpak*, the RTC, nevertheless, gravely erred in imposing three (3) separate penalties for Murder for the death of Arjay; and two (2) counts of Attempted Murder for wounding Jonathan and Seva. The appellant argues that there was only a single shot that he purportedly fired, hitting Jonathan, Arjay and Seva, thereby producing a compound crime pursuant to Article 48 of the Revised Penal Code that was charged against him in a single information for Murder with Double Attempted Murder.[20]

This argument is meritorious. Jonathan himself testified that the appellant fired the *sumpak* only once.[21] Jonathan, Seva and Arjay were hit by a single shot.[22] Seva likewise testified that there was only one shot which hit her, Jonathan and Arjay.[23] Thus, Article 48 of the Revised Penal Code is applicable, viz:

> "Article 48. When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be applied in its maximum period."

In the case at bench, when the appellant fired the *sumpak*, Jonathan, Seva and Arjay were hit. Arjay sustained gunshot wounds in his head which caused his death, while Jonathan and Seva were injured.