

SPECIAL THIRD DIVISION

[CA-G.R. CR.-H.C. No. 05728, May 23, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIET ATILANO, ROGELIO IBAÑEZ A.K.A. "ROGER", HERNANDO AMPARO A.K.A. "BADJAO" AND ROLANDO FAMY A.K.A. "LANDO", ACCUSED, ROGELIO IBAÑEZ A.K.A. "ROGER", HERNANDO AMPARO A.K.A. "BADJAO" AND ROLANDO FAMY A.K.A. "LANDO", ACCUSED-APPELLANTS.

DECISION

GARCIA, R. R. J.:

Before Us is an appeal from the Decision^[1] dated June 25, 2012 of the Regional Trial Court, Branch 152, Pasig City, in Crim. Case Nos. 124319-H and 124320-H finding herein accused-appellants Rogelio Ibañez^[2] a.k.a. "Roger", Hernando Amparo a.k.a. "Badjao", and Rolando Famy a.k.a. "Lando" guilty beyond reasonable doubt of two (2) counts of murder defined and penalized under Article 248 of the Revised Penal Code, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused Rogelio Ibañez a.k.a. Roger, Hernando Amparo a.k.a. Badjao and Rolando Famy a.k.a. Lando Guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 124319-H and hereby sentences them to suffer the indivisible penalty of RECLUSION PERPETUA, to indemnify the heirs of Melanie Guillermo Tablit in the amounts of Php20,000.00 as actual or compensatory damages; Php50,000.00 as civil indemnity for [*her*] death; and another Php50,000.00 as moral damages, and to pay the costs and in Criminal Case No. 12430-H this Court finds the accused Rogelio Ibañez a.k.a. Roger, Hernando Amparo a.k.a. Badjao and Rolando Famy a.k.a. Lando Guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 124319-H and hereby sentences them to suffer the indivisible penalty of RECLUSION PERPETUA, to indemnify the heirs of Joan Castrence Tindugan in the amounts of Php20,000.00 as actual or compensatory damages; Php50,000.00 as civil indemnity for [*her*] death; and another Php50,000.00 as moral damages, and to pay the costs.

The period of detention of the accused are hereby credited in their favor.

With respect to accused Juliet Atilano as she has not yet been arrested, let these cases as far as she is concerned be archived pending her arrest. Let an alias warrant of arrest be issued against her.

SO ORDERED.^[3]

THE FACTS

In two separate Informations^[4], both dated October 2, 2002, filed before the Regional Trial Court, Branch 262^[5], Pasig City accused-appellants Rogelio Ibañez a.k.a. "Roger", Hernando^[6] Amparo a.k.a. "Badjao", and Rolando Famy^[7] a.k.a. "Lando", and their co-accused Juliet Atilano were charged with two (2) counts of murder, committed as follows:

CRIMINAL CASE NO. 124319-H

That on or about July 17, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused, armed with deadly weapons, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to kill, qualified by treachery, evident premeditation and cruelty, and aggravated by the employment of craft, did then and there willfully, unlawfully and feloniously attack, assault, stab, strangle and employ personal and other forms of violence against Melanie Guillermo Tablit to sustain wounds and/or to be choked, which directly caused her death. Contrary to law.^[8]

CRIMINAL CASE NO. 124320-H

That on or about July 17, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused, armed with deadly weapons, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to kill, qualified by treachery, evident premeditation and cruelty, and aggravated by the employment of craft, did then and there willfully, unlawfully and feloniously attack, assault, stab, strangle and employ personal and other forms of violence against Joan Castrence Tindugan to sustain wounds and/or to be choked, which directly caused her death.

Contrary to law.^[9]

During the arraignment on December 9, 2002, appellants, with the assistance of their respective counsels, pleaded not guilty.^[10] Meanwhile, accused Juliet Atilano remains at large.

The prosecution presented two (2) witnesses, namely: George^[11] Bituin^[12] and Wilma Vicente^[13].

The testimony of Dr. David B. Czenas was dispensed with after the parties stipulated that he was the Medical Officer who performed the autopsies on the bodies of the victims and prepared the reports therefor.^[14] The testimony of Harry Vicente was likewise dispensed with after the parties stipulated that he was the one who filed a complaint against appellants and their co-accused Juliet Atilano.^[15]

The version of the prosecution may be summarized as follows:

Victims Melanie Guillermo Tablit^[16] and Joan Castrence Tindugan were the caretaker and housekeeper, respectively, of a house and lot owned by Aneth Chua located Palmetto St., Greenwoods Village, Pasig City. Sometime in 2002, Chua put the subject property on sale for P6.5 Million.

On July 16, 2002, at around six to seven o'clock in the evening, appellant Rogelio Ibañez approached prosecution witnesses George Bituin and Wilma Vicente at the tricycle terminal in Baclaran. He asked them if they wanted a job that would pay One Million Pesos which they and their cohorts would share. When they asked what the work was, appellant Ibañez told them that they would be serving as lookouts while he would restrain and intimidate Aneth Chua, along with her helpers and her son, to sign a deed of sale over the subject property that accused Atilano wanted to buy. When they acceded, appellant Ibañez instructed them to get on a *Mitsubishi Adventure* where a driver, accused Juliet Atilano, and appellants Rolando Famy and Hernando Amparo were already on board. At around nine o'clock in the evening, they arrived at Greenwood Village in Pasig City. They were told to spend the night at an establishment called *Archie's Parlor*.

The following day, July 17, 2002, at around seven o'clock in the morning, accused Juliet Atilano, appellants and prosecution witnesses George Bituin and Wilma Vicente went to the subject house owned by Aneth Chua. When they arrived at the house, only victim Melanie Guillermo Tablit was present, but she allowed them inside because she knew accused Atilano as a prospective buyer of the subject property. Appellants then toured the house, accompanied by Tablit, while prosecution witness Bituin stayed at the living room. Thereafter, appellant Amparo asked victim Tablit for a glass of water. After receiving the water, appellant Amparo brought out a knife and pointed it at victim Tablit who fought back and tried to wrest possession of the knife. Appellants Amparo and Ibañez boxed victim Tablit, hitting her on the stomach. Once she was overpowered, appellants Amparo and Ibañez tied her hands and feet before bringing her to the comfort room. Accused Atilano then told appellants and witnesses Bituin and Vicente that another house helper would arrive at around one in the afternoon.

At around one-thirty in the afternoon of that same day of July 17, 2002, victim Joan Castrence Tindugan arrived, accompanied by another woman and the minor son of the owner of the house. Victim Tindugan asked accused Juliet Atilano where victim Tablit was, but the latter's answer was inaudible. Later, victim Tindugan's female companion and the minor boy left the house while she guided accused Atilano and appellants around. Victim Tindugan asked appellant Rogelio Ibañez what materials were needed to repair the property. As appellant Ibañez was answering, appellant Amparo brought out a hammer and, without warning, hit victim Tindugan's head. Appellants then took advantage of her dizziness and tied her hands and feet with a piece of cloth. She was then carried into the comfort room. Later, accused Atilano brought out black garbage bags and instructed appellants to put the two women inside. At that time, prosecution witness George Bituin saw that victim Tindugan was still moving. Thereafter, the two women were loaded into a *Tamaraw FX*, which was then boarded by accused Atilano, appellants, and a driver. Before leaving, accused Atilano instructed those left behind not to let anyone inside the house. However, prosecution witnesses Bituin and Wilma Vicente opted to return home.

The following day, July 18, 2002, the news that the bodies of two women were salvaged and were dumped in Cavite City was published on the front page of a newspaper. This prompted prosecution witnesses George Bituin and Wilma Vicente to go to the Baclaran police station to report the incident. They were advised to go to the Western Police District instead. However, they knew that accused Juliet Atilano exerted influence on some police officers there, so they opted to go directly to the National Bureau of Investigation the following day of July 19, 2002.

For the defense, all three appellants took the witness stand in their respective behalf, all of whom interposing the twin defenses of denial and alibi,

Appellant Rogelio Ibañez testified that he was a stay-in worker in a piggery located at Sto. Niño, Pasay owned by Marina Lopez. On July 17, 2002, he was working in the piggery. Since he worked alone, it was his duty to feed the pigs thrice a day. He also collected food from a fast food restaurant in the afternoon and mixed them with cooked rice in the evening. He claimed that he did not know accused Juliet Atilano or prosecution witnesses George Bituin and Wilma Vicente. He only met appellants Hernando Amparo and Rolando Famy in jail after being charged with the instant case.^[17]

Appellant Hernando Amparo testified that he was a pedicab driver in Baclaran. On July 17, 2002, he was plying his pedicab from morning until four o'clock in the afternoon. He likewise denied knowing accused Juliet Atilano or appellants Rogelio Ibañez and Rolando Famy. He only met the two other appellants after he was arrested by the NBI.^[18]

Appellant Rolando Famy testified that on July 17, 2002, he was at home in Tondo the entire day because he was sick. He also did not know accused Juliet Atilano, appellants Rogelio Ibañez and Fernando Amparo, or victims Melanie Guillermo Tablit and Joan Castrence Tindugan.^[19]

In a Decision^[20] dated June 25, 2012, the court *a quo* found appellants guilty beyond reasonable doubt of two (2) counts of murder. It gave full credence to the clear and straightforward testimony of prosecution witness George Bituin and Wilma Vicente who categorically identified appellants as the persons who entered with them the house of Aneth Chua. Appellants Hernando Amparo and Rogelio Ibañez attacked victims Melanie Guillermo Tablit and Joan Castrence Tindugan and thereafter bound their hands and feet. Later, they, with the help of appellant Rolando Famy, slid the victims into garbage bags and then into an awaiting vehicle. Such positive identification cannot prevail over appellants' twin defenses of denial and alibi. There being treachery in appellants' sudden and unexpected attack against the victims, the killing was qualified as murder. The pertinent portions of the Decision are quoted:

The Court had noticed that the testimonies of eyewitnesses George/Jorge Bituin and Wilma Vicente were straightforward, candid and unshaken even under grueling cross-examinations. There were minor inconsistencies in the testimonies in the testimonies of the eyewitnesses but said inconsistencies do not affect their credibility. There is no reason to doubt their credibility. It is part of jurisprudence that eyewitness' identification of the accused is vital to the evidence of the prosecution and in most cases, it is decisive of the success or failure of the prosecution.

X X X

This Court finds all of the accused's defense of alibi to be weak and unconvincing. The defense of the accused failed to overcome the clear, positive, straight forward testimonies of the eyewitness who belonged originally to the group of the accused. Alibi and denial cannot prevail over the eyewitnesses' narration of the incident subject matter of these cases.

This Court humbly believes that the accused in these cases had committed the crimes charged.

x x x

There was conspiracy among all of the accused. x x x

Aside from conspiracy in doing the grisly murders, evident premeditation was so apparent, as even on the night before the crimes happened, accused Juliet Atilano and Rogelio Ibañez had talked to their co-accused on how they will go through with the gruesome murders of the victims. Accused took advantage of their superior strength, as having great in numbers compared to the victims and to make sure that they will not fail in their plan, accused had used treachery in the manner of execution of the twin murders. As testified by prosecution witness Dr. David B. Cazenias x x x the victims Lani and Joan died of "asphyxia" secondary to strangulation. Obviously the victims were finished off by the accused even before they were placed at the black garbage bags otherwise eyewitnesses could notice a struggle from the victims while they were being placed at the garbage bags.

The accused were in union in the commission of the crimes as shown by the following: Badjao suddenly poked a kitchen knife at Lani who fought back by sitting on the floor and was able to get hold of the knife and had tried to get it from Badjao. But Badjao boxed her. When she felt weak, Roger and Badjao tied the hands and feet of Lani with a piece of cloth in the kitchen near the sala. Lani was brought upstairs by Rogelio Ibañez a.k.a. Roger, Hernando Amparo a.k.a. Badjao and Rolando Famy a.k.a. Lando.

Badjao suddenly hit the head of Joan with a hammer. When she felt dizzy, Badjao and Roger also tied her hands and feet of Joan and placed at the mouth of Joan a piece of cloth and brought her inside the comfort room. Juliet arrived together with the driver of the vehicle and they handed them a black garbage bag. Juliet asked them to put the two maids inside the black garbage bag. Roger followed the order of Juliet. They brought the 2 garbage bags to the garage and had them boarded on a Tamaraw FX. The four accused x x x altogether boarded at the Tamaraw FX that brought the bodies of the victims to Cavite.^[21]

Hence, this appeal in which appellants raised the following **ASSIGNMENT OF ERRORS**^[22], to wit:

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THE COURT A QUO GRAVELY ERRED IN FINDING APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN THEIR FAVOR; AND

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