

SIXTH DIVISION

[CA-G.R. CR. - HC. NO. 06178, November 17, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PONCIANO ESPINA Y BALASANTOS ALIAS "JUN ESPINA AND
JR", ACCUSED-APPELLANT.**

D E C I S I O N

BALTAZAR-PADILLA, J.:

This is an appeal^[1] interposed by accused Ponciano Espina from the Decision^[2] rendered by the Regional Trial Court, Branch 153, Pasig City dated May 10, 2013 in Criminal Case No. 132527- H for Murder, the decretal portion of which reads:

"WHEREFORE, this Court finds accused PONCIANO ESPINA Y BALASANTOS GUILTY BEYOND REASONABLE DOUBT of the crime of murder and hereby sentences him to suffer the penalty of reclusion perpetua which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

Accused is hereby ordered to pay the heirs of Ernando Reyes the amount of P25,000.00 as actual damages; P50,000.00 as civil indemnity ex delicto; P40,000.00 as moral damages; and P20,000.00 as exemplary damages.

The City Jail Warden of Taguig City is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED."

The antecedent facts of the case as borne-out by the record are as follows:

Accused-appellant Ponciano Espina alias "Jun Espina" and "JR" was charged of Murder in an Amended Information^[3] which reads as follows:

"That on or about the 26th day of May, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ERNANDO REYES, thereby inflicting upon the latter mortal gunshot

wound on the trunk, which eventually caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength, which qualify such killing to murder and aggravated by night time and use of a firearm, which is a deadly weapon, that is, all to the damage and prejudice of the heirs of ERNANDO REYES.

CONTRARY TO LAW."

Upon arraignment, accused-appellant pleaded "*not guilty*" to the crime charged against him.^[4] Thereafter, trial on the merits ensued.

To establish the guilt of accused-appellant, the prosecution presented Russel Michael and Evelyn Reyes. Their testimonies established the following facts:

At around 8:30 o'clock in the evening of May 26, 2005, accused-appellant Ponciano Espina, Ernando Reyes, Russel Michael, a certain Dante and Pio Manjares were having a drinking spree at the latter's house at Ibayo, Tipas, Taguig. While they were drinking, accused-appellant left for a while to go home. When he returned, he carried with him a .45 caliber gun. He showed this to his companions and asked them to hold it, which they did. Thereafter, he took possession of the gun and placed it on his waist. After a few minutes, accused-appellant suddenly pulled the gun out and pointed it closely to Ernando's chest while uttering – "*Ano gusto? Patay-buhay?*". He then pulled the trigger and shot Ernando at his upper right chest for no reason at all and even without any provocation coming from Ernando or from the rest of the group. None of his companions attempted to stop accused-appellant from shooting Ernando. They simply scampered away. Russel, however, returned to help in rushing Ernando to the Rizal Medical Center where he eventually died. By reason of Ernando's death, his wife and family incurred funeral expenses amounting to P30,000.00. For the hurt and anger they experienced, payment for damages in the amount of P200,000.00 was also sought by them in the criminal case for murder filed against accused-appellant before the RTC of Taguig City.

To rebut the prosecution's theory, the defense presented accused-appellant as its lone witness.

Accused-appellant in his testimony denied all the allegations of the prosecution. He asserted that he does not know the late Ernando Reyes or his wife Evelyn, Russel Micheal and Pio. As a tricycle driver, he was just plying the route Tramo-Zapote and Zapote-Tramo from 2003 to May 26, 2005. He never passed by Taguig en route to Pasig between May 26, 2005 and September 14, 2006. From the year 2003 to August 26, 2006, he was residing at Sampaloc St., Admiral Village, Las Piñas City. It was only on August 27, 2006 that he started living in his cousin's house at DC Clamp Compound, Ibayo, Tipas, Taguig City and that he started to drive the tricycle owned by his cousin John John Espina in Pasig only on September 14, 2006.

Accused-appellant claimed that on the fateful night of September 14, 2006 at around 10:00 o'clock in the evening, he was at Dolmar Subdivision in Pasig City. He was driving a tricycle plying the route Kalawaan-San Joaquin when three (3) men flagged down his tricycle and asked him to bring them to a certain place. Since he was not familiar with the said place, he refused to bring them there. They ganged up on him and boxed him. He suddenly took his screw driver and stabbed one of

them and ran towards the Kalawaan Barangay Hall in Pasig. He surrendered himself at the barangay hall and reported the incident. He was turned over to the police and a case was filed against him before Branch 67 of the Pasig City RTC. He was acquitted in the said case.

During his re-cross examination, however, accused-appellant testified that he was jobless from August 17, 2006 to September 14, 2006. In the morning of September 14, 2006, he worked as a carpenter in Makati City from 8:00 o'clock in the morning to 8:00 o'clock in the evening. At around 10:00 o'clock in the evening, he started driving his tricycle and was arrested at 10:30 o'clock in the evening at Dolmar Subdivision contrary to what was stated in the Booking and Information Sheet that he was arrested on September 18, 2006. He learned about the charge against him four (4) days after he was detained.

After the prosecution and the defense rested their respective cases, the court *a quo* rendered its assailed Decision finding accused-appellant guilty beyond reasonable doubt of Murder.

Dissatisfied, accused-appellant filed this appeal challenging the said Decision and assigning a lone error for resolution of this Court, to wit:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT."^[5]

Accused-appellant asserts that the fact and cause of death of Ernando Reyes, Jr. were not proven beyond reasonable doubt by the prosecution. The "*medico-legal certificate*" stating that the victim died of "*Gunshot wound, trunk*" was not identified by the doctor who prepared it or by the one who treated the victim. Thus, it has no evidentiary weight. Likewise, the death certificate of the victim carries no probative value as the same constitutes hearsay evidence. It was not authenticated by any expert witness. Its genuineness and due execution were not also established.

Accused-appellant further insists that the element of intent to kill was not duly proven arguing that the lone gunshot wound sustained by Ernando was not proven to be fatal enough to cause his death. Therefore, he should be acquitted for the prosecution's failure to overcome the presumption of innocence accorded him by the Constitution.

In its Appellee's Brief, the People refutes every argument raised by accused-appellant and recommends the affirmation of the challenged decision.

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, WE find the appeal to be absolutely without merit.

It is glaring from the records that the prosecution was able to clearly establish that Ernando was killed and that it was accused-appellant who killed him.

The following testimony of prosecution eyewitness Russel Michael shows beyond

cavil that accused-appellant shot Ernando with a .45 caliber gun, to wit:

"Q Mr. witness, do you remember where you were on May 26, 2005 at around 8:30 p.m.?"

A Yes, sir.

Q Where were you?

A In the house of one of my companions, sir.

Q What is the name of your companion?

A Pio, sir.

Q And where is this house of Pio?

A Ibayo, Tipas, sir.

Q Where exactly in Ibayo, Tipas?

A There is no street, it is just in Ibayo, Tipas, sir.

Q Now what were you doing there, in the house of Pio?

A We were having a drinking session, sir.

Q You said you were having a drinking session, with whom are(sic) you drinking?

A My co-workers, sir.

Q And who are these co-workers of yours?

A Dante, Espina, Pio, me and one Ernando Reyes, sir.

Q Now, do you remember of peculiar incident, which happened at around 8:30 p.m., which involved in this case?

A None, sir.

Q How about a crime?

A There is, sir.

Q What crime is this?

A Shooting incident, sir.

Q Who was shot?

A Ernando Reyes, sir.

Q Who shot Ernando Reyes?

A Espina, sir.

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Q How many times did Ponciano Espina shoot Ernando Reyes?

A Only one(sic), sir.

Q Where was Ernando Reyes shot?

A Upper right chest sir.

Q Do you remember what kind of gun did Espina use?

A Yes, sir.

Q What kind of gun?

A It is a .45 caliber, sir.

Q According to you, Espina was drinking with you, is that correct?

A Yes, sir.

Q And also the victim, Ernando Reyes, was drinking with you?

A Yes, sir.

Q Prior to the shooting incident, was there any argument between Espina and Ernando Reyes?

A There was none, sir.

Q Do you mean to say that Espina suddenly shot Ernando Reyes?

A Yes, sir."^[6]

On cross examination, Russel maintained and never waned in his account of the incident, viz –

"Q In your affidavit, Mr. witness, you mentioned that "umuwi sa bahay nila itong si JR", so he left the area, is that correct, Mr. witness?

A Yes, sir.

Q Then he returned?

A Yes, sir.