



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 198789

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

REGGIE BERNARDO,
Accused-Appellant.

Promulgated:

JUN 03 2013

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DECISION

REYES, J.:

Before the Court is an appeal from the Decision¹ dated March 4, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02805 entitled *People of the Philippines v. Reggie Bernardo and John Does*, which affirmed with modification the Judgment² dated April 27, 2007 of the Regional Trial Court (RTC) of Laoag City, Ilocos Norte, Branch 14, in Criminal Case No. 13134-14. The RTC found accused-appellant Reggie Bernardo (Bernardo) guilty of the complex crime of Murder with Attempted Murder.

¹ Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Rodil V. Zalameda, concurring; CA *rollo*, pp. 119-132.

² Penned by Presiding Judge Francisco R.D. Quilala; records, pp. 74-87.

The Facts

Bernardo was charged under the following Information:³

That in the morning of July 27, 2006 along the national highway within the vicinity of Brgy. 21, San Marcos, Sarrat, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with John Does whose true names and identities are not yet certain at this time, with intent to kill, with treachery and evident premeditation and with the use of an illegally possessed firearm, did then and there willfully, unlawfully and feloniously shoot to death one EFREN CALUMAG y ANTONIO and inflict grazing gunshot wounds (abrasion) upon REAH B. CALUMAG, thus, commencing the execution of the crime of Murder by overt acts but did not perform all the acts that would produce the same by reason of some cause other than their own spontaneous desistance.

CONTRARY TO LAW.⁴

On September 5, 2006, Bernardo pleaded “not guilty” to the charge.⁵ Thereafter, trial on the merits ensued.

During trial, the prosecution offered as witnesses Dr. Ruth Ann Corpuz (Dr. Corpuz), Reah Calumag (Reah) and Police Inspector Samuel Ofilas. On the other hand, the defense witnesses were Jail Senior Inspector Jun Melchor Boadilla, JO1 Joel Gabutan, JO1 Julieta Valenzuela, SJO1 Virgilio Bagay, *Barangay* Chairman Elmer Pungtilan (Chairman Pungtilan), and Bernardo himself.⁶

Reah testified that the incident transpired on July 27, 2006 along the National Highway in Sarrat, Ilocos Norte around 11:45 a.m. while she was aboard a motorcycle driven by her father, Efren Calumag (Efren). Three men on a motorcycle going in the same direction as the Calumags appeared beside them and shot them several times. Reah and Efren fell down. While Reah survived and was treated for her wounds, Efren eventually died. It was while being treated at the hospital that Reah described one of the assailants to the investigating policemen and told them that she could recognize him if she would see him again.⁷

³ Id. at 1-2.

⁴ Id. at 1.

⁵ CA *rollo*, p. 120.

⁶ Records, p. 74.

⁷ Id. at 74-75.

Dr. Corpus, a physician at Dingras District Hospital where Reah and Efren were brought after the shooting incident, issued a medical certificate to Reah and a medico legal report on the injuries sustained by Efren.⁸

On July 29, 2006, Reah went to the Sarrat Police Station upon being informed by the Dingras police chief that they had in their custody a person who fitted the description of one of the assailants as given by her. They then proceeded to the provincial jail where a police line-up was conducted, during which she pointed to Bernardo as the shooter.⁹

Bernardo interposed the defense of denial and alibi. He alleged that he was inside the District Jail of Batac, Ilocos Norte when the crime was committed on July 27, 2006. He was originally a prisoner of the district jail and was ordered to be released on July 21, 2006. He claimed that because he had nowhere to go, he asked and was permitted by the Jail Warden to stay in jail. With the Jail Warden's permission, he went to Cabugao, Ilocos Sur on July 22, 2006 but returned to the district jail the following morning. He narrated that on the day of the incident, he washed his clothes in the morning and later on helped in preparing lunch. Afterwards, three jail guards accompanied him to the Pag-IBIG Office in Laoag City using the district jail service. They even dropped by Chairman Pungtilan's residence to request for a certification and there they were told that a shooting incident was reported over the radio. The self-imposed extension of his stay allegedly lasted until July 28, 2006.¹⁰

The RTC Decision

The RTC rendered its Decision dated April 27, 2007 finding Bernardo guilty beyond reasonable doubt of the complex crime of Murder with Attempted Murder. The decretal portion reads:

WHEREFORE, the accused Reggie Bernardo is found GUILTY beyond reasonable doubt of the complex crime of murder with attempted murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the heirs of the deceased the following: (1) ₱50,000.00 as civil indemnity for his death; (2) ₱50,000.00 as moral damages; (3) ₱25,000.00 as temperate damages; and (4) ₱25,000.00 as exemplary damages. He is further ordered to pay Reah Calumag an indemnity of ₱30,000.00. Costs against the accused.

SO ORDERED.¹¹

⁸ CA *rollo*, p. 41.

⁹ Id. at 91-92.

¹⁰ Id. at 122.

¹¹ Records, pp. 86-87.

The RTC gave credence to Reah's narration of facts over Bernardo's defense of denial and alibi. The RTC refused to give merit to the circumstances postulated by Bernardo, which he claimed to have impaired Reah's ability to identify the assailant. During the shooting incident, the motorcycle where Bernardo was riding was only about a meter beside Reah and Efren.¹² Though Bernardo was wearing a bull cap, Reah can still see the face of the perpetrator because it was only the hair that was hidden. Substantially, the RTC considered Reah's testimony as reliable, credible and sufficient to convict Bernardo.

The CA Decision

On March 4, 2011, the CA affirmed with modification the judgment of conviction of the trial court, the dispositive portion of which reads:

WHEREFORE, the appealed Decision of the Regional Trial Court of Laoag City, Branch 14, dated April 27, 2007, that convicted accused-appellant for the complex crime of **MURDER** with **ATTEMPTED MURDER**, except for the award of temperate damages which is hereby deleted, is hereby **AFFIRMED** in all other aspect.

SO ORDERED.¹³

The CA upheld the RTC's ruling of the insufficiency of Bernardo's alibi in overcoming Reah's positive identification.¹⁴ The CA, however, deleted the award of temperate damages.

Aggrieved, Bernardo elevated the case to this Court. Both parties manifested that they are no longer filing supplemental briefs and they are adopting their respective main briefs before the CA.¹⁵ Bernardo mainly argues that the prosecution failed to establish his guilt beyond reasonable doubt and that there is no basis for the award of the damages.¹⁶

The Court's Ruling

The Court sustains Bernardo's conviction.

Bernardo asserts alibi and denial as defenses. He argues that he was in jail when the crime was committed. Such alibi, while corroborated by the testimonies of some of Batac District Jail guards, cannot prevail over the

¹² Id. at 79.

¹³ CA *rollo*, p. 131.

¹⁴ Id. at 124-125.

¹⁵ *Rollo*, pp. 24-26 and 27-31.

¹⁶ CA *rollo*, p. 40.

positive identification made by Reah pinpointing Bernardo as one of the malefactors who shot Efren to death. The identification of Bernardo as an assailant was positively and credibly established by the prosecution in this case. It has been settled that affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.¹⁷ Absent clear and convincing evidence, alibi and denial are negative and self-serving evidence undeserving of weight in law.¹⁸

Further, for alibi to prosper, it must be proved, not only that the assailant was in another place when the crime was committed, but that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission altogether.¹⁹ In this case, Bernardo claims the physical impossibility of having committed the crime for the reason that he was still in jail when it was perpetrated. He was ordered released by the RTC of Batac on July 21, 2006; hence, he was no longer a detention prisoner during the commission of the crime. The Batac District Jail is in the same province where the crime was committed and could be easily reached within thirty to forty five minutes from *Barangay San Marcos, Sarrat, Ilocos Norte*.²⁰ Having been discharged from jail, Bernardo was also free to move around and was not subject to strict monitoring. This was bolstered by the finding of the RTC that there was no record that Bernardo stayed in jail on the day the crime was perpetrated.²¹ Undisputedly, there was no physical impossibility for Bernardo to leave his cell and be present at the shooting incident.

The alleged minor discrepancies in the testimony of Reah, the main prosecution witness, identifying Bernardo as one of the perpetrators in the shooting incident were, indeed, negligible. As the CA correctly emphasized, Reah was not only able to relate a detailed story of what transpired on July 27, 2006 but more importantly, her testimony was sufficient to convict Bernardo for the crime charged, to wit:

Q: While you were traversing at that part of the national highway, what happened if there was any?

A: There was sir.

Q: What was that?

A: That was the time that we were fired upon with my father, sir.

Q: Can you tell this Honorable Court how come that incident happened?

A: Men riding on a motorcycle suddenly came beside us and shot us immediately for several times, sir.

¹⁷ *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 510.

¹⁸ *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 574.

¹⁹ *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583, citing *Campos v. People*, G.R. No. 175275, February 19, 2008, 546 SCRA 334, 335.

²⁰ CA rollo, p. 128.

²¹ Records, p. 82.

Q: Where is that motorcycle when you noticed the same in relation to where you were?

A: At the national highway, sir.

Q: In relation to the place where were you?

A: While we were traversing the national highway the motorcycle riding men suddenly went beside us and shot us several times, sir.

Q: When you said they were beside you, is it at your right or at your left?

A: Left side, sir.

Q: Now you mentioned of persons riding in that motorcycle, how many persons did you see, if any?

A: Three (3) persons, sir.

Q: And you said that the motorcycle was then beside you at the left side, how far was the motorcycle they were riding and the motorcycle that you were riding?

A: About one meter, sir

Q: And do you know who fired the shots?

A: Yes, sir.

Q: Who among the three (3) who were then riding in that motorcycle?

A: The one who sat at the back portion of the motorcycle, sir.

Q: Why are you saying that it is the one at the back who fired the shot?

A: He was the one whom I saw holding a gun and fired upon us with my father, sir.

Q: And you said that he fired upon you, how many gun reports did you hear?

A: Several times, sir.

Q: And after the gun reports, what happened next?

A: The motorcycle which we were then riding with my father skidded and I was thrown at a hole and my father suffered gun shot wounds already at that time, sir.

Q: And what happened next?

A: When I was able to climb out from the hole somebody came to help me and he told me that I was hit, sir.

Q: So, when somebody told you that you were hit, what happened next?

A: I was brought to the hospital, sir.

Q: How about your father?

A: He was lying prostrate, sir.

Q: And what next after that?

A: I was treated with my wounds, sir.

Q: Do you know, what happened to your father?

A: He died, sir.²²

x x x x

Q: What happened after that after looking of the inmates who were positioned?

A: When I looked at the inmates I was able to recognize one of the assailants and I told Officer Ofilas, sir.

Q: What is your basis in pointing to him as one who shot your father?

A: Because he was the one whom I saw shooting us with my father, sir.

Q: So what happened after you have pointed to him as the one who shot your father?

A: Officer Ofilas and Magno went to ask from the jail guard the identity of the person that I earlier pointed to, sir.

Q: Madam Witness, you said that you recognized by the way, if the said person is inside the courtroom, will you be able to identify him again?

A: Yes, sir.

Q: Can you please identify him?

A: That one sir (Witness pointing to a man wearing a red shirt when asked his name he gave the name Reggie Bernardo).²³

The Court also finds no reason to deviate from the ruling of the RTC and CA as to the crime committed. The presence of treachery qualifying the killing was clearly manifested in the facts of this case. There is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof that tend directly and specially to insure its execution eliminating the risk to himself, arising from the defense which the offended party might make.²⁴ The presence of two conditions is necessary to constitute treachery, to wit: (1) that the victim was not in the position to defend himself at the time of the attack; and (2) the means of execution were deliberately or consciously adopted.²⁵ The prosecution established that Reah and Efren were unarmed aboard a motorcycle when another motorcycle suddenly appeared and shot them several times. This clearly showed that Reah and Efren were totally defenseless when they were fired upon by Bernardo.

It was also proven that Bernardo committed attempted murder against Reah. It is settled that if the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide.²⁶ Such fact was established by the medical certificate issued by Dr. Corpuz.²⁷

²² TSN, October 10, 2006, pp. 10-12.

²³ Id. at 21.

²⁴ THE REVISED PENAL CODE, Article 14(16).

²⁵ *People v. Mabuhay*, 264 Phil. 277, 283 (1990), citing *People v. Samonte, Jr.*, 159-A Phil. 593, 599-600 (1975).

²⁶ *Colinares v. People*, G.R. No. 182748, December 13, 2011, 662 SCRA 266, 276.

²⁷ Records, pp. 10-11.

Bernardo, however, can only be convicted of the complex crime of murder with attempted murder. On this point, the Court concurs and adopts the ratiocination of the RTC, to wit:

Nonetheless, he may be convicted only of the complex crime of murder with attempted murder, not of the two separate crimes of murder and attempted murder. To be sure, Reah Calumag's testimony that the accused shot her and her father several times shows that he was actuated by more than one criminal impulse, ruling out the application of the concept of complex crime. The evidence however, does not conform to the Information, which contains no allegation that the accused was so actuated. In fact, the Information merely alleges that the accused shot the victim, but it does not allege that he did so several times. In the absence of such a clear statement in the Information, the accused may be convicted only of the complex crime of murder with attempted murder. After all, the concept of complex crimes is intended to favor the accused by imposing a single penalty irrespective of the number of crimes committed.

To rule that the accused should be convicted of two separate offenses of murder and attempted murder pursuant to the evidence presented but contrary to the allegations in the Information is to violate the right of the accused to be informed of the nature and cause of the accusation against him. It is well-settled that an accused cannot be convicted of an offense, even if duly proven, unless it is alleged or necessarily included in the complaint or information.²⁸ (Citations omitted)

A complex crime is only one crime. Although two or more crimes are actually committed, there is only one crime in the eyes of the law as well as in the conscience of the offender when it comes to complex crimes. Hence, there is only one penalty imposed for the commission of a complex crime.²⁹

Under Article 48 of the Revised Penal Code (RPC), 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 imposed, the same to be applied in its maximum period. In this case, the most serious crime committed was Murder and Article 248 of the RPC provides for the penalty of *reclusion perpetua* to death. Meanwhile, Article 63 of the RPC provides that if the penalty prescribed is composed of two indivisible penalties and there is an aggravating circumstance, the higher penalty should be imposed. As previously discussed, treachery was proven and correctly appreciated to have attended the commission of the crime, qualifying the killing to the highest penalty, which is death. In view, however, of the enactment of Republic Act No. 9346,³⁰ which prohibits the imposition of the death penalty, the penalty for crime should, therefore, be reduced to *reclusion perpetua* without eligibility

²⁸ Id. at 85-86.

²⁹ *People v. Orias*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 435, citing *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.

³⁰ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

for parole. Thus, the RTC was correct in imposing, and the CA, in affirming, the penalty of *reclusion perpetua*.

The Court, however, modifies the award of damages.

First, we reinstate the award of temperate damages in favor of Efren's heirs. Article 2224 of the New Civil Code provides that "(t)emperate or moderate damages, which are more than nominal but less than compensatory damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, proved with certainty." In this case, it cannot be denied that the Calumags suffered pecuniary loss for the wake, funeral and burial of Efren, although the exact amount thereof was not proved with certainty.

Second, in light of our ruling in *People v. Malicdem*³¹ and *People v. Laurio*³², the civil indemnity awarded to the heirs of Efren is increased from ₱50,000.00 to ₱75,000.00, while the exemplary damages is increased from ₱25,000.00 to ₱30,000.00.

Third, the civil indemnity awarded to Reah is reduced from ₱30,000.00 to ₱25,000.00, to conform to our ruling in *People v. Adallom*³³. However, Reah is declared also entitled to ₱40,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages, consistent with our ruling in *People v. Nelmida*³⁴ and *People v. Punzalan*³⁵.

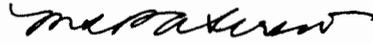
WHEREFORE, the appeal is **DENIED**. The Court of Appeals' Decision dated March 4, 2011 in CA-G.R. CR-H.C. No. 02805 is **AFFIRMED WITH MODIFICATION** in that accused-appellant Reggie Bernardo is ordered: (a) to pay the heirs of Efren A. Calumag the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages; and (b) to pay Reah B. Calumag the amount of ₱25,000.00 as civil indemnity, ₱40,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱25,000.00 as temperate damages.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

³¹ G.R. No. 184601, November 12, 2012, 685 SCRA 193.
³² G.R. No. 182523, September 13, 2012, 680 SCRA 560.
³³ G.R. No. 182522, March 7, 2012, 667 SCRA 652.
³⁴ G.R. No. 184500, September 11, 2012, 680 SCRA 386.
³⁵ G.R. No. 199892, December 10, 2012.

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

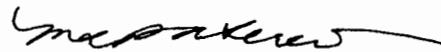

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice