



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 178115

- versus -

JOJO SUMILHIG,
RICARDO SUMILHIG *alias*
CARDING SUMILHIG,
PASOT SALOLI, ERIC ENOC,
WARLITO MONTEBON,*
and CIO LIMAMA,
Accused,

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

JOJO SUMILHIG,
RICARDO SUMILHIG *alias*
CARDING SUMILHIG, and
PASOT SALOLI,
Accused-Appellants.

Promulgated:

JUL 28 2014 *del Castillo*

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DECISION

DEL CASTILLO, *J.:*

This is an appeal from the Decision¹ dated July 28, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00187-MIN, which affirmed with modifications the Regional Trial Court's (RTC) conviction² of appellants Jojo Sumilhig (Jojo), Ricardo Sumilhig *alias* Carding Sumilhig (Carding), and Pasot Saloli (Pasot) in Criminal Case No. 3(99). *Mam*

* Also spelled as Montibon in some parts of the records.

¹ CA rollo, pp. 139-154; penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr.

² See Decision dated September 17, 2001, records, pp. 122-131; penned by Judge Hilario I. Mapayo.

Factual Antecedents

Appellants, together with the accused Eric Enoc, Warlito Montibon and Cio Limama, were charged with double murder and double frustrated murder in an Amended Information,³ the accusatory portion of which reads:

That on or about October 31, 1998, in the Municipality of Kiblawan, Province of Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with assorted firearms, with intent to kill with treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously, simultaneously strafe the house of Eugenio Santander resulting to death of [Cresjoy] Santander and Rolly Santander and seriously wounding Marissa Santander and Micel Santander, which would have caused their death had there been no timely and able medical assistance rendered to them, to the damage and prejudice of the offended parties.

CONTRARY TO LAW.⁴

Only Jojo, Carding and Pasot, who entered separate pleas of “not guilty” during their arraignment,⁵ faced trial. The other accused could not be located and remain at-large to this day.

Factual Antecedents

The prosecution established that on October 31, 1998, at around 6:30 p.m., Jerry Masaglang (Jerry), together with Eugenio Santander (Eugenio) and his son Mario, were in the living room of Eugenio’s house in *Sitio* Overland, Kimlawis, Kiblawan, Davao del Sur. Suddenly, they heard gun bursts and saw six persons firing at the kitchen where members of the Santander family were having dinner. Jerry and Mario recognized the assailants to be the appellants and their co-accused.

The strafing of the kitchen lasted for about two minutes. Before the gunmen dispersed, Jojo shouted, “At last, I have retaliated!” In the aftermath, the children of Eugenio’s other son Remegio⁶ Santander (Remegio), 3-year old Cresjoy,⁷ 8-year old Rolly, and teeners Marissa and Micel, sustained gunshot wounds. Unfortunately, Cresjoy expired while on the way to the hospital while Rolly was pronounced dead-on-arrival. Marissa sustained gunshot wounds at the right breast area and left wrist, while Micel was wounded in the left sternal area and elbow.

³ Id. at 33-34.

⁴ Id. at 33.

⁵ Id. at 43.

⁶ Also spelled as Remigio in some parts of the records.

⁷ Also referred to as Crisboy/Crisjoy in some parts of the records.

Jojo denied involvement in the incident and interposed the defense of alibi. At the time of the incident, he claimed to be in the house of his parents-in-law in *Sitio Ologo-o, Barangay Tacub, Kiblawan, Davao del Sur*. He further asserted that it was impossible for him to be at the scene of the crime on October 31, 1998 since he could not walk briskly due to a gunshot wound he earlier sustained in his left knee and anus. He maintained that it was only in January 1999 that he was able to walk without the aid of crutches. However, Jojo admitted harboring ill-will against the Santander clan since he believed that they were the ones responsible for the massacre of his family in February 1998.

Carding, for his part, claimed to be illiterate and unaware of the incident. He contended that at the time of the shooting, he was in Dalmandang, Tacub, Kiblawan, Davao del Sur, which is four-hours walk away from the crime scene. Pasot, on the other hand, maintained that he was with his wife at the house of Pablo Mot in Lampara, Balasiao, Kiblawan, Davao at the time the crime was committed. Both claimed total ignorance of the incident.

Ruling of the Regional Trial Court

The RTC convicted the appellants of the complex crime of double murder and double frustrated murder and sentenced them to suffer the penalty of death. It further ordered them to indemnify, jointly and severally, the heirs of Cresjoy and Rolly the sum of ₱100,000.00 as civil indemnity, and the surviving victims, Marissa and Micel, the sums of ₱50,000.00 and ₱30,000.00 as moral and exemplary damages, respectively.⁸

Ruling of the Court of Appeals

On appeal, the CA did not find any reason to disturb the findings of the RTC. However, it found merit in appellants' argument that the crime committed could not have been a complex crime since the death and injuries complained of did not result from a single act but from several and distinct acts of shooting. And as treachery was alleged in the Amended Information and sufficiently proven during trial, appellants should be convicted instead of two counts of murder and two counts of frustrated murder. Thus, in rendering its Decision⁹ dated July 28, 2006, the CA disposed of the case as follows:

WHEREFORE, the judgment of conviction of appellants Jojo Sumilhig, Alias Carding Sumilhig and Pasot Saloli is affirmed but modified as follows –

Appellants Juan “Jojo” Sumilhig, Alias Carding Sumilhig and Pasot Saloli, are found guilty beyond reasonable doubt of:

⁸ Records, pp. 122-131.

⁹ CA *rollo*, pp. 139-154.

- a. Murder for killing Crisjoy Santander, and x x x are sentenced to suffer the penalty of *reclusion perpetua*;
- b. Murder for the killing of Rolly Santander, and x x x are sentenced to suffer the penalty of *reclusion perpetua*;
- c. Frustrated Murder for the shooting of Marissa Santander and x x x are sentenced to suffer an imprisonment of six (6) years, four (4) months and [ten] (10) days of *prision mayor* as minimum to fourteen (14) years, eight (8) months and twenty (20) days of *reclusion temporal* as maximum;
- d. Frustrated Murder for the shooting of Micel Santander and x x x are sentenced to suffer an imprisonment of six (6) years, four (4) months and ten (10) days of *prision mayor* as minimum to fourteen (14) years, eight (8) months and twenty (20) days of *reclusion temporal* as maximum.

All accused are ordered to indemnify jointly and severally the heirs of Crisjoy Santander and Rolly Santander the sum of ₱100,000.00 and the surviving victims Marissa Santander and Micel Santander ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency.

Costs *de officio*.

SO ORDERED.¹⁰

Hence, this appeal.

Since there is no more dispute that appellants should not have been convicted of the complex crime of double murder and frustrated murder as the Office of the Solicitor General (OSG) already concedes to the same,¹¹ the only error left from those raised by appellants in their brief is as follows:

GRANTING ARGUENDO THAT THE ACCUSED-APPELLANTS ARE GUILTY, THE COURT A QUO GRAVELY ERRED IN FINDING THAT CONSPIRACY WAS PRESENT AND IN FINDING THAT THE CRIMES COMMITTED WERE MURDER AND FRUSTRATED MURDER.¹²

It must be noted at the outset that Carding died on June 24, 2011 during the pendency of this appeal.¹³ “[I]n view of [this] supervening event, it is unnecessary for the Court to rule on [Carding’s] appeal. Whether x x x he was guilty of the [crimes] charged has become irrelevant since, following Article 89(1) of the Revised Penal Code, x x x, even assuming [that Carding] had incurred any criminal liability, it was totally extinguished by his death. Moreover, because [the]

¹⁰ Id. at 152-153.

¹¹ See Brief for the Appellee, id. at 94-120.

¹² Id. at 47-48.

¹³ *Rollo*, p. 76.

appeal was still pending and no final judgment of conviction had been rendered against him [before] he died, his civil liability arising from the crime, being civil liability *ex delicto*, was likewise extinguished by his death.”¹⁴

Appellants’ Arguments

Appellants claim that the RTC erred in relying heavily on the ill-feelings and vendetta Jojo harbored against the Santander family. They contend that this motive for committing the crime is not a substitute for proof beyond reasonable doubt. Moreover, Jojo’s alibi that it was impossible for him to be at the crime scene due to the gunshot wounds in his knee and anus is amply corroborated by a medical prognosis.

Anent Pasot, appellants argue that although the trial court found his claim of total ignorance on almost about everything to be incredulous, still, his conviction must not rest on the weakness of his defense but on the strength of the prosecution’s evidence.

Appellants likewise question the finding of conspiracy and treachery.

Our Ruling

The appeal has no merit.

Appellants’ conviction was based on their positive identification by the prosecution witnesses.

True, the RTC noted in its Decision the existence of motive on the part of Jojo for committing the crime as well as Pasot’s incredulous claim of ignorance on almost about everything. It is well to note, however, that the said court neither based the appellants’ conviction on the existence of such motive nor on Pasot’s weak defense of ignorance alone, but upon the prosecution witnesses’ identification of appellants as the assailants, *viz*:

Assessing the evidence presented by both [P]rosecution and defense, we see a less than glaring hint of vendetta. As part of his defense, the accused Jojo Sumilhig narrated that his family was massacred by Jerry Santander, brother of Remigio Santander [in] February 1998. Short of admitting the crime, Sumilhig stated that because of this, he harbored ill feelings not only against Jerry and Carlos Santander but also against their family. Thus a clear motive for killing the

¹⁴ *People v. Ayochok*, G.R. No. 175784, August 25, 2010, 629 SCRA 324, 331.

Santander family has been established giving credence to prosecution witnesses' allegation that after the strafing Jojo Sumilhig shouted "Nakabalos na ko!" The likelihood of his intention to wipe out the said family became even more apparent.

Despite his positive assertion that it was the Santanders that killed his family, he did not file any case against them. It was only after he was arrested that he filed a complaint against Jerry and Carlos Santander.

His alibi likewise failed to meet the stringent requisites of the Rules. Even as Dr. Quirapas appeared determined to rule out the possibility that he could walk without crutches five months after his discharge, the same was based on general medical prognosis. Such prognostication admits certain exception[s], as could be gleaned from the testimony of the doctor himself that the healing period may vary depending on the age and physical condition of the patient. Notably Jojo Sumilhig was then 23 years old.

What was certain was the positive identification made by Jerry Masaglang and Remegio Santander of all of the accused.

The "overkill" by which the accused Pasot Saloli and Carding Sumilhig claimed total ignorance of almost anything only served to arouse incredulity. Both accused claimed they could not read, write, tell time, day, month or year. Neither could [they] allegedly speak [or] understand Visayan, which is of common knowledge to be widely spoken in almost every part of Mindanao. Saloli claimed he did not know what day [it] was when he was testifying, or the day before and after that. Both claimed they did not know the complainants or of the massacre that took place.

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More importantly, these claims [of] utter ignorance are belied by the evasiveness by which all three accused answered in obvious effort to avoid criminal responsibility. Behind the façade of ignorance and lack of education lurks a calculating mind. We find [it] difficult to ascribe innocence to the accused when traces of ingenuity and craftiness characterize their testimonies.

All these observations however become insignificant in the face of the positive and spontaneous identification of the assailants/accused by credible witnesses Jerry Masaglang and Remigio Santander.¹⁵

There is no reason to doubt Jerry and Mario's identification of the appellants considering that (1) Jerry was just six meters away from them;¹⁶ (2) the moon was bright and Jerry was familiar with all the accused as most of them are his relatives;¹⁷ and, (3) Mario knows Jojo ever since he was small.¹⁸ Besides, "[t]ime-tested is the rule that between the positive assertions of prosecution

¹⁵ Records, pp. 129-130; emphasis supplied.

¹⁶ TSN dated October 12, 1999, pp. 7-8.

¹⁷ Id. at 7-11.

¹⁸ TSN dated October 14, 1999, p. 7.

witnesses and the negative averments of the accused, the former undisputedly [deserve] more credence and [are] entitled to greater evidentiary weight.”¹⁹

Anent the respective alibis interposed by appellants, suffice it to say that “[a]libi cannot prevail over the positive identification of a credible witness.”²⁰

There was conspiracy among the accused.

“[C]onspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.”²¹ It is not necessary to adduce evidence of a previous agreement to commit a crime.²² “Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.”²³

Here, there is no proof of a previous agreement among the accused but there is a series of events that clearly established conspiracy among them. First, they were all armed with firearms. Second, they surreptitiously approached the crime scene. Third, when they were within close range of the intended victims, they simultaneously discharged their firearms. Fourth, they ceased firing at the same time and fled together. Undoubtedly, their acts before, during and immediately after strafing the house of Eugenio evince their unanimity in design, intent and execution.²⁴

Treachery attended the commission of the crime.

“There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure the execution, without risk to himself arising from [any] defense which the offended party might make.”²⁵

Treachery is evident in this case as the suddenness and unexpectedness of the assault deprived the victims of an opportunity to resist it or offer any defense of their persons. This is considering that the victims were unaware that they

¹⁹ *People v. Monteron*, 428 Phil. 401, 407 (2002).

²⁰ *Soriano v. People*, 579 Phil. 83, 91 (2008).

²¹ REVISED PENAL CODE, Article 8.

²² *People v. Perez*, G.R. No. 179154, July 31, 2009, 594 SCRA 701, 714.

²³ *Id.* at 714-715.

²⁴ *Id.* at 715.

²⁵ REVISED PENAL CODE, Article 14(16).

would be attacked by appellants with a hail of bullets from their firearms fired at close range. Indeed, “[t]he suddenness of the attack, without the slightest forewarning thereof, placed the [victims] x x x in such a position that they could not have defended themselves from the aggression x x x.”²⁶

The crime committed is two counts of murder and two counts of frustrated murder.

As earlier discussed, treachery attended the commission of the crime. This qualifies the killing of Cresjoy and Rolly to murder.

With regard to Marissa and Micel, the Court notes that while the RTC was silent as to the nature of injuries sustained by them, the CA correctly ruled on the seriousness thereof. The Medico Legal report of Marissa shows that she suffered multiple gunshot wounds in her right breast and left wrist²⁷ while the Certificate of Treatment/Confinement of Micel states that she sustained gunshot wounds in the area of the sternum and elbow.²⁸ As aptly found by the CA, the girls would have died if not for the timely medical attention provided to them. The crimes committed by the appellants against them were thus frustrated murders.

The Penalty

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. With both penalties being indivisible and there being no aggravating circumstance other than the qualifying circumstance of treachery, the lower of the two penalties which is *reclusion perpetua* was properly imposed by the CA on appellants for each count of murder.²⁹ However, appellants are not eligible for parole.³⁰

As regards the frustrated murders of Marissa and Micel, the penalty lesser by one degree shall be imposed on appellants.³¹ Accordingly, the penalty that must be imposed is *reclusion temporal* for each count of frustrated murder. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances other than the qualifying circumstance of treachery, the maximum penalty shall be taken from the medium period of *reclusion temporal*, which has a

²⁶ *People v. Ledesma*, 320 Phil. 215, 226 (1995).

²⁷ Records, p. 15.

²⁸ Id. at 16.

²⁹ See REVISED PENAL CODE, Article 63.

³⁰ Section 3 of Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines) provides: “Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of the Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

³¹ Pursuant to Article 50 in relation to Article 61, paragraph 2 thereof, Revised Penal Code.

range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* in any of its periods, the range of which is from six (6) years, one (1) day to twelve (12) years. The prison term imposed by the CA on appellants must therefore be modified to six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum, which is within these ranges,³² for each count of frustrated murder.

Awards of Damages

For the murders of Cresjoy and Rolly, the CA correctly held that their heirs are entitled to an award of civil indemnity, however, the amount of the award must be ₱75,000.00 for each death pursuant to prevailing jurisprudence.³³ The awards of moral damages in the amount of ₱50,000.00 each and exemplary damages in the amount of ₱30,000.00 each are proper.³⁴ In addition, the heirs of the victims are entitled to temperate damages in the sum of ₱25,000.00 for each death in lieu of actual damages.³⁵

For the frustrated murders of Marissa and Micel, the awards of moral and exemplary damages by the CA must be decreased to ₱40,000.00 and ₱20,000.00, respectively for each victim.³⁶ They are likewise entitled to temperate damages in the amount of ₱25,000.00 each in lieu of actual damages.³⁷

All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.³⁸

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00187-MIN which affirmed with modification the Decision of the Regional Trial Court of Digos City, Davao del Sur, Branch 19, finding appellants Jojo Sumilhig and Pasot Saloli guilty beyond reasonable doubt of two counts of murder and two counts of frustrated murder is **AFFIRMED with MODIFICATIONS** as follows:

For the murders of Cresjoy Santander and Rolly Santander:

³² *People v. Milan*, G.R. No. 175926, July 6, 2011, 653 SCRA 607, 624-625.

³³ *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

³⁴ *Id.* at 530-531.

³⁵ *Id.* at 531.

³⁶ *People v. Milan*, *supra* note 32 at 626; *People v. Baldomar*, G.R. No. 197043, February 29, 2012, 667 SCRA 415, 419.

³⁷ *People v. Baldomar*, *id.*

³⁸ *People v. Manalili*, G.R. No. 191253, August 28, 2013, 704 SCRA 305, 319.

(1) appellants Jojo Sumilhig and Pasot Saloli shall suffer the prison term of *reclusion perpetua* for each count of murder without eligibility for parole;

(2) appellants Jojo Sumilhig and Pasot Saloli shall pay the heirs of the victims the amount of ₱75,000.00 as civil indemnity for the death of each victim;

(3) appellants Jojo Sumilhig and Pasot Saloli shall pay the heirs of the victims ₱25,000.00 as temperate damages for each death.

For the frustrated murders of Marissa Santander and Micel Santander:

(1) appellants Jojo Sumilhig and Pasot Saloli are sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, for each count of frustrated murder; and,

(2) appellants Jojo Sumilhig and Pasot Saloli are ordered to pay moral damages and exemplary damages to each of the victims in the reduced amounts of ₱40,000.00 and ₱25,000.00, respectively.

All amounts of damages awarded shall earn interest at the legal rate of 6% *per annum* commencing from the date of finality of judgment until fully paid.

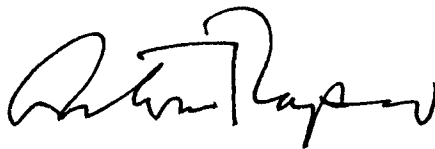
Due to the death of Ricardo Sumilhig *alias* Carding Sumilhig prior to final judgment, his criminal liability and civil liability *ex delicto* as found by the Regional Trial Court and affirmed by the Court of Appeals, are extinguished. Consequently, Criminal Case No. 3(99) is ordered dismissed insofar as Ricardo Sumilhig *alias* Carding Sumilhig is concerned.

Costs against appellants Jojo Sumilhig and Pasot Saloli.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



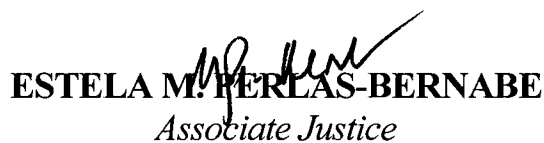
ARTURO D. BRION

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice

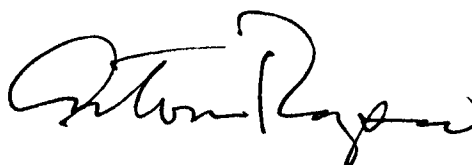


ESTELA M. FERLAS-BERNABE

Associate Justice

ATTESTATION

I attest 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.



ANTONIO T. CARPIO

Associate Justice

Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson’s Attestation, 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

