



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 194068

-versus-

Present:

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

BENJIE CONSORTE y FRANCO,
Accused-Appellant.

Promulgated:

JUL 09 2014

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DECISION

PEREZ, J.:

Before the Court is an appeal from the Decision¹ of the Court of Appeals (CA) dated 27 May 2010 in CA-G.R. CR HC No. 01806. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 67, Binangonan, Rizal, which found Benjie Consorte y Franco (appellant) guilty of Murder, sentenced him to suffer the penalty of *reclusion perpetua* and directed him to indemnify the heirs of Elizabeth Palmar (Elizabeth) the amounts of ₱50,000.00 as civil indemnity and ₱29,500.00 as actual damages. The CA, however, modified the judgment of the trial court in that, in addition to actual damages, appellant was further directed to pay moral

¹ CA *rollo*, pp. 121-131; Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Isaias P. Dicdican and Sesinando E. Villon concurring.

and exemplary damages in the amounts of ₱50,000.00 and ₱25,000.00, respectively.

The Antecedents

As found by the CA, the facts of the case are as follows:

x x x [Appellant] was a former conductor of Elizabeth Palmar's jeepney plying [the route of] Antipolo, Teresa and Morong, Rizal. Sometime in June 2000, Elizabeth's residence was robbed and several personal belongings[,] including cash[,] were taken. Appellant was the only one who had access [to the] house, aside from [Elizabeth's] family. So [Elizabeth's] brother x x x tailed appellant and found out that the latter pawned her tv [sic] set to Frederic Francisco. She then sued appellant for robbery. x x x A hearing was scheduled on January 23, 2001, but on the night of January 22, 2001, Elizabeth was murdered.

On January 22, 2001, Jose Palmar, Elizabeth's husband, instructed Rolando Visbe to haul feeds from Morong, Rizal and deliver them to their piggery in x x x Binangonan, Rizal. As he [was driving] the jeepney, Rolando saw Elizabeth together with her 14-year old daughter Myrna and [her] 3-year old nephew "Big Boy." They went with him to deliver the feeds to [Binangonan]. On their way back to Morong, Rolando noticed appellant[,] who was wearing a hat. When they got near him, Rolando slowed down and asked appellant where he was going. Appellant did not reply. Rolando veered to the right to avoid hitting appellant. In the process, the jeepney ran over a stone, lost its balance, and rolled [into] a ditch. While struggling to release the vehicle, Rolando heard a gunshot. He looked around and saw appellant standing near the jeepney's left rear, holding a handgun. Appellant immediately fled. He (Rolando) then heard Myrna x x x shouting "Ninong, may dugo si Nanay!" They rushed Elizabeth to Angono District Hospital. But due to her fatal gunshot wound on the forehead, she died x x x.

Aneline Mendoza, a resident of Greenpark, Cainta, Rizal, testified that on January 22, 2001, around 8:45 pm while on her way home, a stranger greeted her "magandang gabi po." He was carrying something wrapped in a black cloth which looked like a gun. She was somewhat frightened so she let him walk ahead of her. She saw him turn to a corner. Immediately after she entered her house, she heard a gunshot. She opened her window and saw the stranger, standing by the side of the jeepney. The [stranger] immediately ran toward the direction of Elizabeth's house. She also heard the driver saying "Putang ina, sinong bumaril?"²

²

Id. at 122-123.

Appellant was arrested the following day in Morong, Rizal while attending the hearing of the robbery case against him.³ He was charged with murder under an Information which reads:

That on or about the night of the 22nd day of January 2001 in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon (hand gun), with intent to kill and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Elizabeth V. Palmar on the vital part of her body, thereby inflicting upon the latter mortal wound which directly caused her death.⁴

When arraigned, appellant pleaded not guilty to the charge against him. Trial thereafter ensued, during which, appellant interposed the defense of alibi. He claimed that at around 8 or 9 o'clock in the evening of 22 January 2001, he was at his brother's house in Antipolo. He had dinner with his brother's family and left at 10 o'clock in the evening, after his brother gave him ₱100.00 as fare. His sister-in-law corroborated his statement, testifying that appellant was at their house on the questioned date from 5 to 10 p.m.

The Ruling of the RTC

The trial court found that the pieces of evidence presented by the prosecution leaves no doubt that it was indeed appellant who shot Elizabeth. According to the RTC:

Against the eyewitness testimony who [sic] positively identified the [appellant] as the perpetrator of the crime, the alibi of the defense will die. x x x

Other than himself[,] the accused presented only two witnesses, her [sic] sister-in-law and the forensic chemist. As for the testimony of her [sic] sister-in-law, she could not reason out why, the [appellant] who is gainfully employed as a tricycle driver would be asking for a one hundred peso fare, just to appear at the hearing [the following day]. Her answers are full of open ends, which give [her testimony] little credence.

The testimony of the Forensic chemist is also not conclusive. She testified that the [appellant] tested negative for powder burns. On cross-examination, she testified that the lack or presence of nitrates in the hands of the [appellant] could be affected by several factors, like cloth or

³ TSN, 23 January 2003, pp. 4-5; Direct examination of appellant.

⁴ Records, p. 1.

coverings on the hand that fired the gun; gun fired at a downward direction; wind velocity; efficiency of the gun; and finally[,] the kind of gun used[,] whether automatic or pistol.

x x x x

In a line of cases, the rulings on the weight and conclusiveness of [the] presence and absence of gunpowder in [sic] the hands of the accused is dependent entirely on the evidence presented [by] the prosecution as a whole. Absence or lack of trace of gunpowder in [sic] the hands of the apparent shooter does not necessarily equate that he did not fire a gun. This defense will not defeat what the two witnesses for the prosecution saw on the night of the shooting.⁵

x x x On the element of treachery, the rulings has [sic] been consistent that in order for the court to appreciate treachery it must be established by the prosecution that the victim did not have any opportunity to defend themselves (sic), or that the attack was so sudden or immediate that the victims were in no position to defend or protect themselves.

x x x x

In the case at bar, [appellant] took advantage of the situation when he shot the unsuspecting victim. The unexpected attack on the victim rendered her unable and unprepared to defend herself by reason of the suddenness and severity of the attack. [The] [f]acts [of this] case show that the victim [had] her back [to] her assailant when attacked, [and] she was not aware of any danger on her part. She was likewise cuddling a baby in [sic] her lap when the shot was fired. Clearly[,] she was in no position to make any defense.

The eyewitness testimony likewise sufficiently established that [appellant] consciously adopted the particular means, method or form of attack[.] [A]ccused was armed and stealthily performed the criminal act at nighttime at an unexpected time while the victim was defenseless. x x x Add to this scenario the fact that on January 23, 2005 [sic], the [appellant] and [the] victim will meet at the Municipal Trial Court hearing for the robbery case filed by the victim. This only shows that the [appellant] took into consideration these factors[,] hence he was bent on committing the crime on the day prior to the robbery hearing. [Appellant] therefore has set the time frame within when (sic) to commit [the] crime, and on the said day x x x he did not resist in perpetrating the crime. There is no other construction in this picture other than [sic] the fact [that] the shooting was treacherous and well planned.⁶

⁵ Id. at 3-4.

⁶ Id. at 6-7.

The Ruling of the Court of Appeals

The CA dismissed the appeal on the ground that appellant's attack on the credibility of prosecution witnesses Rolando Visbe and Aneline Mendoza has no merit. The CA pointed out that:

x x x Rolando and Aneline never wavered in their respective testimonies regarding appellant's presence in the situs criminis and his possession of the gun before and after the fatal shooting of Elizabeth Palmar. Although Visbe may have shouted "x x x, sinong bumartil?", it did not mean he did not recognize appellant. It was simply an instinctive reaction of one who heard a gunshot in the middle of nowhere and saw his companion fatally wounded. At any rate, Rolando did not ask any further question when right after the shooting, he saw appellant holding a gun beside the jeepney he was driving. Rolando saw appellant twice that night and it was not improbable for him to remember appellant. Precisely because of the unusual acts of violence committed right before his eyes, Rolando remembered with a high degree of reliability appellant's identity.

x x x x

True, Rolando and Aneline did not see appellant actually fire the gun on Elizabeth, but the circumstances surrounding the incident unerringly point to him as the perpetrator, viz:

First. Appellant had an axe to grind against Elizabeth for filing a robbery case against him. Elizabeth got murdered the night before the initial hearing of the case;

Second. Rolando saw appellant near the jeepney's left rear, holding a gun, right after he heard a gunshot;

Third. Right before the incident, Aneline saw appellant holding something in his hand wrapped in a black cloth, which looked like a gun;

Fourth. Immediately after Aneline entered her house, she heard a gunshot and when she peeped through the window, she saw appellant standing by the side of the jeepney where Elizabeth's lifeless body was sprawled. Shortly after, Aneline saw appellant running towards the direction of Elizabeth's house. x x x;

Fifth. Notably, appellant himself did not accuse Rolando and Aneline of any [ill] motive to falsely testify against him and cause his damnation for such a serious crime of murder. Although he claims their loyalty belonged to the victim and her family, loyalty does not equate with perjury, let alone, persecution of an innocent peron [sic]. Settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.

x x x x

Appellant, nonetheless, claims that the negative result of the paraffin test done on him is proof of his innocence.

On this score, suffice it to state that the only thing a paraffin test can definitely establish is the presence or absence of nitrates or nitrites on the hand. From this test alone, it cannot establish that the source of the nitrates or nitrites was the discharge of firearm.⁷ x x x

The CA likewise concurred with the trial court with respect to its finding on the presence of the aggravating circumstance of treachery. According to the CA, the trial court correctly found that the two elements of treachery, which are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate or conscious adoption of the means of execution, are present in this case. In addition to the foregoing, the CA granted moral and exemplary damages to the heirs of Elizabeth, aside from the civil indemnity and actual damages previously granted by the trial court.

Our Ruling

We deny the appeal but modify the award of damages.

Both the CA and the trial court have exhaustively discussed the merits of the case at bench and concur on their findings and conclusions. In this connection, it bears repeating that factual findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon the Supreme Court.⁸ The rule is that, the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on such findings are accorded respect, if not, conclusive effect. This specially holds true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, as in the case at bar, said findings are generally binding upon us. We find no compelling reason in this case to depart from the general rule.⁹

In the first place, appellant relies on alibi for his defense. As invariably held by this Court, however, alibi is an inherently weak defense

⁷ CA rollo, pp. 126-128.

⁸ *People v. Credo*, G.R. No. 197360, 3 July 2013 citing *People v. Nazareno*, G.R. No. 196434, 24 October 2012, 684 SCRA 604, 608.

⁹ *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 64-65.

and has always been viewed with disfavor by the courts due to the facility with which it can be concocted.¹⁰ Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.¹¹ For alibi to prosper, appellant must prove not only that he was at some other place when the crime was committed but that it was physically impossible for him to be at the *locus criminis* at the time of its commission.¹² In the case at bench, the defense failed to present convincing evidence to reinforce appellant's denial and alibi. It is significant to note that the distance between Binangonan (the scene of the crime) and Antipolo (where appellant claimed he was at the time of the incident in question) is only about twenty (20) kilometers.

In *People v. Bation*,¹³ this Court held that there was no physical impossibility for the appellant to be at the scene of the crime, considering that appellant was merely twenty-six (26) kilometers away from said scene. In *People v. Ignas*,¹⁴ the distance was even much farther:

x x x the defense admitted that the distance between La Trinidad, Benguet and Kayapa, Nueva Vizcaya is 79 kilometers, which can be negotiated in 4 or 5 hours. Clearly, it was not physically impossible for appellant to be at the *locus criminis* at the time of the killing. Hence, the defense of alibi must fail.

“Physical impossibility in relation to alibi takes into consideration not only the geographical distance between the scene of the crime and the place where accused maintains he was, but more importantly, the accessibility between these points. In this case, the element of physical impossibility of appellant's presence that fateful night at the crime scene has not been established.”¹⁵

More importantly, the Court gives even less probative weight to a defense of alibi when it is corroborated by friends and relatives. One can easily fabricate an alibi and ask friends and relatives to corroborate it. When

¹⁰ *People v. Peteluna*, G.R. No. 187048, 23 January 2013, 689 SCRA 190, 201 citing *People v. Barde*, G.R. No. 183094, 22 September 2010, 631 SCRA 187, 211.

¹¹ *People v. Tomolon*, G.R. No. 180169, 27 February 2009, 580 SCRA 384, 395.

¹² *Id.* citing *People v. Fernandez*, G.R. No. 134762, 23 July 2002, 385 SCRA 38, 51.

¹³ 419 Phil. 494, 516 (2001) cited in *People v. Republo*, G.R. No. 172962, 8 July 2010, 624 SCRA 542, 552.

¹⁴ 458 Phil. 965, 993 (2003) cited in *People v. Republo*, G.R. No. 172962, 8 July 2010, 624 SCRA 542, 552.

¹⁵ *People v. Bihag, Jr.*, 396 Phil. 289, 299 (2000) citing *People v. Gomez*, 388 Phil. 462 (2000).

a defense witness is a relative of an accused whose defense is alibi, as in this case, courts have more reason to view such testimony with skepticism.¹⁶

In any case, the positive identification of the appellant by witnesses destroys the defense of alibi. Alibi warrants the least credibility, or none at all and cannot prevail over the positive identification of the appellant by the prosecution witnesses.¹⁷ Absent any ill motive on the part of witnesses, their positive identification of the appellant as the perpetrator of the crime prevails over the defense of denial or alibi.¹⁸

Here, two witnesses established appellant's presence at the scene of the crime and the fact that he had, in his possession at that time, a gun. While, as pointed out by the CA, the said witnesses did not actually see appellant fire the gun at Elizabeth, the circumstances surrounding the incident, as enumerated by the CA, "unerringly points to him as the perpetrator."

Indeed, no prosecution witness has actually seen the commission of the crime. But jurisprudence tells us that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules on evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt.¹⁹ The lack of direct evidence does not *ipso facto* bar the finding of guilt against the appellant. As long as the prosecution establishes the appellant's participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the appellant committed the imputed crime, the latter should be convicted.²⁰ In the case at bar, those circumstances were enumerated by the CA in its decision, as follows:

First. Appellant had an axe to grind against Elizabeth for filing a robbery case against him. Elizabeth got murdered the night before the initial hearing of the case;

¹⁶ *People v. Salcedo*, G.R. No. 178272, 14 March 2011, 645 SCRA 248, 262 citing *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).

¹⁷ *People v. Peteluna, et. al.*, supra note 10.

¹⁸ *People v. Medice*, G.R. No. 181701, 18 January 2012, 663 SCRA 334, 346 citing *People v. Combate*, G.R. No. 189301, 15 December 2010, 638 SCRA 797, 810 further citing *People v. Padilla*, G.R. No. 167955, 30 September 2009, 601 SCRA 385

¹⁹ *People v. Alawig*, G.R. No. 187731, 18 September 2013 citing *People v. Manchu*, G.R. No. 181901, 29 November 2008, 572 SCRA 752, 759.

²⁰ *People v. Villamor*, G.R. No. 187497, 12 October 2011, 659 SCRA 44, 50 citing *People v. Solangon*, G.R. No. 172693, 21 November 2007, 537 SCRA 746 and *People v. Villarino*, G.R. No. 185012, 5 March 2010, 614 SCRA 372.

Second. Rolando saw appellant near the jeepney's left rear, holding a gun, right after he heard a gunshot;

Third. Right before the incident, Aneline saw appellant holding something in his hand wrapped in a black cloth, which looked like a gun;

Fourth. Immediately after Aneline entered her house, she heard a gunshot and when she peeped through the window, she saw appellant standing by the side of the jeepney where Elizabeth's lifeless body was sprawled. Shortly after, Aneline saw appellant running towards the direction of Elizabeth's house. x x x;

Fifth. Notably, appellant himself did not accuse Rolando and Aneline of any [ill] motive to falsely testify against him and cause his damnation for such a serious crime of murder. Although he claims their loyalty belonged to the victim and her family, loyalty does not equate with perjury, let alone, persecution of an innocent person [sic]. Settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.

“[C]ircumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt. All the foregoing elements were sufficiently established in this case.”²¹

Anent the amount of damages, we sustain the grant of actual damages in the amount of ₱29,500.00, the same being supported by official receipts. We likewise affirm the CA's award of ₱50,000.00 as moral damages to the heirs of the victim in addition to civil indemnity. The grant of moral damages is mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim.²²

In conformity with current jurisprudence, however, we increase the amount of civil indemnity from ₱50,000.00 to ₱75,000.00.²³ Civil indemnity is given without need of proof other than the fact of death as a result of the crime and proof of appellant's responsibility for it.²⁴ We also

²¹ *People v. Alawig*, supra note 19 citing *People v. Gaffud, Jr.*, G.R. No. 168050, 19 September 2008, 566 SCRA 76, 85.

²² Id. citing *People v. Casta*, G.R. No. 172871, 16 September 2008, 565 SCRA 341, 361.

²³ *People v. Aquino*, G.R. No. 201092, 15 January 2014 and *People v. Dadao*, G.R. No. 201860, 22 January 2014.

²⁴ *People v. Alawig*, supra note 19 citing *People v. Berondo, Jr.*, G.R. No. 177827, 30 March 2009, 582 SCRA 547, 554-555.

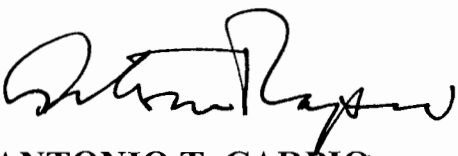
increase the award of exemplary damages granted by the CA from ₱25,000.00 to ₱30,000.00 consisted with prevailing jurisprudence.²⁵


WHEREFORE, the Decision of the Court of Appeals dated 27 May 2010 in CA-G.R. CR HC No. 01806 is **AFFIRMED** with the following **MODIFICATIONS** (1) that the amount of civil indemnity is increased from ₱50,000.00 to ₱75,000.00; and (2) that the amount of exemplary damages is increased from ₱25,000.00 to ₱30,000.00. An interest, at the rate of six percent (6%) per annum shall be imposed on all the damages awarded in this case from the date of finality of this judgment until they are fully paid.²⁶

SO ORDERED.

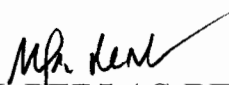

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

²⁵ *People v. Ibañez, et. al*, G.R. No. 197813, 25 September 2013 citing *People v. Barde* G.R. No. 183094, 22 September 2010, 631 SCRA 187, 220.

²⁶ *People v. Dulay*, G.R. No. 194629, 21 April 2014 citing *People v. Lagman*, G.R. No. 197807, 16 April 2012, 669 SCRA 512, 529; *People v. Cayanan*, G.R. No. 200080, 18 September 2013.

A T T E S T A T I O N

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, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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