

EN BANC

[G.R. NO. 173551, October 04, 2007]

ARNALDO MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

For review is the Decision^[1] and Resolution^[2] dated 30 November 2005 and 5 July 2006, respectively, of the Court of Appeals in CA-G.R. CR-H.C. No. 00446, affirming with modification the Decision^[3] and Order^[4] of the Lipa City Regional Trial Court (RTC), Branch 12, dated 20 October 2004 and 24 November 2004, respectively, in Criminal Case No. 0582-98 convicting petitioner Arnaldo Mendoza of the crime of murder, and imposing upon him the supreme penalty of death plus civil indemnity, actual, moral and exemplary damages.

On 6 October 1998, petitioner and his relatives by affinity, namely, Manolito Gonzales (Manolito), Glenn Gonzales (Glenn) and Ruperto de Villa (Ruperto), were indicted in an Information^[5] for murder, allegedly committed as follows:

That on or about the 1st day of September, 1998, at about 1:30 o'clock in the afternoon, at Barangay Lumanglipa, Municipality of Mataasnakahoy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed short firearms and M-16 rifle, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery, evident premeditation and grave abuse of superior strength and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms suddenly and without warning one Ernesto Velasquez y Ciruelas, thereby inflicting upon the latter gunshot wounds on the different parts of his body, which directly caused his death.

After evading arrest for around four years, petitioner surrendered to the authorities, while his co-accused Manolito, Glenn and Ruperto remained at large. When arraigned on 14 August 2002, petitioner, with the assistance of counsel *de parte*, pleaded "Not Guilty" to the charge.^[6] Thereafter, trial on the merits ensued.

Gathered from the records are the following facts:

Petitioner is Manolito's brother-in-law, while the latter is Glenn's father. Ruperto is Manolito's cousin.^[7]

On 31 August 1998, at about 5:00 in the afternoon, the victim, Ernesto C. Velasquez (Ernesto), and his friends were drinking and singing outside the house of Ernesto's

parents at Barangay Lumanglipa, Mataasnakahoy, Batangas when a gunshot rang out. Ernesto ran towards the road in front of his parent's house and saw Glenn driving a jeepney loaded with several passengers and heading towards the southern direction. Minutes later, Glenn, who was driving alone this time and heading towards the northern direction, passed again in front of the house of Ernesto's parents. Ernesto flagged down and asked Glenn who had fired a gunshot earlier in front of his parent's house. Glenn responded, "*Wala ka nang pakialam kung sino ang nagpaputok!*" Irked, Ernesto pushed Glenn's left chin with his palm and told the latter "*Umalis ka na, bastos ka!*" When Glenn was about to leave, he threatened Ernesto, "*Humanda ka, babalikan ka namin, papatayin ka namin!*"^[8]

On 1 September 1998, at around 8:00 in the morning, petitioner, Glenn, Manolito and Ruperto boarded a red Nissan Sentra Super Saloon car with plate number UBU-674 and traversed the southern road of Barangay Lumanglipa, Mataasnakahoy, Batangas. Petitioner drove the car.^[9]

At about 9:30 in the morning of 1 September 1998, petitioner, Glenn, Manolito and Ruperto, on board the same car, arrived at the house of Ernesto's parents at Barangay Lumanglipa, Mataasnakahoy, Batangas. Petitioner and Ruperto went out of the car and inquired from Ernesto's wife, Vida Velasquez (Mrs. Velasquez), the whereabouts of Ernesto. Mrs. Velasquez replied that Ernesto was in Mataasnakahoy. Thereafter, petitioner, Glenn, Manolito and Ruperto left and proceeded to the direction of Mataasnakahoy.^[10]

At 1:30 in the afternoon of 1 September 1998, petitioner, Glenn, Manolito and Ruperto reached Mataasnakahoy and parked the car near a chapel. Petitioner went out of the car while Glenn, Manolito and Ruperto remained inside. Petitioner then walked towards a group of persons, among them Ernesto, who were playing a card game called *tong-its* near the chapel. Petitioner approached Ernesto and asked, "*Ikaw ba si Ernesto Velasquez?*" Ernesto answered, "*Ako nga po.*" Petitioner asked him again, "*Ay bakit ganoon, bakit mo sinampal agad si Glenn Gonzales?*" Ernesto retorted, "*Hindi ko sinampal, nilamas ko lamang ang bibig dahil masama ang nalabas sa bibig niya.*" Subsequently, petitioner called Glenn, who was inside the car. When Glenn alighted, petitioner told Glenn, "*Yon pala namay nilamas lamang ang bibig mo ay anong desisyon mo?*" Without saying a word, Glenn drew a short firearm, approached Ernesto frontally and shot the latter who was sitting at that moment. Ernesto stood up and tried to run, but he fell towards the ground. Glenn fired more shots at Ernesto, who was lying on the ground. Petitioner also drew a short firearm and shot Ernesto once. When petitioner and Glenn were about to board the car, petitioner noticed that Ernesto was still alive. Thus, petitioner told Manolito and Ruperto who were at the backseat of the car, "*Pare, buhay pa ito, gamitin mo yung mahaba.*" Ruperto then handed an M-16 armalite to Manolito. The latter took the armalite and moved to the driver's seat. Thereupon, Manolito shot Ernesto with the armalite. Ruperto also shot Ernesto with a short firearm. When petitioner was about to board the car, he brandished his short firearm and shouted, "*Sino pa sa inyo?*" Thereafter, petitioner, Glenn, Manolito and Ruperto left the crime scene on board the car. Subsequently, several persons brought Ernesto to the hospital where he was pronounced dead on arrival.^[11]

Petitioner denied any involvement in the killing of Ernesto. He alleged that on 1 September 1998, at about 9:30 in the morning, Manolito and Glenn arrived at his

house at Barangay II, Mataasnakahoy, Batangas. Manolito and Glenn told him that they will hitch a ride with him in going to Barangay Lumanglipa since petitioner will also go to the said place with his car to buy *tilapia* from his mother-in-law for the birthday of his son on the next day, September 2.^[12] While on their way to Barangay Lumanglipa, Manolito and Glenn asked him if they can pass by the house of Ernesto's parents. He agreed. However, upon reaching Barangay Lumanglipa, Manolito and Glenn changed their minds and instead requested him to proceed to the barangay hall of Lumanglipa. While traversing the road leading to the barangay hall, they saw Ruperto in a nearby chapel. Manolito and Glenn told him to stop the car and wait for them. Manolito and Glenn alighted from the car and talked with Ruperto. Petitioner drove the car a little farther and parked it beside the road.^[13]

Later, he went out of the car and decided to go to the house of "Pareng Digo." But before he could go farther, he heard gunshots and saw some persons scampering. He went back inside the car and started the engine. When he maneuvered the car towards the road back to Barangay II, Mataasnakahoy, Manolito, Glenn and Ruperto suddenly appeared and boarded the car. The three, who were nervous and jittery, told him to speed up the car. He then asked them, "*Bakit, bakit ano bang nangyari?*" One of the three whom he could no longer recall told him, "*Basta idiretso mo at saka na kami magpapaliwanag sayo*" After traveling for a few minutes, one of the three whom he could not also remember directed him to pull over on the side of the road because they will just talk to somebody. He told the three that he will go ahead and that he was leaving the car to them. He immediately went out of the car and boarded a jeepney bound for Lipa City. Upon seeing a telephone booth along the way, he alighted from the jeepney, entered the telephone booth and called his house at Barangay II, Mataasnakahoy. A person, whom he again failed to recall, answered his call and instructed him to proceed to his house/residence at Sta. Cruz, Manila.^[14]

Subsequently, he boarded a bus bound for Manila. Upon reaching his house/residence at Sta. Cruz, Manila, he slept. When he woke up the next morning, his wife told him that he was implicated in the murder of Ernesto.^[15]

After trial, the RTC rendered a Decision dated 13 October 2004 finding petitioner guilty beyond reasonable doubt of the crime of murder. Thus:

WHEREFORE, the Court finds the accused, ARNALDO MENDOZA, guilty beyond reasonable doubt, as co-principal by direct participation, of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, with one (1) aggravating circumstance, and sentences him to suffer the penalty of DEATH.

Arnaldo Mendoza is also ordered to pay the heirs of Ernesto Velasquez the sums of P50,000.00, as indemnification for his death, P35,000.00, as actual damages, P100,000.00 as moral damages and P50,000.00 as exemplary damages and to pay his proportionate share of the costs. For insufficiency and unreliability of the evidence of loss of earning capacity, no award for the same is made.^[16]

Petitioner filed a Motion for Reconsideration dated 25 October 2004,^[17] and a Supplemental Motion for Reconsideration^[18] dated 8 November 2004 which were denied by the RTC in its Order dated 24 November 2004.

Undaunted, petitioner appealed to the Court of Appeals. On 30 November 2005, the appellate court promulgated its Decision affirming with modification the RTC decision. The modification pertains only to the amount of moral and exemplary damages. The appellate court decreed:

WHEREFORE, the decision of the Regional Trial Court of Lipa City, finding accused-appellant ARNALDO MENDOZA **GUILTY** beyond reasonable doubt of murder and sentencing him to suffer the supreme penalty of death is hereby **AFFIRMED**. With regard to the civil aspect of the case, except with respect to the civil indemnity and actual damages, same is **MODIFIED** to read as follows: Appellant is hereby ordered to pay the heirs of the victim the amount of P50,000.00 as moral damages and P25,000.00 as exemplary damages.

However, pursuant to Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases, We refrain from entering judgment and, instead, forthwith certify the case and elevate its entire record to the Supreme Court for further review.^[19]

Petitioner filed a Motion for Reconsideration dated 3 January 2006^[20] but was denied by the appellate court in its Resolution dated 5 July 2006.

Before us, petitioner assigns in his Petition,^[21] Supplemental Petition for Review^[22] and Supplemental Brief ^[23] the following errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE CREDIBLE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT CONSPIRACY EXISTS AND THAT AGGRAVATING CIRCUMSTANCES OF EVIDENT PREMEDITATION AND ABUSE OF SUPERIOR STRENGTH ATTENDED THE KILLING OF THE VICTIM.

III.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT ACCUSED IS NOT ENTITLED TO THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

IV.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR

IN DISREGARDING THE FACT THAT THE TRIAL JUDGE TOTALLY DENIED
ACCUSED-APPELLANT OF HIS DAY IN COURT.

Anent the first issue, petitioner maintains that the prosecution failed to establish the true identity of the person who shot to death Ernesto; that the prosecution's alleged eyewitness Dante Ciruelas (Ciruelas) did not mention in his affidavit that he saw petitioner shoot Ernesto after the latter was shot by Glenn, whereas during the trial, Ciruelas testified that he saw petitioner shoot Ernesto right after Glenn shot Ernesto; that such is a material and substantial inconsistency which adversely affects the credibility of Ciruelas as an eyewitness; and that Ciruelas's testimony was not corroborated by other prosecution witnesses.^[24]

Petitioner also asserts that there is a material discrepancy between the testimonies of Ciruelas and the doctor who autopsied the body of Ernesto, namely, Dr. Antonio S. Vertido (Dr. Vertido). According to petitioner, Ciruelas testified that during the incident, Glenn positioned himself at a distance of one meter in front of Ernesto, who was then seated on a chair and playing *tongits*, and shot the latter for the first time. Thus, if Ernesto was sitting and facing Glenn at the time he was allegedly shot by the latter, the bullet that hit Ernesto should have been located somewhere in his chest or in any upper portion of his body and that the gunshot wound should have a point of entry somewhere in the anterior or front portion of Ernesto's body and not at his back or in the posterior portion of his body. On the contrary, Dr. Vertido testified that, except for the gunshot wound in the right thigh of Ernesto, the entry points of the three other gunshot wounds were located at Ernesto's back or in the posterior part thereby indicating that the assailant was at Ernesto's back at the time the latter was shot.^[25]

Petitioner further avers that Dr. Vertido's testimony that the three gunshot wounds sustained by Ernesto were caused by an armalite bullet and that the fourth gunshot wound was caused by a .22 caliber bullet is very inconsistent with his other statement that all of the four gunshot wounds sustained by Ernesto have the same diameter; that no bullets and empty shells from the armalite allegedly used by Manolito were found in the body of Ernesto and in the crime scene; and that the deformed slug and empty shells presented by the prosecution were not subjected to ballistic examination.^[26]

As testimonial evidence, the prosecution presented the following witnesses, namely: Reynaldo Velasquez (Reynaldo), Ciruelas, Maximino Guterrez (Gutierrez), SPO1 Dominador Castillo (SPO1 Castillo), Dr. Vertido, Police Chief Inspector Ruben S. Castillo (Police Chief Castillo) and Mrs. Marquez.

Reynaldo, brother of Ernesto and a resident of Barangay Lumanglipa, Mataasnakahoy, Batangas, testified that he knows petitioner because petitioner and the latter's wife are natives of Barangay Lumanglipa, Mataasnakahoy, Batangas. He also knows Glenn, Manolito and Ruperto because they are all residents also of Barangay Lumanglipa, Mataasnakahoy, Batangas. He narrated that on 31 August 1998, at about 5:00 in the afternoon, he was with Ernesto and the latter's friends outside their parent's house located at Barangay Lumanglipa, Mataasnakahoy, Batangas. Ernesto and the latter's friends were then drinking and singing when a gunshot rang out. He immediately looked on the road opposite his parent's house and saw Glenn driving a jeepney filled with passengers and was traveling on the