

# FIRST DIVISION

[ G.R. No. 239783, January 12, 2021 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIUS  
CAPONGOL Y MAICO AND ARWIN BIO Y VILLEZA, ACCUSED-  
APPELLANTS.**

## D E C I S I O N

**ZALAMEDA, J.:**

On appeal<sup>[1]</sup> before this Court is the Decision<sup>[2]</sup> dated 19 December 2017 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 08752, affirming with modification as to damages the Decision<sup>[3]</sup> dated 28 July 2016 of Branch 257, Regional Trial Court (RTC) of Parañaque in Crim. Case No. 13-0929, convicting accused-appellants, Julius Capongol y Maico (Capongol) and Arwin Bio y Villeza (Bio) (accused-appellants, collectively), for the crime of murder.

### Antecedents

In an Information dated 16 August 2013, accused-appellants were charged with murder for the death of Josephine Sarmiento y Belarmino (Josephine), viz:

That on or about the 20th day of May 2013, in the City of Parañaque City (sic), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, conspiring and confederating, together with three (3) John Does, whose true names and whereabouts are still unknown, and all of them mutually helping and aiding one another, with intent to kill did then and there willfully, unlawfully and feloniously, attack, assault, shot and employ personal violence upon the person of one JOSEPHINE SARMIENTO y BELARMINO, who was hit in the lower jaw and upper chest, thereby inflicting upon her mortal wounds which directly caused her death, the said killing having been attended by the qualifying circumstances of treachery and evident premeditation, which qualify such killing to Murder.

**CONTRARY TO LAW.**<sup>[4]</sup>

Upon arraignment, accused-appellants pleaded not guilty to the charges.<sup>[5]</sup> After the termination of pre-trial proceedings, trial on the merits ensued.

The prosecution presented the following witnesses: (1) Peter Robert M. Sarmiento, <sup>[6]</sup> Josephine's husband; (2) PCI Benjamin Venancio Lara (PCI Lara), <sup>[7]</sup> the medico-legal officer who conducted autopsy on the victim's cadaver; (3) SPO4 Charlie Bayoca (SPO4 Bayoca), <sup>[8]</sup> one of the police officers who arrested the accused-

appellants; (4) SPO2 Rudy Dimson (SPO2 Dimson);<sup>[9]</sup> and (5) Jhonie Carl R. Honrubia (Honrubia),<sup>[10]</sup> the eyewitness to the crime.

### **Version of the Prosecution**

At around 3 o'clock in the afternoon of 20 May 2013, Josephine was dining at Pancake House in Parañaque City when accused-appellants entered the restaurant. Capongol approached the bar area and ordered iced tea, while Bio sat at a table near the door, opposite Josephine's table. Suddenly, Capongol shot Josephine twice, one in the head, and another on the chest. Bio acted as a lookout.

### **Version of the Defense**

Accused-appellants denied the charges.<sup>[11]</sup> Capongol testified that on 20 May 2012, he was at his house in Kapatiran Subdivision, Molino, Cavite. He cooked for his siblings and watched television all day. He denied being a hired killer. He also claimed that he did not know Josephine. He admitted to knowing Bio, who happened to be his co-accused in another case in Tagaytay.

Meanwhile, Bio<sup>[12]</sup> testified that on the day of the crime, he was in Calbayog City, Western Samar to attend a fiesta. Five (5) days later, he went to Montalban, Rizal. On 04 June 2013, he went to Tagaytay upon his cousin's invitation. While on his way there, he was arrested at a police checkpoint. He alleged that the police mauled and forced him to admit to crimes he did not commit. Likewise, he claims he does not know Josephine, and only met Capongol when they were both arrested and detained in Tagaytay. He denied that he was a hired killer.

### **Ruling of the RTC**

On 28 July 2016, the RTC convicted accused-appellants for the crime of murder. The RTC sentenced them to suffer the penalty of *reclusion perpetua* and ordered them to pay Josephine's heirs Php75,000.00 as moral damages.<sup>[13]</sup>

The RTC ruled that accused-appellants are hired killers, who conspired to kill Josephine.<sup>[14]</sup> It found Honrubia's positive identification of accused-appellants and candid narration of how the shooting occurred to be credible.<sup>[15]</sup> The RTC noted that both accused-appellants were also charged for the murder of the Registrar of Deeds of Tagaytay City. Capongol was likewise an accused in a separate murder case in Las Piñas.<sup>[16]</sup>

The trial court concluded that the crime was attended by evident premeditation and treachery, which qualified the crime to murder. <sup>[17]</sup>

### **Ruling of the CA**

On 19 December 2017, the CA affirmed, with modifications as to the damages, accused-appellants' conviction. In addition to moral damages, both accused-

appellants were order to pay Josephine's heirs, Php75,000.00 as civil indemnity and Php30,000.00 as exemplary damages. It also imposed legal interest at the rate of 6% *per annum* on all of the monetary awards from the date of the judgment until full payment.<sup>[18]</sup>

The CA agreed with the RTC that Honrubia positively identified accused-appellants as the perpetrators of the crime, and sufficiently narrated each of their participation in killing Josephine.<sup>[19]</sup> It concluded that while Bio did not actually shoot Josephine, his behavior at the crime scene showed that he was one with Capongol in consummating the crime.

The appellate court did not give weight to the accused-appellants defense of alibi.

Hence, this appeal.

### **Issues**

Accused-appellants claim that:

#### **I.**

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITIES OF THE ASSAILANTS BEYOND REASONABLE DOUBT.

#### **II.**

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE MATERIAL INCONSISTENCIES AND IMPROBABILITIES IN THE TESTIMONY OF THE LONE EYE WITNESS.<sup>[20]</sup>

### **Issue**

Ultimately, the controversy boils down to whether or not the CA correctly affirmed accused-appellants' conviction for the crime of murder.

### **Ruling of the Court**

Initially, this Court would address the sufficiency of the allegations in the Information.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be

informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.<sup>[21]</sup>

In *People v. Solar*,<sup>[22]</sup> this Court made a pronouncement that a criminal Information, the State must specify in detail the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now include in the Information the specific acts and circumstances constituting the attendant circumstances in the crime committed.

In this case, the Court notes that the Information merely alleged "with evident premeditation and treachery"<sup>[23]</sup> without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.<sup>[24]</sup>

Ordinarily, the non-allegation of a detail that aggravates an accused's liability serves to bar the introduction or consideration of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.<sup>[25]</sup> Nonetheless, this Court finds the defect in the allegations of the Information, in the case at bar, insufficient to cause the downgrade of the accused-appellant's conviction due to his failure to timely assert his right in the proceedings before the RTC and CA.

There are various procedural remedies available to an accused who believes that the Information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.<sup>[26]</sup> Likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective Information.<sup>[27]</sup> In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

In this case, it does not appear that accused-appellants raised any objection to the sufficiency of the allegations in the Information at any stage of the proceedings. Not only did accused-appellants fail to move for a bill of particulars or to quash the Information before the arraignment, they also participated in the trial. It is now too late in the proceedings to invalidate the Information without unduly prejudicing the State, which was also deprived of the opportunity to amend the Information<sup>[28]</sup> or submit a bill of particulars in the trial court.<sup>[29]</sup>

We now proceed to review the propriety of accused-appellants' conviction.

In reviewing criminal cases, this Court's duty is to determine not only on whether

the elements of a crime were committed but also on whether assailants were legally and credibly identified.<sup>[30]</sup> After this Court's perusal of the records of this case, this Court affirms Capongol's conviction, but acquits Bio for the crime of murder.

There is no litmus test to eyewitness identifications since it is intrinsically linked with the complexities and frailties of human behavior recognizing the dangers of absolute reliance to eyewitnesses, jurisprudence has advanced the "totality of circumstances" test, which encourages courts to look into various factors to determine the veracity of an eyewitness' identification of the accused. In the past, some of the factors considered by courts as crucial in adjudging the identification of the perpetrators are the following:

1. the witness' opportunity to view the malefactor at the time of the crime;
2. the witness' degree of attention at that time;
3. the witness' specialized skills or extraordinary capabilities;
4. the accuracy of any prior description given by the witness;
5. the degree of certainty demonstrated by the witness at the moment of identification;
6. the length of time between the crime and the identification made by the witness;
7. the suggestiveness of the identification procedure undergone by a witness.<sup>[31]</sup>

In this case, both the RTC and CA relied heavily on the testimony of the prosecution's witness Honrubia who identified accused-appellants as Josephine's killers. However, what is clear from the records is that while Honrubia positively identified Capongol, the same is not true for Bio.

*The prosecution witness positively identified Capongol*

Contrary to accused-appellants' contention, Honrubia, who was the on-duty cashier at the Pancake House restaurant, was consistent in pointing Capongol as the gunman who shot Josephine. In his sworn statement, Honrubia narrated:

xxx

Q Maari mong (*sic*) bang ikuwento o isalaysay sa akin ang iyong nakitang ins[i]dente sa loob ng PANCAKE House?

A Opo sir, ganito po yun habang nakaduty po ako ang natatandaan ko po ay yung grupo nila Josephine B[.] Sarmiento ang tanging kustomer namin at siya ay may kasamang dalawang babae at sila ay nakaupo sa lamesa malapit sa Bar Area namin [nang] may pumasok na dalawang lalaki na nagpanggap din customer at ang isa po ay lumapit sa akin para umorder ng inumin[, ] ang isa ay umupo sa tapat ng mesa nila mam Josephine Sarmiento.

Q Ano ang sumunod na nangyari na iyong nasaksihan?

A Habang naglilinis ako sa loob ng Bar Area at may lumapit ang isang lalaki at umorder sa akin ng dalawang iced tea at