

## FIRST DIVISION

[ G.R. No. 233194, September 14, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALMAR LAGRITA Y FLORES AND REX MIER (ACQUITTED), ACCUSED. ARVIN ALBARAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

Before us is an appeal of accused-appellant Arvin Albaran from the Decision<sup>[1]</sup> dated May 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01340-MIN, which affirmed with modifications the Judgment<sup>[2]</sup> dated February 21, 2013 of the Regional Trial Court (RTC), Branch 11, Davao City, finding him and co-accused Almar Lagrita guilty beyond reasonable doubt of the crime of Murder, and acquitting co-accused Rex Mier.

Appellant, together with Lagrita and Mier, were charged with murder in an Information dated April 23, 2007, the accusatory portion of which reads:

That on or about April 21, 2007, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the accused Almar Lagrita, armed with an ipil-ipil firewood, conspiring and confederating with all the other above-named accused, with intent to kill and with treachery, willfully, unlawfully and feloniously struck with said Ipil-ipil firewood the nape of one Reynald Giron, which caused the latter's death.

Contrary to law.<sup>[3]</sup>

Upon arraignment, all three accused,<sup>[4]</sup> duly assisted by their respective counsels, entered a plea of not guilty. Trial thereafter ensued.

The prosecution presented the testimonies of Police Chief Inspector Alex Uy (*PCI Uy*), PO3 Gennie Palma (*PO3 Palma*), Rogelio Giron, Angela Abariento, Jomar Pesania (*Pesania*),<sup>[5]</sup> and Benjie Lapuz (*Lapuz*).<sup>[6]</sup> Their testimonies established the following facts:

At 9:30 in the evening of April 21, 2007, Reynald Giron (*victim Reynald*) together with Lapuz, who was seated beside him, and Pesania, were having a conversation in front of Jeffrey store located at Phase 2, Molave Homes, Indangan, Davao City.<sup>[7]</sup> Later, the group of Lagrita, Mier and appellant arrived at the store.<sup>[8]</sup> Reynald and Lapuz then stood up thinking that the group would buy something.<sup>[9]</sup> Lagrita went behind Reynald and suddenly, with a piece of firewood, struck the latter on the lower portion of the back of his neck causing him to fall on the ground.<sup>[10]</sup> Mier, with appellant standing by, warned Reynald's companions, Pesania and Lapuz, saying

"*ayaw Kalampag*" (*don't react or resist*).<sup>[11]</sup> Lagrita, using the same firewood, also struck Lapuz hitting him on his forehead, right shoulder, and neck. Lapuz then fell down on his buttocks while parrying the attack.<sup>[12]</sup> Lagrita, appellant and Mier fled the scene together. Lapuz then helped Reynald who was then bleeding from his neck.<sup>[13]</sup> While Pesania ran to the house of his uncle-in-law Rodil Giron, who is the brother of Reynald, to inform him of what happened, and together they went back to the crime scene,<sup>[14]</sup> and saw Reynald lying face down on the ground and was no longer breathing.

PO3 Palma and another policeman of the Buhangin Police Precinct were dispatched to the crime scene and they saw overturned chairs and disarrayed pieces of firewoods. It was learned that Lagrita, Mier and appellant were the suspects in striking or hitting the victim. The policemen went to Lagrita's house and invited him to the station for questioning and later turned him over to the investigation officer. PO3 Palma recovered from the crime scene the piece of firewood with traces of blood which was allegedly used in striking Reynald's nape.<sup>[15]</sup>

PCI Uy, a Medico-Legal Officer of Davao City, conducted an autopsy on Reynald's corpse. He found a contusion and lacerated wounds at the back area of the head, but found no external injuries like contusion or wound as well as internal injuries in the body.<sup>[16]</sup> He certified that the cause of Reynald's death was intracranial hemorrhage secondary to traumatic blunt injuries.<sup>[17]</sup>

Rogelio<sup>[18]</sup> and Angela,<sup>[19]</sup> victim Reynald's brother and sister, respectively, testified on the expenses incurred for the funeral and burial of Reynald, but were not able to present all the receipts thereof.

On the other hand, the defense presented a totally different scenario.

Lagrita testified that he only started living in Molave Homes, Indangan, Davao City on April 4, 2007 and had stayed there for only two weeks.<sup>[20]</sup> At 9:00 p.m. of April 21, 2007, he was at home waiting for the call of his wife when a patrol car passed by and the policemen asked him if he knew a certain Rex Mier who had a tattoo.<sup>[21]</sup> He denied knowing him, but he was still brought to the station since he had a tattoo on his right arm and was detained.<sup>[22]</sup> Later, witnesses Pesania and Lapuz arrived at the station and confirmed that he was not Rex Mier, but claimed that he was also with the latter. He was shocked to learn of the murder charge.<sup>[23]</sup> He denied knowing Pesania and Lapuz as he met them only at the police station.

Mier narrated that at 8:00 p.m. of April 21, 2007, he was on his way home to New Corella, Davao del Norte, coming from Cabantian, Davao, and decided to stop by Molave Homes, Indangan, to visit his older brother Reynaldo Mier who, however, was not around.<sup>[24]</sup> He then went to Jeffrey's store at 9:30 p.m. to buy cigarettes and saw five (5) people drinking, which included Lapuz, a co-worker at Molave Homes where he used to work.<sup>[25]</sup> He then proceeded home at 10:00 p.m. He only learned of the murder charge against him upon his arrest on his wedding day.<sup>[26]</sup>

Appellant admitted that he knew his co-accused Mier, being his cousin, but denied knowing his co-accused Lagrita. On the night of April 21, 2007, he was on his way

home from his aunt's house and passed by Jeffrey's store in Molave Homes to buy noodles.<sup>[27]</sup> He saw people drinking outside the store and was invited by the victim for a drink, but he refused. When he was about to leave, victim Reynald prevented him and suddenly punched him on his left jaw. He fell on the ground and Reynald started kicking him. He then saw pieces of firewood piled at the store and took one piece and hit Reynald on his chest.<sup>[28]</sup> When Reynald turned his back on him to get a piece of wood, he struck the former's nape.<sup>[29]</sup> He was then attacked by Reynald's companions so he tried to strike them back and ran away. He did not intend to kill Reynald, but was merely defending himself, and denied conspiring with the other co-accused.<sup>[30]</sup>

On February 21, 2013, the RTC issued its Judgment, the dispositive portion of which reads:

Wherefore, in view of all the foregoing, judgment is hereby rendered finding Almar Lagrita and Arvin Albaran GUILTY beyond reasonable doubt of the crime of MURDER as penalized under Art. 248 of the Revised Penal Code. They are hereby sentenced to suffer the penalty of *reclusion perpetua*.

They are, likewise, sentenced to pay the heirs of the deceased Reynald Giron, jointly and severally, the amount of FIFTY THOUSAND (P50,000.00) PESOS as civil indemnity and the further sum of THIRTY[-] FIVE THOUSAND FIVE HUNDRED THIRTY-FOUR [PESOS] and FIFTY-FOUR CENTAVOS (P35,534.54) as actual damages.

Accused Rex Mier is hereby ACQUITTED for failure of [the] prosecution to establish his guilt beyond reasonable doubt.

The City Warden of the Davao City Jail is hereby ordered to release Rex Mier from detention immediately unless he is being held for another crime.

SO ORDERED.<sup>[31]</sup>

The RTC gave credence to the testimonies of prosecution witnesses Pesania and Lapuz that they saw Lagrita hit Reynald on the nape causing the latter to fall on the ground unconscious and died. It found their testimonies to be positive and straightforward. The RTC did not accept appellant's claim of self-defense finding that even if Reynald first attacked him, there was unreasonable necessity of striking Reynald on the nape with a wood which was fatal.

The RTC found the presence of treachery when Lagrita picked up a piece of firewood and struck Reynald on the nape knowing that it would incapacitate the latter; and the attack was sudden and Reynald was hit from behind.

The RTC ruled that the prosecution failed to establish conspiracy among the accused. However, since appellant admitted that he hit Reynald with a piece of firewood without intending to cause his death, the RTC held that Lagrita and appellant acted on their own volition. On the other hand, it found that Mier was not categorically mentioned by the witnesses as having hit Reynald and was not shown

to have conspired and participated in the killing.

Lagrita and appellant filed a Notice of Appeal. However, the Appellant's Brief filed with the CA pertained only to appellant Albaran.

On May 8, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, the appeal is DENIED. The February 21, 2013 Judgment of the Regional Trial Court, Branch 11, Davao City in Criminal Case No. 61,284-07 for MURDER is AFFIRMED with MODIFICATIONS. The accused are ORDERED to pay, jointly and severally, the victim's heirs P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P75,000.00 as civil indemnity, in addition to the award of actual damages of P35,534.54. All monetary awards shall earn an interest of 6% per annum from the finality of this judgment until fully paid.<sup>[32]</sup>

The CA rejected appellant's allegations of unlawful aggression on the part of victim Reynald as it was not corroborated by any evidence other than his self-serving testimony which was short of the required clear and convincing evidence. It found unmeritorious appellant's contention that his testimony should be given more credence than that of the prosecution's version which is replete with inconsistencies; and found the testimonies of the prosecution witnesses to be consistent and coherent on substantial points and the noted discrepancies were sufficiently explained and justified.

The CA, nevertheless, ruled that granting, in line with appellant's defense, that it was the victim who started the commotion, the unlawful aggression had already ceased to exist when he struck the victim's nape.

The CA found the presence of treachery as the attack on Reynald was done not only in an unexpected and swift manner but with the means that would make him improbable to perceive it.

Dissatisfied, appellant files the instant appeal.

Appellant and the Office of the Solicitor General were required to submit their Supplemental Briefs, if they so desire.<sup>[33]</sup> However, both parties filed their respective Manifestations that they are no longer filing Supplemental Briefs, thus adopting the allegations and arguments in their respective Briefs filed with the CA.

Appellant contends that the CA erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt and when it failed to appreciate his claim of self-defense.

Appellant argues that prosecution witnesses Pesania and Lapuz gave conflicting testimonies on material points, *i.e.*, on the malefactors, and the attending circumstances prior to the striking of a piece of firewood on the victim Reynald. As to Pesania, appellant claims that during his testimony on September 8, 2009, he categorically declared that it was Lagrita who struck Reynald on the nape with the use of a piece of firewood. However, when he was asked during the earlier hearing held on September 3, 2007 as to who he was referring to when he said that they

immediately struck without saying anything, his answer was Tata Mier. With respect to Lapuz, appellant avers that while Lapuz identified Lagrita as the one who struck Reynald, he had also said that appellant struck them. Hence, appellant alleges that with the cited material inconsistencies, it can be gainfully said that these witnesses' account on the occurrence which led to the demise of Reynald cannot be appreciated against him.

We are not convinced.

We have gone over the records of the case and found that the alleged inconsistencies cited by appellant were properly explained by the witnesses in their subsequent testimonies. As to Pesania, he declared in his testimony on September 3, 2007, that it was Tata Mier who struck them. Upon a follow up question on him, he declared that Tata Mier struck nobody.<sup>[34]</sup> He was then asked to explain the contradiction of his statement and he said that he was nervous.<sup>[35]</sup> However, after he was no longer feeling nervous,<sup>[36]</sup> he had unequivocally identified Lagrita as the one who struck Reynald.<sup>[37]</sup> In fact, when he was called again to testify two years after the arrest of appellant and Mier, he never wavered in his identification of Lagrita as the one who struck Reynald despite the intense cross examinations of the two defense counsels.

On the other hand, we found that Lapuz had also consistently identified Lagrita as the one who struck Reynald and him. While he had mentioned once that appellant had struck them, he clarified that it was because the accused were in a group and they were together.<sup>[38]</sup> However, he clearly declared throughout his testimony that it was Lagrita who struck Reynald. In fact, he tapped Lagrita's shoulder when he was asked to identify the latter.<sup>[39]</sup>

While Pesania and Lapuz had positively identified Lagrita as the one who struck Reynald with a piece of firewood that caused his death on the night of April 21, 2007, appellant, however, testified and insisted that he was the one who struck Reynald in self-defense. He stated that on the night of April 21, 2007, he passed by a store on his way home to buy noodles when he noticed five people drinking outside the store. He was then invited by the victim Reynald, who was already intoxicated, for a drink but he refused; that Reynald got angry and punched him and continued to kick him even when he was already on the ground. He fell down near the pieces of wood that the store was selling, picked up a piece of firewood and hit Reynald on the chest; and that when Reynald turned his back and took a piece of wood, he then struck him on the nape.<sup>[40]</sup>

Appellant's narration was not at all proven by the evidence on record. Notably, the alleged drinking session among the victim Reynald and his companions never happened. Witness Pesania denied that they were drinking on that fateful night,<sup>[41]</sup> which found corroboration from PO3 Palma when he testified that he only saw upturned chairs and disarrayed pieces of firewood at the crime scene,<sup>[42]</sup> and the firewood used in striking Reynald. We quote, with approval, the CA's disquisition on this matter, thus:

It bears noting that when PO3 Jennie Palma and his team arrived at the crime scene, it was still in disarray. The said authorities saw firewood and