

SECOND DIVISION

[G.R. No. 242696, November 11, 2020]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZALDY BERNARDO Y ESPIRITU, MONROY FLORES Y CORPUZ, JESUS TIME Y CABESA, GILBERT PACPACO Y DIRECTO, GILBERT RAMIREZ Y DUNEGO, DANNY CORTEZ Y DONIETO, ROGELIO ANTONIO Y ABUJUELA, TOMMY CABESA Y VILLEGAS, AND MILA ANDRES GALAMAY, ACCUSED,

ZALDY BERNARDO Y ESPIRITU, MONROY FLORES Y CORPUZ, DANNY CORTEZ Y DONIETO, AND MILA ANDRES GALAMAY, ACCUSED-APPELLANTS.

DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated July 31, 2017 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 05124, **which affirmed with modification** the Joint Judgment^[3] dated April 7, 2011 of the Regional Trial Court of Pasig City. Branch 166 (RTC) finding accused Zaldy Bernardo y Espiritu (**Bernardo**), Monroy Flores y Corpuz (**Flores**), Jesus Time y Cabesa (Time), Gilbert Pacpaco y Directo (Pacpaco), Gilbert Ramirez y Dunego (Ramirez), Danny Cortez^[4] y Donieto (**Cortez**), Rogelio Antonio y Abujuela^[5] (Antonio), Tommy Cabesa^[6] y Villegas (Cabesa), and Mila Andres Galamay (**Galamay**; collectively, accused) guilty beyond reasonable doubt of the crimes of **Kidnapping for Ransom with Homicide**, as defined and penalized under Article 267 of the Revised Penal Code (RPC), and Murder, as defined and penalized under Article 248 of the RPC.

The Facts

The instant case stemmed from two (2) separate Informations filed before the RTC charging accused-appellants **Bernardo, Flores, Cortez, and Galamay** (accused-appellants) and their co-accused with the crimes of Kidnapping for Ransom with Homicide and Murder, the accusatory portions of which read:

Criminal Case No. 115554-H^[7]

That on or about July 2, 1998 at around 8:00 o'clock in the morning, in the Municipality of Cainta, Province of Rizal, above-named accused being private individuals, while conspiring, conniving, confederating and mutually helping one another, did then and there, with criminal and malicious intent willfully, unlawfully and feloniously, for the purpose of extorting ransom from one Dr. Eliezer Andres, Sr. and his family, in the amount of Ten Million Pesos (P10,000,000.00) Philippine Currency, kidnap, take and carry away Dr. Eliezer Andres, Sr. and brought him to

Jalajala, Rizal, which is within the jurisdiction of this Honorable Court, deprived him of his liberty, against his will and consent, accused pursuant to their plans take and carry away the Nissan Sentra of the victim and burned it in Norzagaray, Bulacan; that during his (Dr. Eliezer Andres, Sr.) detention, accused with intent to kill, willfully, unlawfully and feloniously assault and inflict physical harm on the victim and later shoot the victim with a firearm which caused his instantaneous death and afterwards dumped his body in Mabitac, Laguna, to the damage and prejudice of his heirs in such amount as maybe (sic) awarded to them by the provision of the Civil Code.

CONTRARY TO LAW.

Criminal Case No.115555-H^[8]

That on or about July 3, 1998, in the Municipality of Jalajala, Province of Rizal, and within the jurisdiction of this Honorable Court, above-named accused, while confederating, conniving conspiring and mutually helping one another, with evident premeditation, taking advantage of superior strength and employing means to weaken the defense of the victim, did then and there, with criminal and malicious intent to kill, willfully, unlawfully, feloniously assault and hit Igmedio U. Arcega with hard instruments, object, article causing the victim to suffer head injuries and with the use of firearm shoot the victim which caused his instantaneous death to the damage and prejudice of his heirs in such amount as maybe (sic) awarded to them by the provisions of the Civil Code.

CONTRARY TO LAW.

The prosecution alleged that on July 2, 1998, Dr. Eliezer Andres, Sr. (Dr. Andres, Sr.) and retired Major Igmedio Arcega (Major Arcega) went to Sta. Lucia Mall in Cainta, Rizal to separately meet with a group of people selling gold bars. However, Dr. Andres, Sr. did not return from the meeting. His son, Dr. Eliezer Andres, Jr. (Dr. Andres, Jr.), informed Major Arcega that his father was missing. Thus, the two of them returned to the mall to look for Dr. Andres, Sr. On the way, Major Arcega described to Dr. Andres, Jr. the appearance of the five (5) persons whom he and the elder Andres separately met that day.^[9]

As Dr. Andres, Jr. went around the mall, he noticed that he was being followed by four (4) suspicious men whose descriptions matched those provided by Major Arcega; three (3) of whom were eventually identified as Flores, Cortez, and Pacpaco.^[10] Wary of being followed, Dr. Andres, Jr. decided to discontinue his search and went home without finding his father. On the same day, Major Arcega himself also went missing.^[11]

Later that evening, Dr. Andres, Jr. received a phone call from a woman who claimed to have custody of his father and demanded ransom money for his release. Dr. Andres, Jr. recognized the voice of the female caller as that of **Galamay**, who was a frequent visitor in the Andres residence and with whom Dr. Andres, Sr. had previous dealings. Dr. Andres, Jr. then reported the matter to the Philippine National Police (PNP) and requested for monitoring and assistance during the payment of the

ransom money, which date and place were earlier agreed upon.^[12]

Thus, on July 4, 1998, at the actual payment of the ransom money in front of Aladdin Bus Terminal at España, Manila with the furtive presence of P/C Inspector Arthur de Guzman, P/C Inspector Warren de Leon, and other members of the PNP-Criminal Investigation and Detection Group (PNP CIDG),^[13] Dr. Andres, Jr. saw and identified the group of **Bernardo**, Pacpaco, Time, Cabeza, and Ramirez. Dr. Andres, Jr. personally handed the ransom money in a brown envelope to **Bernardo**, who gave it to Cabeza, who then rode a motorcycle and sped away. The exchange having been completed right there and then, Bernardo, Pacpaco, Time, and Ramirez were arrested by the PNP-CIDG. Meanwhile, the police officers followed Cabeza to a house in Camarin, Caloocan City where they found him together with **Flores**, Antonio, and Cortez in the living room, counting the previously-marked ransom money. They were all arrested and brought to the police station.^[14]

Meanwhile, the cadaver of an unidentified male person was discovered at Brgy. Amuyong, Mabitac, Laguna the previous day or on July 3, 1998.^[15] The autopsy^[16] conducted on the body revealed various injuries^[17] and the cause of death was a gunshot wound on the head and asphyxia by strangulation. Later on, Dr. Andres, Jr. positively identified^[18] the body as that of his father, Dr. Andres, Sr.

Subsequently, Antonio executed two (2) *Sinumpaang Salaysay* dated July 6^[19] and 8,^[20] 1998, respectively, with the assistance of his counsel, Atty. Nicomedes R. Martelino, Jr. In the July 6, 1998 *Sinumpaang Salaysay* (July 6 *Salaysay*), Antonio expressly admitted his and his co-accused's participation in the kidnapping of Dr. Andres, Sr. and confessed that the latter was already dead and that his car was brought to Norzagaray, Bulacan where it was burned.^[21] Meanwhile, in the July 8, 1998 *Sinumpaang Salaysay* (July 8 *Salaysay*), Antonio recounted the killing of Major Arcega in a farm in Brgy. Jala-jala, Rizal and likewise, implicated his co-accused in the crime. Upon recovery of Major Arcega's body therefrom - which his son, Joel Arcega, later identified^[22] - the autopsy^[23] revealed the cause of death to be a gunshot wound and traumatic injuries on the head.

For their part, all the accused, who were arrested on different occasions and in various locations, interposed their own defenses of denial and *alibi*, each asseverating their own versions of torture, wrongful accusation, and frame-up.^[24]

The RTC Ruling

In a Joint Judgment^[25] dated April 7, 2011, the RTC found all the accused **guilty** beyond reasonable doubt of Kidnapping for Ransom with Homicide in *Criminal Case No. 115554-H*, and accordingly, sentenced each of them to suffer the penalty of *reclusion perpetua* without eligibility for parole^[26] and to jointly and severally indemnify the heirs of Dr. Andres, Sr. the amounts of P75,000.00 as civil indemnity, P100,000.00 as exemplary damages, P100,000.00 for each member of the family as moral damages, and P117,455.00 as actual damages. Similarly, the RTC found all the accused guilty beyond reasonable doubt of Murder in *Criminal Case No. 115555-H*, and accordingly, sentenced them to suffer the penalty of *reclusion perpetua* and

to jointly and severally indemnify the heirs of Major Arcega the amounts of P75,000.00 as civil indemnity and P100,000.00 as exemplary damages.^[27]

The RTC found the confluence of all the elements^[28] of the crime of Kidnapping for Ransom with Homicide, noting that the prosecution had established the participation of all the accused in the crime. On the other hand, the defenses of bare denial and *alibi* were not given weight in light of Dr. Andres, Jr.'s positive identification of the perpetrators of the crime, which were bolstered by the documentary evidence, as well as Antonio's *voluntary* extrajudicial confession. Likewise, the RTC held that the prosecution had sufficiently proved the elements^[29] of the crime of Murder in light of Antonio's narration that Major Arcega was hit at the back of his head with a shovel, which eventually caused his death.^[30]

All the accused appealed^[31] their conviction to the CA. However, Antonio and Ramirez subsequently withdrew^[32] their appeal, leaving only **Bernardo, Flores, Time, Pacpaco, Cortez, Cabesa, and Galamay** to pursue theirs.^[33]

The CA Ruling

In a Dec'ision^[34] dated July 31, 2017, the CA **affirmed** the conviction of Bernardo, Flores, Time, Pacpaco, Cortez, Cabesa, and Galamay but **modified** the amounts of damages awarded, as follows: (a) in *Criminal Case No. 115554-H* for Kidnapping for Ransom with Homicide, to jointly and severally pay the heirs of Dr. Andres, Sr. the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P117,455.00 as actual damages, and; (b) in *Criminal Case No. 115555-H* for Murder, to pay the heirs of Major Arcega the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as temperate damages.^[35]

Echoing the RTC's findings, the CA found the presence of all the elements of the crimes charged, further noting the lack of ill motive on the part of the prosecution witnesses to falsely implicate the accused. Moreover, it ruled that Antonio's extrajudicial confession was voluntarily made with the assistance of an independent counsel, which was supported by the withdrawal of his appeal. The CA added that the identification of Galamay by Dr. Andres, Jr. had been duly established, having known her personally through several real estate dealings. On the other hand, the bare denials of the accused cannot prevail over the positive and straightforward testimonies of the prosecution witnesses pointing to them as the perpetrators of the crimes.^[36]

Only accused-appellants **Bernardo, Flores, Cortez, and Galamay** filed a notice of appeal^[37] before the Court.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellants' conviction for the crimes charged.

The Court's Ruling

I.

At the outset, it is well to note that during the pendency of this appeal, the Court received a letter^[38] dated May 8, 2019 from the Bureau of Corrections stating that one of the accused-appellants, Cortez, had already died on May 17, 2016, as evidenced by copies of his Death Report^[39] and Certificate of Death.^[40] In light of Cortez' supervening death, the Court is constrained to dismiss the instant criminal actions against him inasmuch as he can no longer stand as an accused herein. In the same vein, the civil action impliedly instituted for the recovery of the civil liability *ex delicto* is likewise *ipso facto* dismissed, grounded as it is on the criminal action. However, it is well to clarify that Cortez' civil liability, if any, in connection with his acts against the victims, may be based on sources other than delicts; in which case, the victims' heirs may file separate civil actions against Cortez' estate, as may be warranted by law and procedural rules.^[41] As such, the instant criminal cases must be declared closed and terminated as to Cortez in view of his supervening death.

II.

It is well-settled that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[42]

Guided by the foregoing considerations, and as will be explained hereunder, the Court: (a) affirms accused-appellants' and their co-accused's conviction for Kidnapping for Ransom with Homicide of Dr. Andres, Sr.; and (b) acquits accused-appellants and their co-accused, except for Antonio, for the Murder of Major Arcega.

**Accused-
appellants
are guilty of
the special
complex
crime of
Kidnapping
for Ransom
with
Homicide**

The elements of Kidnapping for Ransom under Article 267 of the RPC, as amended, are as follows:(a) intent on the part of the accused to deprive the victim of his/her liberty; (b) actual deprivation of the victim of his/her liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim. In the special complex crime of Kidnapping for Ransom with Homicide, the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought.^[43]