

SECOND DIVISION

[G.R. No. 219614, July 10, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
PONCIANO ESPINA Y BALASANTOS ALIAS "JUN ESPINA AND
JR", ACCUSED-APPELLANT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision^[1] dated November 17, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06178 affirming with modification the trial court's verdict of conviction^[2] for murder against Ponciano Espina y Balasantos.

The Proceedings Before the Trial Court

By Information^[3] dated September 3, 2007, appellant was charged with murder for the killing of Ernando Reyes, Jr., thus:

That on or about the 26th day of May, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ERNANDO REYES, thereby inflicting upon the latter mortal gunshot wound on the trunk, which eventually caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength, which qualify (sic) the killing to murder and aggravated by nighttime and use of a firearm, which is a deadly weapon, that is, all to the damage and prejudice of the heirs of ERNANDO REYES.

CONTRARY TO LAW.

On arraignment, appellant pleaded "not guilty."^[4] During the trial, Russel Michael and Ernando's wife Evelyn Reyes testified for the prosecution. On the other hand, appellant alone testified for the defense.

The Prosecution's Version

On May 26, 2005, around 8:30 in the evening, appellant Ponciano Espina, Ernando Reyes, Jr., Russel, Pio Manjares and a certain Dante were having a drinking spree inside Pio's house in Ibayo, Tipas, Taguig City. While the drinking spree was ongoing, appellant left. When he returned, he showed his drinking companions a .45-caliber gun and asked them to hold it, which they did. He later retrieved the gun and tucked it on his waist.^[5]

After a while, appellant pulled out the gun and pointed it close to Ernando's chest, posing these questions "*Ano gusto? Patay buhay?*" Then right off, he shot Ernando in the upper right chest. Everyone else in the group scampered away. But shortly after, Russel came back and helped rush Ernando to the Rizal Medical Center. Ernando later died in the hospital.^[6] His wife Evelyn Reyes and his relatives incurred funeral expenses of P25,500.00.^[7] They sought damages of P200,000.00.^[8]

The prosecution offered the following documentary evidence:

Exhibit "A" - Affidavit of Evelyn Reyes^[9]

Exhibit "B" - Affidavit of Russel Michael^[10]

Exhibit "G" - Death Certificate of Ernando Reyes, Jr.^[11]

Exhibit "H" - San Roque Parish Receipt^[12]

The Defense's Version

Appellant denied the charge and even denied knowing Ernando, Evelyn, Russel, or Pio.^[13] According to him, in 2005, he resided in Las Piñas City and had never before been to Taguig City. It was only on August 27, 2006 that he started staying in his cousin's house at DC Clamp Compound, Ibayo Tipas, Taguig City.^[14]

On September 14, 2006, he got involved in a stabbing incident in Brgy. Kalawaan, Pasig City. He surrendered to the barangay officials who turned him over to the nearest police station. He was charged with frustrated homicide. Four (4) days later, on September 18, 2006, a warrant of arrest for the present case of murder was served on him. Thus, he only learned of the murder charge in the Pasig City police station where he got detained for the frustrated homicide charge.^[15]

On February 6, 2012, the trial court acquitted him in the frustrated homicide case.^[16] He, however, remained under custody for the alleged murder of Ernando.

The defense offered copy of the Decision^[17] dated February 6, 2012 of Regional Trial Court -Branch 67, Pasig City where appellant was acquitted in the frustrated homicide case.

The Trial Court's Ruling

Appellant was pronounced guilty of murder, qualified by treachery.^[18] The trial court found that when appellant shot Ernando in a sudden and unexpected manner, sans any provocation from Ernando, the latter was rendered unable to retaliate or defend himself. It rejected appellant's bare denial and alibi in light of the prosecution's positive and categorical evidence pointing to him as the culprit,^[19] thus:

WHEREFORE, this Court finds accused PONCIANO ESPINA Y BALASANTOS **GUILTY BEYOND REASONABLE DOUBT** of the crime of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua* which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

Accused is hereby ordered to pay the heirs of Ernando Reyes the amount of P25,500.00 as actual damages; P50,000.00 as civil indemnity ex

delicto, P40,000.00 as moral damages; and P20,000.00 as exemplary damages.

The City Jail Warden of Taguig City is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED.^[20]

The Proceedings Before the Court of Appeals

On appeal,^[21] appellant faulted the trial court for convicting him of murder despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He averred: (1) the failure of a medical expert to authenticate Ernando's death certificate^[22] rendered the same inadmissible in evidence; and (2) there was no competent proof on record to establish intent to kill.^[23]

In response, the Office of the Solicitor General (OSG) through Senior State Solicitor Marsha C. Recon and State Solicitor Samantha P. Camitan countered: (1) appellant was positively identified as the one who slayed Ernando; and (2) treachery attended Ernando's killing.^[24]

By Decision^[25] dated November 17, 2014, the Court of Appeals affirmed with modification, viz.:

WHEREFORE, in view of all the foregoing, the Decision appealed from finding the accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties is hereby **AFFIRMED** with **MODIFICATIONS** in that accused-appellant shall not be eligible for parole and shall be liable to pay to the heirs of Ernando Reyes, Jr. the following: the amount of P25,500.00 as actual damages, P75,000.00 as civil damages *ex delicto*, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. He is further ordered to pay an interest of at the rate of six percent (6%) per annum on the award of civil indemnity, moral damages, and exemplary damages from the finality of judgment until fully paid.

SO ORDERED.^[26]

The Court of Appeals ruled that the elements of murder were all present. For it was sufficiently proved that appellant fatally shot the unsuspecting victim in the chest with a .45-caliber gun while they were having a drinking spree in Pio's house at Ibayo, Tipas, Taguig. The victim was not shown to have initiated any aggression or provocation.^[27]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.^[28] In compliance with Resolution^[29] dated October 19, 2015, the OSG and appellant manifested^[30] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for murder?

Ruling

The appeal is devoid of merit.

There is no question that the victim Ernando Reyes, Jr. was killed. The fact of his death was duly established by his Death Certificate.^[31] In this jurisdiction, a duly registered death certificate is considered a public document.^[32] To be admissible in evidence, there is no need for a medical expert to authenticate or verify. Its issuance by the Office of the Civil Registry concerned is sufficient proof of the death of the person named therein.^[33] So must it be.

Turning now to appellant's theory of lack of intent to kill, the Court keenly notes that it was not what he pleaded before the trial court and the Court of Appeals.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change his or her theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court, as these cannot be raised for the first time at such late stage.^[34] To allow otherwise would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory.^[35] In any event, changing postures of defense betray a guilty mind and sheer lack of credibility.

Intent to kill sufficiently established

Intent to kill, being a state of mind, is discerned by the courts only through external manifestations. In ***Rivera v. People***,^[36] We held that intent to kill must be proved by either direct or circumstantial evidence which may consist of: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed. We have also considered as determinative factors the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim.^[37]

The factual circumstances surrounding Ernando's death clearly showed appellant's intent to kill. He left the drinking spree and shortly after, he came back and showed off his gun to his drinking companions. Then, he pointed it to Ernando posing two (2) queries: "*Ano gusto? Patay buhay?*" And right off, he shot the unarmed victim in the right chest.

Appellant's vicious attack was unprovoked. He just shot Ernando in the right chest during the drinking spree. The Medico Legal Report^[38] stated that Ernando sustained one (1) gunshot wound, through and through, causing laceration of his right lung, diaphragm, liver, and stomach. The cause of death was: "*Gunshot wound, trunk.*" It has been settled that if the victim died because of a deliberate act of the malefactor, intent to kill is conclusively presumed.^[39] Verily, appellant's intent to kill Ernando was amply established on record.