

## **SECOND DIVISION**

**[ G.R. No. 242413, September 04, 2019 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WENNIE PESPENIAN, ACCUSED-APPELLANT.**

### **DECISION**

**REYES, J. JR., J.:**

Two armed assailants as against an unarmed victim and companions constitute taking advantage of superior strength.

#### **The Case**

This is an ordinary appeal from the June 22, 2018 Court of Appeals (CA) Decision<sup>[1]</sup> in CA-G.R. CR-HC No. 02160, affirming the January 22, 2015 Regional Trial Court (RTC) Decision<sup>[2]</sup> in Criminal Case No. DNO-2932, finding the accused guilty beyond reasonable doubt of murder.

#### **The Facts**

In an Information<sup>[3]</sup> dated February 4, 2003, accused Wennie Pespenian<sup>[4]</sup> (Pespenian) and Ireneo Salili (Salili) were charged with Murder. Pespenian was arrested and detained, while Salili remains at large.<sup>[5]</sup> During arraignment, Pespenian pleaded not guilty.<sup>[6]</sup> A warrant of arrest was issued for the arrest of Salili.<sup>[7]</sup> Thereafter, pre-trial and trial followed.

The prosecution presented three witnesses: 1) Alejandro Pilota (Pilota), the victim's companion; 2) Neri Valenzona (Valenzona), another companion of the victim; and 3) Dr. Eufemia P. Maratas (Dr. Maratas), Municipal Health Officer of Pilar, Camotes.<sup>[8]</sup>

Pilota testified that at 7 p.m. of January 2, 2003, he was at Joel Manza's (Manza) house with Brigido Colminas (Colminas), Valenzona, and many others to have dinner as it was the last night of prayers for Manza's late wife. After dinner, Pilota, Colminas and Valenzona left. Pilota and Valenzona accompanied Colminas on his way home, because they heard from the other guests that Pespenian and Salili were planning to take Colminas' life.<sup>[9]</sup>

On their way, they met the two accused. Pespenian stabbed Colminas several times on the left and right chest down to his foot using an eight-inch knife, while Salili was holding a pistol and stayed behind Pespenian.<sup>[10]</sup>

Pilota saw the whole incident and the identity of the assailants as he was holding a flashlight four meters away from Colminas. He and Valenzona were stunned with the attack and were unable to help Colminas. Thereafter, Pespenian and Salili chased

them, prompting them to run away.<sup>[11]</sup>

Valenzona corroborated Pilota's testimony. The attack happened about 15 meters away from Colminas' house. He saw Pespenian stabbed Colminas while Salili pointed a gun at the latter. When Colminas fell, Pespenian and Salili went after him and Pilota. They ran away and hid to avoid getting assaulted.<sup>[12]</sup>

The last prosecution witness was Dr. Maratas, who testified that she conducted a post mortem examination on Colminas' body on January 3, 2003, and issued a post mortem report. She confirmed that Colminas had multiple stab wounds which caused massive bleeding that led to his death. Colminas had 18 wounds all over his body, found on his cheeks, forearm, chest, abdomen, right knee, and right foot.<sup>[13]</sup>

For his defense, Pespenian testified that at around 7:30 p.m. on January 2, 2003, he was with Salili fishing. Once done, they went home. On their way, they encountered Colminas, who was holding a knife. Salili and Colminas grappled for the knife. Pespenian feared for his life and left to go home. The following day, he learned that Colminas died, and he was arrested instead of Salili, because he had fled. He said there were no other witnesses to the incident.<sup>[14]</sup>

### **The RTC Decision**

On January 22, 2015, the RTC convicted Pespenian of Murder, imposed the penalty of *reclusion perpetua*, and ordered him to pay Colminas' heirs P75,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00 as exemplary damages.<sup>[15]</sup>

The RTC ruled the presence of aggravating circumstance of taking advantage of superior strength, which pertains to the inequality of forces between the victim and the aggressors. It was purposely selected to facilitate the commission of the crime. Here, the accused were armed with a knife and a gun, while Colminas had nothing to defend himself. The accused took advantage of their weapons and their number against an unarmed victim, which is an aggravating circumstance.<sup>[16]</sup>

Aggrieved, Pespenian appealed to the CA.

### **The CA Decision**

On June 22, 2018, the CA affirmed with modification the RTC's decision. The CA increased the award of moral damages to P75,000.00, exemplary damages to P75,000.00, and temperate damages to P50,000. The CA retained the P75,000.00 civil indemnity. All monetary awards shall earn an interest of 6% per annum from the date of finality of the decision until fully paid.<sup>[17]</sup>

Unsuccessful, Pespenian appealed his conviction before the Court.

### **The Issue Presented**

The sole issue for resolution is whether or not the CA erred in affirming Pespenian's conviction for murder.

## **The Court's Ruling**

The Court affirms the conviction.

In his Brief, Pespenian alleges that the prosecution witnesses failed to identify him as Colminas' assailant because the place of incident was dark and there was no showing that the witnesses saw his face. The Court is not convinced.<sup>[18]</sup>

*First*, Pespenian admitted during his direct examination that he and Salili encountered the victim, Colminas, on their way home. He narrated that Colminas was holding a knife, and fought over it with Salili. However, he left them out of fear.<sup>[19]</sup>

### **Direct Examination of Pespenian - TSN dated October 1, 2010, pp. 8-10**

Q: You mentioned awhile ago that after fishing you went home, did you arrive to your house?

A: No.

Q: Why?

A: We met the victim there at the road.

Q: Meaning to say, you met Brigido Colminas at the road when you were on your way home?

A: Yes, ma'am.

Q: And when you met, what happened next?

A: He approached us.

Q: And after that what happened?

A: That's the time that the incident happened because he approached us.

Q: What did he do when he [approached] you and Ireneo Salili?

A: I saw Brigido Colminas was carrying a knife.

Q: You mentioned awhile ago that Brigido Colminas approached you and he was then during that time carrying a knife. So, when [he] approached you, what happened next?

A: Ireneo Salili and Brigido Colminas were grappling each other [for] the knife.

x x x x

Q: What did you do when you saw them grappling with each other with a knife?

A: I left them and I proceeded my way to my home.

Q: You did not bother to pacify?

A: No, I did not because I was already afraid.

Pespenian's admission puts him on the crime scene while a crime was being committed. His admission contradicts his claim that the prosecution witnesses did not see him because it was dark.

*Second*, it was established during the examination of the prosecution witnesses that the place where the incident took place was not totally dark. There was illumination coming from the flashlight, which helped the witnesses see the attackers. The witnesses were only four meters away from Colminas as he was being assaulted. The witnesses knew the accused as they lived near each other. Pespenian even admitted during his cross examination that he knew Pilota and Valenzona as they were neighbors.<sup>[20]</sup> In sum, the light, the distance, and the familiarity with the accused aided the prosecution witnesses to identify them.

The following excerpts support the conviction of the accused. The details narrated below prove that the witnesses saw the faces of the accused, the weapons used, and their participation in the crime.

**Direct Examination of Pilota - TSN dated September 3, 2004, pp. 5-11**

Pros. Did you and your companion reach the house of  
Macias: Brigido Colminas?

Witness: We did not reach the house of Brigido Colminas,  
Ma'am.

Pros. What was the reason why you and your companion  
Macias: did not reach the house of Brigido Colminas?

Witness: Because Wennie Pespenian and Ireneo Salili waylaid  
us.

Pros. After that, what happened?  
Macias:

Witness: Wennie Pespenian kept on stabbing.

Pros. Who was being stabbed by Wennie Pespenian?  
Macias:

Witness: Brigido Colminas.

Pros. What part of the body of Brigido Colminas was  
Macias: stabbed by Wennie Pespenian?

Witness: He had many wounds.

Court            The witness is pointing to his left and right chest  
Interpreter: down to his foot.

Pros.            Did you see how many times Wennie Pespenian  
Macias:          stabbed Brigido Colminas?

Witness:        I saw him [stab] Brigido Colminas but I was not able  
to count, how many times.

Pros.            While Wennie Pespenian stabbed Brigido, where was  
Macias:          Ireneo Salili?

Witness:        He was there following Wennie Pespenian.

Pros.            What do you mean when you say that Ireneo Salili  
Macias:          was following Wennie Pespenian?

Witness:        Because they were walking together... (The answer  
of witness was interrupted by Pros. Macias.)

Pros.            My question is: where was Ireneo Salili when Wennie  
Macias:          Pespenian kept on stabbing Brigido Colminas?

Witness:        He was very near him and following him.

Pros.            What was the distance of Ireneo Salili when Wennie  
Macias:          Pespenian stabbed Brigido Colminas?

Witness:        One meter distance.

Pros.            What was he doing that time?  
Macias:

Witness:        He was there following Wennie Pespenian because  
while the victim was being stabbed, he was re-  
treating.

Court to the    What was Ireneo Salili doing when he saw Wennie  
Witness:        Pespenian stabbed Brigido Colminas?

Witness:        He was behind Wennie Pespenian.

Court to the    Witness: What was he doing?

Witness:        I did not see him do anything.

Pros.            Did you see the weapon used by Wennie Pespenian in  
Macias:          stabbing Brigido Colminas?

Witness:        I saw it.

Pros.            What was it?  
Macias: