

FIRST DIVISION

[G.R. No. 198760, January 11, 2017]

ATTY. ALLAN S. HILBERO, PETITIONER, VS. FLORENCIO A. MORALES, JR., RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Petitioner Atty. Allan S. Hilbero, through the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, assails the Decision^[1] dated June 7, 2011 of the Court of Appeals in CA-G.R. SP No. 111191, which (a) modified the Resolution^[2] dated September 30, 2009 of the Department of Justice (DOJ) in I.S. No. 1428-07 finding probable cause to charge respondent Florencio A. Morales, Jr., along with Primo J. Lopez (Primo), Lorenzo M. Pamplona (Lorenzo), and Sandy M. Pamplona (Sandy), with the murder of petitioner's father, Atty. Demetrio L. Hilbero (Demetrio); and (b) ordered the dropping of the criminal charge against respondent.

The antecedent facts are as follows:

Based on the initial criminal investigations conducted by the Calamba City Police Station,^[3] on June 16, 2007, Demetrio and his wife, Estela S. Hilbero (Estela), had just attended the Saturday evening anticipated mass at the Calamba Catholic Church. Spouses Demetrio and Estela then proceeded to Demetrio's law office located along Gen. Lim St., Barangay 5, Calamba City, arriving at said office around 7:45 p.m. Estela alighted first from their car and immediately went inside the office, while Demetrio went to a nearby store to buy cigarettes. When Demetrio was about to enter the gate of his office, two armed men on-board a motorcycle suddenly appeared and shot Demetrio several times. The gunmen escaped towards the adjacent Mabini Street.

Estela thought that the gunshots were mere firecrackers, but when she checked, she found Demetrio sprawled on the ground. Estela cried for help. Demetrio was rushed to the Calamba Medical Center where he was pronounced dead on arrival. Initial medico-legal findings revealed that Demetrio sustained three gunshot wounds on the left side of his body.

Three spent shells and one deformed slug of a .45 caliber pistol were recovered from the crime scene. A cartographic sketch of one of Demetrio's assailants was made based on the descriptions given by eyewitnesses to the shooting incident. Demetrio's relatives also informed police investigators that Demetrio was heard having a heated argument on the telephone with an unknown caller inside his office at around 12:30 p.m. on June 16, 2007. Demetrio seemed bothered and anxious after said telephone conversation.

On December 26, 2007, P/Supt. Mariano Nachor Manaog, Jr. of the Laguna Criminal

Investigation and Detection Team (CIDT-Laguna) forwarded to the Calamba City Prosecution Office (CCPO) the records of the investigation relative to Demetrio's killing. Among the documents submitted was a *Sinumpaang Salaysay*^[4] dated December 26, 2007 executed by Reynaldo M. Leyva (Reynaldo), an alleged eyewitness to the shooting of Demetrio. In his *Sinumpaang Salaysay*, Reynaldo recounted:

SINUMPAANG SALAYSAY

AKO, si Reynaldo M. Leyva, may sapat na gulang, at nakatira sa Brgy. Real Calamba City, matapos manumpa na naayon sa batas ay nagsasalaysay ng mga sumusunod:

NA noong Hunyo 16, 2007 angoras sa pagitan ng 7:00 at 8:00 ng gabi, ako noon ay papunta sa Mercury Drug sa may lumang palengke Calamba upang bumili ng gamot para sa aking ubo pagkatapos ko manggaling sa simbahan sa bayan ng Calamba, Laguna. Habang binabaybay ko ang Gen. Lim St., Calamba City, Laguna, papuntang Mercury Drug sa lumang palengke, ako ay napadaan sa Morales-Alihan Tax Accounting Firm at doon ay napansin ko ang isang motorsiklo na nakaparada na katabi ang dalawang tao na nag-uusap. Agad kong nakilala ang dalawang tao na iyon na sina Sandy Pamplona at Florencio Morales, Jr. Nakilala ko sila dahil si Florencio Morales, Jr. ay ka-barangay ko sa Real samantalang si Sandy Pamplona naman ay madalas ko rin makita sa Real.

AKO ay nagpatuloy sa paglalakad papuntang Mercury Drug sa lumang palengke. Pagkatapos kong makabili ng gamot, ay nagpasya ako na bumili ng okoy sa may Gen. Lim St., Calamba City. Habang ako ay nandoon sa tindahan, may nakita akong kotseng kulay gray na pumarada sa isang bahay na halos katapat ng tindahan ng okoy na pinagbibilihan ko. Nakita ko ang isang babae na bumaba sa sasakyan at pumasok sa gate ng bahay. Hang sandali pa, ang lalaki na nasa kotse naman ang bumaba ngunit hindi siya pumasok sa gate ng bahay. Namukhaan ko agad ang matandang lalaki na si Atty. Demetrio Hilbero dahil maliwanag naman sa Iugar na kanyang kinatatayuan dahil sa ilaw sa bahay.

NA may bigla akong napansin na dalawang lalaki na nakasakay sa motorsiklo na biglang lumapit kay Atty. Hilbero habang siya ay nakatalikod. Isa sa mga lalaki ang biglang bumaba ng motorsiklo at bumunot ng baril at pinaputukan si Atty. Hilbero. Nakita kong bumagsak si Atty. Hilbero habang ang bumaril na lalaki ay agad surnakay sa motorsiklo, samantalang ang lalaki na naiwan sa motorsiklo ay nagpaputok rin ng baril pataas. Nakilala ko agad ang nasabing lalaki nasi Lorie Pamplona dahil siya ay kabarangay ko din sa Real. Subalit ang lalaki na bumaril kay Atty. Hilbero ay hindi ko kakilala bagamat nakita ko ang kanyang mukha at kung makikita ko muli yung burnaril ay makikilala ko siya. Agad agad na umalis ang motorsiklo na lulan ang dalawang lalaki at sinundan sila ng isa pang motorsiklo na una kong nakita na nakaparada sa Morales-Alihan Accounting Firm na nadaanan ko kanina papuntang Mercury Drug pagkatapos silang senyasan ng bumaril kay Atty. Hilbero. Sakay sa nasabing motorsiklo si Sandy Pamplona na angkas naman si Florencio Morales, Jr.

NA, dahil sa pagkabigla sa aking nasaksihan ako ay hindi agad nakakilos sa aking kinalagyan. Nakita ko na lang ang asawa ni Atty. Hilbero na nagsisigaw at humihingi ng tulong. Ilang sandali pa, may mga tao ng tumulong at isang tricycle ang dumating at doon isinakay si Atty. Hilbero.

NA, dahil sa kalituhan ay agad agad ako na pumuntang palengke at sumakay sa tricycle pauwi ng Real.

Nang ako ay makauwi sa Real, wala akong pinagsabihan na tao sa aking nasaksihan. Natakot ako sa maaaring mangyari sa akin at sa aking mga anak kung irereport ko ang nakita ko sa pulisya ng Calamba.

NA, hindi ko nireport ang aking nasaksihan sa pulisya ng Calamba sa kadahilanan na ako ay nangangamba na si Lorie Pamplona ay maari akong balikan dahil alam ko na siya ay miyembro ng KALADRO na hawak ng isang pulis Calamba.

Ngunit habang tumatagal ang araw ay ako ay nababagabag ng aking kunsyensya. Lagi kong naiisip ang aking nasaksihan. Hanggang sa ako'y magpasya na pumunta nasa pulisya at ireport ang mga nakita ko. Pinili kong puntahan ang CIDG sa Cabuyao noong Disyembre 26, 2007 at sinabi sa kanila ang aking nasaksihan. May pinakitang mga larawan ang CIDG sa akin at doon ko nakilala at itinuro ang lalaki na bumaril kay Atty. Hilbero. Sinabi sa akin ng CIDG na ang pangalan ng aking itinuro ay si Primo Lopez na isa ring miyembro ng KALADRO. Si Primo Lopez ang aking nakita na bumaril kay Atty. Hilbero kasama sina Lorie Pamplona, Sandy Pamplona, at Florencio Morales, Jr.

NA ginawa ko itong salaysay na ito upang tumestigo laban kina Primo Lopez, Lorie Pamplona, Florencio Morales, Jr., at Sandy Pamplona at iba pang sangkot sa pagpaslang kay Atty. Demetrio Hilbero.

The CCPO docketed the preliminary investigation of Demetrio's killing as I.S. No. 1428-07.

The Preliminary Investigation in I.S. No. 1428-07 by the ORSP-Laguna and the appeals before the DOJ

Acting on the voluntary inhibition of Prosecutor Miguel Noel T. Ocampo of the CCPO, Regional State Prosecutor Ernesto C. Mendoza officially designated Assistant Regional State Prosecutor Dominador A. Leyros (Leyros) as the Acting City Prosecutor of Calamba City in charge of I.S. No. 1428-07.^[5] Prosecutors Oscar T. Co and Elnora L. Nombrado of the Office of the Regional State Prosecutor of Region IV, San Pablo City, Laguna (ORSP-Laguna) joined Prosecutor Leyros in conducting the preliminary investigation.

In a Resolution^[6] dated May 6, 2008, the ORSP-Laguna stated that there was well-founded belief that Primo and Lorenzo were responsible for the murder of Demetrio and ordered that an information for murder under Article 248 of the Revised Penal Code, attended by the qualifying aggravating circumstance of night time, be filed against them. In the same Resolution, the ORSP-Laguna directed that the case

against Sandy and respondent be dismissed for lack of sufficient evidence. The ORSP-Laguna evaluated the evidence before it, thus:

Primo Lopez was positively identified by the eyewitness Reynaldo M. Leyva as the gunman who shot Atty. [Demetrio] Hilbero, while x x x Lorenzo Pamplona was positively identified by the same eyewitness as the driver of the motorcycle where the gunman alighted before shooting Atty. [Demetrio] Hilbero and mounted the same after the shooting and sped away.

The defense of alibi presented by Lorenzo Pamplona cannot overcome the positive, clear and convincing identification made by the eyewitness as narrated in his sworn statement. His self-serving declaration that the witness has erred in identifying him affords him no respite. Neither the sworn statement of his witness purportedly seeing him and with him in a place other than the place of the shooting at the given time nor the production and submission of pictures and/or photographs depicting that he was in Baguio City on the fateful day of the shooting incident could extricate him from being indicted. They have no probative value to overcome the testimony of the eyewitness pointing to his possible participation in the commission of the crime. The quantum of evidence necessary to put up a finding of probable cause is not proof beyond reasonable doubt or moral certainty for purposes of charging the respondent in criminal information before the courts. We can only restate the time honored principle that alibi is inherently weak and easily contrived. Furthermore, in the case before us there had been a positive identification made by the witness that x x x Primo Lopez and Lorenzo Pamplona are the perpetrators of the crime.

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With regard to x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., we find no evidence had been introduced that may tend to establish their direct or indirect participation or cooperation in the commission of the crime. Even if we assume that what was stated by the witness Reynaldo M. Leyva in his sworn statement, in so far as x x x Sandy and [respondent] Florencio were concerned, was factual, still that would not be enough basis to include them in the indictment **in the absence of any other independent evidence**. For such alleged "thumb's-up sign" allegedly executed by the gunman Primo Lopez immediately after shooting Atty. [Demetrio] Hilbero, and which the witness perceived to be a signal intended for the other two persons on board a motorcycle, that immediately sped off does not necessarily or absolutely mean that the two persons (Sandy and [respondent] Florencio) riding in tandem on a motorcycle were co-plotters in the crime committed. We cannot reasonably draw the inference from such events and conclusively assert that x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., who happened to be there - if indeed they were there!, had anything to do with the murder of Atty. [Demetrio] Hilbero. What we have here is at best a suspicion, which is tantamount to doubt or skepticism. For that alleged "thumb's-up sign" could be at risk to varying interpretation. It could be taken as a boastful expression for

achieving an objective. It could also be a demonstration directed to nobody or such did not happen at all and was just perceived to be so. The speeding off of the other motorcycle after the shooting incident is just but a natural reaction of persons fleeing from danger. It is noteworthy to mention that other than the speeding off of the other motorcycle, which was allegedly boarded by x x x Sandy and [respondent] Florencio, no evidence was proffered to show that the latter participated or conspired before, during and after the commission of the crime of murder against Atty. [Demetrio] Hilbero. One could always speculate, however, but it is not evidence.

Lastly, the evidence for the prosecution in its entirety strongly implies the presence of all the elements of the crime of Murder perpetrated by x x x Primo Lopez and Lorenzo Pamplona.

Accordingly, an Information^[7] for murder against Primo and Lorenzo was filed before the Regional Trial Court (RTC) of Calamba City on May 15, 2008, docketed as Criminal Case No. 15782-2008-C.

Petitioner challenged before the DOJ the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07 insofar as it found no sufficient evidence to indict Sandy and respondent for the murder of Demetrio. Primo and Lorenzo likewise assailed before the DOJ the same Resolution of the ORSP-Laguna for finding that there was probable cause to charge them for the murder of Demetrio.

The DOJ, through Secretary Raul M. Gonzalez (Gonzalez), issued a Resolution^[8] dated March 18, 2009, which (a) granted the appeal of Primo and Lorenzo and denied the appeal of petitioner; (b) reversed and set aside the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07; and (c) directed the ORSP-Laguna to withdraw the Information against Primo and Lorenzo filed with the RTC and inform the DOJ of the action taken. DOJ Secretary Gonzalez reasoned in his Resolution that:

Culled from the records, it is undeniable that the entire case of the [petitioner] rests upon the statement of alleged eyewitness Reynaldo Leyva. Simply put, without his statement, there is nothing to hold [Primo, Lorenzo, Sandy, and respondent] for trial.

Thus, the bone of contention is whether or not such statement of Reynaldo Leyva is sufficient for purposes of indicting [Primo, Lorenzo, Sandy, and respondent].

After a thorough evaluation of the evidence on record, this Office is not convinced that probable cause exists to indict [Primo, Lorenzo, Sandy, and respondent] for the offense levelled against them.

While it is true that positive identification ordinarily prevails over alibi, it admits of qualifications as held in the case of *People v. Ondalok*, to wit:

"Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over the alibi and