

SECOND DIVISION

[G.R. No. 200302, April 20, 2016]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERRY LIPATA Y
ORTIZA, APPELLANT.**

D E C I S I O N

CARPIO, J.:

The Case

G.R. No. 200302 is an appeal^[1] assailing the Decision^[2] promulgated on 31 May 2011 by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04461. The CA affirmed the Decision^[3] dated 23 March 2010 of Branch 85 of the Regional Trial Court of Quezon City (RTC) in Criminal Case No. Q-05-136584. The RTC found appellant Gerry Lipata y Ortiza (appellant) guilty beyond reasonable doubt of the crime of Murder and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC also ordered appellant to pay damages to the heirs of Rolando Cueno (Cueno).^[4]

The Facts

Appellant was charged with the crime of Murder in an Information which reads as follows:

That on or about the 1st day of September, 2005, in Quezon City, Philippines, the said accused, conspiring, confederating with two (2) other persons whose true names, identities and definite whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill and with evident premeditation and treachery, and taking advantage of superior strength, did, then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one RONALDO CUENO Y BONIFACIO, by then and there stabbing him repeatedly with bladed weapons, hitting him on the different parts of his body, thereby inflicting upon him serious and mortal stab wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of Ronaldo Cueno y Bonifacio.

CONTRARY TO LAW.^[5]

Appellant was arraigned on 11 October 2005, and entered a plea of not guilty to the charge. Pre-trial conference was terminated on 26 October 2005, and trial on the merits ensued.

The CA summarized the parties' evidence as follows:

The Prosecution['s] Evidence

Mercelinda Valzado, sister-in-law of the victim Rolando Cueno, testified that on September 1, 2005 at around 6:00 p.m., she was in her house located in [sic] Lot 34, Block 4, Sipna Compound, Bagong Silangan, Quezon City. She was about to leave the house to go to the market when she saw appellant, his brother Larry Lipata and a certain [Rudy] attacking the victim by repeatedly stabbing him. She was at a distance of more or less ten (10) meters from the incident. Shocked at what she had just witnessed, she shouted for help and pleaded the assailants to stop, but they did not stop stabbing the victim. In her account, she recalled that the assailants, including appellant, used a tres cantos, an ice pick and a broken piece of glass of Red Horse [bottle]. At one point, the victim managed to take the knife away from appellant and brandished the same at his attackers. Thereafter, the victim fell on the ground. Upon seeing the victim fall, appellant and the other assailants left the scene. Through the help of some neighbors, Mercelinda rushed the victim to a hospital but he was pronounced dead on arrival.

Criz Reymiluz Cueno, daughter of the victim, testified that she saw appellant together with Larry Lipata and Rudy Lipata [stab] her father to death in front of their house. She recounted that upon arriving at home from work on September 1, 2005 at around 6:00 p.m., her father immediately went to the house of her aunt Mercelinda Valzado, which was located only a block away from their house, to ask for malunggay leaves. Upon coming home from her aunt's house, the victim was attacked by the Lipatas which prompted the victim to run away. Thinking that his assailants were no longer around, the victim proceeded to their [sic] house but then the Lipatas stabbed him to death. She was at a distance of six (6) to eight (8) meters away from the scene. She further testified that she had no knowledge of any reason why the Lipatas would kill her father, but her father's death brought her pain and sadness and anger against the perpetrators of her father's killing.

The Defense['s] Evidence

The defense presented a sole witness in the person of appellant himself. According to appellant, he was resting in his house in Sipna Compound, Brgy. Bagong Silangan, Quezon City on September 1, 2005 at around 6:00 p.m. when two children, namely John Paul Isip and a certain Rommel, called him and told him to help his brother, Larry Lipata. He immediately rushed to his brother and upon arrival he saw Larry being stabbed by the victim. He instantaneously assisted his brother but the victim continued stabbing Larry, causing Larry to fall to the ground. Thereafter, appellant managed to grab the knife from the victim and stab the victim. Then he fled from the scene [of the crime] because he was wounded. Appellant's sister-in-law, a certain Lenlen, brought him to the Amang Medical Center for treatment of his stab wound where he was apprehended by police officers.^[6]

The RTC's Ruling

The RTC noted that since appellant raised the justifying circumstance of defense of a relative, he hypothetically admitted the commission of the crime. Hence, the burden of proving his innocence shifted to appellant. The RTC found that the defense failed to adequately establish the element of unlawful aggression on the part of Cueno. There was no actual or imminent danger to the life of appellant or of his brother Larry. On the contrary, the three Lipata brothers (appellant, Larry, and Rudy)^[7] employed treachery and took advantage of their superior strength when they attacked Cueno after Cueno left the house of his sister-in-law. Cueno suffered 17 stab wounds on his trunk from the Lipata brothers. The existence of multiple stab wounds on the trunk of the unarmed Cueno is inconsistent with appellant's theory of defense of a relative. The RTC, however, ruled that the prosecution failed to show conclusive proof of evident premeditation.

The dispositive portion of the RTC's decision reads:

WHEREFORE, in the light of the foregoing considerations, the Court here[b]y renders judgment finding the accused GERRY LIPATA Y ORTIZA guilty beyond reasonable doubt of the crime of Murder and he is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* from twenty (20) years and one (1) day to forty (40) years.

The accused is hereby adjudged to pay the heirs of Rolando Cueno the following amounts:

- (a) Php 50,000.00 representing civil indemnity *ex delicto* of the accused;
- (b) Php 120,550.00 representing the actual damages incurred by the heirs of Rolando Cueno, incident to his death plus 12% interest per annum computed from 6 September 2005 until fully paid;
- (c) Php 50,000.00 as moral damages for the mental and emotional anguish suffered by the heirs arising from the death of Rolando Cueno; and
- (d) Php 25,000[.00] as exemplary damages.

The accused shall be credited with the full period of his preventive imprisonment, subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.

SO ORDERED.^[8]

Appellant, through the Public Attorney's Office (PAO), filed a notice of appeal^[9] on 6 April 2010. The RTC granted appellant's notice in an Order^[10] dated 19 April 2010.

The CA's Ruling

The CA dismissed appellant's appeal and affirmed the decision of the RTC. The CA agreed with the RTC's ruling that appellant's claim of defense of a relative must fail. There was no actual or imminent threat on the life of appellant or of his brother

Larry. There was also no reason for appellant to stab Cueno. Cueno was outnumbered by the Lipata brothers, three to one. The requirement of lack of provocation on the part of appellant is negated by the multiple stab wounds that Cueno sustained.

The CA disagreed with appellant's contention that the prosecution failed to establish treachery. The CA pointed out that Cueno was not forewarned of any impending threat to his life. Cueno was unarmed, and went to his sister-in-law's house to gather *malunggay* leaves. The Lipata brothers, on the other hand, were readily armed with *tres cantos*, an icepick, and a broken piece of glass from a Red Horse bottle. The execution of the Lipata brothers' attack made it impossible for Cueno to retaliate.

The CA also disagreed with appellant's contention that there was no abuse of superior strength. The three Lipata brothers were all armed with bladed weapons when they attacked the unarmed Cueno. The Lipata brothers refused to stop stabbing Cueno until they saw him unconscious.

The dispositive portion of the CA's decision reads:

WHEREFORE, finding the appeal to be bereft of merit, the same is hereby DISMISSED. The appealed decision of the trial court convicting appellant of the crime of murder is hereby AFFIRMED.

SO ORDERED.^[11]

The PAO filed a notice of appeal^[12] on behalf of appellant on 10 June 2011. The CA ordered the immediate elevation of the records to this Court in its 30 June 2011 Resolution.^[13]

Appellant's Death Prior to Final Judgment

This Court, in a Resolution dated 13 June 2012,^[14] noted the records forwarded by the CA and required the Bureau of Corrections (BuCor) to confirm the confinement of appellant. The BuCor, in a letter dated 26 July 2012, informed this Court that there is no record of confinement of appellant as of date. In a Resolution dated 10 September 2012,^[15] this Court required the Quezon City Jail Warden to transfer appellant to the New Bilibid Prison and to report compliance within ten days from notice. The Quezon City Jail Warden, in a letter dated 22 October 2012,^[16] informed this Court that appellant passed away on 13 February 2011. The former Quezon City Jail Warden wrote to the RTC about appellant's demise in a letter dated 23 February 2011. Attached to the 22 October 2012 letter were photocopies of appellant's death certificate and medical certificate, as well as the former Quezon City Jail Warden's letter.^[17] In a Resolution dated 7 January 2013,^[18] this Court noted the 22 October 2012 letter from the Quezon City Jail Warden, and required the parties to submit their supplemental briefs on the civil aspect of the case if they so desire.

The Office of the Solicitor General filed a Manifestation dated 18 March 2013,^[19] which stated that it had already exhaustively argued the relevant issues in its appellee's brief. The PAO, on the other hand, filed a supplemental brief on 26 March 2013.^[20]

In view of appellant's death prior to the promulgation of the CA's decision, this Court issued a Resolution dated 25 September 2013 which ordered the PAO "(1) to SUBSTITUTE the legal representatives of the estate of the deceased appellant as party; and (2) to COMMENT on the civil liability of appellant within ten (10) days from receipt of this Resolution."^[21]

The PAO filed its Manifestation with Comment on the Civil Liability of the Deceased Appellant on 29 November 2013.^[22] According to the Public Attorney's Office-Special and Appealed Cases Service, the relatives of the deceased appellant have not communicated with it since the case was assigned to its office on 29 September 2010. The PAO sent a letter on 4 November 2013 to Lilia Lipata, who was appellant's next of kin per official records. Despite receipt of the letter, the relatives of appellant still failed to communicate with the PAO.

In its Manifestation, the PAO stated that:

x x x x

9. Considering that the civil liability in the instant case arose from and is based solely on the act complained of, i.e. murder, the same does not survive the death of the deceased appellant. Thus, in line with the abovesited ruling [*People v. Jaime Ayochok*, G.R. No. 175784, 25 August 2010, 629 SCRA 324, citing *People v. Rogelio Bayotas*, G.R. No. 102007, 2 September 1994, 236 SCRA 239], the death of the latter pending appeal of his conviction extinguished his criminal liability as well as the civil liability based solely thereon.

10. This being so, it is respectfully submitted that the necessity to substitute the legal representatives of the estate of the deceased as party does not arise.^[23]

On 9 July 2014, this Court issued a Resolution which declared that "the [PAO] shall continue as the legal representative of the estate of the deceased [appellant] for purposes of representing the estate in the civil aspect of this case."^[24]

The Court's Ruling

At the outset, we declare that because of appellant's death prior to the promulgation of the CA's decision, there is no further need to determine appellant's criminal liability. Appellant's death has the effect of extinguishing his criminal liability. Article 89(1) of the Revised Penal Code provides:

Article 89. *How criminal liability is totally extinguished.* - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

x x x x