

## THIRD DIVISION

[ G.R. No. 208446, April 06, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
JONEL VARGAS Y RAMOS, JERIENALD VILLAMERO Y ESMAN,  
ARMANDO CADANO @ MANDO, JOJO ENORME @ JOJO, RUTHER  
GARCIA @ BENJIE/LOLOY, AND ALIAS TABOY, ACCUSED, JONEL  
VARGAS Y RAMOS, JERIENALD VILLAMERO Y ESMAN, ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**PEREZ, J.:**

Before us for review is the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 05286 dated 8 January 2013 which affirmed with modification the Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 12, in Criminal Case No. 1014-M-2005 finding appellants Jonel Vargas y Ramos (Jonel) and Jerienald Villamero y Esman (Jerienald) guilty beyond reasonable doubt of the crime of murder.

The Information filed on 7 April 2005 charged appellants with murder committed as follow:

That on or about the 4th day of September 2004, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with unknown caliber guns, and with intent to kill one Jojo F. Magbanua, with evident premeditation, treachery and abuse of superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms, they were then provided, the said Jojo F. Magbanua, hitting him on his head, thereby inflicting upon him mortal wound which directly caused his death.<sup>[3]</sup>

Appellants entered a "not guilty" plea. Trial proceeded.

The prosecution's lone eyewitness, Adolfo Lagac (Adolfo), narrated that on 4 September 2004, at around 7:00 p.m., he was inside a grocery store in *Barangay* Muzon, San Jose del Monte City, Bulacan when he heard a gunshot which preceded the arrival of Jojo Magbanua (Jojo), who was bloodied and running. Immediately thereafter, two (2) armed men, whom Adolfo identified as appellants Jonel and Jerienald, entered the grocery store. They approached Jojo who, then, was already sprawled on the ground. Adolfo saw Jonel shoot Jojo while Jerienald merely stood beside Jonel. After the shooting, appellants hurriedly left the store.<sup>[4]</sup>

The victim's father, Elias Magbanua (Elias) testified on the expenses he incurred as a

result of the death of his son, Jojo. Elias however failed to present the receipts in court.

In his defense, Jonel claimed that he was watching television inside his house in Pabahay 2000 in San Jose del Monte City on 4 September 2004 between 4:00 p.m. and 11:00 p.m, the time of the supposed shooting incident. Jonel denied he knew and killed Jojo.<sup>[5]</sup> Jonel also denied knowing the eyewitness, Adolfo.<sup>[6]</sup>

Jerienald admitted that he and Jonel grew up together in Quezon City. He narrated that he was at home doing his chemistry project on 4 September 2004 when he heard from a neighbor that someone was killed in the area near the church. Worried for his cousins who were attending a service in said church, Jerienald went to the scene of the crime.<sup>[7]</sup> He did not find his cousins. He was arrested a year later or on 10 September 2005 by three aides upon identification by Jonel's brother.<sup>[8]</sup>

Jerienald's mother corroborated his statement that he was at home studying on the date of the incident.<sup>[9]</sup>

On 30 June 2011, the RTC rendered judgment finding appellants guilty beyond reasonable doubt of Murder. The dispositive portion reads:

**WHEREFORE**, the Court finds the accused JONEL VARGAS y RAMOS and JERIENALD VILLAMERO y ESMAN, **guilty beyond reasonable doubt of the crime of Murder**, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the victim Jojo Magbanua, the sum of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and costs.

In so far as the other accused ARMANDO CADANO @Mando; JOJO ENORME @ Jojo; and RUTHER GARCIA @ Benjie/Loloy are concerned, let an ALIAS WARRANT be issued against them. In the meantime, the records of this case [are] hereby sent to the archives to be revived upon the arrest of the other accused.<sup>[10]</sup>

The RTC relied on the lone eyewitness' positive identification of appellants as the perpetrators of the crime over appellants' defense of denial and alibi.

Appellant seasonably filed a Notice of Appeal<sup>[11]</sup> before the Court of Appeals. On 8 January 2012, the Court of Appeals affirmed the judgment of the RTC with modification on the amount of damages awarded, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 30 June 2011 of the Regional Trial Court, Third Judicial Region, Branch 12, City of Malolos, Bulacan in Criminal Case No. 1014-M-2005, finding accused-appellants Jonel Vargas y Ramos and Jerienald Villamero y Esman guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, sentencing accused-appellants to suffer the penalty of *reclusion perpetua*, and ordering them to pay to the heirs of the victim Jojo Francisco Magbanua the sum of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php30,000.00 as

exemplary damages is **AFFIRMED** with **MODIFICATION** in that accused-appellants are further ordered to pay to the heirs of the victim Php25,000.00 as temperate damages, with interest of six percent (6%) *per annum* on all damages, from the date of finality of this Decision until fully paid.<sup>[12]</sup>

Appellants filed a Notice of Appeal.<sup>[13]</sup> On 25 September 2013, we issued a Resolution requiring the parties to file their supplemental briefs, if they so desire.<sup>[14]</sup> Both parties manifested that they will adopt the same arguments in their separate briefs filed before the Court of Appeals.<sup>[15]</sup>

Appellants highlight the inconsistencies in the statements given by the lone prosecution witness in his sworn statement and in his testimony in open court relative to the identification of the perpetrators. Appellants assert that due to said inconsistencies, their guilt has not been proven beyond reasonable doubt.

Appellants also question the trial court's finding of treachery to qualify the crime to murder. Appellants aver that the eyewitness did not witness the whole incident, thus treachery cannot be presumed.

We agree with appellants.

In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.<sup>[16]</sup>

In his sworn statement, Adolfo named six (6) individuals who apparently chased the victim into the grocery store, namely: Jonel Vargas, *alyas* Taroy, *alyas* Mando, *alyas* Jojo, *alyas* Jamin and *alyas* Benjie, and he could not identify who shot the victim. He reasoned that he could not remember because he was too scared for his life.<sup>[17]</sup> Two years later and testifying before the court, Adolfo categorically identified appellants as the only two assailants who chased Adolfo into the grocery store and further pointed to Jonel as the one who shot him.

Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject.<sup>[18]</sup>

The circumstances obtaining in this case militate against the application of the aforecited principle. The inconsistency between the two statements relate to the identification of the assailants. Adolfo named six (6) assailants in his sworn statement which was taken twelve (12) days after the shooting incident, thus:

6.: Kilala mo ba ang mga taong humabol at bumaril kay Jojo

T - Magbanua?

S -: Kilala ko lang po sila sa mukha at sa kanilang mga alyas o palayaw.

7.: Kung kilala mo sila sa kanilang palayaw, ano-ano ang

T - kanilang palayaw?

S -: Sina **Jonel Vargas, Alyas Taroy, Alyas Mando, Alyas Jojo, Alyas Jamin at si Alyas Benjie** po.<sup>[19]</sup> (Emphasis supplied)

Such categorical identification could not be taken as utterances made out of fear or panic. Adolfo gave out names which match the names of actual people living in *Barangay Muzon*. Furthermore, when pressed by the police officer on who shot the victim, Adolfo replied that he could not remember, thus:

8.: Sa mga taong sinabi mo, sino naman ang bumaril kay Jojo?

T -

S -: Hindi ko na po matandaan sa kanila.

9.: Sinabi mong nakita mo nuong nabaril si Jojo, bakit hindi mo

T - matandaan kung sino sa kanila ang bumaril?

S -: Dahil po sa natakot ako at nagmadali narin akong umalis.<sup>[20]</sup>

And then two years later, he crossed out from his recollection the other accused that were still at large and zeroed in on appellants as the only two assailants. Adolfo testified:

**DIRECT-EXAMINATION BY FISCAL CARAIG:**

Q: Tell us, Mr. Witness, if you can recall, where were you on September 4, 2004, at about 7:00 in the evening?

A: I was inside a store, a semi-grocery, sir.

Q: Where is that located?

A: At Phase 3, Pabahay 2000, sir.

Q: Barangay what?

A: Brgy. Muzon, San Jose del Monte City.

Q: While you were in that place, do you know of any unusual incident that took place?

A: Yes, sir.

Q: Tell us what was that?

A: I heard a gunshot from the nearby place and after about more than a minute, I saw the son of Elias Magbanua running towards the store where I was then buying cigarettes and I noticed that he had bloodstains on his back.

Q: Was that person you saw able to enter the grocery?

A: Yes, sir.

Q: When he was able to enter the grocery, what did you see (sic) next?

A: I saw blood on his back before he fell on the ground face up.

Q: And that is while he was already inside the grocery?

A: Yes, sir.

Q: On that point and time, how far were you from him?

**INTERPRETER:**

Witness pointing to the chair.

**WITNESS:**

A: Three (3) meters, sir.

**FISCAL:**

Q: And as you said that was 7:00 in the evening. Why were you