

## THIRD DIVISION

[ G.R. No. 210673, June 29, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
GILBERT CABALLERO Y GARSOLA, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**PEREZ, J.:**

For Resolution is the appeal from the 29 August 2013 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CEB-CR HC No. 01195 affirming the conviction of appellant Gilbert Caballero y Garsola for the crime of murder by the Regional Trial Court (RTC) of Dumaguete City.

Appellant is charged of murder in an Information, which reads:

That on or about the 25<sup>th</sup> day of July 2007, in the City of Bayawan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, accused John Doe, driving a motorcycle conspiring together, confederating and mutually helping accused, Gilbert Caballero y Garsola armed with a gun, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot several times, wound and kill JUDGE ORLANDO C. VELASCO, without giving him a chance to defend himself to ensure the execution of the act, without risk to both accused out of any defense which the victim could have made, thereby inflicting upon his person these injuries, to wit:

Multiple gunshot wounds x x x

- Multiple organ failure;
- Sever[e] hypovolemia sec. to exsanguinations;
- Multiple gunshot wounds abdominal pelvic area with through and through injury to the bladder complete transection ® distal ureter, through and through injury to the rectum, 88A plate transection of the @ internal iliac artery and vein through and through injury to the sacrum, through and through injury to the penile shaft, multiple muscles bleeders bilateral inguinal area and which injuries caused his death to the damage and prejudice to the heirs of the victim.<sup>[2]</sup>

The antecedent facts are as follow:

On 25 July 2007, Judge Orlando Velasco (Judge Velasco) was riding in a motorcycle on his way home from a party when two men riding in two separate motorcycles

shot him at the back and in front numerous times. Judge Velasco was first brought to Bayawan District Hospital. Upon advice of the doctors, he was then brought to Silliman University Medical Center where he underwent surgery. He survived for another twelve hours before he expired. In Judge Velasco's death certificate, the following are the findings:

1. Multiple organ failure
2. Severe hypovolemia secondary to exanginations severe blood loss
3. Multiple gunshot wounds abdominal pelvic area with through and through injury to the bladder complete transection ® distal ureter, through and through injury to the rectum, 88A plate transaction of the ® internal that artery and vein through and through injury to the sacrum through and through injury to the penile shaft, multiple muscles bleeders bilateral inguinal area.<sup>[3]</sup>

Judge Velasco's wife, Bernadette, witnessed the shooting. She and her husband had just left the party and rode in two separate motorcycles.

Bernadette reached home first and she waited for Judge Velasco at the shoulder of the road. Bernadette then noticed two motorcycles heading towards her house so she stepped backward. When one of the motorcycles neared Bernadette, she heard two gunshots. She saw another motorcycle running side by side with the motorcycle where Judge Velasco was. Then, she saw her husband being shot at three times at his lower hip. One of the gunmen shot at Judge Velasco again, and then looked at Bernadette while returning his gun to his waist. Bernadette, in turn, shouted for help.<sup>[4]</sup>

Two landscapers employed by Judge Velasco narrated that more or less, a month before the shooting, a neighbor of Judge Velasco came and asked them to inform Judge Velasco that someone on a motorcycle was tailing him. They saw the man allegedly following Judge Velasco in front of a school that is directly across Judge Velasco's house. They told Judge Velasco about it but the latter dismissed the warning.<sup>[5]</sup>

The police received information that the gunman is appellant. But it was only on 2 January 2008 that they received a report that appellant was seen riding a motorcycle towards Bayawan. On the following day, the police established a checkpoint where appellant was apprehended after being seen carrying a shotgun. He was arrested and brought to the police station. That evening, Bernadette was called to come to the police station. She positively identified appellant in a police line-up.<sup>[6]</sup>

Appellant, for his defense, alleged that he was in the Municipality of Jimalalud in Negros Oriental on 25 July 2007. On 3 January 2008, he was going towards Bayawan when he was arrested at a checkpoint. He claimed that the shotgun belonged to his father and that he wanted to sell it to be able to buy his child's milk. He denied knowing and shooting Judge Velasco. He would assert that Bernadette visited him in jail.<sup>[7]</sup>

On 5 April 2010 the RTC rendered a Decision<sup>[8]</sup> finding appellant guilty beyond reasonable doubt of murder. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the [c]ourt finds accused Gilbert Caballero y Garsola guilty beyond reasonable doubt of the crime of murder defined and punished under Article 248 of the Revised Penal Code, and the [c]ourt hereby punished him by reclusion perpetua and to pay the following amounts:

1. Fifty Thousand (P50,000.00) pesos for death indemnity;
2. Fifty Thousand (P50,000.00) pesos for moral damages;
3. Six Million five hundred thirty- six thousand, one hundred thirty-one pesos and sixty-eight centavos (P6,536,131.68) for loss of earnings; and
4. Five hundred sixty one thousand five hundred ninety-nine pesos and forty-eight centavos (P561,599.48) for medicines, doctors' fees and hospital expenses.<sup>[9]</sup>

The trial court held that all elements of the crime of murder are attendant in the case. Treachery was present when Judge Velasco was shot in the back and he was in a position where he could not defend himself. The trial court dismissed as trivial the alleged inconsistencies in the prosecution's evidence. It found appellant's alibi or denial as weak which cannot prevail over positive identification of the accused.

Appellant elevated the case to the Court of Appeals. The appellate court affirmed with modification the ruling of the trial court in the following dispositive portion of the Decision:

**WHEREFORE**, the instant appeal is hereby **DENIED**. The Judgment dated April 5, 2010 rendered by Branch 35, Regional Trial Court of Dumaguete City in Criminal Case No. 725 is hereby **AFFIRMED WITH MODIFICATION** as to the award of damages.

The RTC's award of moral damages in the sum of P50,000.00 is affirmed. We likewise affirm the award of actual damages in the amount of P561,599.48. The award for loss of earnings in the amount of P6,536,131.68 is also affirmed.

The RTC's award for civil indemnity in the amount of P50,000.00 is increased to P75,000.00. Further, accused-appellant is ordered to pay exemplary damage in the amount of P30,000.00.

The foregoing damages shall be with legal interest at the legal rate of 6% per annum from the date of finality of this judgment until such amounts shall have been duly paid.<sup>[10]</sup>

Aggrieved by the appellate court's ruling, appellant filed a Notice of Appeal.

Appellant argues that the circumstances under which he was identified indicate that impermissible suggestions were exerted by the police on the wife of Judge Velasco. Thus, appellant claims that he should be exonerated in view of the failure of the prosecution to sufficiently identify him as the perpetrator.

The appeal is bereft of merit.

The prosecution was able to prove that it was appellant who shot and killed Judge

Velasco. The victim's wife, Bernadette, gave a clear and categorical testimony in identifying appellant as the perpetrator, thus:

Q: What happened if any upon reaching your house?

A: Upon my arrival in our residence[, ] I disembarked from my motorcycle and stand (sic) at the shoulder of the road and waited for my husband to arrive, the late Judge Orlando Velasco[.]

Q: What happened next?

A: I was just watching motorcycles passing. It took me (sic) before I noticed two motor cycles signaled going towards my place. So I stepped backward.

Q: What else happened thereafter?

A: After I looked from one direction to another direction I noticed a motorcycle getting nearer to me and I heard two gunshots and then I looked to one direction to another direction (sic). The next (sic) when I almost stepped near the motorcycle into my husband and I saw another motorcycle side by side with my husband shot (sic) three times the lower hip of my husband.

Q: How far were you when you first heard these gunshots (sic).

A: 8 to 10 meters away from my husband when I hear two gunshots.

Q: What else happened to you after you heard these gunshots being fired?

A: After he shot my husband three times to (sic) the lower hip he fired on air again and after he fired gunshots on air[, ] he looked at me then the motorcycle changed gear before he left, {pagchange gear niya nisagunto iyang motor nilingi dayon nako ang gapusil ni Judge Velasco nga gatindog ko daplin sa dalan dungan sa iyang paglingi gihipus iyang pusil} I even glanced sideways and he even looked at me.

Q: After seeing that the gunmen fired shots in the air and glanced at you before returning to his firearm[, ] what happened?

A: After the vehicle stopped[, ] he glanced at me while returning his gun on (sic) his waist. I looked at my husband who was then on a stop position.

Q: After the gunshots was fired by the gunman, what else, if any, did you observe?

A: I got near my husband an[d] shouted for help and a few seconds the service of the Mayor of Bayawan City arrived. He was in a speaking condition and told me Ma, please help me. I was hit.

x x

x x

Q: Can you please tell the Honorable Court what happened?

A: More or less before 11 of [sic] after 11:00 o'clock Col. Abella texted me that he is coming so I response [sic] okay sir. So I even told my daughter.

Q: What was the purpose of Col. Abella calling you at that late hour of the night?

A: Some important matters to be discussed.

Q: Did he tell you what this important matter was?

A: No[, ] he did not tell me.

Q: What happened?