

THIRD DIVISION

[G.R. No. 192790, August 01, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
YOLANDO LIBRE ALIAS "NONOY," ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

Before this Court is an appeal via Rule 45 from the Decision dated April 27, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 00089-MIN^[1], *affirming in toto* the Decision dated January 18, 2000 of the Regional Trial Court (RTC), Panabo, Davao, Branch 34, convicting appellant Yolando Libre of murder and frustrated murder.

On February 9, 1995, four (4) Informations were filed, accusing accused-appellant Yolando Libre alias "*Nonoy*" and accused Albino Caman and Flora Encabo Vda. de Lumidas of murder and frustrated murder. The Informations alleged -

Criminal Case No. 95-21 for Murder^[2]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one Rodel Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim. CONTRARY TO LAW.

Criminal Case No. 95-22 for Murder^[3]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Joselito Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

Criminal Case No. 95-23 for Frustrated Murder^[4]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Ruben Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reasons of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Ruben Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.

Criminal Case No. 95-25 for Frustrated Murder^[5]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Renante Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Renante Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.

On February 16, 1996, upon arraignment, all three (3) accused pleaded not guilty. Joint trial ensued.

On January 7, 1997, however, during the pendency of these cases, accused Albino Caman while attempting to escape, was shot by provincial prison guards which resulted in his death. Consequently, on January 21, 1997, by reason of his death, the criminal cases against him were dismissed.^[6]

The facts are as follows:

In the evening of November 25, 1994, prosecution witness Lucy Sabando (*Lucy*), together with her husband, Edwin, and their child, were visited in their home by three (3) persons, whom she later identified as accused Albino Caman (*Caman*), a member of the Citizen's Armed Forces Geographical Unit (*CAFGU*), accused-appellant Yolando Libre (*Libre*), and accused Flora Encabo (*Encabo*). The three accused told her that they were confused as to the direction of the house of Ruben Barte (*Ruben*), who was known to be a member of the New People's Army (*NPA*). They suddenly pushed the door of her house and ordered them to accompany them

to Ruben's house. She noticed that each of them was carrying a firearm. One was a long firearm and the rest were short firearms. Her husband, while carrying their child, was the one who led the group to Ruben's house which was about two (2) kilometers away. Since they were not carrying any lamp, it took them about thirty minutes to reach their destination. In the meantime, while they were walking, accused ordered Lucy to call out Ruben when they reach the latter's house and ask for medicine for her child. [7]

When they reached Ruben's house, Lucy called out asking for medicine for her supposed sick child. Ruben, while holding a lamp, went out of his house to see who was calling. [8] It was then that one of the male accused rushed towards Ruben. Lucy later testified that the one who was carrying a short firearm was the one who rushed towards Ruben. She likewise testified that immediately after the accused and Ruben started "pulling" each other, she grabbed her husband and ran away. When they were about 250 meters away, she heard several gunshots.

Ruben testified that at about 9 o'clock in the evening of November 25, 1994, while he was inside their house together with his wife and children, he heard a woman's voice asking for medicine for a sick child. He recognized the voice to be that of Lucy. When he opened the door, he was suddenly attacked by accused Caman who was then carrying a gun which he thought was an M-14. He likewise saw accused-appellant Libre bringing a .38 caliber handgun. Caman then shot him at the back and thereafter began firing at his family who were then sleeping. The strafing lasted for about 30 minutes. [9] Meanwhile, immediately after Caman shot Ruben, the latter took cover near their house post and was able to crawl out of the house and escape. While escaping, he heard one of the accused saying "*Buhi pa ba rial*" (Is he still alive") and the other one answered: "*Mabuhi pay pino pa sa bugas.*" (an idiom to mean that no one could survive with the strafing). [10] He then went to the house of SPO4 Ernesto Evangelista, which was about a half kilometer away. He told SPO4 Evangelista that they were strafed. He thereafter fell unconscious and was later taken to Tagum for treatment of his injuries.

Ruben likewise testified that he did not know the motive of the attack but he testified that he had previous incident with Yolando Libre who challenged him to a fight with a bolo. He likewise testified that *albeit* he did not know Albino Caman, he knew that the latter was a member of the CAFGU and used to rove around their place. He also knew that Albino Caman and Yolando Libre were *compadres*. [11]

SPO4 Ernesto Evangelista testified that at about 9 o'clock in the evening of November 25, 1995, he was awakened by Ruben who informed him that his house was strafed by unidentified persons. While his house was only a half kilometer away from Ruben's, he did not hear the gunfire as he was asleep. He noticed that Ruben was hit and bloody. He then called the police station and requested assistance to investigate the incident. At about 10 o'clock that night, the PNP Group, consisting of about ten police officers, led by the chief of Police, Elmer Royo, went to the crime scene. There they discovered that Juanita had one gunshot wound and several of the children were also hit. They noticed that the house was hit by several bullets and a number of empty shells of Garand rifle and .38 caliber revolver were recovered in the premises. Thereafter, they brought Juanita and the wounded children to the Davao Medical Hospital. [12]

Among the seven children, three (3) were shot. Renante Barte, who was then thirteen (13) years old, was shot in his left buttock and was confined at the Davao Regional Hospital for five (5) days and was recommended by the medical officer for medical attendance for 30-45 days barring complications. Joselito Barte, who was then eleven (11) years old, was pronounced dead on arrival and the cause of death was: *"Hemorrhagic shock sec. to gunshot wound at the right inguinal point of entrance towards the right buttocks point of exit."* Rodel Barte, who was then 1 year and 3 months old, was likewise hit and the medical finding was: *"gunshot wound buttock, bilateral with massive tissue loss"* and the medical operation performed was a *"wide excision of gunshot buttocks proximal diverting loop colostomy."* He died four (4) days after he was confined in the Davao Regional Hospital.

Juanita Barte testified that when her husband went outside to answer Lucy's call for help, she suddenly heard gunshots and learned that Ruben was hit. She then started crying and shouted: *"Do not shoot us because we have children"* but the firing still continued. So she gathered her children and embraced them all. She later identified accused Albino Caman, Yolando Libre, and Flora Encabo as the assailants. She could see their faces because of the lamp which was carried by Ruben. She was wounded on her right leg and right elbow.

For the defense, Flora testified that accused-appellant Libre was her common-law husband and they started living together in 1993. She likewise testified that she did not know Albino Caman and that she only met him in the evening of November 25, 1994. At about 9 o'clock in the evening, Caman allegedly went to their house and asked her husband the directions to the house of Ruben. Her husband allegedly did not want to accompany Caman as it was already dark. Caman got mad, and with "blazing" eyes, poked his gun at Libre and forced them to go out and accompany him to Ruben's house. She knew the Bartes by name and face and she also knew where their house was. While they were walking, they were allegedly pushed by Caman and were allegedly told not to tell anyone including the police. She likewise testified that they did not stop at Ruben's house but instead passed by it as they were allegedly afraid at what Caman might do to Ruben and to them. Then, Caman asked them what place they were in already, and she answered that she did not know. When Caman turned to his left, he saw a lighted house and ordered Flora to wake the people inside. It turned out to be Lucy Sabando's house. As she refused Caman's orders, the latter himself woke the people inside the house and asked for the direction of Ruben Barte's house. Lucy Sabando then woke her husband, who told Caman that he will guide them to Barte's house. Together with Lucy and her husband, they turned back to where they came from to proceed to Ruben's house. She further testified that they could not run as Caman was allegedly holding her shoulder while his gun was pointed at her husband. She further testified that she and her husband ran to the cogon area when the commotion started and it was there that she heard the gunshots.

Yolando Libre, for his part, denied having any participations in the strafing. He testified that he knew Albino Caman as a member of the CAGU and he used to see him wearing a "fatigue" uniform and fully packed with firearms. He was not close to Albino Caman and did not have any previous conversation with him. He testified that at around 9 o'clock in the evening of November 25, 1994, Albino Caman went to their house and asked for the directions of Ruben Barte's house. Albino Caman allegedly smelled of liquor and had reddish eyes. Yolando Libre knew Ruben's house,

however, he refused to accompany Albino as it was already dark. This seemed to infuriate Albino Caman who then cocked his rifle and poked it at him while commanding them to accompany him to Ruben's house. Libre testified that he intentionally misled Albino Caman and so they were able to proceed to the house of Lucy and Edwin Sabando instead and it was already the latter who led them to Ruben Barte's house. Yolando Libre testified that he was familiar with Barte's house as he always passed by it when gathering firewood. He however denied having a grudge against him.

On January 18, 2000, the court *a quo* rendered its Decision,^[13] to wit:

Wherefore, the Court sentences the accused Yolando Libre, to suffer the following penalties.

In Crim. Case No. 95-21, he is sentenced to suffer the penalty of reclusion perpetua and is ordered to pay the heirs of Rodel Barte the sum of P50,000.00 for indemnity ex delicto and P50,000.00 for moral damages and P50,000.00 for exemplary damages.

In Crim Case No. 95-22, he is sentenced to suffer the penalty of reclusion perpetua and is directed to pay the heirs of Joselito Barte the sum of P50,000.00 as indemnity ex delicto, moral damages of P50,000.00 and exemplary [damages] of P50,000.00.

In Crim. Case No. 95-23, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay Ruben Barte the sum of P20,000.00 as indemnity ex delicto, PI 0,000.00 moral damages and PI 0,000.00 as exemplary damages.

In Crim. Case No. 95-25, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay Renante Barte the sum of P20,000.00 as indemnity ex delicto, PI 0,000.00, [as] moral damages and PI0,000.00 as exemplary damages.

In all of these cases, he shall also suffer all the accessory penalties provided for by law. He should be credited with the period of his detention pending termination of these cases.

The accused, Flora Encabo, is acquitted in Crim. Cases [No.] 95-21, 95-22, 95-23 and 95-25 for want of proof beyond reasonable doubt as to her.

SO ORDERED.

Accused-appellant Libre appealed before the Court of Appeals.

On April 27, 2010, in its disputed Decision, the Court of Appeals dismissed the appeal for lack of merit and the appealed decision of the trial court was affirmed *in toto*.

Hence, this appeal, with the following issues: