

FIRST DIVISION

[G.R. No. 195244, June 22, 2015]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALVIN ESUGON Y AVILA, ACCUSED-APPELLANT.**

DECISION

BERSAMIN, J.:

Every child is presumed qualified to be a witness. The party challenging the child's competency as a witness has the burden of substantiating his challenge.

Under review is the decision promulgated on July 23, 2010,^[1] whereby the Court of Appeals (CA) affirmed with modification the conviction of the appellant for the composite crime of robbery with homicide handed down by the Regional Trial Court (RTC), Branch 211, in Mandaluyong City through its judgment rendered on January 27, 2006.^[2]

Antecedents

The information charged the appellant with robbery with homicide, alleging as follows:

That on or about the 22nd day of October 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, with the use of a bladed weapon, by means of force and violence, did, then and there, willfully, unlawfully and feloniously take, steal and carry away cash money amounting to P13,000.00 belonging to JOSEPHINE CASTRO y BARRERA, to the damage and prejudice of the latter; that by reason or on occasion of said robbery, accused did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon said JOSEPHINE CASTRO y BARRERA, thereby inflicting upon her physical injuries which directly caused her death.

CONTRARY TO LAW.^[3]

The CA adopted the RTC's summation of the evidence of the Prosecution, to wit:

Carl or Muymoy, 5-year old son of the victim, testified that on the night of the incident, he, his younger sister Cheche, and his mother and father, were sleeping on the ground floor of their house. He saw appellant, whom he calls "Nonoy," enter their house and stab her mother with a knife, while he (Carl) peeped through a chair. Although there was no light at the ground floor, there was light upstairs. After his mother got stabbed, his father chased the appellant. Carl saw blood come out of his

mother's lower chest. His father then brought her to the hospital. Carl positively identified the appellant, a neighbor who often goes to their house, as the one who stabbed his mother. On cross-examination, he related that the assailant took money from his father's pocket. He likewise admitted that he did not see very well the perpetrator because there was no light (TSN, February 24, 2004, pp. 3, 11-23, 28, 30-32).

Upon being asked by the trial court, Carl stated that although there was no light when his mother was stabbed, he was sure of what he saw since there was light at their second floor, which illumined the ground floor through the stairway (TSN, February 24, 2004, pp. 33-34).

Insp. Marquez, who autopsied the body, related that the cause of the victim's death was hemorrhagic shock due to stab wound. The wound was located at the epigastric region, measuring 2.8 x 0.5 cm. 4 cm from left of the anterior midline, 13 cm deep, directed posterior and upward, piercing the right ventricle of the heart, thoracic aorta and lower lobe of the left lung (TSN, April 21, 2004, pp. 1, 6; Exh. "I," Records, p. 103).

Next to testify was Dennis, husband of the victim. He narrated that he and the victim were married for nine years before the incident and that they have four children: Monica, 11 years old; Mary Joy, 9 years old; Carl, 5 years old; and Cherry Ann, 7 months old. At about 9 p.m. on October 21, 2003, he and his wife were sleeping downstairs in their sala, with their baby, while their other children slept upstairs. Their sala measures 3 by 3 meters. At around 2 a.m., his son Carl woke up crying and went downstairs to sleep with them. Fifteen to thirty minutes later, he heard someone shout "*magnanakaw!*" [H]e turned on the light and saw that their door was open. He got their bolo and ran outside. When he did not see anybody, he returned and heard his wife moaning. He embraced and carried her and saw blood on her back. He shouted for help and his brother-in law helped him bring the victim to the hospital where she eventually died. He spent P23,000.00 for the funeral and P44,500.00 for the wake and burial. On cross-examination, he admitted that he has no personal knowledge as to who stabbed his wife since he did not actually see the perpetrator and that it was his son who saw the appellant (TSN, August 25, 2004, pp. 3-12; October 6, 2004, pp. 5-6; November 17, 2004, pp. 3-4).

Sharon, sister-in-law of the victim, testified that she and her husband were sleeping upstairs when they were roused from their sleep at around 2 a.m. of October 22, 2003 by Dennis' cry for help. She saw that there was blood on the victim's chest. After the victim was brought to the hospital, she noticed that the victim's children were trembling in fear and were crying. They got outside and went to the billiard hall in front of their house. She took Carl and had him sit on her lap. Then Carl said, "*Tita, sya pasok bahay namin*" pointing to someone but she did not see who it was since there were many people passing by. Later, the police asked Carl whether he saw somebody enter their house and he answered yes and demonstrated how his mother was stabbed. Carl also said that the person who stabbed his mother was present in the vicinity. He then pointed to appellant and said "*siya po yung pumasok sa bahay namin.*"

As a resident there, appellant often goes to the billiard hall and sometimes watches the television at the house of the victim (TSN, February 9, 2005, pp. 3-14).

PO1 Fabela also testified that after it was reported to him that there was a stabbing incident, he went to the hospital then to the crime scene and interviewed the persons thereat. Later, Carl pinpointed and positively identified the appellant as the one who stabbed his mother and robbed them of their money. Appellant was arrested and brought to the police station (TSN, March 16, 2005, pp. 2, 5-6).

PO2 Sazon meanwhile testified that while he was questioning people in the area, Carl pointed to them the suspect who was one of the bystanders. They were asking Carl questions when he suddenly blurted out that it was appellant who entered their house and stabbed his mother. They invited the appellant to the police station but the latter denied having committed the crime. On cross-examination, the witness admitted that their basis in arresting appellant was the information relayed by Carl (TSN, April 27, 2005, pp. 2, 12-17; June 15, 2005, p. 5).

[4]

In turn, the appellant denied the accusation. According to him, he had frequented the victim's billiard hall, which was situated only four houses away from where he lived, and, on the evening in question, he had been the last to leave the billiard hall at 11 o'clock p.m. and had then gone home. He recalled that he had been roused from slumber by screams for help around two o'clock a.m., prompting him to ask his mother for the key to the door; that he had then gone outside where he learned of the killing of the victim; that police officers had later on approached him to inquire what he knew about the killing because they told him that Carl, the young son of the victim, had pointed to him as the perpetrator, making him the primary suspect; that he had replied that he had had nothing to do with the crime; and that he had assured the police officers that he had never been involved in any wrongdoing in his years of living in the neighborhood.

The appellant's mother corroborated his version.[5]

Judgment of the RTC

As mentioned, the RTC pronounced the appellant guilty of the crime charged under its judgment rendered on January 27, 2006,[6] disposing:

WHEREFORE, premises considered, finding the accused **ALVIN ESUGON y AVILA @ "NONOY" GUILTY** beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE under Article 293 and punished under Article 294 (1) of the Revised Penal Code, the court hereby sentences him to *Reclusion Perpetua* and to indemnify the heirs of JOSEPHINE CASTRO y BARRERA as follows:

- 1) P50,000.00 civil indemnity;
- 2) P57,500.00 as actual damages;

3) P50,000.00 as moral damages.

SO ORDERED.^[7]

Decision of the CA

On appeal, the appellant argued that the RTC erred in finding him guilty beyond reasonable doubt of the composite crime of robbery with homicide based solely on the testimony of Carl, a 5-year old witness whose recollections could only be the product of his imagination.^[8]

On July 23, 2010, however, the CA, giving credence to the child witness, and opining that his inconsistencies did not discredit his testimony, affirmed the conviction of the appellant,^[9] ruling thusly:

WHEREFORE, the appeal is **DENIED** for lack of merit. The Decision dated January 27, 2006 of the Regional Trial Court, Branch 211 of Mandaluyong City in Crim. Case No. MC03-7597, is hereby **AFFIRMED** with the **MODIFICATION** in that the award of P57,500.00 as actual damages should be **DELETED** and in lieu thereof, temperate damages in the amount of P25,000.00 should be **AWARDED** the heirs of Josephine Castro y Barrera.

SO ORDERED.^[10]

Issues

In this appeal, the appellant posits that the adverse testimony of the 5-year old Carl, being filled with inconsistencies, was not credible, but doubtful; that unlike him, his sisters, who were then at the second floor of the house, were not roused from sleep; that contrary to Carl's recollection, the place was not even dark when the stabbing attack on the victim occurred because his father said that he had turned the light on upon hearing somebody shouting "*Magnanakaw!*;" and that his father had then gotten his bolo, and gone outside the house.^[11]

Moreover, the appellant maintains that the Prosecution did not prove that violence or intimidation was employed in the course of the robbery. He argues that he could not be held liable for robbery by using force upon things considering that the culprit had neither broken any wall, roof, floor, door or window to gain entry in the house nor entered the house through an opening not intended for entrance. If at all, he could be liable only for the separate crimes of theft and homicide, not of the composite crime of robbery with homicide.^[12]

The Office of the Solicitor General (OSG) counters that the evidence showed that the appellant's principal intent had been to rob the victim's house, with the homicide being perpetrated as a mere incident of the robbery; and that Carl positively identified the appellant as the person who had stabbed the victim, his identification bearing "all the earmarks of credibility especially when he has no motive for lying about the identity of the accused."^[13]

Ruling of the Court

The appeal is bereft of merit.

The most important task of the State in the successful prosecution of the accused is his credible and competent identification as the perpetrator of the crime. Hence, this appeal turns on whether or not the identification of the appellant as the perpetrator of the robbery with homicide was credible and competent considering that the identifying witness was Carl, a 5-year old lad, whose sole testimony positively pointed to and incriminated the appellant as the person who had entered their home, robbed the family, and killed his mother.

The qualification of a person to testify rests on the ability to relate to others the acts and events witnessed. Towards that end, Rule 130 of the *Rules of Court* makes clear who may and may not be witnesses in judicial proceedings, to wit:

Section 20. *Witnesses; their qualifications.* - Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification. (18a)

Section 21. *Disqualification by reason of mental incapacity or immaturity.*
- The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (19a)

As the rules show, anyone who is sensible and aware of a relevant event or incident, and can communicate such awareness, experience, or observation to others can be a witness. Age, religion, ethnicity, gender, educational attainment, or social status are not necessary to qualify a person to be a witness, so long as he does not possess any of the disqualifications as listed the rules. The generosity with which the *Rules of Court* allows people to testify is apparent, for religious beliefs, interest in the outcome of a case, and conviction of a crime unless otherwise provided by law are not grounds for disqualification.^[14]

That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the *Rule on Examination of a Child Witness* (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.^[15]