

FIRST DIVISION

[G.R. No. 203066, August 05, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODELIO LLOBERA Y OFIZA, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

Questioned in the present notice of appeal is the Decision dated November 11, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04389,^[1] which affirmed with modifications the Decision dated November 13, 2009 of the Regional Trial Court (RTC), Branch 15, Malolos City, in Criminal Case No. 680-M-06,^[2] finding accused-appellant Rodelio Llobera^[3] y Ofiza^[4] guilty beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as temperate damages.

In an Information^[5] dated February 20, 2006 and filed on March 7, 2006, accused-appellant was charged with the murder of Cristituto Biona, Jr., as follows:

That on or about the 22nd day of March, 2005, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an improvised shotgun (sumpak) and with intent to kill one Cristituto Biona, Jr. y Billones, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the use of an improvised shotgun the said Cristituto Biona, Jr. y Billones, hitting him on his abdomen, thereby inflicting upon him mortal wound which caused his death.

Contrary to law.

Upon arraignment, accused-appellant, assisted by counsel *de officio*, pleaded not guilty to the crime charged.^[6]

The prosecution, in presenting its case, offered the testimonies of Betty dela Cruz (Betty)^[7] and Rosebert Biona (Rosebert), relatives of the victim who witnessed the shooting incident firsthand.

Betty, an aunt by affinity of the victim, testified that on March 22, 2005, at around 11:00 p.m., a commotion took place in front of her house as certain persons threw stones at each other ("*nagbatuhan*").^[8] When the commotion was over, she and her

kin, including the victim, went out of the house to find out what happened.^[9] It was then that accused-appellant, who suddenly emerged from a nearby house armed with an improvised shotgun, shot the victim on the left side of his body.^[10] Betty testified that she is familiar with accused-appellant as the latter is her *barangaymate* and she always sees him when she passes by his house.^[11]

Rosebert, a cousin of the victim, corroborated Betty's testimony. He recounted that, at the time in question, he was beside the victim as they were talking to each other when accused-appellant suddenly appeared and shot the victim.^[12] He testified that he was able to positively identify accused appellant at the time of the shooting because the place where the shooting occurred was illuminated by the moon, the lights from the neighbors' houses, and the lamp *gasera* at his uncle's house.^[13]

The defense, for its part, presented accused-appellant who testified that on March 22, 2005, at around 10:00 p.m., he, his wife, their children, and certain visitors, one of whom was his cousin, Roderick Soriano (Roderick), were in their house in Barangay Mojon, San Jose del Monte, Bulacan, planning a swimming event.^[14] His visitors left at around 11:15 p.m., and, thereafter, he and his family slept.^[15] Accused-appellant maintained that it takes one and a half hours to reach the scene of the crime from his house; thus, he could not have been at the scene of the crime at the time the crime supposedly happened.^[16] These statements were corroborated by Roderick when he testified.

After trial, the RTC rendered a judgment of conviction, viz.:

WHEREFORE, this court finds the accused Rodelio Llobrera y Otiaza GUILTY beyond reasonable doubt of **Murder** under Article 248 of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the deceased Cristituto Biona, Jr. y Billones the following sums of money[,] to wit:

- 1.) P60,000.00 as civil indemnity;
- 2.) P50,000.00 as moral damages; and
- 3.) P25,000.00 as exemplary damages.

SO ORDERED.^[17]

The RTC reasoned that accused-appellant's denial and alibi cannot prevail over the positive identification of Betty and Rosebert.^[18] Besides, according to the RTC, accused-appellant's claim of physical impossibility has no basis because, as attested to by accused-appellant himself, it takes only one and a half hours to reach the scene of the crime coming from accused-appellant's house.^[19]

The RTC also ruled that treachery attended the killing of the victim for the prosecution's evidence shows that accused-appellant suddenly and unexpectedly appeared and shot the victim who did not sense any danger upon him.^[20]

Accused-appellant appealed before the Court of Appeals, assigning the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION.

III.

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.^[21]

After a review of the case, the Court of Appeals affirmed the conviction and merely modified the award of damages. The appellate court gave full credence to the positive identification of Betty and Rosebert, especially in the absence of any ulterior motives on their part.^[22] Moreover, a review of Roderick's testimony showed that while it took an hour and a half to reach the scene of the crime from accused-appellant's house, that is by public transportation. Should one travel by private car, it would only take about fifteen minutes to traverse said distance. The appellate court then rejected accused-appellant's claim of physical impossibility.^[23]

The appellate court also affirmed the finding of treachery. It held that accused-appellant's mode of attack was such that the victim appeared not to have seen him prior to, during, or after the attack, leaving him no chance to defend himself.^[24]

Thus, the Court of Appeals held:

WHEREFORE, the appeal is **DENIED** for lack of merit. The Decision dated 13 November 2009 of the Regional Trial Court of Malolos City, Branch 15, in Criminal Case No. 680-M-06, is **AFFIRMED** with the following **MODIFICATIONS**: (1) the award of civil indemnity is increased to P75,000.00, (2) temperate damages is awarded in the amount of P25,000.00, and (3) the award of exemplary damages is deleted.

SO ORDERED.^[25]

Accused-appellant is now before the Court, adopting the arguments he raised before the Court of Appeals.^[26] Specifically, accused-appellant questions his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt, the disregard of his version of events, and the appreciation of treachery.^[27]

Accused-appellant avers that Betty and Rosebert probably misidentified him. For one, contrary to Betty's claim, he and Betty were not *barangaymates*, as he resides in Barangay Mojon, while Betty resides in Barangay Minuyan. While accused-appellant admits that he used to visit Barangay Minuyan every Sunday, the probability that Betty would chance upon him as to make her familiar with his identity and physical characteristics is very low. For another, Rosebert was merely vacationing in Barangay Minuyan when the shooting incident transpired. Not being a resident of Barangay Minuyan, Rosebert is not familiar with the locals residing in Barangay Minuyan and in the nearby *barangays* as to enable him to pinpoint accused-appellant as the one who shot the victim. All in all, accused-appellant argues that Betty and Rosebert probably misidentified him as the perpetrator of the crime, especially since there were other suspects.^[28]

Accused-appellant also questions the appreciation of treachery in the case at bar. He claims that while the prosecution alleged that the victim was suddenly shot by accused-appellant, it failed to establish that accused appellant contemplated on the means or method to ensure the victim's killing without affording the latter a chance to defend himself.^[29]

We dismiss the appeal.

Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act (R.A.) No. 7659, defines the crime of Murder -

ART. 248. *Murder*.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

"The elements of murder that the prosecution must establish are[:] (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [RPC]; and (4) that the killing is not parricide or infanticide."^[30]

All these elements have been proven in the case at bar. The death of Cristituto Biona, Jr. is evidenced by a certificate of death duly presented in court.^[31] Also, accused-appellant and the victim not being related to each other and the victim not being an infant, the killing here does not come within the definition of parricide or of infanticide.

As to accused-appellant's culpability, the clear and categorical testimonies of the prosecution witnesses obviate any doubt that on March 22, 2005, accused-appellant shot the victim with a shotgun, causing the latter a fatal wound which brought about his untimely death.

Betty resoundingly identified accused-appellant in open court as the one who shot the victim, viz.:

- Q This Cristituto Biona, where is he now?
A [H]e is already dead.
Q What was the caused (sic) of his death?
A He was shot, sir.
Q [W]ho shot him?
A
Rodel, sir.
Q This Rodel, for how long have you known him prior to March 22, 2005?
A More than a year, sir, because I always passed his house and I used to see him.
Q Is he your barangaymate?
A Yes, sir.
Q If present in Court today[,] could you point this Rodel whom you claimed shot Cristituto Biona, Jr.[]?
INTERPRETER:
Witness pointing to a detention prisoner who when asked of his name answered Rodel Llobrera.^[32]

Betty and Rosebert, both eyewitnesses to the shooting incident, categorically identified accused-appellant as the perpetrator of the crime. Betty testified:

- Q Considering that it was night time, how were you able to identify Rodel Llobrera as the one who shot Cristituto Biona?
A It was so near, sir, and the distance is like the door of this Courtroom, sir.
FISCAL:
7 meters, your Honor, from the witness.
Q What illuminated the place at that time?
A The moon, sir.
xxxx
Q Considering that you were there and Cristituto Biona was here, how were you able to see Rode) Llobrera approached (sic) Cristituto Biona while he was on the side[]?
A I would clearly see because when the 3 were talking I was looking at them illumined by the brightness of the moon.^[33]

Betty's testimony was corroborated by Rosebert who, at that time, was in an opportune spot to clearly see the shooter. Rosebert recounted:

- Q Now, Mr. [W]itness, on this 11:00 o'clock of March 20, 2005, where were you then?
A I was beside Cristituto Biona, sir.
Q When you said Cristituto Biona [you] are referring to the