768 Phil. 443

SECOND DIVISION

[G.R. No. 211160, September 02, 2015]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REGGIE VILLARIEZ ALIAS "TOTI," APPELLANT.

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is an appeal assailing the Decision[1] dated 20 November 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 00882. The CA affirmed with modification the Decision[2] dated 22 August 2007 of the Regional Trial Court (RTC) of Roxas City, Branch 17, in Criminal Case No. C-4770. The CA convicted appellant Reggie Villariez alias "Toti" (Villariez) of the crime of murder qualified by treachery and sentenced him to suffer the penalty of *reclusion perpetua.*

The Facts

On 22 September 1995, Villariez, together with his two brothers, Amado Villariez (Amado) and Tomas Villariez (Tomas), was charged in an Information for murder, defined and penalized under Article 248[3] of the Revised Penal Code. The Information states:

> That on July 3, 1995, at around 3:30 o'clock in the afternoon at the compound of the Catholic Cemetery in Brgy. Casanayan, Pilar, Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with guns of unknown caliber and with intent to kill, conspiring and confederating with one another, did then and there willfully, unlawfully and without any warning or provocation shot from behind one ENRIQUE OLIMBA, thereby inflicting upon the latter a fatal gunshot wound in the body causing the instantaneous death of said Enrique Olimba.
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> The crime was committed with the qualifying aggravating circumstances of treachery and known premeditation.
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> That because of the death of said ENRIQUE OLIMBA, his heirs are entitled to death indemnity of P50,000.00 plus other damages in consonance with the provisions of the New Civil Code of the Philippines.
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> CONTRARY TO LAW.[4]

On 20 July 1995, warrants of arrest were issued against the three accused brothers - Villariez, Amado, and Tomas. Amado and Tomas surrendered and posted bail. On 26 August 1995, Amado was shot dead and the case against him was dismissed. On 17 November 1995, Tomas was arraigned and pleaded not guilty.

On 29 January 1997, the prosecution filed a Motion to Dismiss Tomas from the case. Perla Olimba (Perla), the wife of the victim Enrique Olimba (Enrique), executed an Affidavit of Desistance because of the insufficiency of evidence to prove Tomas' guilt beyond reasonable doubt. On 30 January 1997, the motion was granted by the RTC.

On 6 October 1999, the RTC ordered the issuance of an alias warrant of arrest against Villariez. On 14 February 2003, the alias warrant of arrest was returned to the RTC after Villariez was arrested. On the same day, Villariez was taken into custody by the provincial warden of the Capiz Rehabilitation Center.

On 5 May 2003, Villariez was arraigned and pleaded not guilty.

On 20 August 2003, at the pre-trial conference, the following facts were admitted by the parties: (1) the name and identity of Villariez; (2) the name and identity of the victim, Enrique; (3) that on 3 July 1995, at about 3:30 p.m., a shooting incident occurred in the premises of the Catholic Cemetery of Barangay Casanayan, Pilar, Capiz, where the victim was present and died as a result; (4) that Villariez knows Enrique since they are second cousins; (5) that Villariez is a brother of co-accused Amado and Tomas; and (6) that Villariez was arrested on 14 February 2003.

On 25 March 2004, Villariez posted a personal bail bond and was released from custody.

During the trial, the prosecution presented the following witnesses: (1) Dr. Florentino Bermejo (Dr. Bermejo), postmortem examiner; (2) Perla; (3) Randy Olimba (Randy), son of the victim; (4) Ana Olimba (Ana), daughter of the victim; and (5) Antonio Bacto, Chief of Police of Capiz.

Ana testified that on 3 July 1995, she, together with her family -parents Enrique and Perla and sibling Randy, attended the burial of Perla's uncle in the cemetery of Barangay Casanayan, Pilar, Capiz. At around 3:30 in the afternoon, while praying the novena before the burial, Ana, who was on top of a tomb and about eight meters from her father, heard a gun explode. When she turned to look at her father, she saw him spinning. Ana then shouted to her mother that her father was shot. Ana ran towards her father and saw Villariez waving a gun, accompanied by his brothers Amado and Tomas. Ana held her father's head with her dress drenched in blood. She asked her father the identity of the person who shot him. At the brink of death and with a voice she could hardly hear, her father uttered the name "Toti." Thereafter, she ran towards the road and told her mother to bring her father to the hospital. She also saw Villariez and his two brothers pointing their guns to people who were scampering away. The three then fled on a motorcycle.

Randy testified that he was two to three meters away from his father prior to the shooting. He saw Villariez and the latter's two brothers Amado and Tomas position themselves behind his father's back. Thereafter, he saw Villariez, with a short firearm, shoot his father. When the three started running away, he rose and followed

them. Randy saw Amado ride a motorcycle while Tomas and Villariez passed by the rice fields. He then saw Villariez waving the short firearm he was carrying to some tricycle drivers. Afterwards, Randy saw Villariez riding on a motorcycle.

Perla testified that while attending the burial of her uncle, she heard an explosion. She went out and saw Villariez and his two brothers run away from the place where her husband was lying. Then she saw Ana cradling the head of her husband who was lying on the ground. Randy approached Perla and told her that Toti was the one who shot his father. Perla went to the Barangay Captain to inform him that Villariez shot her husband. Perla then returned to the cemetery. There, she found her husband already dead. Thereafter, Perla, Ana and Randy brought Enrique's body to their house and summoned Dr. Bermejo.

Dr. Bermejo, the Rural Health Physician of Pilar, Capiz, performed the postmortem examination on Enrique's cadaver. Dr. Bermejo testified that the victim's cause of death was severe hemorrhage, antecedent to a gunshot wound with the entrance of the bullet at the back. He further testified that both the victim and assailant were possibly standing when the incident happened.

The defense, on the other hand, presented (1) Villariez; (2) Tomas; and (3) Reynaldo Jalbuna (Jalbuna), Villariez's friend and co-worker.

Villariez testified that he was at the Casanayan Cemetery attending the burial of his uncle at around 3:30 in the afternoon of 3 July 1995. He was with Jalbuna, his friend for more than 10 years. His elder brother Tomas was also present and was standing about 20-30 meters ahead of them. Around 200 people attended the burial and while they were praying, he heard a sudden outburst and saw a person fall down. The person was later identified as Enrique, the husband of his second cousin Perla. Everyone scurried away to different directions. Together with Jalbuna, Villariez then proceeded to Balasan, Iloilo.

Jalbuna testified that he was Villariez's co-worker and at the time of the incident they were employed by Vice Mayor Samson Vedro of Balasan, Iloilo. Jalbuna corroborated Villariez's testimony and stated that he was with Villariez in the afternoon of 3 July 1995 attending the funeral of Villariez's relative. They saw Tomas at the funeral but Tomas did not see them. When the shooting incident occurred, Jalbuna saw people running away. They followed everyone else and left the cemetery. They then headed back to work in Balasan, Iloilo.

Tomas testified that he, together with his brother Amado, attended the burial of his uncle on 3 July 1995. He did not see his brother Villariez during the burial. Tomas stated that he was about 10 meters away when he saw the man who shot Enrique but he did not recognize the lone gunman. He further said that Perla could not have seen the shooting incident since her husband was way behind her and that their two children, Randy and Ana, were not present during the burial.

In its Decision dated 22 August 2007, the RTC found Villariez guilty beyond reasonable doubt of the crime of homicide. The RTC found that the seething righteous indignation of the prosecution's witnesses against Villariez could have arisen only from their unadulterated knowledge of the identity of their kin's assailant. The RTC also gave weight to the positive identification of Villariez by Randy and found no reason to disregard the testimony of Ana on her father's dying

declaration that it was "Toti" who shot him. The RTC, however, found that the prosecution failed to establish the existence of the qualifying circumstances of treachery and taking advantage of strength. Thus, it held Villariez liable for the crime of homicide, punishable by *reclusion temporal*. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of homicide, and he is hereby sentenced to suffer the indeterminate prison term of 6 years and 1 day of Prision Mayor, as minimum, to 12 years and 1 day of Reclusion Temporal, as maximum, and to pay the heirs of the victim of the amount of P70,000.00 as civil indemnity, P100,000.00 as moral damages and P50,000.00 as funeral and wake expenses, and pay the costs.
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> SO ORDERED.[5]

On 20 September 2007, Villariez filed an appeal with the CA. Villariez raised the following errors of the RTC:

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> THE COURT A QUO GRAVELY ERRED IN DRAWING FACTUAL CONCLUSIONS FROM THE NEBULOUS AND DOUBTFUL TESTIMONIES OF PERLA OLIMBA, RANDY OLIMBA AND ANA OLIMBA, WIDOW, SON AND DAUGHTER, RESPECTIVELY OF THE DECEASED, THAT IT WAS THE ACCUSED-APPELLANT WHO SHOT THE LATTER;
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> II
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> THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE ALLEGED STATEMENT OF THE DECEASED TO HER DAUGHTER, ANA OLIMBA, AFTER THE SUBJECT SHOOTING INCIDENT AS A DYING DECLARATION; AND
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> III
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> THE COURT A QUO GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT FOR THE FAILURE OF THE PROSECUTION WITNESSES TO IDENTIFY HIM BEYOND REASONABLE DOUBT AS THE PERSON WHO SHOT TO DEATH THE DECEASED.[6]

The Ruling of the CA

In its Decision dated 20 November 2012, the CA affirmed with modification the decision of the RTC. The CA found that Randy's testimony leaves no doubt that Villariez committed the crime. Randy's eyewitness account was amply supported by the postmortem examination which revealed that the entrance wound, located at Enrique's back, caused his father's death. The CA also stated that the close relationship of the Olimbas' with Villariez, being Perla's second cousin, assured the certainty of the identification of Enrique's killer. The CA found the Olimbas'