771 PHIL. 505

FIRST DIVISION

[G.R. No. 214506, October 19, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR PARBA Y SOLON, ACCUSED-APPELLANT.

R E S O L U T I O N

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal[1] filed by accused-appellant Oscar Parba y Solon (Parba) assailing the Decision[2] dated May 19, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05266, which affirmed the Decision[3] dated September 22, 2011 of the Regional Trial Court of Muntinlupa City, Branch 276 (RTC) in Criminal Case No. CBU-44139, finding him guilty beyond reasonable doubt of the crime of Murder.

The Facts

Parba and a John Doe were charged with the crime of Murder, defined and penalized under Article 248[4] of the Revised Penal Code (RPC), as amended, in an Information[5] dated March 14, 1997, the accusatory portion of which reads:

> That on or about the 6th day of January, 1997 at about 6:55 A.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Mark P. Navaja with the gun, hitting the latter on his head and inflicting upon him the following wounds:
>
> "SHOCK, SECONDARY TO GUNSHOT WOUND ON THE HEAD (L) OCCIPITAL AREA."
>
> and as a consequence of said injuries Mark P. Navaja died few minutes later.
>
> CONTRARY TO LAW.

Upon arraignment, Parba pleaded not guilty. Thereafter, trial on the merits ensued.[6]

The prosecution alleged that at around 6:55 in the morning of January 6, 1997, Jesus Catapan (Catapan), a security guard of the Salazar Institute of Technology (SIT) in Natalio Bacalso Avenue, Labangon, Cebu City, was buying cigarettes from a vendor stationed near the main gate of SIT Elementary Department. Suddenly, Parba, who was then seated beside the vendor, stood up, pulled a gun from his belt

bag, and shot a man at the back of the head while the latter was helping his daughter disembark from a motorcycle.[7] At that instance, the victim, later on identified as Mark P. Navaja (Navaja), fell to the ground, while Parba and a companion exited towards the highway, chased by Nestor Buenavista (Buenavista) and Fernando Cuizon (Cuizon), fellow security guards of Catapan.[8] As they were running, Parba pointed a gun at Buenavista and Cuizon, prompting the two to seek cover. Parba then boarded a jeepney while Buenavista and Cuizon followed *via* a separate jeepney and continued their pursuit.[9] Eventually, Parba disembarked at Tabada Street and the two security guards lost sight of him.

The following day, the policemen, who were only able to arrest Parba, subjected him to a paraffin test, where the casts taken off his hands tested positive for the presence of gunpowder residue.[10] Likewise, Dr. Jesus Cerna, the doctor who conducted the autopsy on the body of Navaja, reported that the latter died due to a gunshot wound at the back of the head.[11]

In his defense, Parba denied committing the crime and interposed alibi, denial, and set-up as defenses. He averred that on the date of the incident, he was sleeping in his house until 10 o'clock in the morning as he came from a drinking spree with his brother the night before.[12] Later in the afternoon, Jose Leeway Rivera (Rivera), a police officer, arrived and allowed Parba to test a gun which the former promised to give him. After firing the gun, Rivera invited Parba to the police headquarters where he learned for the first time that he was suspected of killing Navaja.[13] Parba admitted that he knew Navaja since they were neighbors and had been friends since childhood, claiming that the latter was known as a tough guy who had many enemies because of his attitude.[14] However, Parba maintained that he held no personal grudge against Navaja.[15]

The RTC Ruling

In a Decision[16] dated September 22, 2011, the RTC convicted Parba as charged, sentencing him to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordering him to pay the heirs of Navaja P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages.[17]

The RTC refused to give credence to Parba's alibi finding the same to be weak and unsubstantiated, noting that Parba failed to present his wife or his brother to corroborate his testimony and to show that it was physically impossible for him to be at the place of the incident. In fact, the short distance of 100 meters between the crime scene and Parba's house, where he said he was, did not foreclose the possibility of his presence at the crime scene since it would only take around 20 minutes to get to the place.[18]

On the contrary, the prosecution witnesses - Catapan, Buenavista, and Cuizon - who saw the crime, positively identified Parba as the one who shot Navaja at the back of his head. It is undisputed that immediately after the shooting, Buenavista and Cuizon chased Parba and had a good look at him when he pointed a gun at them.[19] Moreover, Buenavista was familiar with the face of Parba since he was a former barangay tanod of Labangon City where he often saw the latter.[20]

Further, the RTC appreciated treachery as a qualifying circumstance since the attack was so sudden and unexpected, which rendered Navaja totally defenseless. However, the other aggravating circumstance of evident premeditation was not appreciated since the prosecution failed to prove the same with certainty.[21]

Aggrieved, Parba appealed[22] to the CA.

The CA Ruling

In a Decision[23] dated May 19, 2014, the CA affirmed Parba's conviction but modified the award of damages.

It found the elements of Murder to have been established by proof beyond reasonable doubt and attended by the qualifying circumstance of treachery. It also found the alibi of Parba weak for failure to prove that he was in another place when the crime was committed. More importantly, the positive identification by the prosecution witnesses greatly outweighs his uncorroborated alibi.[24]

However, the CA modified the awards of damages in favor of Navaja's heirs and ordered Parba to pay P17,000.00 as actual damages which was amply supported by receipts, P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.[25]

Hence, the instant appeal.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly upheld Parba's conviction for Murder.

The Court's Ruling

The appeal is bereft of merit.

In order to convict a person charged with the crime of Murder, the prosecution must establish the following elements beyond reasonable doubt: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*d*) the killing does not constitute Parricide or Infanticide.[26]

One of the circumstances which qualifies the killing to Murder is the existence of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[27] In *People v. Gunda*,[28] it was explained that when the attack against an unarmed victim is so sudden and unexpected that he had no inkling of what the assailant was about to do, there is treachery.[29]

In this case, the prosecution was able to prove that Parba's attack on Navaja was so sudden and executed in such a manner that Navaja was caught off-guard on what Parba intended to do. Eyewitnesses testified that at the time of the attack, Navaja was helping his child alight from the motorcycle when Parba, without warning, shot him at the back of his head. It is inconceivable how Navaja could have expected the attack since clearly, he merely intended to take his daughter to school. As the RTC and CA correctly pointed out, the treacherous nature of the attack rendered Navaja completely defenseless, noting that the attack was from behind.[30] Thus, in view of the principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect,[31] the Court concludes that treachery was correctly appreciated.

Anent Parba's alibi, the Court finds the same to be unavailing. It is well-settled that alibi as a defense is inherently weak and unreliable owing to the fact that it is easy to fabricate and difficult to disprove.[32] To establish alibi, the accused must prove that: (a) he was present at another place at the time of the perpetration of the crime, and (b) it was physically impossible for him to be at the scene of the crime.[33]

In *People v. Marquez*,[34] the Court explained that "physical impossibility" refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[35]

Thus, a distance of one and a half (1 1/2) to two (2) kilometers[36] was held not too far to traverse by walking.[37] Likewise, a distance of about two (2) kilometers,[38] three (3) kilometers,[39] or even five (5) kilometers[40] were consistently held not too far to preclude the possibility that the accused was present at the *locus criminis*.[41] Surely then, a distance of 100 meters, as in this case, is not the "physical impossibility" contemplated to satisfy the defense of alibi.

Moreover, considering its doubtful nature, clear and convincing evidence must be submitted to support the alibi of an accused, otherwise, it is considered negative, self-serving, and undeserving of weight in law.[42] Thus, alibi and denial cannot prevail over the positive identification of the accused as the perpetrator of the crime, especially in cases where the testimonies of the witnesses are categorical, consistent and untainted by ill-will.[43]

Here, Parba failed to satisfy the aforementioned requisites to establish his alibi. Other than Parba's bare assertions that he was at home sleeping in late and doing household chores at the time of the incident,[44] there was no proof and no other witness showing the physical impossibility of his presence at SIT, which was only 100 meters away. On the contrary, the positive, straightforward, and convincing testimonies of the prosecution witnesses as to the details of that fateful morning incident heavily outweigh Parba's alibi.

As narrated, Catapan personally witnessed Parba pull out a gun and shoot Navaja in the head, which led to his untimely demise, while Buenavista and Cuizon immediately chased Parba after the shooting and further encountered him face-to-