

THIRD DIVISION

[G.R. No. 196960, March 12, 2014]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERWIN TAMAYO Y
BAUTISTA, APPELLANT.**

D E C I S I O N

ABAD, J.:

The City Prosecutor of Manila originally filed separate charges of homicide and theft of a necklace worth P1,500.00 against accused Erwin Tamayo y Bautista (Erwin) and John Del Rosario (John) before the Regional Trial Court (RTC) of Manila in Criminal Cases 04-225922-23. Subsequently, however, the prosecution amended the charge of homicide to one of murder, qualified by taking advantage of superior strength and employing means to weaken the defense and afford impunity. It also claimed the attendance of the aggravating circumstances of treachery and evident premeditation.^[1] Trial took place only as to Erwin since John jumped bail and remained at-large. ^[2]

The prosecution presented Norman Pleno (Norman), Wilson Quinto (Wilson), Alvin Hernaez (Alvin), and Leonard Miranda (Leonard). They testified that in the early morning of April 8, 2004, while Joey M. Obamen (Joey), Wilson, Alvin, and Lorenzo Gloria (Lorenzo) were having drink and merriment beside the *Iglesia Ni Cristo* (INC) chapel on Lacson Street in Tondo, Manila,^[3] someone hurled empty bottles of gin at them.^[4] As Wilson went to look for whoever had done it, he saw accused Erwin and John, in the company of several others, also having their drink.^[5]

Retaliating, Joey and his group threw stones and empty gin bottles at accused Erwin and his companions.^[6] Enraged, the latter group gave chase to Joey and the others with him. Unfortunately, Joey tripped on an iron chain that guarded the INC's parking area and fell to the ground.^[7] He was in this position when Erwin and his companions attacked and mauled him. Some, including Erwin, stabbed Joey with their knives. The assailants scampered away afterwards.^[8]

Joey was rushed to the Jose Reyes Memorial Hospital but died shortly on arrival.^[9] A subsequent autopsy of his body showed that he died of traumatic injuries on the head and multiple stab wounds on the abdomen.^[10]

In his defense, Erwin claimed that when the killing took place, he was asleep at home with his wife and a certain Maricel Bustarde although it would take but about 20 to 25 minutes to walk from his house to where the incident took place.^[11] He also claimed that he and Norman, his wife's former boyfriend and one of the prosecution witnesses, had an altercation shortly before the killing incident.^[12] This was the reason Norman testified falsely against him.^[13]

On November 21, 2008 the RTC found accused Erwin guilty of murder but innocent of the separate charge of theft.^[14] Although it did not find sufficient evidence of treachery, evident premeditation, or employment of means to weaken the defense and afford impunity, the RTC elevated the crime that Erwin committed from homicide to murder based on its finding that abuse of superior strength attended the killing. The RTC sentenced him to suffer the penalty of *reclusion perpetua* and to pay Joey's heirs P50,000.00 as civil indemnity, P36,981.85 as actual damages, and P50,000.00 as moral damages.^[15] Erwin appealed the conviction.^[16]

On November 19, 2010 the Court of Appeals (CA) affirmed the RTC Decision with modification in that it further ordered Erwin to pay Joey's heirs P30,000.00 as exemplary damages,^[17] hence, the appeal to this Court. ^[18]

Accused Erwin claims that since about 15 men mauled Joey, it is "highly possible" that the prosecution witnesses made a mistake in saying that it was he who caused Joey's death.^[19] Erwin cites several variances in the testimonies of the prosecution witnesses that lend credit to his defense that he was elsewhere when the incident took place.^[20] He also insists that Norman's testimony cannot be believed for being tainted with ill motives. Lastly, Erwin contends that the CA and the RTC erred in finding that abuse of superior strength qualified the killing of Joey to murder.^[21]

But the Court has always been inclined, with few exceptions, to defer to the findings of fact of the trial court since it had the opportunity to observe how each witness expressed himself and whether his eyes agreed with his lips. The Court finds nothing from the transcripts that would indicate that the trial court and the CA misapprehended the facts.

The Court also finds no error in the RTC and the CA's rejection of his alibi. The site of the murder was not far from where he lived. Besides, he presented no corroborating testimony that he was then at his house. As to his lament that the RTC and the CA should not have given credit to Norman's testimony for he had a grudge against him, Erwin presented no proof apart from his word that this was so. At any rate, the accounts of the remaining eyewitnesses were just as positive, straightforward, consistent, and clear. They all testified that Erwin stabbed Joey with a knife.

Assuming that the prosecution witnesses failed to identify exactly who inflicted the fatal wounds on Joey during the commotion, Erwin's liability is not diminished since he and the others with him acted with concert in beating up and ultimately killing Joey. Conspiracy makes all the assailants equally liable as co-principals by direct participation.^[22]

Since about 15 men, including accused Erwin, pounced on their one helpless victim, relentlessly bludgeoned him on the head, and stabbed him on the stomach until he was dead, there is no question that the accused took advantage of their superior strength.

In disposing the civil aspect of the case, the RTC correctly awarded to Joey's heirs the amount of P36,981.85 as actual damages representing medical and funeral