

FIRST DIVISION

[G.R. No. 201858, June 04, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JENNY LIKIRAN ALIAS "LOLOY", ACCUSED-APPELLANT.

R E S O L U T I O N

REYES, J.:

Jenny Likiran (accused-appellant) was convicted of the crime of Murder by the Regional Trial Court (RTC) of Malaybalay City, Branch 8, for the death of Rolando Sareno, Sr. (Sareno). In its Decision^[1] dated July 17, 2006, the RTC disposed as follows:

WHEREFORE, this court finds accused Loloy Likiran guilty of the crime of Murder and imposes upon him the penalty of Reclusion perpetua and to pay the heirs of the victim the sum of [P]50,000.00 as civil indemnity; [P]50,000.00 moral damages; [P]30,000.00 actual damages, and [P]10,000.00 attorney's fee and to pay the costs. This court has no jurisdiction over Jerome alias Caro Likiran as he is not impleaded in the information.

SO ORDERED.^[2]

The incident that led to the death of Sareno happened on the wee hour of March 19, 2000 in *Barangay* Bugca-on, Lantapon, Bukidnon. It was the eve of the town *fiesta* and a dance was being held at the basketball court. Prosecution witnesses Celso Dagangon (Dagangon), Prescado Mercado (Mercado) and Constancio Goloceno (Goloceno) testified that on said night, they were at the dance together with Sareno at around 8:00 p.m. After a few hours, while Mercado and Goloceno were inside the dance area, Jerome Likiran^[3] (Jerome), the accused-appellant's brother, punched Mercado on the mouth. Goloceno was about to assist Mercado when he saw that Jerome was armed with a short firearm while the accused-appellant was holding a hunting knife, so he backed off. Dagangon and Sareno, who were outside the dance area, heard the commotion. Afterwards, Jerome approached Sareno and shot him several times. With Sareno fallen, **the accused-appellant stabbed him on the back**. It was Dagangon who saw the incident first-hand as he was only three meters from where Sareno was. Dagangon was able to bring Sareno to the hospital only after Jerome and the accused-appellant left, but Sareno was already dead at that point. Sareno suffered multiple gunshot wounds and a stab wound at the left scapular area.^[4]

The accused-appellant, however, denied any involvement in the crime. While he admitted that he was at the dance, he did not go outside when the commotion

happened. He and Jerome stayed within the area where the sound machine was located and they only heard the gunshots outside. Other witnesses testified in the accused-appellant's defense, with Edgar Indanon testifying that he saw the stabbing incident and that it was some other unknown person, and not the accused-appellant, who was the culprit; and Eleuterio Quiñopa stating that he was with the accused-appellant and Jerome inside the dance hall at the time the commotion occurred.

The RTC found that the prosecution was able to establish the accused-appellant's culpability.^[5] Prosecution witness Dagangon's positive identification of the accused-appellant was held sufficient by the RTC to convict the latter of the crime of murder.^[6] The RTC also rejected the accused-appellant's defense of denial as it was not supported by evidence. It also ruled that *alibi* cannot favor the accused-appellant since he failed to prove that it was impossible for him to be at the scene of the crime on the night of March 19, 2000.^[7]

The Court of Appeals (CA) affirmed the RTC decision *in toto* per assailed Decision^[8] dated July 27, 2011, to wit:

WHEREFORE, premises considered, the appealed Decision dated July 17, 2006 of the Regional Trial Court, Branch 8 of Malaybalay City, in Criminal Case No. 10439-00 is hereby **AFFIRMED *in toto***.

SO ORDERED.^[9]

The CA sustained the findings of the RTC as regards the identity of the accused-appellant as one of the perpetrators of the crime. The CA, nevertheless, deviated from the RTC's conclusion that there was conspiracy between Jerome and the accused-appellant, and that abuse of superior strength attended the commission of the crime. According to the CA, the information failed to contain the allegation of conspiracy, and the evidence for the prosecution failed to establish that Jerome and the accused-appellant ganged up on the victim.^[10] The CA, however, sustained the RTC's finding of treachery.^[11]

The accused-appellant protested his conviction.^[12] According to him, the prosecution failed to establish his guilt beyond reasonable doubt. Specifically, the accused-appellant argued that the prosecution failed to prove the identity of the assailant and his culpability.^[13]

Upon review, the Court finds no cogent reason to disturb the findings and conclusions of the RTC, as affirmed by the CA, including their assessment of the credibility of the witnesses. Factual findings of the trial court are, except for compelling or exceptional reasons, conclusive to the Court especially when fully supported by evidence and affirmed by the CA.^[14]

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal.^[15] In this case, the identity of the accused-appellant as one of the perpetrators of the crime has been adequately established by the prosecution, more

particularly by the testimony of Dagangon. The Court cannot sustain the accused-appellant's argument that it was impossible for Dagangon to see the assailant considering that there was no evidence to show that the place where the crime occurred was lighted. As found by the CA, Dagangon was only three meters away from the accused-appellant and Jerome and had a good view of them. Moreover, there was no distraction that could have disrupted Dagangon's attention. He even immediately identified the accused-appellant and Jerome during police investigation, and there is no showing that Dagangon was informed by the police beforehand that the accused-appellant was one of the suspects.^[16] Positive identification by a prosecution witness of the accused as one of the perpetrators of the crime is entitled to greater weight than *alibi* and denial.^[17] Such positive identification gains further ground in the absence of any ill motive on the part of a witness to falsely testify against an accused.^[18]

The accused-appellant also asserted that the information charged him of murder committed by attacking, assaulting, stabbing and shooting Sareno, thereby causing his instantaneous death.^[19] The accused-appellant argued that the evidence on record established that Sareno was in fact shot by some other person.^[20] At this juncture, the Court notes that the testimony of Dagangon, indeed, identified two assailants – the accused-appellant and his brother, Jerome; however, it was only the accused-appellant who was charged with the death of Sareno. Defense witnesses also testified that Jerome died on March 12, 2005.^[21]

The CA disregarded the accused-appellant's contention and ruled that "the cause of death was not made an issue in the court *a quo*" and the Certificate of Death was admitted during the pre-trial conference as proof of the fact and cause of death.^[22] And even assuming that the cause of death was an issue, the CA still held the accused-appellant liable for the death of Sareno on the basis of the Court's ruling in *People v. Pilola*.^[23]

The Court reviewed the records of this case and finds sufficient basis for the CA's disregard of the accused-appellant's argument.

The pre-trial agreement issued by the RTC states that one of the matters stipulated upon and admitted by the prosecution and the defense was that the Certificate of Death issued by Dr. Cidric Dael (Dr. Dael) of the Bukidnon Provincial Hospital and reviewed by the Rural Health Physician of Malaybalay City "is admitted as proof of fact and cause of death due to multiple stab wound scapular area."^[24] Stipulation of facts during pre-trial is allowed by Rule 118 of the Revised Rules of Criminal Procedure. Section 2 of Rule 118, meanwhile, prescribes that all agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused.^[25] In this case, while it appears that the pre-trial agreement was signed only by the prosecution and defense counsel, the same may nevertheless be admitted given that the defense failed to object to its admission.^[26] Moreover, a death certificate issued by a municipal health officer in the regular performance of his duty is *prima facie* evidence of the cause of death of the victim.^[27] Note that the certificate of death issued by Dr. Dael provides the following:

CAUSES OF DEATH

Immediate cause: DOA

Antecedent cause: Multiple GSW

Underlying cause: Stab wound scapular area (L)^[28]

The accused-appellant, therefore, is bound by his admission of Sareno's cause of death.^[29]

More importantly, the accused-appellant is criminally liable for the natural and logical consequence resulting from his act of stabbing Sareno. It may be that he was not the shooter, it is nevertheless true that the stab wound he inflicted on Sareno contributed to the latter's death. In *Quinto v. Andres*,^[30] the Court stated that:

If a person inflicts a wound with a deadly weapon in such a manner as to put life in jeopardy and death follows as a consequence of their felonious act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the factual result. The offender is criminally liable for the death of the victim if his delictual **act caused, accelerated or contributed to the death of the victim**. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. x x x^[31] (Citations omitted and emphasis ours)

The Court, however, cannot agree with the RTC and CA's conclusion that the killing of Sareno was attended by treachery, qualifying the crime to murder.

Treachery is appreciated as a qualifying circumstance when the following elements are shown: a) the malefactor employed means, method, or manner of execution affording the person attacked no opportunity for self-defense or retaliation; and b) **the means, method, or manner of execution was deliberately or consciously adopted by the offender**.^[32] Treachery is not present when the killing is not premeditated, or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.^[33]

In this case, the testimony of the prosecution witnesses all point to the fact that the shooting and stabbing of Sareno was actually a spur of the moment incident, a result of the brawl that happened during the *barrio* dance. The prosecution failed to show that the accused-appellant and his brother Jerome deliberately planned the means by which they would harm Sareno. In fact, what was revealed by the prosecution evidence was that Sareno was an innocent bystander who unfortunately became a target of the accused-appellant and Jerome's rampage. Consequently, the accused-appellant should be liable only for the lesser crime of Homicide.

In convictions for homicide, Article 249 of the Revised Penal Code (RPC) prescribes the penalty of *reclusion temporal*, which ranges from twelve (12) years and one (1) day to twenty (20) years.^[34] In the absence of any modifying circumstances, the