

## SECOND DIVISION

[ G.R. No. 192183, November 11, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDY ZULIETA A.K.A. "BOGARTS," ACCUSED-APPELLANT.**

### DECISION

**DEL CASTILLO, J.:**

On appeal is the August 13, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00568-MIN which affirmed with modification the October 24, 2007 Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 38, finding appellant Andy Zulieta a.k.a. "Bogarts" guilty beyond reasonable doubt of the crime of Murder.

#### ***Factual Antecedents***

On July 21, 2006, an Information<sup>[3]</sup> was filed charging appellant with the crime of Murder, the accusatory portion of which reads:

That on June 13, 2006, at around 10:00 o'clock in the evening, more or less, at Sto. Niño, Lapasan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously stab one Armand Labando, with the use of a Batangas knife, hitting on the chest x x x the latter thereby inflicting mortal wounds which [caused] his immediate death.

Contrary to Art. 248 of the Revised Penal Code, in relation to RA 7659, as amended.

When arraigned on November 3, 2006, appellant pleaded not guilty.<sup>[4]</sup> During the pre-trial, no stipulation of facts was made hence trial on the merits ensued.<sup>[5]</sup>

#### ***Summary of Facts***

The facts as summarized by the trial court are as follows:

The first witness for the prosecution was SPO1 Apolinario Ubilas who testified that on June 13, 2006, at about 10:00 o'clock in the evening, Police Precinct Commander Police Inspector Ladao directed him to verify and investigate x x x a stabbing incident x x x which took place in Sto. Niño, Lapasan, Cagayan de Oro City. [The victim was no longer at the

crime scene] as [he] was reportedly brought to the Northern Mindanao Medical Center (NMMC) so he made inquiries as to possible witnesses of the incident and learned that Bryan Pascua witnessed the incident. He then proceeded to NMMC and saw the body of the victim, which was declared dead-on-arrival. Per order of their Precinct Commander, [a police team] conducted a pursuit operation and was able to arrest, on the following day, Jonathan Zaporteza and Rey Sabado, companions of the accused Andy Zulieta.

The next witness was Bryan Pascua who testified that on June 13, 2006, at about 10:30 in the evening, he and deceased Armand Labando[, ] Jr. were outside their boarding house, seated at the bench just outside the store of Jimmy Saura. While they were eating bananas, Bogarts, Rey and Tantan approached them. Bogarts, who had with him a pitcher, dropped it in front of them so they immediately stood up. He then heard Tantan shout, "birahi na na" (hit him now), then saw Bogarts pull a batangas knife and stab the deceased, hitting him on his chest. He ran towards their boarding house, afraid that he will be attacked next.

The next witness for the prosecution was Dr. Francisco Romulo C. Villaflor, a Medico-Legal Officer of the Philippine National Police, who testified that he conducted an autopsy of the deceased Armand Labando[, ] Jr. and found that the stab wound was inflicted on the anterior chest hitting the most vital organ of the body, the right ventricle of the heart. Based on his analysis, the instrument used in inflicting the wound [was] a bladed, pointed instrument, which could be a knife and by the location of the wound, the assailant was in front of the victim.

After the testimony of Dr. Villaflor, the prosecution offered their exhibits: exhibit "A", the Death Certificate of Armand Labando[, ] Jr.] and exhibit "B", the Autopsy Report of Dr. Villaflor, which were admitted by the defense. The prosecution then rested its case.

Accused set up denial and alibi as [his] defense claiming that on June 13, 2006 at 10:00 o'clock in the evening, he was asleep in his house in Gingoog City with his wife and in-laws. Sometime in November, 2006, he was arrested by Police Officer Radam and companions at his house in Gingoog City for being accused of killing the deceased Armand Labando[, ] Jr. Accused claimed that he does not know the deceased Armand Labando[, ] Jr., Rey Sabando, Jonathan Zaporte[z]a or witness Bryan Pascua. When cross-examined by the Court, accused claimed that his nickname is Andy as his real name is Zandy and he is not known in Sto. Niño as Bogarts. He, however, admitted that he was born in Sto. Niño, Lapasan, Cagayan de Oro City in 1985, lived and stayed with his parents in Sto. Niño, Lapasan, until he got married in x x x 2005. He then transferred residence with his own family [to] Gingoog.

The next witness for the defense was Maryflor Mamba Zulieta, wife of the accused, who testified that she married the accused [o]n August 28, 2005 in Nazareno Parish, Cagayan de Oro City. They resided in Gingoog City from the time they got married until the day that her husband was arrested. Her husband works at the farm of Mr. Lugod, in Cabuyuan,

Gingoog City, planting, weeding and harvesting rice, from 7:00 o'clock in the morning until 4:00 o'clock in the afternoon, but goes home at noontime to eat lunch. On July 13, 2006, at around 10:00 o'clock in the evening, they were asleep in their house in Gingoog City. Sometime in October or November, 2006, at around 4:00 o'clock in the morning, while they were still sleeping, they were surprised when some men entered their house, went upstairs and handcuffed [her] husband as [he] is said to be under arrest.<sup>[6]</sup>

### ***Ruling of the Regional Trial Court***

On October 24, 2007, the RTC rendered its Judgment finding appellant guilty of killing the victim Armand Labando, Jr. (Labando) with the attendant qualifying circumstance of treachery. The dispositive portion of the Judgment reads as follows:

Accordingly, the Court finds accused Andy Zulieta guilty beyond reasonable doubt of the crime of murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*, with accessory penalties provided by law. He is also liable to pay the heirs of Armand Labando[, Jr.] civil damages in the amount of Php50,000.00, moral damages of Php50,000.00 and costs of suit.

SO ORDERED.<sup>[7]</sup>

Aggrieved, appellant filed his Notice of Appeal<sup>[8]</sup> which was approved by the RTC.

### ***Ruling of the Court of Appeals***

In its Decision dated August 13, 2009, the CA affirmed with modification the Judgment of the RTC, viz:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 38 in Cagayan de Oro City finding appellant Andy Zulieta guilty beyond reasonable doubt of Murder, is AFFIRMED WITH MODIFICATION, in that appellant is further ORDERED to pay the heirs of Armand Labando, Jr., the amount of P25,000.00 as exemplary damages, in addition to the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.<sup>[9]</sup>

Hence, this present appeal.

### ***Assignment of Error***

Appellant seeks his acquittal by assigning the lone error that: