

## FIRST DIVISION

[ G.R. No. 189981, March 09, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN GABRINO, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the August 28, 2008 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00731, which affirmed the April 3, 2007 Decision<sup>[2]</sup> in Criminal Case No. 1347 of the Regional Trial Court (RTC), Branch 10 in Abuyog, Leyte. The RTC convicted accused Allan Gabrino of murder.

#### **The Facts**

The charge against the accused stemmed from the following Information:

That on or about the 30<sup>th</sup> day of December, 1993 in the Municipality of La Paz, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and wound one JOSEPH BALANO with the use of bladed weapon locally known as pisaw which said accused had purposely provided himself, thereby causing and inflicting upon the said JOSEPH BALANO wounds on his body which caused his death shortly thereafter.

Contrary to law.<sup>[3]</sup>

On July 7, 2003, the arraignment was conducted. The accused, who was assisted by counsel, pleaded not guilty to the offense charge. A mandatory pre-trial conference was done on October 1, 2003. Thereafter, trial ensued.

During the trial, the prosecution offered the testimonies of Bartolome Custodio (Bartolome), laborer and a resident of *Barangay* Mag-aso, La Paz, Leyte; and Ismael Moreto (Ismael), farmer and a resident of *Barangay* Mohon, Tanauan, Leyte. On the other hand, the defense presented Nestor Sarile (Nestor), Municipal Planner of La Paz, Leyte and a resident of *Barangay* Mag-aso, La Paz, Leyte; and the accused as witnesses.

#### **The Prosecution's Version of Facts**

The first witness, Bartolome, testified that he is a resident of *Barangay* Mag-aso, La Paz, Leyte for more than 30 years and he knows the accused as they were classmate from Grade 1 to Grade 5. He also testified that on certain occasions, the accused would spend the night at their house. He stated that he likewise knows Joseph Balano (Balano), the deceased, as he was a former resident of *Barangay* Mag-aso, La Paz Leyte, but had to transfer to *Barangay* Cogon, Tanauan, Leyte because of an insurgency.<sup>[4]</sup>

He narrated that on December 30, 1993, he visited his uncle, Gorgonio Berones (Gorgonio) in *Barangay* Mag-aso, La Paz, Leyte with Balano. Upon arrival at the house of his uncle, he noticed that a certain Jom-jom and his friends, including the accused, were having a drinking session. Thirty minutes later, Jom-jom and his group left the vicinity. Bartolome and Balano stayed for less than an hour at the house of Bartolome's uncle, and left thereafter. On their way home, however, somebody suddenly sprang out from behind the coconut tree and stabbed Balano. As there was a bright moonlight at the time, and because of the two-arms-length distance between them, Bartolome easily recognized the assailant to be the accused. He even testified that he tried to calm the accused down. Bartolome further stated that he saw the accused stab Balano once, after which Balano ran away while being pursued by the accused. He stated that he asked the people for help in transporting Balano to the hospital but the latter died on the way there.<sup>[5]</sup>

The second witness, Ismael, testified that on December 30, 1993, he was in *Barangay* Mag-aso, La Paz, Leyte, working with Balano for the processing of copra of Guadalupe Balano. That night, he stayed at the house of Bartolome in the same *barangay*. He stated that while he was already at Bartolome's house at about 10:30 in the evening, he could not sleep yet as Bartolome and Balano were still out of the house looking for a helper. He, therefore, decided to go out of the house and upon going outside, he saw the accused suddenly stab Balano once with a *pisao* (small bolo or knife).<sup>[6]</sup> Fearing for his life, Ismael instantly went back to Bartolome's house.<sup>[7]</sup>

### **The Defense's Version of Facts**

Nestor, the first witness for the defense, stated that on December 30, 1993 at about 5 o'clock in the afternoon, he was in *Sitio* Siwala, *Barangay* Rizal, La Paz, Leyte, picking up passengers as a motorcycle driver for hire. Gorgonio was one of the passengers at that time who he brought to *Barangay* Mag-aso, La Paz, Leyte. When they arrived at the house of Gorgonio, the latter went inside to get money to pay for his fare. Consequently, Nestor waited in his tricycle outside of Gorgonio's house. During such time, Nestor saw four people going down the house: the accused, Jeffrey Erro (Jeffrey), Tap-ing Fernandez (Tap-ing), and Balano. According to Nestor's testimony, the accused went to the side of the house to urinate and while so doing, he saw Tap-ing throw something at the accused, which caused him to bleed, and then they ran away. Thereafter, Balano attacked the accused, and as they grappled, the former was stabbed by the latter on the chest. The accused ran away after the incident happened.<sup>[8]</sup>

Quite differently, the accused narrated that on December 30, 1993 at 5 o'clock in the afternoon, he was at the house of Gorgonio having a conversation with Leny

Berones and Luna Berones. After an hour had passed, Gorgonio arrived with Nestor, Tap-ing, Balano and a certain Eddie who all came from the fiesta in *Barangay Siwala*. The accused stated that he went outside of the house to urinate when Tap-ing threw a stone at him, which hit him on the forehead and caused him to fall down. And when he saw Balano rushing towards him with an ice pick, he immediately stabbed him and then ran away.<sup>[9]</sup>

### **The Ruling of the Trial Court**

After trial, the RTC convicted the accused. The dispositive portion of its April 3, 2007 Decision reads:

WHEREFORE, finding the accused [Allan] Gabrino guilty beyond reasonable doubt of the crime as [charged], this Court hereby sentences accused to suffer the penalty of RECLUSION PERPETUA, ordering the accused to indemnify the offended party the amount of Sixty Five Thousand Pesos (P65,000.00) and to pay the costs.

SO ORDERED.<sup>[10]</sup>

In finding for the prosecution and convicting the accused of murder under Article 248 of the Revised Penal Code (RPC), the RTC gave credence to the testimonies of the witnesses of the prosecution. The RTC found that treachery was employed by the accused in killing Balano. The RTC further held that the justifying circumstance of incomplete self-defense under Art. 11(1) of the RPC could not be applied in the present case as the element of unlawful aggression is absent.

### **The Ruling of the Appellate Court**

On August 28, 2008, the CA affirmed the judgment of the RTC *in toto*. The dispositive portion of the CA Decision reads:

WHEREFORE, the herein appealed Decision convicting appellant Allan Gabrino of the crime of murder and imposing on him the penalty of reclusion perpetua and the payment to the victim's heirs of civil indemnity in the amount of P65,000.00 is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[11]</sup>

### **The Issues**

Hence, this appeal is before Us, with accused-appellant maintaining that the trial court erred in convicting him of the crime of murder, despite the fact that his guilt was not proved beyond reasonable doubt. Accused-appellant also alleges that assuming that he could be made liable for Balano's death, the CA and the RTC erred in appreciating the qualifying circumstance of treachery. Another issue that he raises is the alleged existence of the mitigating circumstance of incomplete self-defense.

## The Court's Ruling

We sustain the conviction of accused-appellant.

### **Factual findings of the RTC should be given credence and should therefore be respected**

In the instant case, while both the prosecution and the defense agree on the date when the incident occurred and the fact that accused-appellant stabbed Balano, they conflict with the rest of the facts. It was, therefore, incumbent upon the RTC to appreciate the facts during trial and determine which information carries weight. And in doing so, the RTC gave credence to the testimonies of the prosecution's witnesses, with which the CA thereafter concurred. Accordingly, the RTC adopted the version of the prosecution as the correct factual finding.

We agree with the RTC's factual determination as affirmed by the CA.

We have held time and again that "the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality."<sup>[12]</sup> As We have reiterated in the recent *People v. Combate*, where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses.<sup>[13]</sup> This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial.<sup>[14]</sup> Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.

In the present case, in giving weight to the prosecution's testimonies, there is not a slight indication that the RTC acted with grave abuse of discretion, or that it overlooked any material fact. In fact, no allegation to that effect ever came from the defense. There is, therefore, no reason to disturb the findings of fact made by the RTC and its assessment of the credibility of the witnesses. To reiterate this time-honored doctrine and well-entrenched principle, We quote from *People v. Robert Dinglasan*, thus:

In the matter of credibility of witnesses, we reiterate the familiar and well-entrenched rule that the factual findings of the trial court should be respected. **The judge a quo was in a better position to pass judgment on the credibility of witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.** It is doctrinally settled that the evaluation of the testimony of the witnesses by the trial court is received on appeal with the highest respect, **because it had the direct opportunity to observe the witnesses on the stand and detect if they were telling the truth. This assessment is binding upon the appellate court in the absence of a clear showing that it was reached arbitrarily or that the trial court had plainly overlooked certain facts of substance or value that if considered might affect the result of the case.**<sup>[15]</sup> (Emphasis Ours.)

## Treachery was committed by accused-appellant

Art. 248 of the RPC defines murder as follows:

ART. 248. *Murder.*<sup>3/4</sup>Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis Ours.)

For a person to be convicted of the offense of murder, the prosecution must prove that: (1) the offender killed the victim; and (2) that the killing was committed with any of the attendant circumstances under Art. 248 of the RPC, such as treachery. Particularly, *People v. Leozar Dela Cruz* enumerates the elements of murder, thus:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.
4. The killing is not parricide or infanticide.<sup>[16]</sup>

In this case, it is undoubted that accused-appellant was the person who stabbed Balano and caused his death.<sup>[17]</sup> And this killing is neither parricide nor infanticide. The question, therefore, to be resolved in this case is whether the killing was attended by treachery that would justify accused-appellant's conviction of murder.

Treachery exists when "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and