

FIRST DIVISION

[G.R. No. 186539, June 29, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MITSUEL L. ELARCOSA AND JERRY B. ORIAS, ACCUSED-
APPELLANTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the February 28, 2008 Decision of the Court of Appeals (CA) in CA G.R. CEB-CR-H.C. No. 00608 entitled *People of the Philippines v. Mitsuel L. Elarcosa and Jerry B. Orias* which held accused-appellant Jerry B. Orias guilty of multiple murder. The CA Decision modified the December 17, 1996 Decision in Criminal Case No. 567 of the Regional Trial Court (RTC), Branch 56, Himamaylan, Negros Occidental, which held accused-appellant Orias liable for robbery with multiple homicide.

The Facts

In the evening of September 27, 1992, Jorge, Segundina, Jose and Rosemarie, all surnamed dela Cruz, heard some persons calling out to them from outside their house, which is located in Barangay Amotay, Binalbagan, Negros Occidental. Since the voices of these persons were not familiar to them, they did not open their door immediately, and instead, they waited for a few minutes in order to observe and recognize these persons first. It was only when one of them identified himself as Mitsuel L. Elarcosa (Elarcosa), an acquaintance of the family, that Segundina lighted the lamps, while Jose opened the door.^[1]

Elarcosa and his companion, accused-appellant Orias, then entered the house and requested that supper be prepared for them as they were roving. Both Elarcosa and accused-appellant Orias were Citizen Armed Forces Geographical Unit (CAFGU) members.^[2] Segundina and Rosemarie immediately went to the kitchen to prepare food, while Jose and Jorge stayed in the living room with Elarcosa and accused-appellant Orias.^[3]

Since the rice was not cooked yet, Rosemarie first served a plate of *suman* to Elarcosa and accused-appellant Orias, who were then engaged in a conversation with her father, Jorge, and her brother, Jose. She heard accused-appellant Orias asked her brother why the latter did not attend the dance at Sitio Nalibog. Her brother replied that he was tired. Suddenly thereafter, Elarcosa and accused-appellant Orias stood up and fired their guns at Jose and Jorge.^[4]

Segundina, who was busy preparing supper in the kitchen, ran towards the living

room and embraced her son, Jose, who was already lying on the floor. Elarcosa and accused-appellant Orias then immediately searched the wooden chest containing clothes, money in the amount of forty thousand pesos (PhP 40,000) intended for the forthcoming wedding of Jose in October, and a registration certificate of large cattle. During this time, Rosemarie escaped through the kitchen and hid in the shrubs, which was about six (6) extended arms length from their house. She heard her mother crying loudly, and after a series of gunshots, silence ensued.^[5]

Shortly thereafter, Rosemarie proceeded to the house of her cousin, Gualberto Mechabe, who advised her to stay in the house until the morning since it was already dark and he had no other companion who could help them. The following morning, Rosemarie returned to their house where she found the dead bodies of her parents and her brother.^[6] The money in the amount of PhP 40,000, as well as the certificate of registration of large cattle, were also gone.^[7]

Eventually, Elarcosa and accused-appellant Orias, as well as a certain Antonio David, Jr., were charged with robbery with multiple homicide in an Information which reads as follows:

The undersigned Provincial Prosecutor accuses MITSUEL ELARCOSA y LOMINOK, JERRY ORIAS y BESARIO alias "Boy" and ANTONIO DAVID, JR. y MORE ALIAS "Junior" of the crime of ROBBERY WITH MULTIPLE HOMICIDE, committed as follows:

That on or about the 27th day of September, 1992, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring confederating together and mutually helping one another, and with grave abuse of confidence, armed with different kinds of firearms, and with intent of gain, entered the house of GEORGE DE LA CRUZ and, once inside, by means of violence and intimidation of persons, did, then and there, willfully, unlawfully and feloniously take, steal and carry away against the consent of the owners thereof, cash money amounting to FORTY THOUSAND PESOS (P40,000.00), Philippine Currency, to the damage and prejudice of the said owners in the aforestated amount.

That by reason or on the occasion of the said robbery, the said accused for the purpose of enabling them to take, steal and carry away the aforestated amount at the same time did, then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, attack, assault, shot and wound said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ, alias "Pitong" hitting them in the vital parts of their bodies, thereby inflicting upon them mortal gunshot wounds, which directly caused the instantaneous death of said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ alias "Pitong".

CONTRARY TO LAW.

Bacolod City, Philippines, December 11, 1992.^[8]

On January 19, 1993, accused-appellant Orias, along with the other accused, pleaded not guilty to the charge. After the pre-trial conference, trial on the merits ensued.

In his defense, accused-appellant Orias contends that on the night the incident took place, he was at the dance hall sponsored by his unit as he was assigned by his Detachment Commander to entertain the visitors and that he stayed there from 6:00 p.m. until the wee hours of the morning.^[9]

Ruling of the Trial Court

After trial, the RTC of Himamaylan, Negros Occidental convicted Elarcosa and accused-appellant Orias, but acquitted Antonio David, Jr. The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing facts and considerations, this Court declares accused Mitsuel Elarcosa and Jerry Orias guilty beyond reasonable doubt of the offense as charged in the information and sentences them to suffer the penalty of *Reclusion Perpetua*. Further, both accused are ordered to indemnify the heirs of the victim the sum of One Hundred Thousand Pesos (P100,000.00); as moral damages and Forty Thousand Pesos (P40,000.00) as actual damages without subsidiary imprisonment in case of insolvency.

Accused Antonio David, Jr. is hereby acquitted on the ground of reasonable doubt.

SO ORDERED.^[10]

One of the accused, Antonio David, Jr. was acquitted on the ground of reasonable doubt. The trial court justified this by stating that based on the affidavit and testimony of Rosemarie, only Elarcosa and accused-appellant Orias were positively identified. There was no mention that Antonio David, Jr. was indeed present during the incident.^[11]

Aggrieved, Elarcosa and accused-appellant Orias filed an appeal with the CA. However, on June 25, 2005, Elarcosa filed an Urgent Motion to Withdraw Appeal,^[12] which was granted by the CA in its Resolution^[13] dated September 11, 2007.

Essentially, accused-appellant Orias contends that the decision of the RTC is erroneous because of the incredibility of the testimony of the prosecution's star witness, Rosemarie dela Cruz, and because of the physical impossibility for accused-appellant to be present at the place of the crime at the time the same was committed.^[14]

Ruling of the Appellate Court

On February 28, 2008, the CA affirmed with modification the judgment of the lower

court. It ruled that contrary to accused-appellant Orias' contention, the detailed testimony of Rosemarie was clear, consistent and convincing. Further, accused-appellant Orias failed to present any evidence to establish any improper motive that may have impelled Rosemarie to falsely testify against him. The CA also held that in the face of the positive identification of the accused by their very victim as the perpetrators of the crime charged, the defense of alibi must fail.^[15]

The CA, however, held that accused-appellant Orias can only be convicted of three (3) counts of murder, and not of robbery with multiple homicide, since the prosecution was not able to prove that robbery was indeed committed.^[16] In addition, the CA found that the killing was attended by treachery; hence, the crime committed was not multiple homicide, but multiple murder.^[17]

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of all the foregoing, December 17, 1996 Decision of the Regional Trial Court, Branch 56, Himamaylan, Negros Occidental, in Criminal Case No. 567, is hereby **AFFIRMED WITH MODIFICATION**. Appellant Jerry B. Orias is hereby found guilty beyond reasonable doubt of Multiple Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellants are further ordered to pay the heirs of the victims the amount of One Hundred Fifty Thousand Pesos (P150,000.00) as civil indemnity. The awards for moral and actual damages are **DELETED** for lack of factual and legal basis.

SO ORDERED.^[18]

On March 25, 2008, accused-appellant Orias filed his Notice of Appeal of the Decision dated February 28, 2008 rendered by the CA.^[19]

In our Resolution dated April 13, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. On June 8, 2009, accused-appellant Orias manifested that he would no longer file a supplemental brief and that he was merely adopting the Brief for the Accused-Appellants^[20] dated September 8, 1999 as his supplemental brief. In the same vein, on July 2, 2009, the People of the Philippines manifested that it was no longer filing a supplemental brief as it believed that the Brief for Plaintiff-Appellee^[21] dated January 7, 2000 had adequately addressed the issues and arguments in the instant case.

The Issues

Accused-appellant Orias contends in his *Brief*^[22] that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED.

Our Ruling

We sustain accused-appellant's conviction.

The assessment of the credibility of a witness is best left to the sound discretion of the trial court

In his *Brief*, accused-appellant Orias contends that the testimony of Rosemarie is incredible as her recollection of the incident is uncertain and is insufficient to support a finding of guilt against accused-appellant Orias.^[23]

We do not agree. As found by both the RTC and the CA, the detailed testimony of Rosemarie is clear, consistent and convincing.

In this regard, it should be noted that questions concerning the credibility of a witness are best addressed to the sound discretion of the trial court, since it is the latter which is in the best position to observe the demeanor and bodily movements of a witness.^[24] This becomes all the more compelling when the appellate court affirms the findings of the trial court. Thus, we generally defer to the trial court's assessment, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.^[25] Unfortunately, however, accused-appellant Orias failed to show any of these as to warrant a review of the findings of fact of the lower court.

Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.^[26] Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.^[27]

In the instant case, Rosemarie was able to convincingly testify that she was present when accused-appellant Orias and Elarcosa shot to death her brother and her father in the living room, since during that time, she and her mother were preparing supper for accused-appellant Orias and Elarcosa in the kitchen, which was only an arm's length away from the living room. ^[28]

From where she was standing, Rosemarie could not have any difficulty identifying the malefactors, since she knew them beforehand and the living room was sufficiently lighted when the incident happened. As a matter of fact, Rosemarie positively and consistently identified accused-appellant Orias and Elarcosa in the police station during the police line-up, as well as in the courtroom during trial, as the persons who shot her brother and her father.^[29]

Moreover, accused-appellant Orias did not present any evidence which would show that Rosemarie was driven by any improper motive in testifying against him. Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that her testimony is worthy of full faith and credit.^[30] Indeed, there is no reason to deviate from the factual findings of the trial court.