

SECOND DIVISION

[G.R. No. 188704, July 07, 2010]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO ORTIZ, JR. Y LOPES, ACCUSED-APPELLANT.

DECISION

MENDOZA, J.:

This is an appeal^[1] from the April 29, 2009 Decision of the Court of Appeals (CA),^[2] in CA-G.R. CR No. 31164, affirming the June 7, 2007 Decision of the Regional Trial Court, Branch 18, Manila (*RTC*) which found accused Pedro Ortiz, Jr., guilty beyond reasonable doubt of the crime of Murder for the killing of one Loreto Cruz.

Accused Pedro Ortiz, Jr., along with his nephew, Jojo Ortiz, was charged with murder for the killing of Loreto Cruz in two (2) consolidated cases before the Regional Trial Court, Manila, Branch 18. The accusatory portions of the two (2) Informations read:

Criminal Case No. 03-215663
(People v. Jojo Ortiz y Quitada)

"That on or about June 22, 2003, in the City of Manila, Philippines, the said accused, conspiring and confederating with one another whose true name, identity and present whereabouts are still unknown and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ Y CRUZ, by then and there suddenly shooting the latter with a .38 revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ Y Cruz mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."

Criminal Case No. 03-219216
(People v. Pedro Ortiz)

"That on or about June 22, 2003, in the City of Manila, Philippines the said accused conspiring and confederating with one JOJO ORTIZ Y GUTABA, who was already charged with the same offense before the Regional Trial Court of Manila docketed as Criminal Case No. 03-215663, and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery and evident premeditation, attack, assault and use personal violence upon the person of one LORETO CRUZ Y CRUZ, by then and there suddenly shooting the

latter with a .38 caliber revolver bearing Serial No. 47970 with trademarks Armscor on the right cheek, thereby inflicting upon said LORETO CRUZ Y CRUZ, a mortal gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."^[3]

As culled from the evidentiary records, it appears that on June 22, 2003, between 9:00 and 10:00 o'clock in the evening, Loreto Cruz, an Executive Officer of Barangay 597, Zone 59, Guadalcanal St., Sta. Mesa, Manila, together with Barangay Tanod Angelito de Guzman and Kagawad Gil Bactol, was watching television inside the barangay hall. Without anyone noticing him, accused Pedro Ortiz, Jr. entered the hall and called out, "Ex-O!" When Loreto Cruz turned, the accused shot him with a .38 caliber revolver. The bullet hit the left side of his face. Upon realizing what happened, Tanod de Guzman tried to wrest the gun from the accused. In their struggle, another shot was fired hitting a table nearby. Kagawad Villena then grabbed the accused who called out for his nephew, Jojo Ortiz. Responding to his call, Jojo, with a samurai, uttered, "*Bitiwan mo yan, para wala tayong problema.*" Kagawad Villena let go of the accused. Wasting no time, the accused and his nephew fled from the scene. Thereafter, Loreto Cruz was rushed to Our Lady of Lourdes Hospital where he expired. The accused and his nephew, Jojo, were later apprehended and criminally charged with murder.

Although the accused pleaded not guilty during the arraignment, he admitted killing Loreto Cruz in the course of the trial because he was not satisfied with the way the victim dealt with his sons' case. According to the accused, his sons were merely playing "*kara y kruz*" but were detained for illegal drug use. As the Executive Officer, the victim promised that his sons would be released from detention after three to four months. Five months passed and his sons remained in jail. On his part, Jojo Ortiz denied any participation in the commission of the crime and only admitted the fact that he helped his uncle when he saw him being grabbed by the barangay officials.

On June 7, 2007, the RTC found the accused guilty of the crime charged but acquitted co-accused Jojo Ortiz.^[4] The RTC did not consider evident premeditation but appreciated treachery as a qualifying circumstance because of the manner by which the killing was executed. It wrote: "the victim was killed frontally and in a sudden and unexpected manner. Although, accused Pedro Ortiz narrated that he shot the victim after the latter sneered at him, the nature and location of the wound and the manner of the shooting deprived the victim opportunity to put up a defense."^[5]

In acquitting Jojo Ortiz, the RTC ruled that "Pedro Ortiz shot the victim alone. The killing was carried out without the participation of Jojo Ortiz who did not personally hit or harm the victim. Nothing in the testimonies conveyed a coordinated action, concerted purpose or community of design to commit the criminal act."^[6] Thus, the decretal portion of the RTC Decision reads:

"WHEREFORE, the court finds accused Pedro Ortiz guilty beyond reasonable doubt of murder. He is sentenced to suffer the penalty of

reclusion perpetua and to pay the heirs of Loreto Cruz the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Accused Jojo Ortiz is acquitted of the crime charged.

SO ORDERED."^[7]

The accused appealed to the Court of Appeals and assigned the following errors:

"I

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER."^[8]

The accused argued that the RTC erred in appreciating the element of treachery as an aggravating circumstance. He insisted that the victim knew all along that there was a threat to his life but chose to ignore it.^[9] He likewise stressed that the presence of three Barangay tanods outside the barangay hall did not render Loreto Cruz totally defenseless from any possible attack against his life.^[10]

In its Brief,^[11] the Office of the Solicitor General (OSG) countered that there was treachery because of the suddenness of the attack while the victim was watching television. It wrote: "Even if Cruz was aware of the accused's threat against him, the suddenness of the attack deprived him of any real chance to defend himself or to retaliate. The weapon used and the nature of the injury inflicted, which pertained to the lone gunshot fatally wounding the victim, clearly shows that accused deliberately and consciously adopted the particular mode of attack to ensure the commission of the offense with impunity."^[12] The OSG likewise prayed that exemplary and temperate damages be added to the award of damages.^[13]

On April 29, 2009, the Court of Appeals agreed that there was treachery and affirmed the ruling. It pointed out that the accused, with a firearm in hand, barged into the Barangay hall, called out "Ex-O," and suddenly shot the victim at close range, evident of his intent to ensure the success of his attack with no risk to himself. The CA also added that while it is true that the accused called Loreto Cruz "Ex-O" as he shot the latter, "he did so only to make sure that the person he would shoot was his intended target and not to afford his victim a chance to defend himself."^[14]

Hence, this appeal.

The only issue before this Court is whether or not the accused employed treachery or *alevosia* so as to qualify the killing of one Loreto Cruz to murder.