

FIRST DIVISION

[G.R. No. 183094, September 22, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO BARDE, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

On appeal is the Decision^[1] dated 24 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01245, which affirmed with modifications, the Decision^[2] dated 29 January 2005 of the Regional Trial Court (RTC) of Legazpi City, 5th Judicial Region, Branch 1, in Criminal Case No. 8661, finding herein appellant Reynaldo Barde (appellant) guilty beyond reasonable doubt of the complex crime of multiple murder with multiple frustrated murder. The appellate court, however, increased the penalty imposed upon the appellant by the court *a quo* from *reclusion perpetua* to the ultimate penalty of death, being the maximum penalty prescribed by law, for the crime of murder. In view, however, of the subsequent passage of Republic Act No. 9346^[3] prohibiting the imposition of the death penalty, the appellate court reduced the penalty to *reclusion perpetua*. The appellate court further increased the amount of moral and temperate damages awarded by the court *a quo* to the heirs of each of the deceased victims from P30,000.00 to P50,000.00 and from P5,000.00 to P25,000.00, respectively. The heirs of each of the deceased victims were also awarded exemplary damages of P25,000.00. With respect to the surviving victims, Purisima Dado (Purisima) and Ligaya Dado (Ligaya), the appellate court similarly increased the temperate damages awarded to them by the court *a quo* from P5,000.00 to P25,000.00 each. They were also awarded exemplary damages of P25,000.00 each.

On the other hand, appellant's co-accused and brother, Jimmy Barde (Jimmy), was acquitted for failure of the prosecution to prove conspiracy and for insufficiency of evidence to prove his guilt for the crime charged. No civil liability has been adjudged against him as there was no preponderance of evidence to prove the same.

Appellant and Jimmy were charged in an Information^[4] dated 13 August 1999 with the complex crime of multiple murder and multiple frustrated murder, the accusatory portion of which reads:

That on or about the 15th day of April, 1999 at more or less 12:30 o'clock in the morning, at Sitio Santo Niño, Barangay Ligan, Municipality of Rapu-Rapu, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant and Jimmy], conspiring and confederating and acting in concert to achieve a common

purpose, willfully, unlawfully and feloniously, **with intent to kill and committed with the qualifying circumstances of treachery (alevosia), evident premeditation, and by means of explosion**, did then and there roll and explode a hand grenade (M26-A1 Fragmentation grenade) inside the dance area which exploded and resulted to the instantaneous deaths of the following persons, to wit:

1. FRANCISCO BIAGO, JR. *alias* Tikboy^[5]
2. ROGER SISO^[6]
3. NICANOR OLOROSO
4. MARGIE BAÑADERA
5. VICTOR BAÑADERA
6. BIENVENIDO BAÑADERA
7. DIOSDADO BAÑADERA^[7]
8. WILLIAM BUTIAL
9. MARYJANE BECHAYDA
10. RICHARD BLANSA^[8]
11. EFREN YASUL^[9]
12. JOSE BOMBALES^[10]
13. DEONY BALIDOY^[11]
14. DAISY OLOROZO^[12]
15. ROLLY BELGA^[13]

This single act of exploding the hand grenade (M26-A1 Fragmentation grenade) by the above-named [appellant and Jimmy] also caused and resulted in the injuries and wounding on the different and various parts of the bodies of at least seventy six (76) persons, namely, to wit:

- | | |
|---------------------------------|-------------------------|
| 1. JOEL MORALES | 39. WILLIAM BALUTE, JR. |
| 2. MARGARITA YASOL | 40. JESUS CAÑO |
| 3. SANTOS BAÑADERA, JR. | 41. BIENVENIDO CAÑO |
| 4. LEA BAÑADERA | 42. VICTOR BORJAL |
| 5. LIGAYA DADO ^[14] | 43. VIRGILIO BALINGBING |
| 6. VIRGILIO BAÑADERA | 44. ALEJANDRO BALUTE |
| 7. MANUEL BAÑADERA | 45. GIL BINAMIRA, JR. |
| 8. RODOLFO GALANG, JR. | 46. RODELITA BARNEDO |
| 9. PURISIMA DAO ^[15] | 47. SANTIAGO BARNIDO |
| 10. MELCHOR BALIDOY | 48. LEVI MAGALONA |
| 11. ABUNDIO BARCENILLA | 49. JUANITO CAÑO |
| 12. LOURDES BALIDOY | 50. ARELFA BETCHAYDA |
| 13. JULIO ROMANGAYA | 51. EDITHA BELCHES |
| 14. FRANDY SANGCAP | 52. JANET BOMBALES |
| 15. LOLIT BERSABE | 53. MARILOU BETCHAYDA |
| 16. DONDON BERSABE | 54. MARIFE BETCHAYDA |
| 17. FERMIN BARNEDO, JR. | 55. ROSEMARIE BEQUIO |
| 18. THERESA BAJARO | 56. ALEXANDER BASALLOTE |
| 19. ANTONIO ECAL | 57. VICTOR BALLARES |
| 20. FLORENCIA ECAL | 58. LUIS OLOROSO, JR. |
| 21. MA. NETOS ECAL | 59. DOMINGO SISO |
| 22. VENUS ECAL | 60. DOMINGO MICALLER |

- | | |
|------------------------|------------------------------|
| 23. NELIZ MORALINA | 61. JENIFER OLOROSO |
| 24. NORMA BAJARO | 62. CATALINO ARCINUE |
| 25. ALEX BAÑADERA | 63. VIOLETA BUEMIA |
| 26. ALADIN MORALINA | 64. TIRSO BARBERAN |
| 27. PEDRO BIÑAS, JR. | 65. NELLY BUEMIA |
| 28. ROMEO MORALINA | 66. RODOLFO BOMBITA |
| 29. PABLITO FORMENTO | 67. BIENVENIDO BAÑADERA |
| 30. ANGELES BOMBALES | 68. BERNARDINO BARBERAN, JR. |
| 31. SARDONINA BERSABE | 69. MYLEN CERILLO |
| 32. DOLORES BAÑADERA | 70. DIONY BALIDOY |
| 33. CATALINO BARRAMEDA | 71. PO3 SAMUEL BATAS |
| 34. ABIGAEAL BROSO | 72. LITO BERMAS |
| 35. NILDA YASOL | 73. JOSEPHINE BEJORO |
| 36. ESPERANZA BARDE | 74. ROGER BELARO |
| 37. RYAN BALUTE | 75. ADELA VERGARA |
| 38. ROBERTO BETITO | 76. VINCENT BERMEJO |

these wounds and injuries caused being fatal and mortal; and thus the above-named [appellant and Jimmy] have already performed all the acts of execution which would have produced the crime of Multiple Murder but which nevertheless did not produce it by reason of causes independent of the will of the [appellant and Jimmy], that is, the able and timely medical assistance given to these victims which prevented their deaths, to the damage and prejudice of the legal heirs of those who died herein and also those who suffered injuries on the various parts of their bodies.^[16] [Emphasis supplied].

Upon arraignment,^[17] appellant and Jimmy, assisted by counsels *de officio*, pleaded NOT GUILTY to the crime charged. Thereafter, trial on the merits ensued.

As culled from the records and testimonies of prosecution witnesses, the facts of this case are as follows:

On 14 April 1999, at around 9:00 p.m., Elmer Oloroso (Elmer), one of the prosecution witnesses and first cousin of appellant and Jimmy, was at a dancing place^[18] at *Sitio* Sto. Niño, Liguán, Rapu-Rapu, Albay, to attend a dance held in connection with the feast day celebration thereat. The dancing place, which was more or less ten (10) meters long and eight (8) meters wide, was enclosed by bamboo fence and properly equipped with long benches. It was well-lighted by the fluorescent lights surrounding it and an oscillating light located at the center thereof. While sitting on the bench inside the dancing place, near the front gate thereof, Elmer saw appellant and Jimmy outside holding flashlights and focusing the same toward the people inside.^[19]

At around 11:00 p.m., Jimmy entered the dancing place and approached the person sitting beside Elmer. The latter overheard Jimmy telling the person beside him to go out and look for their companions. Not long after, Jimmy went out of the dancing place and it was the last time Elmer saw him on that particular day.^[20]

Then, at around 12:00 midnight, which was already 15 April 1999, Elmer spotted appellant, who was wearing *maong* pants and *maong* jacket with a belt bag tied around his waist, entered the dancing place and walked towards the people who were dancing. At that time, Jimmy was no longer there. Elmer, who was only more or less three (3) meters away from the appellant, saw the latter get a rounded object from his belt bag, which he believed to be a hand grenade as he has previously seen one from military men when he was in Manila. Later, appellant pulled something from that rounded object, rolled it to the ground towards the center of the dancing place where the people were dancing, and left immediately. Five seconds thereafter, the rounded object exploded. At that moment, appellant was already one-half meter away from the gate of the dancing place.^[21]

The lights went off, people scampered away, and many died and were seriously injured as a result of the said explosion. Elmer went out of the dancing place, together with the crowd, through the destroyed bamboo fence. Realizing his brothers and sisters might still be inside the dancing place, Elmer went back, together with the people carrying flashlights and torches, to look for his siblings. There he saw the lifeless body of his brother, Nicanor Oloroso (Nicanor). His other brother, Luis Oloroso (Luis), on the other hand, was seriously injured. Elmer's two other siblings, Jenny and Edwin, both surnamed Oloroso, was slightly injured. Elmer immediately brought Luis at Bicol Regional Training and Teaching Hospital (BRTTH), Albay Provincial Hospital, where the latter was confined for almost three months.^[22]

The second prosecution witness, Antonio Barcelona (Antonio), corroborated Elmer's testimony on material points. Antonio first met appellant on 20 March 1999 as the latter's brother, Rafael Barde (Rafael), invited him to their house to attend a dance in Mancao, Rapu-Rapu, Albay. There they had a little conversation and appellant told Antonio that he would not enter any dancing place without creating any trouble. On 14 April 1999 at around 9:30 p.m., Antonio again met appellant at the dancing place at *Sitio* Sto. Niño, Liguán, Rapu-Rapu, Albay. While Antonio was inside the dancing place, appellant saw him and summoned him to go out. Then, Antonio and appellant, who was then with his brothers, Jimmy and Joel, both surnamed Barde, conversed about their work.^[23] Suddenly, appellant uttered, "*Diyan lang kamo, dai kamo maghale sa Tokawan na iyan, to kong may ribok man, yaon kami sa likod lang.*"^[24] Appellant told Antonio that he would just be behind him and his companions because there might be a trouble. Thereafter, Antonio went inside the dancing place. ^[25]

At about 11:30 p.m., the dance was declared open to all. At this juncture, appellant and his two brothers went inside the dancing place. Jimmy then approached Antonio. Then, at around 12:30 a.m. of 15 April 1999, Antonio noticed appellant walking slowly towards the crowd inside the dancing place with his hands partly hidden inside his *maong* jacket with an eagle figure at the back thereof. Suddenly, appellant stopped, looked around, got something from his waist line, rolled it to the ground towards the crowd and hastily left. Antonio confirmed that what was rolled to the ground by appellant was a grenade because after more or less four seconds that thing exploded. Appellant was already in front of the gate of the dancing place when the explosion occurred. Antonio was not injured as he was more or less four (4) meters away from the place where the explosion occurred. Darkness followed after the explosion as the lights went off. People bustled. Many died and were injured.^[26]

Other prosecution witnesses, Alexander Basallote (Alexander) and Nilda Yasol (Nilda) - the *Barangay* Captain of Ligan, Rapu-Rapu, Albay, also corroborated the testimonies of Elmer and Antonio.

The prosecution likewise presented Senior Police Officer 2 Hipolito Talagtag (SPO2 Talagtag),^[27] who was assigned at R-4 Division, Explosive and Ordinance Disposal, Police Regional Office 5 at Camp Simeon Ola, Legazpi City. On 15 April 1999, SPO2 Talagtag received a call from Colonel Delos Santos (Col. Delos Santos), Chief of R-4 Division, Supply of RECOM 5, informing him about the explosion incident happened in a dancing place at *Sitio* Sto. Niño, Ligan, Rapu-Rapu, Albay, and asking assistance from them. In response thereto, a team was organized composed of members from the Crime Laboratory, IID Investigators, CIS Investigating Agents and the Explosive Ordinance Team. Thereafter, the team proceeded to the scene of the crime. They reached the place at more or less 11:00 a.m. of 16 April 1999. The team found a crater inside the dancing place that served as their lead in determining the kind of explosive used. In the course of their investigation, they interviewed people living nearby who told them that the explosion was loud. Later, SPO2 Talagtag placed a magnet in the crater inside the dancing place and recovered several shrapnels similar to those that can be found in an M26-A1 fragmentation grenade. By reason thereof, SPO2 Talagtag concluded that the explosion was caused by an M26-A1 fragmentation grenade. Thereafter, the recovered shrapnels were turned over to the crime laboratory at Camp Simeon Ola, Legazpi City, for examination.^[28]

Engineer Ma. Julieta Razonable (Engr. Razonable), Police Senior Inspector and Forensic Chemical Officer assigned at Camp Simeon Ola, Legazpi City, received the specimen, *i.e.*, the shrapnels recovered at the scene of the crime, for physical examination. Her examination yielded positive result, meaning, the specimen submitted to her were part of a hand grenade fragmentation, M26-A1.^[29] This result was subsequently reduced into writing as evidenced by Physical Identification Report No. PI-601-A-99 dated 16 April 1999.^[30]

In his defense, appellant vehemently denied the charge against him and offered a different version of the incident.

Appellant asseverated that at around 7:00 p.m. on 14 April 1999 he was at home in Mancao, Rapu-Rapu, Albay, organizing the plates, spoons, forks and other kitchen utensils that they were about to bring to the house of Teodora Arsenue (Teodora) at *Sitio* Sto. Niño, Ligan, Rapu-Rapu, Albay, in connection with the feast day celebration in the said place. Then, at around 7:30 p.m., the appellant, together with his mother Gloria Barde (Gloria) and brothers Jimmy, Joel, Rafael, Jovito, Jr., all surnamed Barde, proceeded to the house of Teodora and reached the same before 9:00 p.m. Teodora offered them food. After eating, they acceded to the suggestion of Jovito, Jr., to go to the dancing place also located at *Sitio* Sto. Niño, Ligan, Rapu-Rapu, Albay, only a ten minute-walk away from the house of Teodora.^[31]

Upon reaching the dancing place, they stayed outside as they had no tickets. At around 11:30 p.m., through the help of William Gutchal (William),^[32] appellant and his brothers Joel and Jimmy, both surnamed Barde, were able to enter the dancing place while his mother and other brothers remained outside. They immediately