

SECOND DIVISION

[G.R. No. 177768, July 27, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARMEN OLIVO Y ALONG, NELSON DANDA Y SAMBUTO, AND JOEY ZAFRA Y REYES, APPELLANTS.

D E C I S I O N

QUISUMBING, J.:

This is an appeal from the Decision^[1] dated November 30, 2006 of the Court of Appeals in CA- G.R. CR HC No. 00595 which had affirmed *in toto* the Decision^[2] dated August 24, 2004 of the Regional Trial Court (RTC) of Quezon City, Branch 81, finding accused-appellants Charmen Olivo (Olivo), Nelson Danda (Danda), and Joey Zafra (Zafra) guilty beyond reasonable doubt of the crime of robbery with homicide, with no aggravating nor mitigating circumstance, and sentencing them to suffer the penalty of *reclusion perpetua* and to indemnify, jointly and severally, the heirs of the victim, Mariano Constantino, P65,000 as actual damages, P50,000 for the death of the victim, and P50,000 as moral damages.

Accused-appellants Olivo, Danda and Zafra were charged in an Information dated November 29, 2000, as follows:

The undersigned accuses CHARMEN OLIVO Y ALONG alias Lipay, NELSON DANDA Y SAMBUTO alias Teng, and JOEY ZAFRA Y REYES, of the crime of Robbery with Homicide, committed as follows:

That on or about the 21st day of November 2000, in Quezon City, Philippines, the said accused, conspiring and confederating together and helping one another, with intent to gain and by means of force, violence, and intimidation against persons, to wit: by then and there armed with guns forcibly entered the hardware store of Mariano Constantino [y] Zoleta located at Eagle Street, Sitio Veterans B, Bgy. Bagong Silangan, this City, then announced that it was [a] HOLD-UP and ordered Maricel Permejo, storekeeper thereat, at gunpoint to give them the money of said store, did then and there wilfully, unlawfully and feloniously took, rob and carry away the total amount of P35,000.00 Philippine Currency, representing the days earnings of said hardware store, that on the occasion of and by reason of the said robbery and in pursuance of their conspiracy, the said accused with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MARIANO CONSTANTINO Y ZOLETA, by then and there shooting him with a gun hitting him on the trunk and extrem[i]ties, thereby inflicting upon said Mariano Constantino [y] Zoleta serious and mortal wounds which were the direct and immediate cause of

his death, to the damage and prejudice of the heirs of said Mariano Constantino [y] Zoleta.

CONTRARY TO LAW.^[3]

When arraigned on January 22, 2001, all of the accused-appellants pleaded not guilty.^[4]

The evidence for the prosecution consisted of the oral testimonies of Maricel Permejo, storekeeper of the victim Mariano Constantino, Pablito Constantino, the victim's brother, SPO2 Joseph Dino (SPO2 Dino), medico-legal officer Dr. Winston Tan, and Emelita Constantino, the victim's wife. The defense, for its part, presented accused-appellants Olivo and Zafra, Dominica Bernal, who was the landlady of Olivo and Danda, and Rodel de Belen who corroborated Zafra's testimony.

The prosecution, through the Office of the Solicitor General, narrates its version of the facts as follows:

On November 21, 2000, around 6:30 o'clock in the evening, Maricel [Permejo] was tending the store of the victim, Mariano Constantino in Bagong Silangan, Quezon City. Suddenly, three (3) armed men entered the store and demanded money. When Maricel did not accede to the demand, one of the armed men later identified as appellant Nelson Danda kicked her in the leg while his other companion, appellant Joey Zafra got money from the cash register. When the store owner, Mariano Constantino, went inside the store and shouted, the third companion, appellant Charmen Olivo poked a gun at him. Mariano ran towards the back of the house but appellant Olivo nevertheless chased him. Thereafter, Maricel heard successive shots and saw appellants Danda and Zafra going out of the store while the bloodied body of Mariano was lying at the stairway of the house. The victim was taken to the hospital where he died upon arrival.

Two days after the incident SPO2 Joseph Dino received an information from the Batasan Police Station that they have three (3) suspects for drug violations and illegal possession of firearms. He borrowed the suspects for identification by Maricel. When presented to her, she identified them as the men who staged a hold up and shot the deceased.

^[5]

The defense, through the Public Attorney's Office, summarized its version of facts as follows:

EVIDENCE FOR THE PROSECUTION:

To prove the allegations in the Information, the prosecution presented Maricel [Permejo], Pablito Constantino, SPO2 Joseph Dino, Dr. Winston Tan, and Emelita Constantino.

The evidence for the prosecution tends to establish that while **Maricel [Permejo]** was tending the store of the late Mariano Constantino on 21 November 2000, three (3) armed men barged in at around 6:30 o'clock in the evening and ordered her to bring out the money. When she refused, accused Nelson Danda kicked her leg while accused Joey Zafra proceeded to get the money amounting to P35,000.00 from the cash register.

Meanwhile, the owner Constantino entered his store and shouted. Accused Charmen Olivo pointed a gun at him. Constantino ran to the back of the house and accused Olivo chased him. Successive gunshots were subsequently heard.

[Permejo] looked for her employer and found him wounded and bloodied along the stairway of the house. She sought help from a neighbor and the victim was brought to the Fairview [General] Hospital where he expired.

The cadaver was brought for autopsy to Camp Crame and **Dr. Winston Tan**, after the procedure, found several gunshot wounds, the fatal among which was the one sustained on the right chest.

The cadaver was thereafter brought to the Dela Paz Funeral where he stayed for a day and a night. The remains were then brought to Marinduque for the wake which lasted four (4) days and four (4) nights. **Emelita Constantino** testified on the civil aspect of the case.

SPO2 Joseph Dino, an investigator at Camp Karingal, was designated to handle the case. He went to the place of the incident and took the statement of Maricel [Permejo]. Two (2) days after, their office received information that the Batasan Police Station has three (3) suspects for violation of Republic Act (RA) 6425. SPO2 Dino borrowed the suspects and when he presented them to Permejo, the latter identified them as the same persons who held them up and shot her employer.

EVIDENCE FOR THE DEFENSE:

The defense presented the following witnesses, to wit: Charmen Olivo, Dominica Bernal, Joey Zafra and Rodel de Belen.

The evidence for the defense of accused Charmen Olivo and Nelson Danda shows that at around 6:30 o'clock in the evening of 21 November 2000, the accused were cleaning the house that they rented from **Dominica Bernal** on 20 November 2000.

While accused Olivo was fetching water along Barangay Holy Spirit in Payatas, Quezon City on 24 November 2000, policemen in civilian clothes mauled and arrested him sans a warrant. Together with two (2) others, they were brought to Station 6 allegedly for violation of R.A. 6425. A woman came and accused Olivo was taken out. The policemen asked her, "*ito ba?*" which she answered in the negative. The same question was repeated twice but the answer was not changed.

After a few days, the accused were imprisoned at Camp Karingal. They were asked their names. The same woman arrived thereat and at a distance of 1 ½ meters, accused Olivo heard the policemen telling the woman "*ituro mo na*". The woman then mentioned accused Olivo's name.

[6]

On August 24, 2004, the RTC rendered a decision convicting accused-appellants of the crime of robbery with homicide. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court finds accused Charmen Olivo y Along, Nelson Danda y Sambuto and Joey Zafra y Reyes guilty beyond reasonable doubt of the crime of Robbery with Homicide. There being no mitigating or aggravating circumstance, each accused is hereby sentenced to suffer the penalty of Reclusion Perpetua and is hereby ordered to indemnify, jointly and severally, the heirs of the victim in the following amounts: P65,000.00 as actual damages, P50,000.00 for the death of the victim and P50,000.00 as moral damages.

SO ORDERED. [7]

Accused-appellants Olivo and Danda appealed to the Court of Appeals.

In a Decision dated November 30, 2006, the Court of Appeals affirmed *in toto* the RTC's decision, as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED**. The assailed decision is **AFFIRMED** *in toto*.

SO ORDERED. [8]

Before this Court now, the issues raised by the accused-appellants are the following:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR.

III.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANTS CHARMEN OLIVO AND NELSON DANDA'S CULPABILITY WAS ESTABLISHED, THE COURT A QUO GRAVELY ERRED IN CONVICTING THEM OF THE COMPLEX CRIME OF ROBBERY WITH HOMICIDE.^[9]

The accused-appellants argue that in criminal prosecutions, the State has the burden of proving the guilt of the accused beyond reasonable doubt. It has to prove the identity of the accused as the malefactor, as well as the fact of the commission of the crime for which he is allegedly responsible.^[10] They argue that it can be gleaned from the records of the case that the prosecution relied mainly on the testimony of the alleged eyewitness Maricel Permejo, but her testimony leaves much to be desired.^[11] They argue that Maricel Permejo did not point to them as the malefactors and she only did so upon the instruction given in Camp Karingal. They point out that they were invited allegedly for violation of the anti-drugs law and were appalled to learn that they were charged with a different crime and the alleged witness was coached to identify them. Evidently, they stress, their guilt has not been proved with the required quantum of evidence. Where the people's evidence fails to meet the quantum required to overcome the constitutional presumption of innocence, the accused is entitled to acquittal regardless of the weakness of his defense of denial and uncorroborated alibi, for it is better to acquit a guilty man than to unjustly keep in prison one whose guilt has not been proven beyond the required quantum of evidence.^[12]

The appellants further argue that while the alleged eyewitness claimed she saw the accused-appellant Joey Zafra take the money from the cash register, she did not see how and who killed Mariano Constantino. She merely claimed that she saw the accused-appellants armed and chased the deceased outside the store. They conclude that whether or not the accused-appellants indeed committed homicide on the occasion of the robbery is a matter that has not been proven with the required moral certainty of guilt.^[13]

On the other hand, the prosecution, through the Office of the Solicitor General, argues that findings of fact of the trial court are generally upheld on appeal and the accused-appellants are assailing the correctness of the findings of fact of the trial court by impugning the credibility of the prosecution witness Maricel Permejo.^[14] The prosecution claims that contrary to the accused-appellants' claim that the police officers taught the witness Maricel Permejo to point to them as the perpetrators, her testimony is straightforward and direct.^[15]

After review, we find that the accused-appellants should be acquitted.

It is settled that when the issue is the evaluation of the testimony of a witness or his credibility, this Court accords the highest respect and even finality to the findings of the trial court, absent any showing that it committed palpable mistake, misappreciation of facts or grave abuse of discretion. It is the trial court which has the unique advantage of observing first-hand the facial expressions, gestures and the tone of voice of a witness while testifying.^[16]