

THIRD DIVISION

[G.R. No. 184958, September 17, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTHONY C. DOMINGO AND GERRY DOMINGO, ACCUSED-
APPELLANTS.**

D E C I S I O N

VELASCO JR., J.:

This is an appeal by Anthony C. Domingo from the January 31, 2007 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00325. The CA affirmed the April 23, 2001 judgment^[2] of the Regional Trial Court (RTC), Branch 2 in Kalibo, Aklan, which found accused-appellant Anthony Domingo guilty of murder with frustrated murder in Criminal Case No. 5517. Accused-appellant Gerry Domingo has neither been arrested nor arraigned.

The Facts

Anthony was charged with murder and frustrated murder in an information that reads as follows:

That on or about the 18th day of July, 1999, in the evening, in Barangay Cabugao, Municipality of Altavas, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a long firearm, conspiring, confederating and helping each other, with evident premeditation, treachery and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ROSEMELYN DE PEDRO, thereby inflicting upon the latter mortal gunshot wounds, to wit:

1. The body of the deceased is in a state of rigor mortis. The body is dressed in a hospital gown with the name "RAFAEL S. TUMBOKON MEMORIAL HOSPITAL" printed in front. The head has a bandage wrapped around the head. The right forearm has a small piece of plaster at the medial side at the level of the wrist.
2. Gunshot wound of entrance, 1 cm. in diameter and 17 cms. Deep, located at the posterior right parietal region of the head, directed anteriorly and to the left.
3. 1 pellet, measuring 1 cm. in diameter, flatted and with irregular rough edges, was found at the left frontal region of the brain.

as per Postmortem Examination Report issued by Dr. Gliceria A. Sucgang, Rural Health Physician, Altavas, Aklan, hereto attached as Annex "A" and forming an integral part of this Information, which gunshot wounds directly caused the death of said ROSEMELYN DE PEDRO, as per Certificate of Death issued by the same physician, likewise attached hereto as Annex "B".

That on the same incident and with the single act of the above-named accused, another victim, VIVIAN DOMINGO was hit, thereby inflicting upon the latter gunshot wounds, to wit:

1. Left shoulder with metallic foreign body
2. Left arm, lateral and posterior thru and thru
3. Left hand, 3rd finger proximal 3rd with fracture of proximal phalanx
4. Abdomen, hypogastric area left inferolateral portion with metallic foreign body abdominal wall.

as per Medico-Legal report on Physical Injuries issued by Dr. Victor A. Santamaria, Medical Officer IV of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached as Annex "G" and forming an integral part of this Information; the accused having thus performed all the acts of execution which would produce the felony of Murder but did not produce the same for causes other than their own spontaneous desistance, that is, the timely and able medical attendance rendered to the victim which prevented her death.

That as a result of the criminal acts of the accused, the heirs of the victim Rosemelyn De Pedro and private offended party Vivian Domingo suffered actual and compensatory damages in the amount of SEVENTY FIVE THOUSAND PESOS (P 75,000.00).

CONTRARY TO LAW.

Kalibo, Aklan, Philippines, September 29, 1999.^[3]

The other accused, Gerry, went into hiding. Hence, only Anthony was arraigned on November 22, 1999. With the assistance of his counsel, he pleaded not guilty.^[4]

The plaintiff-appellee, through the Solicitor General, presented its version of the facts as follows: On July 18, 1999, around 8:00 p.m., Nida de Pedro Domingo, her two children, and seven nephews and nieces were at home in *Barangay* Cabugao, Altavas, Aklan watching television. Their three dogs suddenly started to bark so Nida asked her niece, Rosemelyn de Pedro, to turn on the electric bulb that hang at the nearby mango tree beside the national road. When Rosemelyn did not budge, Nida herself turned on the lights, opened the bamboo window, and looked out of the

window. She saw Anthony and Gerry, her brothers-in-law, standing under the mango tree. Without warning, Anthony and Gerry fired their *pugakhang* (homemade shotgun), hitting Nida in the right eyebrow. Rosemelyn, who was seated near the door with her back to the window, slumped on the floor with a wound in her head. Nida's daughter, Vivian, who was then combing her hair in front of the mirror, was hit on the left shoulder, left arm, left middle finger, and abdomen. When Vivian cried that she was hit, Nida immediately closed the window and shouted for help. The two accused fled towards Linayasan.^[5]

Prior to the incident, Nida's older brother, Leopoldo de Pedro, was on his way to Nida's house to fetch his grandchildren. He was about 12 meters away from the house when the dogs barked. He saw the light and heard an explosion which he mistook for thunder until he saw accused-appellants standing near the mango tree and holding a shotgun. Leopoldo ducked behind a pile of soil. He saw the two escaped to Linayasan.^[6]

Leopoldo, a certain Bobong, and Nonie were the first to respond to Nida's cries for help. Leopoldo testified that after the two accused left, he entered the house of Nida and saw his niece Rosemelyn lying on the floor while Vivian was assisted by other people. The victims were brought to the hospital.^[7] Leopoldo, Bobong, and Nonie went to the police station to report the matter while Vivian stayed in the Dr. Rafael S. Tumbokon Memorial Hospital for five days. Rosemelyn died due to cerebral hemorrhage.^[8]

For the defense, Anthony testified that in the afternoon of July 18, 1999, he left his house with his two children and proceeded towards the house of his sister, Teresita Domingo, located in Cabugao, Altavas, Aklan, about half a kilometer away. Anthony's son stayed long at his sister's place as they were still going to Alfredo Dalida, Sr.'s house across the river.^[9]

In the evening, Alfredo was engaged in a drinking session with his friends in a hut located in *Barangay* Cabugao, Altavas, Aklan. Gerry allegedly passed by the hut on his way to the house of his parent-in-law. Gerry refused the group's invitation to join the drinking session. Soon, Gerry's brother, Anthony, arrived at the hut. Alfredo accompanied Anthony to the former's house across the river of Dalipdip. Anthony wanted to talk to Alfredo's wife regarding the medical check-up of Anthony's wife in Manila who was due to arrive the following day. Since Anthony's children fell asleep while watching television, the Dalida spouses invited Anthony to pass the night in their house. Anthony and his children slept in the middle of the house which had no partition. Anthony alleged that he spent the entire night at the Dalida's.

The morning after the incident, Anthony learned that Ronnie Domingo alias "Kana" was the initial suspect. Anthony denied the charges and alleged that he had never been to the house of Nida since he was charged with killing Nida's brother, Tenorio de Pedro. Anthony said that he even avoided passing there since the de Pedros had said that they will kill him. He remained in Altavas and continued farming until he was arrested three months after the incident.^[10]

Ronnie supported Anthony's defense and stated that he was the initial suspect in the shooting incident. He testified that on July 18, 1999, around 4:00 p.m., he was engaged in a drinking session at the store near councilwoman Gloria Marcelino's

house. Because of drunkenness, he fell asleep at Gloria's place around 6:00 p.m. Around 7:00 p.m., he was awakened by Nida's shouts that it was "Kana" who shot her daughter and her niece. Ronnie was surprised at this accusation. Gloria told Nida not to suspect Ronnie because he was at her house sleeping at that time.^[11]

On April 23, 2001, the court *a quo* found Anthony guilty of murder with frustrated murder. The *fallo* of the decision reads:

WHEREFORE, the Court finds the accused ANTHONY C. DOMINGO GUILTY beyond reasonable doubt of the complex crime of MURDER WITH FRUSTRATED MURDER, and hereby imposes upon him the penalty of death.

Further, the Court hereby orders the afore-named accused to pay the legal heirs of the victim ROSEMELYN DE PEDRO the following:

- a. P50,000.00 as civil indemnity ex delicto;
- b. P50,000.00 as moral damages; and
- c. P10,805.00 as actual damages supported with receipts only.

Further, the Court hereby orders that the cases against GERRY C. DOMINGO be ARCHIVED until his arrest.

With COSTS against Anthony C. Domingo.

SO ORDERED.^[12]

In view of the imposition of the death penalty, the case was forwarded to the CA for review.^[13]

In the appellant's brief, ^[14] Anthony reiterated his alibi. He also pointed out the inconsistencies in the testimonies of prosecution witnesses. For one, Nida claimed that the window was open at the time of the shooting which contradicts Vivian's testimony that the window was closed. Also, according to Anthony, the inaction of Gina de Pedro, Nida's niece, during the incident was contrary to human nature. Gina's allegation that there was only one shot also contradicts the prosecution's evidence showing four gunshot wounds on Vivian, two deformed pellets, and one plastic cap recovered from the crime scene. He also contended that since Leopoldo was not among the first to respond to Nida's cries for help, he could not have been at the crime scene and witnessed the attack. Lastly, Anthony attributed ill motive to the prosecution witnesses since they charged him of killing Tenorio, Nida's brother.

The Ruling of the CA

The CA found no merit in Anthony's contentions. In reviewing the testimonies of the

witnesses, the appellate court found no inconsistencies that would question their credibility. For one, the window was initially closed as testified to by Nida, but she later opened it when Rosemelyn did not follow her order. The CA also held that Gina's inaction when the shot was fired was also understandable since she was in shock. Gina's testimony that there was only one fire does not contradict the physical evidence, since a single bullet of a shotgun can fire several pellets that can cause multiple injuries. As to whether Leopoldo de Pedro was at the crime scene, the CA found that Leopoldo stayed behind a pile of soil for three more minutes after the attack for fear that accused-appellants might see him. The fact that he was not among the first to arrive at Nida's side does not mean that he was not at the crime scene or that he did not witness the attack. The CA also dismissed Anthony's alibi and imputation of ill motive on the prosecution witnesses.

With regard to the damages, however, the CA found it appropriate to order the payment of exemplary damages in the amount of PhP 25,000 since treachery was proved. Furthermore, in view of Republic Act No. 9346, the imposition of the death penalty was proscribed. Thus, the trial court's judgment was amended as follows:

WHEREFORE, the Decision of the Regional Trial Court of Kalibo, Aklan, Branch 2, dated 23 April 2003, in Criminal Case No. 5517 is **UPHELD** with modification only as to the penalty and award of civil damages. Accordingly, accused-appellant Anthony C. Domingo is hereby sentenced to suffer *Reclusion Perpetua* in lieu of death and is further ordered to pay the heirs of Rosemelyn De Pedro the amount of P25,000.00 as exemplary damages in addition to those awarded by the trial court.^[15]

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND SELF-CONTRADICTORY TESTIMONIES OF THE PROSECUTION'S ALLEGED EYEWITNESSES.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIME CHARGED HAS BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal lacks merit.

We find no reason to disturb the findings of fact of the trial court. It is an established rule that findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted which would otherwise materially affect the disposition of the case.^[16] In this case, we do not see any reason to depart from this rule.

The trial court gave credence to the testimony of the prosecution witnesses who positively identified Anthony as the culprit. Nida, Leopoldo, and Gina knew Anthony