

SECOND DIVISION

[G.R. No. 178485, September 04, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARIANO SAPIGAO, JR., ACCUSED-APPELLANT.**

QUISUMBING, J.:

For automatic review is the Decision^[1] dated July 19, 2006 of the Court of Appeals, in CA-G.R. CR No. 01018, affirming with modification the Decision^[2] dated July 28, 1999 of the Regional Trial Court (RTC) of Urdaneta City, Branch 46, in Criminal Case No. U-5035, finding appellant Mariano Sapigao, Jr. guilty beyond reasonable doubt of the crime of murder.

The facts of the case, culled from the records, are as follows:

In an Information^[3] dated January 4, 1989, appellant Mariano Sapigao, Jr. and Melvin Sublingo, who remains at large, were accused of the crime of murder with the use of unlicensed firearms, as follows:

That on or about the 22nd day of September 1987, in the afternoon, at Barangay Carosucan Sur, municipality of Asingan, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with Cal. .45 and Cal. .38 Handguns, conspiring, confederating and mutually helping each other, with deliberate intent to kill, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault and shoot one Alexander Turalba, inflicting upon him, the following injuries: Gunshot wound - $\frac{3}{4}$ cm. pt. of entrance passing between the 8th and 9th thoracic vertebrae, lacerating the right ventricle of the heart [bullet lodged between the 6th left and right ribs, at the sternum]; Gunshot wound - $\frac{3}{4}$ pt. of entrance, left parietal bone, traversing the brain with 1 inch ill-defined edges pt. of exit, fracturing the right maxillary bone, which caused the death of said Alexander Turalba, as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code.

A Warrant of Arrest^[4] was issued against appellant and Sublingo on October 12, 1987, but the two allegedly eluded arrest. An Alias Warrant of Arrest^[5] was issued on December 1, 1987. Another Warrant of Arrest^[6] was issued on January 18, 1989 by the RTC of Urdaneta, Pangasinan, Branch 46.

Appellant was arrested on February 8, 1993.^[7] His lawyer filed a petition for bail^[8]

which was opposed by the government prosecutor.^[9] The RTC, acting on the opposition of the government prosecutor, increased the bail bond from P30,000.00 to P50,000.00.^[10] Thereafter, the government prosecutor, Atty. Monte P. Ignacio, filed a motion for consolidation^[11] of the case which had been docketed as Criminal Case No. U-5035 with another criminal case docketed as Criminal Case No. U-4963 for illegal possession of firearms against the appellant and Sublingo arising out of the same incident. The motion was unacted upon and when called for arraignment, appellant was absent and out on bail.^[12] Warrants of arrest were again issued against him and he was finally arrested on January 27, 1999. During his arraignment on February 9, 1999, appellant pleaded not guilty.^[13] Previously, the RTC, on March 18, 1993, consolidated Criminal Case No. U-5035 with Criminal Case No. U-4963 for illegal possession of firearms against the same accused.^[14]

The prosecution presented the testimonies of Dr. Leonardo Guerrero, Cecilio Fabro, SPO4 Rodrigo Escaño, and Apolonia Turalba, the victim's grandmother. For its part, the defense presented the testimonies of eyewitness Jesus Ballesteros, the appellant himself, Ballistician and Chief of the Firearms and Explosives Unit of the National Bureau of Investigation (NBI) Rogelio Munar, and NBI Medico-Legal Officer Dr. Arturo Llavore.

The autopsy of the victim was conducted by Dr. Irenio G. Agapito, Rural Health Physician of Asingan, Pangasinan. The autopsy report states the following findings on the victim:

EXTERNAL:

Fairly developed, fairly nourished, adult male, weighing around 130 lbs., height - 5['] 4"; Lon[g] black hair, brown complexion and wearing maong long pants, green t-shirt, white brief[s] soaked with blood.

INTERNAL:

GUNSHOT WOUNDS

1. $\frac{3}{4}$ cm. Pt. of entrance passing between the 8th and 9th thorasaic vertebrae lacerating the right ventricle of the heart and the bullet was lodged between the 6th left and right ribs, at the sternum.

BLOOD AT THORACIC CAVITY 500 c.c.

2. $\frac{3}{4}$ pt. of entrance - left parietal bone traversing the brain with 1 inch ill-defined edges of pt[.] of exit fracturing the right maxillary bone.

CAUSE OF DEATH: Fatal gunshot wounds.^[15]

Prosecution witness Cecilio Fabro claimed that on September 22, 1987, at about 3 p.m., he was with the victim Alexander Turalba at the basketball court located at

Carosucan Sur in front of the health center of the school, forming a team to play basketball. While they were in the process of forming the team, Melvin Sublingo arrived and immediately shot Alexander Turalba once at the back with a .38 caliber firearm. Turalba fell, face down. Melvin Sublingo fired once more, hitting Henry Osias. Then appellant Mariano Sapigao, Jr., shot Alexander Turalba with a .45 caliber firearm while the latter was lying down. After the shooting, Sublingo ran towards the eastern direction while appellant ran towards the western direction. After Sublingo and appellant left, Fabro lifted Turalba, placed the latter in a jeep and brought him to the Urdaneta Sacred Heart Hospital where he was declared dead on arrival.^[16]

For the defense, Jesus Ballesteros, a resident of Carosucan Sur, Asingan, Pangasinan, testified that on September 22, 1987, at about 3 p.m., he was with the appellant, who was his cousin, and several other cousins near a basketball court at Carosucan Sur. Suddenly, Melvin Sublingo appeared. Sublingo at first tried to shoot Cecilio Fabro but a cousin of Fabro, Orlan Fabro, shouted "You run, *Manong*, because Melvin is there already." Cecilio ran towards the south. Alexander Turalba, who was at the midcourt, was then shot by Melvin Sublingo with a .38 caliber firearm. Appellant was beside Ballesteros at the time Sublingo shot Turalba twice hitting the back and head of Turalba. Sublingo shot the head of Turalba first. When Turalba fell down, he was shot again at the back by Sublingo. Sublingo then ran towards the east where he met Osias. He also shot Osias. Ballesteros denied that appellant shot Turalba. He attributed the shooting by Sublingo to revenge because Turalba mauled Sublingo in the morning of September 22, 1987 and while Sublingo was being mauled by Alexander Turalba, Cecilio Fabro had poked a knife at the head of Sublingo.^[17]

Appellant denied shooting Alexander Turalba. He claimed that it was Melvin Sublingo who shot Turalba twice, the first shot hitting Turalba in the head and the second hitting Turalba at the back.^[18]

NBI Ballistician Rogelio Munar testified that based on the gunshot wounds of Turalba described in the autopsy report, the wound was produced by a .32 or .38 caliber pistol.^[19]

Dr. Arturo Llavore testified that after examining the autopsy report, he concluded that the gunshot wounds were inflicted by a .38 caliber firearm.^[20]

On July 28, 1999, the RTC rendered a decision finding appellant guilty beyond reasonable doubt of murder. It, however, dismissed the charges against him for illegal possession of firearms, appreciating treachery as an aggravating circumstance in the crime of murder. The dispositive portion of the RTC decision reads:

WHEREFORE, JUDGMENT of CONVICTION beyond reasonable doubt is rendered against MARIANO SAPIGAO, JR. of the crime of aggravated Murder (appreciating treachery as qualifying circumstance) with the use of firearms and the Court sentences Mariano Sapigao, Jr. to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the victim the sum of P38,600.00 as actual damages; plus P50,000.00 as moral damages and P20,000.00 as exemplary damages.

Mariano Sapigao, Jr. is ACQUITTED in Crim. Case No. U-4963 (Illegal Possession of Firearm).

The Branch Clerk of Court is hereby ordered to prepare the mittimus.

The Jail Warden, Bureau of Jail Management and Penology is hereby ordered to deliver the person of Mariano Sapigao, Jr. to the National Bilibid Prisons, Muntinlupa City, [within] 15 days from receipt of this Decision.

SO ORDERED.^[21]

Appellant appealed before this Court. Pursuant to the decision in *People v. Mateo*,^[22] the case was transferred to the Court of Appeals for intermediate review.

On July 19, 2006, the Court of Appeals affirmed with modification the trial court's decision, as follows:

WHEREFORE, in view of the foregoing, the [D]ecision dated July 28, 1999 of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-5035 is **AFFIRMED** with modification. Accused-appellant MARIANO SAPIGAO, JR. is found **GUILTY** beyond reasonable doubt of the crime of murder, qualified by treachery, and is hereby sentenced to suffer the penalty of *reclusion perpetua*, and **ORDERED** to pay the heirs of the victim Alexander Turalba the following amounts: P50,000.00 as civil indemnity; P50,000.00 as moral damages; P25,000.00 as temperate damages and P25,000.00 as exemplary damages.

SO ORDERED.^[23]

Hence, this appeal where appellant raises the following issues in his Supplemental Brief:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT APPELLANT SHOT THE VICTIM AND CAUSED HIS DEATH.

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT APPELLANT ACTED IN CONSPIRACY WITH THE OTHER ACCUSED MELVIN SUBLINGO.

III.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE GUILT OF APPELLANT HAS NOT BEEN SHOWN BEYOND REASONABLE DOUBT.^[24]

The primordial issue is: Has appellant's guilt for the crime of murder been proven beyond reasonable doubt?

Appellant, in his Supplemental Brief,^[25] argues the prosecution failed to prove that he shot the victim because: (1) Prosecution witness Cecilio Fabro testified that the handgun used by him in shooting the victim was a .45 caliber handgun, but the diameters at the point of entry of the two wounds sustained by the victim were that of wounds caused by a .38 caliber firearm;^[26] (2) Fabro testified that he shot the victim at the back while the Autopsy Report stated that the wounds of the victim were in the thoracic area and the left parietal area;^[27] (3) The expert witnesses, Ballistician Munar and Dr. Llavore, are impartial witnesses while Fabro had a motive to falsely testify against him;^[28] (4) The reliance by the Court of Appeals on the rule that the trial court is in the best position to assess the credibility of witnesses is not applicable in this case;^[29] (5) Ballistician Munar and Dr. Llavore are expert and impartial witnesses and their testimonies are based on physical evidence and scientific fact;^[30] (6) The other accused, Melvin Sublingo, caused both wounds of the victim;^[31] (7) The path of the bullet wound that caused the wound on the head of the victim belies the testimony of Fabro that he shot the victim while the latter was lying face down on the ground;^[32] (8) He had no motive to shoot the victim;^[33] (9) For more than ten years, the authorities did not arrest him;^[34] (10) The burden of proof that he shot the victim with a .45 caliber handgun rests with the prosecution and he does not have the burden to prove that he did not shoot the victim.^[35]

The prosecution, through the Office of the Solicitor General, opted not to file a supplemental brief, explaining that its arguments on the issues invoked had already been discussed in the brief it had previously filed.^[36]

After review, we uphold the ruling of the Court of Appeals affirming the guilty verdict of the trial court.

Findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of their credibility and the probative weight of their testimonies, as well as its conclusions anchored on the said findings, are accorded by the appellate court high respect if not conclusive effect, unless the trial court ignored, misunderstood, or misconstrued facts and circumstances of substance which, if considered, would warrant a reversal of the outcome of the case.^[37]

In this case, the Court of Appeals and the RTC gave credence to the testimony of prosecution witness Cecilio Fabro whose testimony directly contradicts that of defense witness Jesus Ballesteros. We see no reason to deviate from this finding.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique