

SECOND DIVISION

[G.R. No. 176159, September 11, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEE RODRIGO, JOHN DOE @ BUNSO, AND PETER DOE @ LYN-LYN, ACCUSED.
LEE RODRIGO, ACCUSED-APPELLANT.**

D E C I S I O N

BRION, J.:

Before us for review is the Decision^[1] dated September 18, 2006 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 01531 which affirmed with modification^[2] the decision dated June 27, 2005 of the Regional Trial Court (RTC), Branch 11, Malolos City, Bulacan in Crim. Case No. 917-M-2001.^[3] The RTC's decision found the accused-appellant Lee Rodrigo (*Rodrigo*) guilty beyond reasonable doubt of the crime of robbery with homicide, and sentenced him as follows:

WHEREFORE, this Court finds the herein accused, Lee Rodrigo, GUILTY beyond reasonable doubt of Robbery with Homicide under Article 294, par. 1 of the Revised Penal Code and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the late Paquito Buna the following sums of money, to wit:

1. [P50,000.00] as civil indemnity;
2. P50,000.00 as moral damages; and
3. P60,000.00 as actual damages.

x x x

SO ORDERED.

The Antecedents

The basic facts of the robbery with homicide are not disputed. The spouses Paquito Buna and Rosita Cabrera-Buna^[4] (*Rosita*) owned a restaurant located at Area H in San Rafael, Bulacan. The spouses were in their restaurant at around 10:20 a.m. on October 27, 2000 together with their two helpers; Paquito was cooking in the kitchen while Rosita and the helpers were attending to two customers. Three men, armed with guns, suddenly entered the restaurant, declared a holdup, and immediately proceeded to divest the two customers of their money and the restaurant of its earnings of P500.00. While the robbery was in progress, Paquito came out of the kitchen and, seeing what was happening, grabbed a "*bangko*"; he was instantly fired upon three times by one of the armed men while the other two turned their backs and laughed. After the robbers left, Rosita rushed Paquito to the hospital where he was pronounced dead on arrival.

Rosita afterwards filed a criminal complaint through her *Sinumpaang Salaysay* (dated November 24, 2000)^[5] where she identified Rodrigo as among the men who robbed the restaurant and killed her husband. On February 28, 2001, Rodrigo and two men bearing the aliases of "*Lyn Lyn*"^[6] and "*Bunso*" were formally charged of the special complex crime of robbery with homicide. The Information^[7] reads:

That on or about the 27th day of October, 2000, in the Municipality of San Jose del Monte, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with short firearms, did then and there willfully, unlawfully and feloniously, with intent of gain and by means of force, violence and intimidation, take, rob, and carry away with them P500.00 belonging to the spouses Paquito Buna and Rosita Cabrera-Buna, to the damage and prejudice of the said spouses in the amount of P500.00; and on the occasion of the commission of the said robbery or by reason thereof, the herein accused, in furtherance of their conspiracy, did then and there willfully, unlawfully and feloniously, attack, assault and shoot with the short firearms Paquito Buna, thereby inflicting on him serious physical injuries which directly caused his death.

Contrary to law.

Rodrigo was arrested on May 29, 2001. The other two accused remain at large. Rodrigo pleaded not guilty upon arraignment and trial on the merits subsequently followed.

The prosecution introduced two witnesses - Rosita and Dr. Ivan Richard Viray, the medico-legal officer whose testimony was dispensed with by agreement of the parties.^[8] Thus, Rosita stood as the prosecution's only witness on the identity of the accused and on the commission of the crime.

As an eyewitness, Rosita identified Rodrigo ***in court*** as one of the three armed men who robbed the restaurant and its customers.^[9] She testified that she saw Rodrigo as one of the robbers who entered the restaurant; that one of the three immediately declared a holdup;^[10] that Rodrigo had a firearm in his possession;^[11] that he brandished his firearm and threatened the occupants of the restaurant in the course of the robbery;^[12] and that Rodrigo left with the other robbers after achieving their evil purpose.^[13]

On re-cross-examination, Rosita admitted that she ***initially*** identified Rodrigo by means of a photograph shown to her at the police station; the photograph was the only one shown to her at that time.^[14]

After the presentation of the following documentary evidence: (a) *Sinumpaang Salaysay* dated November 24, 2000 of Rosita Buna (Exhibits "A" and "A-1");^[15] (b) List of Expenses Incurred for the wake, funeral, and burial of Paquito Buna (Exhibit "B" with submarkings);^[16] and (c) Certificate of Death of Paquito Buna (Exhibit "C"),^[17] the prosecution rested its case.

The case for the defense relied solely on the testimony of Rodrigo who interposed the defenses of *denial* and *alibi*.^[18] He claimed that he was at his house at FVR I, Norzagaray, Bulacan with his wife, cousin, and neighbor on the alleged date and time of the commission of the crime. He was at the time watching television while taking care of his child. On cross-examination, he admitted that the distance from Barangay San Rafael, Sapang Palay to his house was more or less one kilometer; the distance can be covered in 10 minutes through a single tricycle and jeepney ride. He also admitted that he came to know that he was being implicated in the case two days after the October 27, 2000 robbery-killing incident.^[19]

The RTC convicted Rodrigo on June 27, 2005 of the crime of robbery with homicide on the basis of Rosita's testimony which the court found to be candid, straightforward, firm, and without any trace of any improper motive. This testimony, an eyewitness account, confirmed that Rosita saw Rodrigo as among the three robbers who robbed the restaurant and who fled after divesting the restaurant of its earnings and the customers of their money, killing Paquito in the course of the robbery. The RTC declared that it was not important that Rodrigo did not actually shoot Paquito since there was a conspiracy; it did not matter who among the conspirators did the actual shooting as the act of one was the act of all, and all were equally liable. The court refused to believe Rodrigo's defenses of *denial* and *alibi* in the absence of any corroborating evidence and in light of Rosita's positive and categorical eyewitness identification and account of the crime.

The CA, to where Rodrigo appealed his conviction, affirmed the lower court's decision, with the modification that the award of civil indemnity should be reduced to P50,000.00. As the lower court did, the CA gave premium to Rosita's identification when it said: ". . . *Rodrigo was positively identified by Rosita Buna as one of the three (3) armed men who perpetrated the crime. She was straightforward in narrating how accused-appellant Rodrigo and his cohorts entered their restaurant, armed with guns and declared a hold-up. . .*" On the matter of identification, the appellate court significantly noted that: ***Rosita identified accused-appellant Rodrigo from the picture shown to her at the police station, and months later when she saw him in San Jose del Monte Police Station, and that she pointed to accused-appellant Rodrigo inside the courtroom during the trial of the case as among those who robbed them in their restaurant.***^[20]

Rodrigo elevated his conviction to this Court, citing the following reversible errors committed by the RTC and CA in their decisions:

- (1) In convicting Rodrigo of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt; and
- (2) In relying on the alleged weakness of the defense evidence rather than on the strength of the prosecution evidence.

Rodrigo particularly cited the inconsistencies in Rosita's testimony regarding his participation in the crime. In his view, these inconsistencies, together with his alibi, showed that he was not actually present at the crime scene. The identification Rosita made at *"the police station was not sufficient and convincing to lead one to believe that Lee Rodrigo was among the malefactors. The act of the wife (herein witness) is expected from someone who had just lost a loved one unexpectedly and*

in an unacceptable manner. Such form of identification clearly impaired her credibility as a witness."^[21] Further, Rodrigo asserted:

However, before the doctrine that positive identification prevails over denial or alibi may apply, it is necessary that the identification must first be shown to be positive and beyond question. Even though inherently weak, the defense of alibi or denial nonetheless acquires commensurate strength where no positive and proper identification has been made by the prosecution witness of the offender, as the prosecution still has the *onus probandi* in establishing the guilt of the accused. (*People v. Crispin*, 327 SCRA 167). While it is true that denial and alibi are weak defenses, it is equally settled that where the evidence of the prosecution is itself feeble, particularly as to the identity of the accused as the author of the crime, the defense of denial and alibi assume importance and acquire commensurate strength. (*People v. Giganto, Sr.* 336 SCRA 294).^[22]

For its part, the People banked on the great weight accorded to the factual findings of the trial court, given its unique position of having observed the witnesses while testifying. It heavily relied, too, on Rosita's credibility and the positive identification she made as an eyewitness,^[23] and the fact that she was not actuated by any improper motive.^[24] Predictably, the People derided the alibi for being inherently weak and for failure to demonstrate that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.^[25]

Our Ruling

We find the petition impressed with merit and acquit Rodrigo of the crime charged.

Presumption of Innocence

While an accused stands before the court burdened by a previous preliminary investigation finding that there is *probable cause* to believe that he committed the crime charged, *the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces*. This principle, a right of the accused, is enshrined no less in our Constitution.^[26] It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt.^[27] Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the *burden of evidence* then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case.

Mode of Review

We mention, too, that the review of a case opens the whole case for our consideration, including the questions not raised by the parties.^[28] Our role in the justice system is not so much to penalize as to see that justice is done. Towards this end, ours is the obligation to explore all aspects of a case, including those that the parties have glossed over or have not fully explored.

The Court, in discharging its mandated duty, is tasked to consider two crucial points in sustaining a judgment of conviction: **first**, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and **second**, all the elements constituting the crime were duly proven by the prosecution to be present. Failing in either of these, a judgment for acquittal is in order.

Identification of the Accused

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

In the present case, the records show that Rodrigo's arrest and eventual conviction were wholly based on the testimony of Rosita who testified as an eyewitness and who identified Rodrigo as one of the perpetrators of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the widow of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Rosita made. The defense, for its part, grasped the possible flaw in the prosecution's case, but did not fully pursue its case and its arguments on the basis of the existing jurisprudence on the matter.

The aspect of this case that remains unexplored, despite the availability of supporting evidence, is Rosita's *out-of-court* identification of Rodrigo, done for the first time through a lone photograph shown to her at the police station, and subsequently, by personal confrontation at the same police station at an undisclosed time (presumably, soon after Rodrigo's arrest). Jurisprudence has acknowledged that *out-of-court* identification of an accused through photographs or mug shots is one of the established procedures in pinning down criminals.^[29] Other procedures for *out-of-court* identifications may be conducted through *show-ups* where the suspect alone is brought face to face with the witness (a procedure that appears to have been done in the present case as admitted by Rosita^[30] and noted in the decision^[31]), or through *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose.^[32]

The initial photographic identification in this case carries serious constitutional law implications in terms of *the possible violation of the due process rights of the accused* as it may deny him his *rights to a fair trial* to the extent that his *in-court*