

## FIRST DIVISION

[ G.R. NO. 175881, August 28, 2007 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARMANDO RODAS<sup>[1]</sup> AND JOSE RODAS, SR.,<sup>[2]</sup> ACCUSED-  
APPELLANTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Assailed before Us is the Decision<sup>[3]</sup> of the Court of Appeals in CA- G.R. CR-HC No. 00289 which affirmed *in toto* the decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch XI, convicting accused-appellants Armando Rodas and Jose Rodas, Sr. of the crime of Murder.

For the death of one Titing Asenda, accused-appellant Jose Rodas, Sr., together with his sons Charlito, Armando, and Jose Jr., all surnamed Rodas, were charged with murder in an information which reads:

That, in the evening, on or about the 9<sup>th</sup> day of August, 1996, in the municipality of Siayan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, armed with a hunting knife, firearm, chako and bolo, conspiring, confederating together and mutually helping one another, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, beat, stab and hack one TITING ASENDA, thereby inflicting upon him multiple wounds on the vital parts of his body which caused his death shortly thereafter; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

- a) Indemnity for victim's death . . . P50,000.00
- b) Loss of earning capacity . . . . . P30,000.00
- P80,000.00

CONTRARY TO LAW (Viol. of Art. 248, Revised Penal Code), with the aggravating circumstances of nocturnity and abuse of superior strength.  
<sup>[5]</sup>

When arraigned on 22 November 1996, the four accused, assisted by counsel *de oficio*, pleaded not guilty to the crime charged.<sup>[6]</sup>

By agreement of the parties, pre-trial conference was terminated on 6 December 1996.<sup>[7]</sup> Thereafter, trial on the merits commenced.

The prosecution presented five witnesses, namely: Alberto Asonda, Danilo Asenda,

Ernie Anggot, Blessie Antiquina and PO1 Pablo Yosores.

Before the prosecution could rest its case, accused Charlito Rodas<sup>[8]</sup> and Jose Rodas, Jr. <sup>[9]</sup> withdrew their previous pleas of "NOT GUILTY" and entered their respective pleas of "GUILTY" for the lesser crime of Homicide. Both were sentenced to suffer the indeterminate penalty of 17 years, 4 months and 1 day to 20 years and were each ordered to indemnify the heirs of the victim in the amount of P12,500.00 as damages.<sup>[10]</sup>

The prosecution formally offered Exhibits "A" to "H," inclusive, with sub-markings.<sup>[11]</sup>

From the evidence adduced, the prosecution's version of the killing is as follows:

On 9 August 1996, Titing Asenda, a resident of Boyos, Sindangan, Zamboanga del Norte, was at Milaub, Denoyan, Zamboanga del Norte, to help his brother, Danilo Asenda, in the harvesting of the latter's corn.

On the same day, at around 8:00 in the evening, a benefit dance at Milaub, which was sponsored by Boboy Raquilme,<sup>[12]</sup> was being held. Among those roaming in the vicinity of the dance hall were Alberto Asonda and Ernie Anggot. They stopped and hung out near the fence to watch the affair. Titing Asenda was standing near them. They saw Charlito Rodas, Armando Rodas, Jose Rodas, Jr., and Jose Rodas, Sr. surround Titing Asenda. Suddenly, without a word, Charlito Rodas, armed with a hunting knife, stabbed Titing at the back. Armando Rodas then clubbed Titing with a *chako* hitting him at the left side of the nape causing him to fall. Thereafter, Jose Rodas, Sr. handed to Jose Rodas, Jr. a *bolo* which the latter used in hacking Titing, hitting him on the left elbow. Alberto Asonda and Ernie Anggot tried to help Titing but Armando Rodas prevented them by pointing a gun at them and firing it towards the sky.

After the assailants left, Alberto Asonda and Ernie Anggot approached Titing Asenda who was already dead. They informed Danilo Asenda that his brother was killed. The police arrived the following day after being informed of the incident.

On the part of the defense, accused-appellants Armando Rodas and Jose Rodas, Sr., and Vilma Rodas, the former's wife, took the witness stand. The defense rested its case without marking and offering any documentary evidence.

Defense evidence showed that only Charlito Rodas and Jose Rodas, Jr. killed Titing Asenda. Appellant Jose Rodas, Sr. denied any participation in the killing of Titing Asenda claiming he was not present in the benefit dance and that he was in his home with his wife and infant granddaughter when the killing happened. He revealed that on the night of the killing, his son, Charlito Rodas, who was carrying a hunting knife, arrived and told him he killed somebody. He then brought his son to the municipal building of Siayan to surrender him to the police authorities.

Appellant Armando Rodas likewise denied he was one of those who killed Titing Asenda. He claimed that at the time of the killing, he was in his house sleeping with his children. He denied using a *chako* and firing a gun. He insisted it was his brothers, Charlito and Jose Jr., who killed Titing Asenda because they pleaded guilty.

To bolster the testimony of the appellants, Vilma Rodas testified that she was at the benefit dance when the killing happened. Armando and Jose Sr., she claimed, did not participate in the killing. She said Charlito stabbed Titing while Jose Jr. merely punched the victim.

On 9 July 1998, the trial court promulgated its decision finding accused-appellants Armando Rodas and Jose Rodas, Sr. guilty of the crime of Murder. The decretal portion of the decision reads:

WHEREFORE, the Court finds the accused Jose Rodas, Sr. and Armando Rodas guilty beyond reasonable doubt of MURDER as defined and penalized under the Revised Penal Code, as amended under Section 6 of Republic Act No. 7659 and hereby sentenced them to RECLUSION PERPETUA each and to indemnify the heirs of the deceased, Titing Asenda, P12,500.00 each or a total of P25,000.00.

COST de oficio.<sup>[13]</sup>

In finding accused-appellants guilty, the trial court gave credence to the testimonies of eyewitnesses Alberto Asonda and Ernie Anggot. It found accused-appellants and the other two accused conspired in the killing of the victim and that treachery attended the same. It gave no weight to accused-appellants' defense of alibi and denial arguing that they were positively identified as the perpetrators and that they failed to adduce evidence that it was physically impossible for them to be present at the crime scene when the killing happened. It added that their unsubstantiated denial will not be given greater evidentiary value over the testimonies of credible witnesses who testified on affirmative matters.

With a Notice of Appeal<sup>[14]</sup> filed by accused-appellants, the trial court forwarded the entire records of the case to this Court.<sup>[15]</sup> However, pursuant to our ruling in *People v. Mateo*,<sup>[16]</sup> the case was remanded to the Court of Appeals for appropriate action and disposition.

In its decision dated 28 July 2006, the Court of Appeals affirmed *in toto* the RTC's decision.<sup>[17]</sup>

With the Court of Appeals' affirmance of their convictions, accused-appellants are now before this Court *via* a notice of appeal. With the appeal being timely filed, the records of the case were elevated to this Court.

In our Resolution<sup>[18]</sup> dated 19 February 2007, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice. Accused-appellants manifested that since they had already filed the Appellants' Brief, as well as Reply and Supplemental Reply Brief, they are dispensing with the filing of the Supplemental Brief because the latter will merely contain a reiteration of the arguments substantially discussed in the former.<sup>[19]</sup> On the part of the Office of the Solicitor General, it manifested that considering that the guilt of the appellants had already been discussed in the Appellee's Brief, it was waiving its right to file a Supplemental Brief.<sup>[20]</sup>

Accused-Appellants assign as errors the following:

I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANTS WERE ALSO PRESENT AT THE DANCE AND PARTICIPATED IN ATTACKING THE VICTIM.

II

ASSUMING ARGUENDO THAT THE ACCUSED ARE GUILTY, THEY ARE ONLY LIABLE FOR THE CRIME OF HOMICIDE.

On the first assigned error, appellants contend that the testimonies of prosecution witnesses Alberto Asonda and Ernie Anggot should not be believed because they did not see the start of the assault on Titing, and all they saw was him injured and lying down on the floor. They insist that Asonda and Anggot could not have seen the killing because only a *Petromax* lighted the place.

After a careful and meticulous review of the records of the case, we find no reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. We affirm appellants' conviction.

We find the evidence of the prosecution to be more credible than that adduced by appellants. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.<sup>[21]</sup>

It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.<sup>[22]</sup> We find no compelling reason to deviate from their findings.

The Court finds that Alberto Asonda and Ernie Anggot witnessed the killing of Titing Asenda by Charlito Rodas, Armando Rodas, Jose Rodas, Jr. and Jose Rodas, Sr. When Titing was killed, Asonda and Anggot were near him. Contrary to the claim of the defense that the place where the killing occurred was not lighted enough for the assailants to be identified, the place was sufficiently lighted by a *Petromax* as testified to by Vilma Rodas.<sup>[23]</sup>

Appellants make a big issue about the absence of a medical examination. Should they be exonerated because of this? The answer is no.

A medical examination or a medical certificate is not indispensable in the case at bar. Its absence will not prove that appellants did not commit the crime charged. They can still be convicted by mere testimonial evidence, if the same is convincing. In the case at bar, the testimonies of the two eyewitnesses, which the Court found to be credible, are sufficient to prove the crime and its perpetrators.

Appellants' defense of denial and alibi must likewise fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a victim.<sup>[24]</sup> Denial is intrinsically weak, being a negative and self-serving assertion.<sup>[25]</sup>

Denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against appellants. Absence of improper motive makes the testimony worthy of full faith and credence.<sup>[26]</sup> In this case, appellants, who were positively identified, testified that Asonda and Anggot had no ill motive to testify against them.<sup>[27]</sup> Moreover, ill motive has no bearing when accused were positively identified by credible eyewitnesses. Motive gains importance only when the identity of the culprit is doubtful.<sup>[28]</sup>

Appellants also interposed the defense of alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.<sup>[29]</sup> For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the *locus criminis* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.<sup>[30]</sup> Appellants failed to do so.

In the case at bar, both appellants claimed that on the night Titing Asenda was killed, they were one kilometer away. Thus, it was not possible for them to have been at the scene of the crime when the crime was committed. The defense witnesses, however, gave conflicting testimonies. Appellant Armando said his residence was more or less one kilometer away from the crime scene<sup>[31]</sup> but Jose Sr. said it was only 50 meters away.<sup>[32]</sup> Jose Sr.<sup>[33]</sup> said the house of Charlito was only 50 meters away from the crime scene but Armando said it was one kilometer away.<sup>[34]</sup> Armando said his wife was in Dipolog City when the killing happened,<sup>[35]</sup> but his wife said she witnessed the killing.<sup>[36]</sup> Armando said he and all the other accused lived in separate houses,<sup>[37]</sup> but his wife revealed that Charlito lives with Jose Sr.<sup>[38]</sup> Vilma Rodas said after the killing, she immediately went home and told Armando that his brothers killed somebody<sup>[39]</sup> but her husband said he only learned of it the next morning.<sup>[40]</sup> What is more incredible is the fact that despite the testimony of Vilma Rodas that she informed Armando of the killing, the latter never testified to this effect. All these negate appellants' claim that they were not at the crime scene when the killing took place.

The information alleged that appellants, together with Charlito and Jose Jr., conspired in killing Titing Asenda. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. It is hornbook doctrine that conspiracy must be proved by positive and convincing evidence, the same quantum of evidence as the crime itself.<sup>[41]</sup> Indeed, proof of previous agreement among the malefactors to commit the crime is not essential to prove conspiracy. It is not necessary to show that all the conspirators actually hit and killed the victim; what is primordial is that all the participants performed specific acts with such closeness and coordination as to indicate a