

## SECOND DIVISION

[ G.R. No. 144383, January 16, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RESTY HORMINA,  
APPELLANT.**

### DECISION

**QUISUMBING, J.:**

Appellant Resty Hormina assails the decision<sup>[1]</sup> dated December 16, 1999, of the Regional Trial Court of Iloilo City, Branch 30, convicting him of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Ricardo Felipe P60,000.00 as death indemnity, P20,700.00 for funeral expenses, and P100,000.00 in moral damages.

In an Information dated June 30, 1995, the City Prosecutor of Iloilo City charged Resty Hormina and Kevin Lozada with murder allegedly committed as follows:

That on or about the 13<sup>th</sup> day of June, 1995 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a gun, conspiring and confederating between themselves, working together and helping one another, with treachery and evident premeditation, did then and there willfully, unlawfully and criminally shoot, hit and wound Ricardo Felipe, with the said gun with which the accused was provided at the time, thereby causing upon Ricardo Felipe bullet wound on vital part (sic) of his body, which caused his death a few moments thereafter.

CONTRARY TO LAW.<sup>[2]</sup>

When arraigned, both Hormina and Lozada pleaded not guilty to the charge. Trial ensued thereafter.

Four witnesses, namely: Maritess Villanueva, who witnessed the incident; SPO1 William Garcera, who investigated the incident; Dr. Tito Doromal, who conducted an autopsy on the victim's body; and Abelardo Felipe, the victim's father, testified for the prosecution.

MARITESS VILLANUEVA, a fish vendor, testified that at a little past midnight of June 13, 1995, she and her husband, Reynaldo Villanueva, were on their way to the Iloilo City fishing port,<sup>[3]</sup> having just come from their house at dela Rama Street, Iloilo City. They were on board a *trisikad* (tricycle) driven by the victim, Ricardo Felipe, when suddenly Kevin Lozada blocked the *trisikad*. Immediately thereafter, somebody from behind the *trisikad* fired a gun at Ricardo.<sup>[4]</sup> When Maritess turned her head to see the gunman, she saw Resty Hormina holding a handgun standing one arm's length away from Ricardo. Ricardo likewise turned his head and asked Hormina why

he fired at him.<sup>[5]</sup> Sensing Hormina's deadly resolve, Ricardo alighted from the driver's seat of the *trisikad* and jumped behind the cab to seek cover.<sup>[6]</sup> But on seeing that it was a futile move, Ricardo, together with Reynaldo, jumped out of the *trisikad* and started to run away. Hormina chased Ricardo and shot him again.<sup>[7]</sup> Ricardo fell as a result. Hormina and Lozada then fled the scene. A few minutes thereafter, police officers arrived and conducted their investigation on the crime scene.

At the trial, SPO1 WILLIAM GARCERA, an investigator of the Philippine National Police (PNP) assigned to the General Luna Police Precinct 1 in Iloilo City, testified that he went to the crime scene in the morning of the following day.<sup>[8]</sup> He saw blood splattered in front of NENACO warehouse at dela Rama Street.<sup>[9]</sup> Garcera was looking into the matter when a certain Emmanuel Abada approached him. Abada claimed to have witnessed the incident, and volunteered to give his statement thereon.<sup>[10]</sup> Together, they went to the police station in General Luna where Abada executed his affidavit.<sup>[11]</sup>

The following day, Maritess Villanueva, accompanied by her husband, met with Garcera to give her own statement.<sup>[12]</sup> Garcera declared that while the affidavits of Abada and Villanueva were in English, he made sure that the two understood their contents by translating them into the Ilonggo dialect before they affixed their signatures.<sup>[13]</sup> Garcera stressed that it was Abada and Villanueva who supplied the names of the accused because they knew them very well.<sup>[14]</sup> Thereafter, Garcera prepared the criminal complaint for murder against the two accused.<sup>[15]</sup>

DR. TITO DOROMAL, a PNP medico-legal officer in Iloilo City, conducted the autopsy of the victim.<sup>[16]</sup> The medical findings were as follows:

#### HEAD AND NECK:

- 1) Contused-abrasion, 2 x 0.7 cm., in dia., right frontal region.
- 2) Contused-abrasion, 2.3 x 1.1 cm., in dia., left lateral frontal area.
- 3) Contusion, 3.5 x 2.8 cm., in dia., right zygomatic arch.
- 4) Contused-abrasion, 2.6 x 1.7 cm., in dia., right anterior face.
- 5) Contused-abrasion, 4.8 x 3.1 cm., in dia., left anterior face.

#### THORACO-ABDOMINAL REGIONS/EXTREMITIES:

1) BULLET WOUND, oval in shape, 1 x 0.4 cm., in dia., with abrasion collar around, 1.2 x 0.6 cm., in dia., postero-medial aspect, upper 3<sup>rd</sup>, left arm, 21 cms., above the left elbow, penetrating muscle tissue, directed forward, upward, medially and the slug lodged underneath the muscle tissue, along the medial 3<sup>rd</sup>, level of the 1<sup>st</sup> rib, left.

2) BULLET WOUND, 0.6 x 0.7 cm., in dia., with abrasion collar around 1 x

0.9 cm., in dia., postero-lateral, left thoracic wall, 12 cms., from the posterior median line, 117 cms., from the left heel, penetrating the thoracic cavity at the level of the 8<sup>th</sup> intercostal space, perforating thru & thru the lower lobe, left lung, medial aspect, upper lobe, left lung, posterior pericardial sac, penetrating the atrio-ventricular junction, left anterior pericardial sac, penetrating muscle tissue of the 2<sup>nd</sup> intercostal space, along mid-clavicular line, where the slug lodged, extracted and recovered.<sup>[17]</sup>

Dr. Doromal testified that the contusions and abrasions on the victim's head and neck were caused by forcible contact with rough objects.<sup>[18]</sup> The bullet wounds found on Ricardo's back indicated that the assailant was at the left back portion of the victim.<sup>[19]</sup> The absence of powder burns also revealed that the distance between the assailant and the victim was more than 24 inches.<sup>[20]</sup> Of the two bullet wounds, wound no. 2 was fatal because it caused the hemorrhage, which in turn, caused Ricardo's death.<sup>[21]</sup>

The victim's father, ABELARDO FELIPE, testified that he was in Tuburan, Passi, attending to his carabao, when he received the painful news of his son's death on June 13, 1995.<sup>[22]</sup> He declared that his son's death caused his family much pain and no amount of moral damages could compensate them for their loss.<sup>[23]</sup> He claimed that Ricardo's funeral expenses totaled P20,700.<sup>[24]</sup>

Appellant RESTY HORMINA testified on his own behalf as sole witness for the defense. At the trial, he denied the charges outright. He declared that on the afternoon of June 13, 1995, he asked Kevin Lozada to help him build a bamboo bed.<sup>[25]</sup> Kevin agreed and together, they were able to finish making the bamboo bed at about 7:00 in the evening.<sup>[26]</sup> As a sign of gratitude, Hormina invited Lozada for a snack at Aldos Restaurant.<sup>[27]</sup> To reach said place, they flagged down the *trisikad* driven by Ricardo. On board already were spouses Reynaldo and Maritess Villanueva as passengers. Ricardo allowed Hormina and Lozada to board the *trisikad*, but Reynaldo protested.<sup>[28]</sup> An argument ensued between Ricardo and the Villanuevas.<sup>[29]</sup> To avoid trouble, Hormina said, he and Lozada decided to alight from the *trisikad* and walk towards the plaza.<sup>[30]</sup> They went ahead of the *trisikad*. When they were already at a distance from the *trisikad*, they heard shots.<sup>[31]</sup> They turned around and saw Ricardo falling to the ground and Reynaldo running away.<sup>[32]</sup> Hormina and Lozada immediately took cover. When the commotion subsided, people swarmed into the streets and the police arrived. Hormina and Lozada then went near Ricardo and saw him lifeless. Maritess was standing alone in the middle of the scene, while Reynaldo was nowhere to be found.<sup>[33]</sup> The policemen arrested Hormina and Lozada. They were then brought to the police station, only to be released shortly afterwards. But according to Hormina, after Maritess gave her statement to the police, he and Lozada were re-arrested at their respective houses.

On cross-examination, Hormina denied that immediately before they boarded the *trisikad*, they came from the birthday celebration of his brother Rodney Hormina.<sup>[34]</sup> He said that before Lozada was arrested, the latter was beaten and maltreated by the police at the back of Maritess' house.<sup>[35]</sup> During the beating, according to

Hormina, Lozada was told by Maritess' husband, Reynaldo, to point at Hormina as the perpetrator of the crime instead of Reynaldo.<sup>[36]</sup>

On December 16, 1999, the trial court rendered its decision finding herein appellant Resty Hormina, guilty of murder qualified by treachery. The charge against Kevin Lozada was dismissed for lack of sufficient evidence to show conspiracy. The dispositive portion of the trial court's decision reads:

CONSIDERING THE FOREGOING, the Court finds accused Resty Hormina guilty beyond reasonable doubt for the crime of Murder qualified by treachery. This court finds no other qualifying circumstance in the commission of said offense, hence, imposes upon the accused Resty Hormina the penalty of *RECLUSION PERPETUA*.

The accused Resty Hormina is also directed to pay the sum of P60,000.00 as indemnity for the death of Ricardo Felipe; P20,700.00 as expenses for the burial of the victim Ricardo Felipe; and P100,000.00 as moral damages, to the heirs of the victim Ricardo Felipe.

The Court finds that no sufficient evidence had been presented by the prosecution to prove that the accused Kevin Lozada conspired with the accused Resty Hormina in the killing of Ricardo Felipe; hence, the charge for murder against him is hereby DISMISSED.

SO ORDERED.<sup>[37]</sup>

Hence, the instant appeal.

Before us appellant avers that:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED RESTY HORMINA OF A CAPITAL OFFENSE ON INSUFFICIENT EVIDENCE.<sup>[38]</sup>

Thus, the sole issue before us is whether the prosecution's evidence suffices to sustain a conviction beyond reasonable doubt. The resolution of this issue hinges on the credibility of the prosecution eyewitness, Maritess Villanueva.

Appellant contends that witness Maritess Villanueva could not have possibly seen the gunman because, as she said in her testimony, the shot came from behind. He adds that she could not positively identify him as the gunman in open court after a lapse of two and a half (2-1/2) years. Appellant attributes an ill motive on Maritess' part, prompting her to point at him as the assailant. This is because, according to appellant, she wanted to shield her husband, Reynaldo, from possible prosecution for the killing of Ricardo. Appellant claims that Reynaldo was extremely jealous of Ricardo, because Maritess was ardently attracted to Ricardo because of his build and countenance.

Appellee, through the Office of the Solicitor General (OSG), counters that Maritess could identify Hormina as the assailant because immediately before the first attack, Maritess caught a glimpse of him hiding behind a lamppost. Immediately after Maritess and her husband had passed Hormina, Maritess heard the gunshot. At an arm's length, Maritess could not have been mistaken as to the identity of the