

THIRD DIVISION

[G.R. No. 138541, June 12, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE LARRY COLONIA, APPELLANT.

D E C I S I O N

CORONA, J.:

Before us is an appeal from the Decision^[1] dated September 17, 1998 of the Regional Trial Court of Malaybalay City, Branch 9, in Criminal Case No. 6725-94, finding herein appellant, Jose Larry Colonia, guilty beyond reasonable doubt of murder for killing Leonardo Mallari. His brothers and co-accused, Eduardo and Rene Colonia, were acquitted of the charge.

The appellant and his co-accused were charged with the crime of murder as defined and penalized under Article 248 of the Revised Penal Code in an Information^[2] which read:

That on or about the 2nd day of January 1994, at dawn, at Purok 2, Barangay Kiburiao, Municipality of Quezon, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, with intent to kill, by means of treachery and taking advantage of their superior strength, armed with pieces of wood and a sharp bladed weapon, did then and there wilfully, unlawfully and criminally attack, assault, strike and stab CPL. LEONARDO MALLARI, inflicting upon the latter mortal injuries which caused the instantaneous death of LEONARDO MALLARI; to the damage and prejudice of the legal heirs of LEONARDO MALLARI in such amount as may be allowed by law.

Contrary to and in violation of Article 248 of the Revised Penal Code.

Upon arraignment on November 25, 1994, all three accused, assisted by counsel, pleaded "not guilty."^[3] Thereafter, trial on the merits ensued.

The prosecution presented two witnesses: Antonio Urcinado,^[4] an eyewitness to the stabbing incident and the victim's widow, Gretel O. Mallari.^[5] On the other hand, the defense presented accused Eduardo Colonia^[6] and his neighbor, Daylinda Oro.^[7]

The records disclose that, at around 1:45 a.m. on January 2, 1994, prosecution witness Antonio Urcinado and the victim, Leonardo Mallari, both soldiers of the Philippine Army, were walking in Purok 2, Kiburiao, Quezon, Bukidnon. Both came from a disco party in Kiburiao proper where they had a drinking spree with some of

their friends. On the other side of the road was a group of nine men, from one of whom Mallari requested a match with which to light his cigarette. Moments later, an argument broke out between Mallari and a member of the group, Eduardo Colonia, who approached the two soldiers. Whereupon Urcinado saw Mallari kick Eduardo, causing the latter to fall. As Urcinado was pacifying Mallari, Eduardo's brother, Rene Colonia, struck Mallari's head with a round stick, causing Mallari to fall face down. As Mallari lay flat on his stomach, another brother of Eduardo, accused Jose Larry Colonia, stabbed Mallari on the left side of his back with a hunting knife, penetrating his chest.^[8] Urcinado ran to the army camp for assistance but, upon his return with companions from the detachment, Mallari was already dead and the group had fled.

The police authorities conducted an investigation before proceeding to the army camp in Kipulot, Palalapaw. Although no post-mortem examination was conducted on Mallari's cadaver, the defense admitted that the cause of death was massive hemorrhage due to a stab wound.

The second witness for the prosecution was the victim's wife, Gretel O. Mallari, who testified that she learned of her husband's death only the following morning. She declared that, by reason of her husband's death, she suffered mental anguish and sleepless nights. She further asked the court to award her the amount of P5,000 for attorney's fees, P3,000 for litigation expenses, P15,000 for embalming and coffin, and P3,000 for the vigil. On cross-examination, she admitted that the GSIS released P10,000 as burial benefits.

The defense of Eduardo Colonia consisted mainly of denial and alibi. He claimed that he arrived home on January 1, 1994 at around 8:00 p.m. from Cagayan de Oro City where he worked in a construction project. While the family was eating dinner, Daylinda Oro arrived and asked him about her son who was working with him there. After a while, he went to sleep. So did his brothers, Jose Larry and Rene. The following morning, Eduardo was awakened by a commotion in the neighborhood. They heard that someone had been killed in the plaza. He went out of the house to inquire into what it was all about but soldiers arrested him and brought him to the barracks for interrogation as one of the suspects in the killing. The next day, his two brothers were also arrested. He did not personally know Antonio Urcinado and was surprised to learn that Urcinado knew them.

Daylinda Oro corroborated Eduardo's testimony that, at the time Mallari was killed at Kiburiao, Quezon, Bukidnon on January 2, 1994, the three Colonia brothers were already asleep. She declared that she knew the Colonias because they were neighbors. On January 1, 1994, on learning that Eduardo had arrived from Cagayan de Oro City, she proceeded to their house to ask about her son who was working with him there. Eduardo told Daylinda that her son had no money for fare so he did not come home. Eduardo's mother, Bonifacia, requested Daylinda to help her dress the chicken and cook "*biko*." She acceded to Bonifacia's request and stayed up to midnight in her house. At around 9:00 p.m., she noticed that Eduardo, Rene and Jose Larry were already asleep in the sala. At past midnight, Daylinda heard gunshots, prompting her to go out of her house to look for her youngest daughter who was not yet home. She returned to Bonifacia's house to seek assistance. While there, she saw Jose Larry, Eduardo and Rene still sleeping in the sala.

After weighing the evidence on record, the trial court rendered judgment finding appellant Jose Larry Colonia guilty of murder. Accused Eduardo Colonia and Rene

Colonia were acquitted for insufficiency of evidence and for having acted in defense of their brother. The dispositive portion of the decision read:

WHEREFORE, the Court hereby acquits accused Eduardo Colonia for failure of the prosecution to prove his guilt beyond reasonable doubt while accused Rene Colonia having acted in defense of his brother co-accused Eduardo is likewise acquitted.

The Court having found Jose Larry Colonia guilty beyond reasonable doubt of the crime of Murder, hereby sentences him to Life Imprisonment and to indemnify the heirs of Leonardo Mallari the following:

- 1) P50,000.00 for his death;
 - 2) P50,000.00 for moral damages;
 - 3) P5,000.00 for attorney's fees;
 - 4) P3,000.00 for litigation expenses;
 - 5) P3,000.00 for the expenses during the vigil;
 - and
 - 6) P15,000.00 for the embalmment and coffin;
- less the P10,000.00 released by the GSIS for burial expenses.

SO ORDERED.

The two principal issues for resolution are: (1) whether the trial court erred in appreciating the qualifying circumstance of treachery against appellant and (2) whether the trial court erred in convicting appellant of murder, instead of homicide, when the guilt for murder was not proven by the prosecution beyond reasonable doubt.

Appellant raises the following arguments:

First, appellant argues that he should be acquitted because of Urcinado's failure to identify Mallari's assailants when he was presented in court. To support his argument, petitioner cites the case of *People vs. Esmale*^[9] which held that the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal for, even if the commission of the crime can be established, without proof of the identity of the criminal beyond reasonable doubt, there can be no conviction.

Once again, we stress that the correct identification of the author of a crime should be the primary concern of criminal prosecution in a civilized legal system and corollary to this is the actuality of the commission of the offense with the participation of the accused.^[10] In the case at bar, Urcinado's error about the Colonia brothers' names cannot justify appellant's acquittal. This Court has repeatedly held that identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person. One may be familiar with the face but not necessarily the name. It does not follow therefore that, to be able to identify a person, one must first know his/her name.^[11] Experience in fact shows that, precisely because of peculiar acts committed before them, eyewitnesses, especially victims of a crime, can remember the identity of criminals with a high degree of reliability. Most often, the face and body movements of the assailant create an