

FIRST DIVISION

[G.R. No. 133647, April 12, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADELIO CONDE Y REYES, HENRY SOLOMON (AT LARGE), ACCUSED.

ADELIO CONDE Y REYES, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE JR., C.J.:

Accused-appellant Adelio Conde y Reyes (hereafter ADELIO) appeals from the 1 September 1997 decision^[1] of the Regional Trial Court of Pasig City, Branch 160, in Criminal Case No. 108269-H, finding him guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Nestor Velano, the amounts of P50,000 as civil indemnity, P50,000 as moral damages, and P50,000 as exemplary damages.

ADELIO was initially charged in an Information^[2] dated 14 June 1995. Upon motion of the prosecution, the court admitted an Amended Information dated 18 July 1995, impleading Henry Solomon as ADELIO's co-accused. The accusatory portion of the Amended Information reads as follows:

That on or about the 11th day of June, 1995 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named (accused) conspiring and confederating together with alias "Edwin Tato" and five (5) unidentified male persons, who are still at large and whose true identities and present whereabouts are still unknown, and all of them mutually helping and aiding one another, while armed with bladed weapons, with intent to kill, treachery and abuse of superior strength, did then and them willfully, unlawfully and feloniously attack, assault and stab one Nestor Velano, as a result of which, the latter sustained stab wounds on the different parse of his body, which directly caused his death.

CONTRARY TO LAW.^[3]

ADELIO pleaded not guilty to the charge upon arraignment. Henry Solomon was never apprehended. Trial on the merits proceeded against ADELIO only, with the prosecution presenting five witnesses, namely, Dr. Emmanuel Aranas, Conchita Velano, Moises Soliman, SPO1 Regie Gapasin, and Imelda Evangelista. Their combined testimonies established the following facts:

On 11 June 1995, at about 10:30 p.m., Nestor Velano (hereafter NESTOR) went out with members of the Citizens' Crime Watch Team of Taguig, Metro Manila, namely, Moises Soliman, Roderico Raymundo, Imelda Evangelista, Andy de los Santos, Dente

Parungao, a certain Carlos, and a female named Ka Jessie. At around 11:00 p.m., they left the Taguig Municipal Hall and proceeded to the corner of Liwayway St. and Pulong Kendi in Sta. Ana, Taguig. When they alighted from their service jeep, alias Edwin Tato, accused Henry Solomon, and ADELIO approached them. Henry asked them if Dante Parungao was one of their companions. When Moises said yes, Henry told them to leave the area. Edwin confronted NESTOR and said, "*Putang ina mo pare masama kang tumingin,*" then immediately stabbed him. Henry also stabbed NESTOR. ADELIO, on the other hand, tried to hit Roderico, but missed, so he turned to NESTOR, who was already moving backward, and stabbed him in the stomach. The assailants' companions arrived at the crime scene and likewise inflicted injuries on NESTOR. Unfortunately, witnesses were only able to recognize Edwin, Henry, and ADELIO. NESTOR was brought to the Rizal Medical Center but he was pronounced dead on arrival.^[4]

Upon being informed of the incident by Andy de los Santos and after establishing the identity of the suspects, SPO1 Reggie Gapasin visited ADELIO at his house, invited him for investigation, then took his statement. Together with a certain Edison Pampag and the son of Andy de los Santos, SPO1 Gapasin proceeded to the hospital where Dante Parungao, who was also wounded, was rushed. Parungao was undergoing operation so that they could not get any information from him.^[5] At the police headquarters, Roderico and Moises identified ADELIO as one of the assailants; hence, he was immediately detained.

The post-mortem report^[6] of Medico-Legal Officer Emmanuel Aranas, Chief of the Philippine National Police Crime Laboratory Service, revealed that NESTOR sustained nineteen (19) wounds. Wound No. 4, which was the cause of death, was the most fatal because it penetrated the liver. The other wounds were only superficial. Dr. Aranas opined that it was possible that the assailant was facing the deceased when Wound No. 4 was inflicted with a sharp single bladed instrument within an armslength or nearer.^[7]

For its version of the events, the defense presented two witnesses, namely, Leonardo Cipriano and ADELIO.

Leonardo, ADELIO's brother-in-law, testified that on 11 June 1995, from 9:30 to 10:30 p.m., he and ADELIO were at the barangay hall having a mediation conference before the barangay captain to settle a misunderstanding between them. After reaching a "*Kasunduan*,"^[8] ADELIO escorted his mother, wife, and sister^[9] (Leonardo's wife) home. He stayed behind and went out to eat. While eating, Leonardo noticed a commotion involving several persons wherein NESTOR was stabbed. He recognized Henry Solomon among those in the middle of the commotion. He was positive that ADELIO was not the person who stabbed NESTOR.^[10]

ADELIO testified that on the night of 11 June 1995, he was at the Barangay Outpost for a conference pursuant to a "*Patawag*,"^[11] in connection with a misunderstanding he had with Elmo (Leonardo) Cipriano. He was accompanied by his wife Gloria, sister Susana, and mother Asuncion, and they arrived at the Barangay Hall at 8:30 p.m. The conference started at around 9:00 p.m. and lasted up to 10:00 p.m., more or less. After the conference, he went home, rested, and slept. At around midnight, he was roused when he heard the Taguig police calling for a certain Henry Salen.

When he looked out the window, the police officers asked him to come out. He was dragged out of his house by the police and brought to the Municipal Hall of Taguig. The following day, June 12th, he was surprised to learn that he was one of the suspects in the stabbing of NESTOR. He vehemently, denied that he was one of those who stabbed NESTOR and insisted that he was implicated as one of the suspects to force him to produce his brother Henry.^[12]

The trial court found the testimonies of the prosecution witnesses categorical, direct, and highly credible when they identified ADELIO as one of those who stabbed the victim. It regarded ADELIO'S defense of alibi as weak against the positive identification made by witnesses Soliman and Evangelista. The court also appreciated the qualifying circumstance of treachery against ADELIO, as it found the attack on NESTOR and his group sudden and unexpected. ADELIO was clearly with the group of Henry Solomon who inflicted injuries on the totally defenseless NESTOR. Finally, finding that the assailants helped each other in inflicting NESTOR's injuries after failing to hit their original quarry, Rodelico Raymundo, the trial court declared the existence of a conspiracy among ADELIO and his cohorts.

Accordingly, in its decision of 1 September 1997,^[13] the trial court decreed:

WHEREFORE, foregoing consideration, accused Adelio Conde is found guilty beyond reasonable doubt of the crime of murder and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heir/s of the deceased in the amount of P50,000.00 as death indemnity; P50,000.00 as moral damages; P50,000.00 as exemplary damages, and to pay the costs of the suit.

SO ORDERED.

ADELIO seasonably appealed to us from this decision.

In his Appellant's Brief, ADELIO argues that the trial court's finding of conspiracy was erroneous because there was no preconceived plan or agreement to attack the victim. The meeting between the assailants and NESTOR was purely casual and accidental. Neither was there treachery since NESTOR and his companions were sufficiently forewarned of an impending danger to their lives by the countenance of Edwin Tato and Henry Solomon, who were both drunk, hostile and brandishing knives, and thus could have inflicted the fatal wound on NESTOR. Since said wound was made on the right side of NESTOR, it could not have been inflicted by him in light of the testimony of prosecution witness Imelda Evangelista that he stabbed the victim in the abdomen. At most, he could only be held liable for serious physical injuries. ADELIO adds that the testimonies of Soliman and Evangelista were characterized with inconsistencies. Finally, he maintains that since he was not the author of the crime, he should not be made to pay death indemnity, moral damages, and exemplary damages to the heirs of the victim.

These arguments have no merit.

Oftentimes, the credibility of prosecution witnesses is called into question in appeals of this nature. We have repeatedly held that we will not interfere with the trial court's determination of the credibility of witnesses, unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the