

FIRST DIVISION

[CA-G.R. CR-HC NO. 05370, March 31, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS.
ELPIDIO AMISTOSO Y CANDELARIO, ACCUSED-APPELLANT.**

DECISION

SORONGON, E. D., J.:

This is an appeal interposed by Elpidio Amistoso (accused-appellant) from the Decision dated August 25, 2011^[1] of the Regional Trial Court (RTC) of San Jose, Occidental Mindoro, Branch 45, in *Criminal Case No. R-6177* for Murder.

Statement of the Case

Accused-appellant was charged with the crime of Murder in conspiracy with sixteen (16) or more unknown armed persons, attended with qualifying circumstances of treachery and evident premeditation, for the death of PO3 Jesus Juliana (PO3 Juliana), as defined and penalized under Article 248 of the Revised Penal Code. The information states:

“The undersigned accuses Elpidio Amistoso y Candelario of the crime of Murder, committed as follows:

That on or about the 13th day of May 2001, at around 8:00 o'clock in the morning, in Barangay Magsikap, Municipality of Rizal, Province of Occidental Mindoro, Philippines and within the jurisdiction of the Honorable Court, the accused being then armed with a M-14 armalite, with intent to kill, with treachery and evident premeditation, conspiring, confederating and helping one another together with 16 or more persons whose true names and identities are still unknown, did then and there willfully, unlawfully and feloniously attack, assault and shot with the said weapon one PO3 Jesus Juliana, thereby inflicting upon the latter serious wounds which caused his untimely death.

WITH SPECIAL CIRCUMSTANCES (sic) OF USE OF UNLICENSED FIREARM.

CONTRARY TO LAW.”^[2]

During arraignment, the accused-appellant with the assistance of his counsel, entered a negative plea to the charge. Trial forthwith ensued.

Statement of Relevant Facts

The Prosecution's Case

The prosecution presented Municipal Health Officer of Calintaan, Occidental Mindoro, Dr. Beth Jimenez^[3], PO3 Edgardo Dairo^[4] (PO3 Dairo), PO3 Antonio Ambay^[5] (PO3 Ambay) whose consolidated testimonies provide:

On May 13, 2001, at around 7:30 in the morning, members of the Philippine National Police (PNP) were on board a "back-to-back" police patrol car on their way to the Provincial Police Headquarters in San Jose, Occidental Mindoro. They were Chief Inspector Manuel Castillo, who was seated beside the driver, PO3 Renato Supranes, PO3 Dairo who was seated behind Inspector Castillo with PO3 Ambay beside him, and the victim PO3 Juliana who was seated at the back of PO3 Dairo. As they were traversing the bridge in Luminato River, they were fired upon from about five (5) meters away from the left side of the road by around twenty (20) men whom they believed to be members of the New People's Army (NPA). PO3 Dairo instantly shouted "*Pre, ambush, talon!*" PO3 Dairo and PO3 Ambay jumped from their running patrol vehicle and rolled over into a deep canal where they sought cover and fired back at the NPAs. During the encounter, they saw and recognized accused-appellant, who is also known as "*Ka Jovan*" as he maneuvered from one spot to another. According to PO3 Dairo and PO3 Ambay, they were able to recognize the accused-appellant as the latter was once a member of the CAFGU assigned in their police detachment sometime in 1980. The firing lasted for about 15-20 minutes. Thereafter, PO3 Dairo and PO3 Ambay extricated PO3 Supranes from the patrol car which landed on the canal, about fifty (50) meters from where PO3 Dairo and PO3 Ambay took cover. Later, they found Inspector Castillo behind a tree who beckoned by waiving his shirt. Thinking that PO3 Juliana was hiding from the NPAs, the three (3) of them left and reached the nearest police station where they sought help and reinforcement. They only learned of the death of their companion PO3 Juliana when they were already in the hospital for treatment.

A Post Mortem Examination^[6] of the cadaver of PO3 Juliana was then conducted by Dr. Jimenez, who testified that the gunshot wound of which point of entry is 0.3 x 0.3 cm infraclavicular area and clavicular line at the level of 1" intercostal space, chest left; and the point of exit is 2x2 cm paravertebral area at the level 5th thoracic vertebral back left, resulted to a massive hemorrhage or bleeding due to the gunshot wound which penetrated great vessels such as the aorta or pulmonary vessels. Such bleeding caused the loss of huge amount of blood in the victim, which consequently affected the supply of oxygen in the victim's circulatory system and resulted to his death.^[7] She further testified that the gunshot could have been a long range shot (a distance of more than two (2) meters) considering the absence of tattooing and gun powder burns.

The Defense' Case

The defense forthwith presented three (3) witnesses, Avelino Dalisay^[8] (Dalisay), the accused himself Elpidio Amistoso^[9], and Klunie Amistoso.^[10] Their version is as follows:

On May 13, 2001 at around 9:00 o'clock in the morning, Dalisay was with the accused-appellant and the latter's wife, Klunie Amistoso talking about accused-appellant's intention of returning to the fold of the government. Their meeting took

place in a dilapidated house in the middle of a field in Barangay San Pedro, Rizal, Occidental Mindoro which is about two (2) kilometers away where the ambush occurred. After their conversation which lasted more or less for an hour, they parted ways. Upon reaching home, he learned of the ambush from his wife and children. Two (2) years later, he learned about the arrest of the accused-appellant upon the latter's return from Visayas.

Accused-Appellant recalled that on May 13, 2001 at around 9:00 o'clock in the morning, he and his wife were talking with Dalisay in Barangay San Pedro, Rizal, Occidental Mindoro which lasted for about an hour. Around 11:00 o'clock in the morning, he heard over the radio of the ambush that took place earlier. He admitted that he was a former CAFGU from 1990 to 1993 and became an active member of the NPA in 2004. He joined the NPA because a certain policeman named Baliguat hit him with a 9MM on his face then warned him, "*Huwag ka ng magpapakita sa akin baka samain ka lang.*" However, he was on AWOL in the NPA prior to the ambushcade. According to him, he was implicated in the said incident because PO3 Ambay knew him to be a CAFGU turned NPA.

Klunie Amistoso, testified that she is the wife of the accused-appellant. According to her, she and her husband had a meeting with Dalisay at San Pedro, Rizal, Occidental Mindoro on May 13, 2001. After their talk, she left them and went home riding a jeep. It was then that she knew about the ambush because the jeep passed the site of the incident. She remembered that it was only in November of 2005 that she again saw her husband as the latter was sick and needed help. She convinced him not to return to the mountain. The accused-appellant agreed and thereafter, both of them went to Antique where they stayed until accused-appellant surrendered to Burgos Nicopior, a Board Member in Antique. She knew her husband had been a member of the NPA in 2002. She came to know of her husband's implication in the ambush while they were staying in Antique.

Ruling of the Trial Court

In a Decision dated August 25, 2011, the trial court found the accused-appellant guilty as charged, the dispositive portion thereof reads:

"WHEREFORE, this Court finds the accused ELPIDIO AMISTOSO y CANDELARIO, GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code but pursuant to the mandate of R.A. 9346 which abolished the Supreme Penalty of Death hereby SENTENCES him to suffer the penalty of Reclusion Perpetua.

Also, this Court ORDERS the accused to pay the surviving spouse of the victim, the following, viz:

1. Php 50,000.00 as Civil indemnity ex-delicto;
2. Php 50,000.00 as Actual damages;
3. Php 50,000.00 as Moral damages'
4. Php 15,000.00 as Exemplary damages; and
5. The costs of this suit.

SO ORDERED.^[11]

Accused-appellant through this appeal prays for the reversal of the aforementioned Decision and his consequent acquittal based on the proposition that **"THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT"**.

Accused-appellant maintained that the prosecution failed to establish his actual participation in the ambush as there was no showing that the witnesses actually saw him fire any shots; his mere presence at the scene of the crime is not enough absent proof of cooperation or agreement to cooperate to the commission of an offense, accused-appellant could not be deemed a party to the conspiracy; that the testimonies of PO3 Dario and PO3 Ambay as to the death of PO3 Juliana should not be given credence being hearsay and self-serving; that the medico-legal report is inconsistent as to how PO3 Juliana sustained the wound in both documentary and testimonial evidence; and that while the accused-appellant may have only alibi and denial for his defense, the same should not be taken entirely against him citing the case of *People v. Lejano* (G.R. No. 176389, December 14, 2010) and *People v. Webb* (G.R. No. 176864, December 14, 2010).

We deny this appeal.

Prefatorily, the trial court is correct when it ruled that treachery was present in this case.

Treachery exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to insure its execution, without risk to himself arising from the offense which the offended party might make.^[12] It must (1) ensure that the offended at the time of the attack was not in a position to put up any defense, not even token defense; and (2) the means, manner, and form was consciously and deliberately chosen.^[13]

The essence of treachery is the swiftness and the unexpectedness of the attack upon the unsuspecting and unarmed victim, who does not give the slightest provocation.^[14]

In this case, it has been established that the police officers while traveling on board their patrol car were fired upon by their attackers who were already positioned along the road and waited for their police car to pass by. They were completely taken by surprise. From the testimonies of the survivor-witnesses, accused-appellant and his cohorts waited for the police car all set to spray them with bullets. The malefactors have strategically positioned themselves at the forested area (*kakahuyan*) of the mountains overlooking the highway, purposely to avoid detection and being hit in retaliation. They were stationed in such a way that vehicles passing by cannot notice their presence. As narrated by the survivor-witnesses, they were oblivious of their attackers until their vehicle traversing the bridge was peppered with shots coming from the forested area. They were in fact forced to jump while the car was running at a speed. Nevertheless, the accused-appellant was distinctly identified as he was leading the group and changing his positions while firing shots at the police officers.

The trial court ruled:

"Also, the said **prosecution's witnesses were able to describe how the fully armed group of the accused positioned themselves in a place where impossibility of being hit in retaliation is high.** While the PNP officers were also armed and able to retaliate yet such action was so ineffective and inferior compared to the spread out position of the ambushers in a higher plane with tall trees covering them and overlooking the wide open location of the former. Indeed **there is inferiority of strength in number and in firearms by the said ambushers xxx**" (emphasis supplied).

As regards the allegation of abuse of superior strength in the information, the trial court correctly ruled that the same is absorbed in treachery and therefore, it cannot be appreciated separately as another aggravating circumstance.

In conspiracy, the act of one is the act of all

The accused-appellant also impugns the trial court's finding of conspiracy considering the absence of evidence of his actual participation in the killing of PO3 Juliana. He averred that the witnesses never actually saw who and how the latter was killed.

We find such contention without merit.

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused when such point to a joint purpose and design, concerted action and community of interest.^[15]

Conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused, before, during, and after the commission of the crime, which, if all taken together, would reasonably be strong enough to show a community of criminal design.^[16] It is also well-settled that **when conspiracy is established, all who participated therein, irrespective of the quantity and quality of his participation is liable equally**, whether the conspiracy is pre-planned or instantaneous. Thus, the criminal liability of one is the same as the criminal liability of the other, unless it can be shown that one or some of the conspirators committed some other crime, which is not part of the intended crime.^[17]

Prosecution witnesses PO3 Dairo and SPO3 Ambay, were present at the scene of the crime, they being victims themselves. They testified that on May 13, 2001, they were on their way to the PNP Provincial Headquarters in San Jose, Occidental Mindoro on board a PNP vehicle when ambushed by a group of armed men. Both of them saw and recognized accused-appellant because SPO3 Ambay knows the latter as a member of the NPA. They described and demonstrated how the accused-appellant moved and positioned himself carrying two (2) rifles, M-14 and M-16.

As cogently pointed out by the Office of the Solicitor General (OSG), the treacherous method of attack demonstrates a concerted action and unity of purpose. The accused-appellant and his comrades, accordingly, consciously adopted, deliberated