

EIGHTEENTH DIVISION

[CA-G.R. CR. NO. 01619, February 28, 2014]

**PEOPLE OF THE PHILIPPINES. PLAINTIFF-APPELLEE, VS.
LEONIDES T. CANILLO, ACCUSED-APPELLANT.**

D E C I S I O N

DIY, J.:

Before Us is an appeal from the Decision^[1] dated August 28, 2009 of Branch 29, Regional Trial Court of Toledo City in Criminal Case No. TCS-1760, the dispositive portion of which reads:

WHEREFORE, finding the guilt of the accused, LEONIDES T. CANILLO to have been proved beyond peradventure of a reasonable doubt, he is hereby sentenced to a reduced penalty for Homicide of from EIGHT (8) YEARS and ONE (1) DAY minimum period to TWELVE (12) YEARS as maximum period of *prision mayor* and indemnify the heirs of the deceased the sum of P50,000.00 plus moral damages of P50,000 plus costs.

SO ORDERED.

A subsequent motion for reconsideration was filed by accused-appellant. On October 20, 2010, the court a quo maintained the finding of conviction of accused-appellant but modified the penalty imposed in its earlier decision. The RTC sentenced accused-appellant to imprisonment ranging from six (6) years and one (1) day of *prision mayor* as minimum, to twelve (12) years and one (1) day of *reclusion temporal* as maximum.

The Antecedents

Accused-appellant was charged with Homicide, the accusatory portion of which states:^[2]

That on or about April 19, 1992, at around 10:00 o'clock in the morning, more or less, at Daanlungsod, Toledo City, Philippines, and, within the jurisdiction of the Honorable Court, the said accused, without just cause or sufficient provocation, did then and there willfully, unlawfully and feloniously and with the intent to kill one JULITO R. MARATA, assault, attack and shoot the said Julito R. Marata with the use of an M14 rifle, thereby inflicting upon him gunshot wound behind the right ear penetrating the occiput and producing a compound fracture of the mentum of the right mandible, lacerating the right uncus of the cerebellum, causing intracranial hemorrhage secondary to gunshot wound, which directly caused the death of said Julito R. Marata.

CONTRARY TO LAW.

On May 22, 1992, the RTC issued a warrant for the arrest of accused-appellant.^[3] However, on even date, he was provisionally released after posting sufficient cash bond.^[4]

Upon his arraignment, accused-appellant, with the assistance of counsel, pleaded not guilty to the crime of homicide charged against him.^[5] Thereafter, trial on the merits ensued after the termination of the pre-trial conference.

The antecedents, as presented by plaintiff-appellee People of the Philippines through the Office of the Solicitor General (OSG), are quoted as follows:^[6]

At about 10:00 o'clock in the morning of April 19, 1992, Julito R. Marata (Marata), Rodirigo Ripdos (Ripdos) and several persons were within the compound of Atlas Consolidated Mining and Development Corporation (Atlas) collecting scrap metals. Suddenly, accused-appellant, armed with an M14 rifle, arrived thereat. He then aimed his rifle at the group, while ordering them to leave the compound. As the group was about to leave the place, a gunshot was fired hitting Marata on the head. Immediately thereafter, accused-appellant left the place on board a motorcycle.

The victim was brought to the nearest hospital where he was declared dead on arrival. Dr. Hermes Labrador, Jr., Medico-Legal Officer of Toledo City, conducted an autopsy on Marata on April 20, 1992. Per his autopsy report, the cause of the victim's death was hemorrhage secondary to gunshot wound. The gunshot wound was about "1/2 inch or 20 cm. more or less located below or behind the right ear." The wound caused the instantaneous death of Marata. According to Dr. Labrador, the victim was shot from behind and that the perpetrator was more than four feet from the victim.

In his defense, accused-appellant admitted having used his firearm but he denied killing the victim. He claimed that when he saw a group of men carrying sacks in the vicinity, he approached them and ordered them to leave the area. The men resented his act and began approaching him. While the men were approaching accused-appellant, the latter moved backwards. While he was backing away, accused-appellant tripped and accidentally shot his firearm in an upward direction.

Accused-appellant further testified that at about the same time, he heard another gunshot coming from the group. As a result, someone from the group fell to the ground. The person died on the spot because of the gunshot wound.

On August 28, 2009, the court *a quo* rendered the assailed decision finding accused-appellant guilty beyond reasonable doubt of homicide.

Aggrieved, accused-appellant filed a Motion for Reconsideration.^[7] On October 20, 2010, the lower court issued an Order,^[8] disposing:

IN VIEW OF THE FOREGOING, the court hereby DENIES the motion for reconsideration for lack of merit and MAINTAINS the conviction of the accused. However, modifying it to its correct sentence of six (6) years

and one (1) day of prison mayor to twelve (12) years and one (1) day of reclusion temporal.

SO ORDERED.

Hence, the instant appeal with the following assignment of errors:^[9]

I.

IN IGNORING THE EXCLUSIONARY EVIDENCE OF PROSECUTION WITNESS DR. HERMES LABRADOR THAT THE ASSAILANT WAS NEAR THE VICTIM AT THE TIME OF THE SHOOTING.

II.

IN IGNORING THE TWIN PROSECUTION EVIDENCE THAT ACCUSED[-]APPELLANT WAS 70 METERS AWAY AT THE TIME OF THE OFFENDING GUNBURST [sic].

III.

IN IGNORING PROSECUTION EVIDENCE THAT THE OFFENDING BULLET SLUG WAS NOT FOUND FOR DETERMINING ITS CALIBER.

IV.

IN IGNORING THE FACT THAT THE BULLET SLUG WOULD DETERMINE THE EXECT [sic] FIREARM WHERE IT CAME FROM.

V.

IN IGNORING THE FACT THAT THERE WAS NO BALLISTIC TEST ON THE FIREARM TO DETERMINE WHETHER IT WAS THE ONE FROM WHERE THE BULLET SLUG CAME FROM [sic]. BESIDES THE AUTOPSY REPORT DOES NOT STATE THE SHAPE OF THE ENTRY WOUND.

VI.

IN IGNORING THE FACT THAT THE MEDICO LEGAL OFFICER NEGLECTED TO X[-]RAY THE BODY TO DETERMINE THE LOCATION OF THE SLUG, OR EVEN TO USE A METAL DETECTOR FOR THAT PURPOSE

VII.

IGNORING THE FACT THAT THE MEDICO LEGAL OFFICER DID NOT RECORD THE STEPS TAKEN DURING THE AUTOPSY.

VIII.

IN ADMITTING THE AUTOPSY REPORT EVEN AS THE SAME WAS UNRELIABLE FO[R] FAILURE OF DR. LABRADOR TO TAKE THE BASIC

STEPS AND RECORDING OF THE AUTOPSY.

IX.

IN COMPLETELY DISREGARDING THE TESTIMONY OF THE EXPERT OPINION EVIDENCE OF THE EXPERTS PRESENTED BY THE ACCUSED[-] APPELLANT[,] NAMELY DR. JESUS CERNA, AND PHD DR. AYAG OF THE NATIONAL BUREAU OF INVESTIGATION PROVING THAT IT COULD NOT HAVE BEEN THE ACCUSED-APPELLANT WHO FIRED THE FATAL SHOT.

X.

IN DISREGARDING THE TESTIMONY OF WITNESS CRISTUTA THAT IT WAS PROBABLY THE SECURITY GUARD OF ATLAS FERTILIZER CORPORATION NEARBY WHO FIRED THE FATAL SHOT AS WAS SHOWN IN THE PERTINENT DOCUMENT.

XI.

IN DISREGARDING THE PHYSICAL EVIDENCE THAT THE FATAL GU[N]SHOT COULD HAVE COME FROM THE COMPANIONS OF THE VICTIM IN THE LIGHT OF PROSECUTION EVIDENCE THAT THE ASSAILANT WAS NEARBY.

XII.

IN RELYING ON THE TESTIMONY OF THE SOLICITOUS COMPANION OF THE VICTIM, WITNESS RIPDOS, WHO SHOWED EXTREME BIAS IN FAVOR OF THE VICTIM.

The Ruling of the Court

The appeal is bereft of merit.

The foregoing issues before the Court boil down to the credibility of the witnesses and the probative weight of their testimonies.

Homicide is defined as the killing of another without the attendance of the circumstances that qualify the crime of parricide, infanticide or murder. Its elements are: (1) that a person was killed; (2) that the accused killed him without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.^[10]

The trial court correctly found that accused-appellant is guilty of the crime of homicide. Settled is the rule that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof, and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court in observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court. Unless it is shown that the trial court overlooked, misunderstood or misappreciated certain facts

and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court.^[11]

After carefully reviewing the records of the case, this Court finds no reason to depart from the findings of the lower court.

It should be emphasized that the trial court convicted accused-appellant as he was positively identified as the author of the crime charged. The testimonies of Rodrigo Ripdos ("Ripdos") and Rodolfo Daclan ("Daclan") are substantially consistent with each other on material and relevant points. The two eyewitnesses saw the actual shooting of the victim and both positively identified accused-appellant as the person who killed the deceased. Prosecution witness Ripdos testified in a straightforward manner, thus:^[12]

COURT:

Q: Now at the time the accused arrived where were you and Julito Marata in relation to the accused?

A: The accused Leonides Canillo, the security guard, arrived we were gathered together.

ATTY. GONZALES:

Q: How far were you from Leonides Canillo?

A: Witness pointing the distance of 15 meters, more or less.

Q: What did the accused do?

A: He stood near the dumptruck [sic] ordering us to disperse.

Q: Do you know who owns that dumptruck [sic] where the accused stood and ordered you to disperse?

A: I do not know.

Q: Does it belong to the APMC?

ATTY. GELLA:

Already answered.

COURT:

He does not know.

ATTY. GONZALES:

Q: How did the accused signify his desire that you disperse? Did he shout or utter any words?

A: We were just ordered or just made by gesturing his hand. Or he gestured to drive us away.

Q: Did your group comply with that gestures?

A: Yes, sir.

Q: How did you disperse? Did you immediately leave the place by