

SPECIAL FIFTEENTH DIVISION

[CA-G.R. CR-H.C. No. 05948, May 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANCELITO RAMOS Y RAMOS, ACCUSED-APPELLANT.**

D E C I S I O N

CASTILLO, M., J.:

On appeal before Us is the Decision dated December 10, 2012^[1] rendered by the Regional Trial Court, Branch 19, Manila finding the accused Mancelito Ramos y Ramos guilty of the crime of murder.

On June 30, 2009, the Office of the City Prosecutor of Manila charged accused Mancelito Ramos y Ramos *a.k.a* "Ambo" for the crime of Murder in an Information^[2], the accusatory portion of which reads:

"That on or about December 24, 2008, in the City of Manila, Philippines, the said accused, armed with a gun, conspiring and confederating with others, whose true names, real identities and present whereabouts are still unknown and helping one another, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon PAUL HERBERT MERTO y SALENGA, by shooting and hitting him at the neck, thereby inflicting upon the latter gunshot wound which was the direct and immediate cause of his death thereafter.

Contrary to law."

An Order of Arrest^[3] was issued against the accused on October 8, 2009. It was returned unserved for the reason that the accused could not be located at the given address. A Certification from the Office of the Barangay Chairman of District I, Barangay 35, Zone 3, City of Manila indicated that the accused no longer resided in the said barangay.^[4] On February 25, 2011, the RTC issued an Alias Order of Arrest against the accused.^[5] A Return of the Alias Order of Arrest^[6] showed that the accused could not be served with the warrant because he was no longer residing at the given address as per certification issued by Barangay Chairman Ricardo Depositar, Barangay 33, Zone 3, District I, Tondo, Manila.^[7] The accused was apprehended on October 13, 2011.^[8]

On October 26, 2011, the accused, assisted by his counsel de officio, pleaded "not guilty" to the crime charged during the arraignment.^[9] During pre-trial, the fact of death of Paul Herbert Merto on December 24, 2008 and the fact of investigation of said death were admitted. The accused raised the defense of denial and alibi. On November 8, 2011, the pre-trial conference was terminated and trial on the merits ensued.^[10]

The prosecution, in support of the allegations in the information, presented the following witnesses: the mother of the victim, Leonida Merto, Jefferson Castro, Francis Pacheco, SPO1 Jonathan Bautista, SPO3 Mardonio Abuda, and Dr. Romeo T. Salen. The defense presented three (3) witnesses, namely: the accused, Mancelito Ramos and his brothers, Wilsiman Ramos and Michaelito Ramos.

The version of the prosecution is summarized as follows:

Main witnesses for the prosecution, Jefferson Castro^[11] and Francis Pacheco,^[12] testified that at approximately 11:00 in the morning of 24 December 2008, the deceased Paul Herbert Merto also known as "Paul Paul" was playing video games inside Abe's Barbershop when accused Mancelito Ramos, whom they knew as "Ambo", arrived. Both recalled that the accused was wearing a red undergarment or "*sando*" and a towel was draped on his shoulder. Castro heard Ramos ask the deceased whether he was indeed Paul Paul to which the latter said "yes." Thereupon, Ramos signaled to Merto that they were to talk outside where three other male persons were waiting. Castro saw Ramos place his arm around Merto's shoulders. However, the deceased apparently felt that something was amiss when he noticed a bulge, in the shape of a gun, protruding from Ramos' left waist. Instinctively, the deceased shouted "*kaaway!*", pushed Ramos away from him and ran away. Both witnesses saw Ramos draw with his right hand a gun, 9mm. caliber, from his left side and fire several shots during the entire incident. Castro testified that he saw the accused fire three (3) shots. Pacheco recalled hearing a total of five shots. Nonetheless, both were in agreement that Merto was knocked down at the first shot. Now fallen, Merto turned around and faced Ramos but the latter continued firing two shots at him. Merto managed to evade the two shots but one of Ramos' companions, whom Castro could not identify, fired another shot at their hapless friend. Castro did not anymore see whether the last shot hit Merto. Both witnesses were in agreement that after firing at the deceased, Ramos tucked the gun to his waist and, together with his unidentified companions, calmly left the scene. Castro and Pacheco boarded the wounded Metro inside a pedicab to take him to the hospital. Castro went to the house of Merto's parents to tell them what happened. Several hours later, he learned that Merto died at the hospital.^[13]

On cross-examination,^[14] Castro stated that he saw the entire incident from beginning to end. When the first shot was fired, he immediately went outside the barbershop to see what was going on. Although they were not actually friends, he was familiar with accused because he always saw him at their place. Everyone knew him as "Ambo." He also heard people call him "Ambo." For his part, Francis Pacheco testified that he was familiar with the accused because the latter was the brother of Pacheco's former friend. Pacheco saw accused when he used to go to the Ramos residence twice a week.^[15]

Dr. Romeo T. Salen was the medico-legal officer of the Manila Police District who conducted the examination of the cadaver of Paul Herbert Merto. He testified that the victim sustained two gunshot wounds, one at the back and the other at the right palm. He confirmed that the cause of death was the gunshot wound at the back of the body. The bullet hit the vertebrae and several organs of the body, causing immediate death. Upon cross-examination, he testified that the distance between the barrel of the gun used and the gunshot wound at the back of the victim was two (2) feet or more.^[16]

The prosecution called the mother of the victim, Leonida Merto, to the witness stand. She testified that she incurred expenses as a result of the death of her son. Said expenses included payment to the funeral home in the amount of Eighteen Thousand Pesos (P18,000.00) and payment for the burial place in the amount of Three Thousand Pesos (P3,000.00).^[17]

Accused remained at large for three years. A warrant for his arrest was issued and remained unserved until October 13, 2011. According to SPO3 Mardonio Abuda,^[18] who was the police officer who apprehended the accused, Leonida Merto went to their station to seek assistance in the implementation of the warrant issued against Ramos. Leonida pointed to SPO3 Abuda herein accused as the person who killed her son. Immediately, SPO3 Abuda arrested Mancelito Ramos and took him to the police station for investigation. At the police station, Leonida had the opportunity to talk to the accused. Since the room was very small, SPO3 Abuda was within hearing distance of the conversation between Leonida and the accused. He confirmed that he heard Ramos admit to Leonida that he was the one who killed her son. He testified that he heard Ramos admit to the desk officer that he committed the offense.^[19]

In the Appellant's Brief^[20] filed by the Public Attorney's Office on behalf of the accused, the version of the defense is summarized as follows:

On December 24, 2008, Mancelito Ramos and his younger brother, Wilsiman Ramos, were doing household chores in their home. They started cleaning the house at 10:30 o'clock in the morning and finished the chore at around 5:00 o'clock in the afternoon. Mancelito thus had no chance to leave their house the entire day. He came to know that a case was filed against him only when he was detained and brought to trial. He had no reason to believe that a criminal case was filed against him considering that he was able to secure clearances from the National Bureau of Investigation (NBI) for the year 2008, 2009, 2010 and 2011. He did not know the victim and he denied the allegation that he authored the death of Paul Merto.

On December 24, 2008, Michaelito Ramos saw his two (2) brothers Mancelito and Wilsiman cleaning the house. Both of them spent the whole day cleaning their two-storey house. He knew of the shooting incident that day because it was relayed to him through "tsismis".

On December 10, 2012, the trial court promulgated the assailed Decision^[21], the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, accused Mancelito Ramos is found **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also ordered to pay the heirs of Paul Herbert Merto the amounts of P21,000.00 as actual damages, P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

SO ORDERED."^[22]

On December 11, 2012, the accused, through counsel, filed a Notice of Appeal,^[23] which was given due course by the trial court in its Order dated December 12, 2012.

[24] In his appeal, accused-appellant raised the following issues:

1. The trial court gravely erred in giving credence to the prosecution witnesses' testimonies;
2. The trial court gravely erred in declaring that the guilt of the accused-appellant was proven beyond reasonable doubt; and
3. The trial court gravely erred in giving weight to the alleged extra-judicial confession of the accused-appellant.

Accused-appellant argues that the trial court overlooked the conflicting and incompatible testimonies of the prosecution witnesses. He pointed out that in Castro's testimony, the latter did not mention that Pacheco was with them playing at Abe's Barber Shop while Pacheco testified that he was playing with Paul Merto and Jefferson Castro.[25] Castro further testified that accused-appellant had three companions when the incident happened and one of them fired a shot.[26] Pacheco, on the other hand, testified that accused-appellant had only two (2) companions.[27] Moreover, Castro testified that accused-appellant fired his gun twice and the third shot came from accused-appellant's companion.[28] In Pacheco's testimony, he claimed that accused-appellant fired five (5) shots and none of them came from accused-appellant's companions.[29]

Accused-appellant maintains that the testimonies of the prosecution witnesses, when pieced together, do not jibe with each other to make a consistent and coherent whole.[30]

Accused-appellant asserts that his alleged extra-judicial confession, which the trial court invariably considered in establishing his guilt, is inadmissible and baseless.[31] There is no mention in the testimony of Leonida Merto that accused-appellant admitted the commission of the crime.[32] Granting that Leonida Merto mentioned said admission, the truthfulness of the fact admitted by the accused-appellant insofar as testified upon by SPO3 Abuda is hearsay and is inadmissible as evidence.[33]

On the other hand, plaintiff-appellee, through the OSG, argues that the guilt of accused-appellant was proven beyond reasonable doubt. The trial court considered the testimonies of Castro and Pacheco sufficient to identify the accused-appellant as the same person who approached Merto at the barbershop and shot him several times. The inconsistencies pointed out by accused-appellant refer to the number of persons playing videogames at the barbershop, the number of men accompanying accused-appellant and the number of shots fired. The inconsistencies harped on by accused-appellant are of such minor nature and thus would not change the finding of the trial court that Castro and Pacheco personally saw accused-appellant shooting Merto several times at Abe's Barbershop on December 24, 2008. The testimonies of both Castro and Pacheco were clear as to the facts relevant to the conviction of accused-appellant for murder.[34]

We affirm accused-appellant's conviction.

Accused-appellant argues that his alleged extrajudicial confession is hearsay evidence and is, therefore, inadmissible.

On said issue, the trial court ruled:

SPO3 Abuda's account of Mancelito Ramos' alleged confession to Leonida Merto and to a desk officer at a police station that he was the one who had killed the victim can be taken into consideration. While the confession was not actually made to him, Abuda recounted having personally "heard" the confession. Allegedly, he was in the same room with Leonida and Ramos when the confession was made. As the room was so small, anything said by one to the other was within his hearing distance. Having testified to personally "hearing" the confession, Abuda's account thereon could not be considered hearsay. This express acknowledgment of guilt by the accused is evidence against him and any person, otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard if he heard and understood it. The said witness need not repeat verbatim the oral confession; it suffices if he gives its substance. (*People v. Erlinda de la Cruz, et al.*, G.R. Nos. 141162-63, July 11, 2002 citing *Aballe v. People*, 183 SCRA 196 [1990].)

The testimony of SPO3 Mardonio Abuda narrates the alleged confession as follows:

FISCAL FLORDELIZA:

Q: And then you said he was shown a warrant of arrest. Who showed the warrant of arrest to Mancelito Ramos?

WITNESS:

A: I showed it to him after I got it from the victim's mother.

Q: What was the reply of the accused?

A: He admitted, sir.

COURT:

Q: He admitted? What did he admit?

WITNESS:

A: He admitted that he is Mancelito Ramos.

Q: He merely admitted that he is Mancelito Ramos? He did not admit that he committed the offense?

A: Initially he denied that he committed the offense but during the confrontation with the mother of the victim and the witness inside the room he admitted that he committed the offense.

ATTY. ORTIZ: