

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR. No. 02097, July 03, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MEMBERS: JOEL GOLONDRINA^[1], ACCUSED-APPELLANT.**

DECISION

HERNANDO, J:

This is an appeal filed by accused-appellant Joel Golondrina from the April 17, 2012 *Decision*^[2] of the Regional Trial Court (RTC), Branch 4 of Dolores, Eastern Samar in Crim. Case No. 480, convicting him of two (2) counts of the crime of Homicide, to wit:

"WHEREFORE, all the foregoing premises considered, this Court finds accused, Joel Golondrina GUILTY beyond reasonable doubt of two (2) counts of the crime of HOMICIDE, only. Accordingly, accused Joel Golondrina is hereby sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years of *prision mayor* as minimum to seventeen (17) years of *reclusion temporal* medium as maximum, for each count.

Further, accused Joel Golondrina is hereby directed to pay the heirs of Maria Cabriana and Romnick Cabriana civil indemnity of P75,000.00, the amount of P50,000.00 as moral damages, and P25,000.00 as temperate damages, for each count.

The period of detention of accused Joel Golondrina is hereby ordered credited in full to his penalty of imprisonment.

Considering that accused Pedro Golondrina, Samuel Golondrina and Narciso Golondrina are still at large, the case against them is hereby ordered ARCHIVED until they are arrested. Let an alias warrant be issued against the said accused.

SO ORDERED."

FACTUAL ANTECEDENTS

On October 6, 2003, accused Joel Golondrina, Samuel Golondrina, alias "Pemel" / "Zamora", Pedro Golondrina, alias "Peter", and Narciso Golondrina, Jr., alias "Jun-jun" / "Nok-nok" were charged with the crime of Robbery with Multiple Homicide as defined under Art. 294, par. 1 of the Revised Penal Code, allegedly committed as follows:

"That on or about the 18th day of July, 2003, at about 8:30 o'clock in the evening, more or less, at Brgy. Lunang, Dolores, Eastern Samar, within the jurisdiction of this Honorable Court, the said accused, in a band confederating together and mutually aiding each other, with intent to gain by means of force and violence, did then and there, willfully, unlawfully, feloniously, suddenly and unexpectedly, taking advantage of superior strength and evident premeditation, forcibly take and carry away two (2) silver and gold bracelets from Maria Gabreana 62 years old, and on the occasion thereof, attack said victim and minor Romnick Gabreana with the use of bladed weapons inflicting eight (8) wounds on the different parts of the body of said Maria Gabreana, and three (3) wounds on the body of minor, Romnick Gabreana, all wounds of victims being necessarily mortal, thereby causing the direct and immediate death of said Maria Gabreana and Romnick Gabreana, to their damage and prejudice.

CONTRARY TO LAW."^[3]

Accused was arraigned on August 2, 2007, where he pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued with the prosecution presenting the following witness: Antonio Cabrana, Dr. Rowie Romuar, and Tarciano Lazarra. Accused presented himself as a witness.

Version of the Prosecution

The prosecution's version^[4] of the facts and as found by the trial court^[5], reveals the following:

Prosecution witness Antonio Cabrana testified that the victim Maria Cabrana was his mother and Romnick Cabrana was his son. On July 18, 2003, while he was at his house in Brgy. Japitan, Dolores, Eastern Samar, he was informed by a certain Lanlan that his mother and his son were killed at their home at Brgy. Lunang.

Prosecution witness Dr. Rowie Romuar conducted the postmortem examination of the bodies of Romnick and Maria. She testified that Romnick sustained three wounds measuring 1-1.5 c.m. long and 1-6 c.m. deep, directed anteriorly, located at the right side of the back, below the wing bone, which wounds caused his immediate death. Dr. Romuar explained that the probable position of the assailant was at the back of the victim and the weapon used was a sharp pointed bladed weapon.

Dr. Romuar observed that Maria sustained multiple stab wounds in the anterior aspect of the breast, the abdomen, and the forearm. Most of Maria's wounds were on her chest and the cause of her death was severe bleeding due to multiple stab wounds. It is possible that more than two persons inflicted these injuries.

According to prosecution witness Tarciano Lazarra, he saw the actual killing of the two victims. Maria was his sister-in-law and Romnick was his grandchild. On July 18, 2003, at about 8:30 in the evening, he went to Maria's house to get the petromax which he earlier lent to her. When he entered the house through the kitchen, he saw accused Joel and Narciso Golondrina stab Maria many times. He also saw inside the house Pedro and Samuel Golondrina who were at the door, appearing to be guards,

while Joel and Narciso stabbed Maria.

Tarciano knows Samuel because the latter used to pasture his carabao in his rice field. Pedro's father is Tarciano's best friend. Tarciano has known Narciso since the latter was ten years old. Lastly, appellant Joel's father is Tarciano's friend.^[6]

Tarciano explained that he was ten meters away from Joel and Narciso when the two stabbed Maria. The incident was visible to him because the house was lighted by a lamp. He even yelled at them to stop considering that Maria is a woman. He managed to pull Romnick away and tell him to run. However, Pedro caught up with Romnick and stabbed him. Tarciano was only four meters away from Romnick at the time. Pedro was clearly visible to him because the weather was fine and the clouds were clear. Tarciano was not able to immediately report the incident as he was very afraid. It was his son that reported the incident to the police.

Version of the Accused

Accused presented his version of the facts as follows:^[7]

Accused Joel testified that on the evening of July 18, 2003, he was staying at his uncle Santos Agno's house in Brgy. Magsaysay, Dolores, Eastern Samar. During that day, he was in Binog making copras with his cousin Roberto. He got back to his uncle's house at 5:00 p.m. and by 8:00 p.m. he was already sleeping. He woke up at around 5:00 a.m. the next day. He explained that Samuel Golondrina is his uncle, Pedro Golondrina, the son of Samuel, is his cousin, while Narciso Golondrina is his brother. All three were residing in Brgy. Lunang.

Accused maintained that he seldom goes to Brgy. Lunang as he was busy at his uncle's house. By motorcycle, it takes a minute to get to Brgy. Lunang from where he lived, or 30 minutes by running.

In its April 17, 2012 *Decision*, the RTC found accused Joel Golondrina guilty of the crime of homicide. While accused was indicted for robbery with homicide, the trial court found that there was sufficient evidence to sustain his conviction for the crime of homicide only.^[8]

Hence, this appeal.

In his October 23, 2013 *Brief for the Accused-Appellant*^[9] accused-appellant assigns the following errors:

ISSUES

I. THE HONORABLE TRIAL COURT COURT ERRED IN ITS FINDINGS OF FACTS WHICH HAD THEY BEEN IN ACCORDANCE WITH THE EVIDENCE ADDUCED WILL SUFFICE TO SUPPORT A JUDGMENT OF ACQUITTAL FOR ACCUSED-APPELLANT.

II. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCONSISTENT, HIGHLY INCREDIBLE UNRELIABLE, AND UNCORROBORATED TESTIMONY OF PROSECUTION SOLE

EYEWITNESS, TARCIANO LAZARRA.

III. THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT'S RULING

We deny this appeal as there is no reversible error in the RTC's April 17, 2012 *Decision*.

At the outset, We note that appellant failed^[10] to append a certified true copy of the RTC *Decision* in contravention of Rule 124, Sec. 7^[11] of the Revised Rules of Criminal Procedure. Nevertheless, We find his submission of a photocopy of the said decision to be substantial compliance therewith.

I. We uphold the RTC's findings of fact.

Art. 249 of the Revised Penal Code states that any person, who shall kill another without the attendance of any the qualifying circumstance for murder, shall be deemed guilty of homicide and be punished by *reclusion temporal*. The elements^[12] of the crime of homicide are:

- (1) a person is killed;
- (2) the accused killed that person without any justifying circumstance;
- (3) the accused had the intention to kill, which is presumed; and
- (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

The death of the victims Maria and her 15-year old grandson Romnick has been duly established^[13] by the prosecution. Appellant comes before this Court to deny his participation in the homicide. He primarily assails the RTC's findings of fact and raises the defense of alibi.

Appellant argues that the RTC erred in giving credence to the testimony of prosecution witness Tarciano Lazarra who should not have been allowed to testify during trial since he was never named as a witness during pre-trial and that consequently, his presentation as a witness violated the rules of procedure on pre-trial.^[14] The prosecution stipulated during pre-trial to have one reserve witness to be revealed before it started the presentation of its evidence, who was named^[15] Jaime Benitez. However, during trial, the prosecution presented Tarciano Lazarra instead.

On a procedural point, appellant cannot question for the first time on appeal the admission of prosecution witness Tarciano's testimony since he made no objection^[16] at the time that Tarciano's testimony was offered in evidence. Rule 132, Sec. 36 of the Rules of Court requires that objection to evidence offered orally must be made immediately after the offer is made.

Even granting that appellant made a timely objection to the prosecution's presentation of Tarciano as a witness, We find that there is nothing improper in the allowance of such testimony. In *Go v. Looyuko*^[17], which involved a case for estafa, it was ruled that the trial court gravely abused its discretion in denying the prosecution the presentation of additional witnesses^[18] that could shed light on the relevant transactions concerned, to wit:

"It must be emphasized that in a catena of cases we have reiterated the principle that the matter of deciding who to present as a witness for the prosecution is not for the defendant or the trial court to decide, as it is the prerogative of the prosecutor. It cannot be overemphasized that the trial court must accord full opportunity for the prosecution, more so in criminal cases, to adduce evidence to prove its case and to properly ventilate the issues absent patent showing of dilatory or delaying tactics. The reason is obvious: it is tasked to produce and adduce evidence beyond a reasonable doubt. Sans such evidence, a dismissal of the criminal case on a demurrer to the evidence is proper. In the case at bar, there was no showing that the presentation of the three (3) witnesses previously approved by the trial court would be dilatory and manifestly for delay."^[19] (*underscoring supplied*)

In this case, We find the presentation of Tarciano to be proper considering that he is the sole eyewitness to the incident who was available^[20] to testify for the prosecution. Tarciano positively identified the victims, appellant and three of his co-accused and testified on the time, place and manner in which the victims were injured and eventually killed. Considering the prosecution's heavy burden of proof, to deny Tarciano's presentation would be to deny the prosecution its day in court.

Appellant posits that the RTC gravely erred in giving weight and credit to prosecution witness Tarciano's testimony. On the basis of Eden Diolola's August 5, 2003 *Sworn Statement* (Sworn Statement), appellant points out several alleged contradictory statements^[21] made by Tarciano.

To recall, appellant formally offered^[22] the *Sworn Statement* to prove that Eden did not see Tarciano on July 18, 2003 at more or less 8:30 in the evening at the victim's house. Appellee objected to the same on the ground that the *Sworn Statement* is hearsay evidence. The RTC ruled^[23] that the *Sworn Statement* is inadmissible for the purpose for which it was offered. Thus, appellant moved to tender the excluded *Sworn Statement*, which was granted^[24] by the trial court.

We cannot give any consideration to Eden Diolola's *Sworn Statement* since it is inadmissible evidence.

Rule 132, Sec. 1 of the Rules of Court requires that witnesses be examined in open court and under oath or affirmation. An extrajudicial statement made without the presentation of the affiant in open court and without subjecting the affiant to cross-examination is hearsay. It is established that statements in an affidavit that were not testified to at trial are mere hearsay evidence and have no real evidentiary value.^[25]