

TWENTIETH DIVISION

[CA-G.R. CR. HC No. 01651, October 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RITZ
BARING MORENO, ACCUSED-APPELLANT.**

DECISION

HERNANDO, J:

Accused-appellant Ritz Baring Moreno appeals the August 17, 2012 *Decision*^[1] of the Regional Trial Court (RTC), Branch 20 of Cebu City in Crim. Case No. CBU-74770, convicting him of the crime of Murder, to wit:

“WHEREFORE, in view of the foregoing, the court finds accused RITZ BARING MORENO GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery, and hereby sentences him to a prison term of *Reclusion Perpetua*.

Accused Ritz Baring Moreno is also hereby ordered to pay the heirs of Kyle Kales Lomibao Capsa the sum of Php75,000.00 as civil indemnity ex delicto and moral damages of P50,000.00.

SO ORDERED.”^[2]

FACTUAL ANTECEDENTS

On October 3, 2005 at past ten o’clock in the evening, accused, accompanied by Alexander Pala and Evan Sala, went to Kyle Kales Capsa’s compound in Sitio Maharlika, Brgy. Sambag II, Cebu City with the apparent intent of shooting Kyle.^[3] Alexander and Evan waited outside the compound while accused went in. While accused was at the gate he saw Kyle and shot him twice using a .38 revolver.^[4] Kyle was declared dead on arrival at Vicente Sotto Memorial Hospital.^[5] Accused immediately ran away to hide.^[6]

The next day, or on October 4, 2005, accused surrendered to Bobby Nalzaro of DYSS Radio Station, fearing for his life after shooting Kyle, who happened to be a member of Tau Gamma Phi fraternity.^[7] Bobby Nalzaro turned over the custody of accused to the police. Accused then voluntarily surrendered to them.^[8] Accused was later brought to the Office of CIIB, Cebu City Police Office at Camp Sotero Cabahug, for the conduct of custodial investigation^[9] where he executed his October 4, 2005 *Sworn Statement* admitting that he shot Kyle. Accused claimed that it was Tyke, Kyle’s cousin, who ordered him to shoot Kyle.^[10] Tyke and Kyle had a previous quarrel. Accused was accompanied by his mother, Dolores Baring Moreno and was duly assisted by counsel, Atty. Rene G. V. Bautista during that time.^[11]

On October 6, 2005, the Office of the City Prosecutor of Cebu filed an *Information* with the RTC charging accused with Murder, allegedly committed as follows:

"That on or about the 3rd day of October, 2005, at about 10:45 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a .38 cal. Revolver, with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there suddenly and unexpectedly shoot one KYLE KALES CAPSA Y LOMIBAO hitting him on [sic] vital part of his body, thereby inflicting upon him physical injuries as a consequence of said injuries, said KYLE KALES CAPSA Y LOMIBAO died a few minutes later.

CONTRARY TO LAW.

NO BAIL RECOMMENDED."^[12]

On the same date, accused was preventively detained at Bagong Buhay Rehabilitation Center.^[13] On arraignment, he pleaded not guilty to the crime charged.^[14]

Thereafter, trial on the merits ensued with the prosecution presenting Vicente M. Capsa, Jr., Reanne Vincent Kerby Capsa, SPO4 Alex Dacua^[15] (police officer who responded to the shooting incident), and Atty. Rene Bautista as its witnesses. The relevant testimonies are as follows:

(a) Vicente M. Capsa, Jr. – 51 years old and father of Kyle, testified that at the time of the incident, Kyle was 23 years old, a Nautical graduate of the University of Cebu and Tau Gamma fraternity member.^[16] Vicente explained that he incurred a "big amount" in expenses relating to the death of his son but was unable to make an estimate of the amount thereof.^[17]

(b) Reanne Vincent Kerby Capsa – 23 years old and brother of Kyle, testified that during the night of October 3, 2005, he was talking to his brother Kyle near the gate of their compound in Sitio Maharlika, Sambag II, Cebu City.^[18] They were talking about the altercation that happened between Reanne and his cousin Tyke Philip Lomibao. Kyle saw them fighting and sided with Reanne.^[19]

At about ten to eleven o'clock that night, Reanne saw accused enter the gate of their compound and suddenly shoot at them.^[20] Reanne heard accused fire two (2) gunshots at him and Kyle.^[21] He noted that: (a) accused was then five (5) meters away from him^[22]; and (b) accused was accompanied by two lookouts, Ivan Sala and Alexander.^[23] Reanne explained that the face of accused was visible even at night time since the sodium lamp was very bright.^[24]

Reanne believed that it was his cousin Tyke who ordered accused to shoot Kyle, on account of Reanne and Tyke's earlier altercation.^[25] On cross-examination, Reanne admitted that he believed he was the intended target of the accused.^[26] On re-direct examination, Reanne clarified that Kyle was also involved in the fist fight with Tyke.^[27]

(c) Atty. Rene Bautista – a consultant for the office of the Cebu City Vice Mayor, testified that he was instructed to go to the police station to observe and ascertain the regularity of the processing of accused.^[28] Atty. Rene confirmed that: (a) he was present during the time that police officers posed questions at accused; (b) accused was not coerced or threatened during the investigation; (c) he saw accused sign the October 4, 2005 *Sworn Statement*.^[29] Atty. Rene testified that prior to the signing of the Sworn Statement, he informed accused of his rights and explained to him the consequences of his admission.

Accused waived his right to present any evidence.^[30]

In its August 17, 2012 *Decision*, the RTC found accused guilty of the crime of Murder, qualified by treachery. Accused timely filed a notice of appeal therefrom. In his February 5, 2014 *Brief for the Accused-Appellant*, he alleges a lone error on the part of the RTC:^[31]

ISSUE

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT'S RULING

We deny this appeal.

I. Appellant shot Kyle and caused his death.

Appellant argues that it was impossible for Reanne to see who shot his brother since he ran away for safety right after the first shot was fired.^[32]

Art. 248 of the Revised Penal Code provides that Murder is committed by any person who shall kill another and does the same with: (a) treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity; and (b) with evident premeditation, among others.

There is no question that appellant caused the death of Kyle. First, Reanne positively identified him as the shooter who fired two gunshots at him and his brother, Kyle.^[33] We find Reanne's testimony altogether credible considering that: (a) Reanne was facing the gate, where appellant was at the time of the incident^[34]; (b) Reanne was merely five (5) meters away from appellant^[35]; and (c) the face of appellant was visible even at night time since the sodium lamp was very bright.^[36]

Second, in his extrajudicial confession (October 4, 2005 *Sworn Statement*), which he duly executed with the assistance of counsel, appellant explicitly admitted^[37] that he shot Kyle.

Appellant argues that even granting that it was he who fired the shot, his target

would have been Reanne alone, on account of the fight between Reanne and Tyke earlier that day.^[38] Appellant points to Reanne's alleged admission during his cross-examination that the second shot was meant for him.^[39]

We cannot give credence to appellant's claim. It is evidently clear that he deliberately shot Kyle. The location of the fatal gun shot, on Kyle's chest^[40], could not have been inflicted had appellant not intended to shoot him. Appellant improperly relies on Reanne's alleged admission. While Reanne said that he believed he was the intended target of appellant^[41], he later clarified that Kyle was also involved in the fist fight with Tyke, the friend of appellant.^[42] These circumstances belie appellant's claim that he had no intention to shoot Kyle.

II. The killing was attended by treachery.

Appellant disputes the trial court's finding of treachery and evident premeditation. He points out that Kyle was not the intended victim of the gunshots.

In view of Our foregoing discussion on the issue of the intended victim of appellant, We will not belabor this point. We find that the trial court properly appreciated the qualifying circumstance of treachery in the killing of the victim. The essence of treachery is the sudden attack by an aggressor without the slightest provocation from the victim, depriving the latter of any real chance to defend him/herself thereby ensuring the commission of the crime without risk to the aggressor.^[43]

Here, the prosecution established that the killing was attended by treachery. Prosecution witness Reanne provided an eyewitness account of the entire incident. His testimony detailed how appellant arrived at their compound and then successively fired gun shots at him and Kyle, with barely a second interval per shot.^[44] The suddenness of the attack and the immediate and successive gunshots fired at Kyle evidently deprived him of all possible means to defend himself. Moreover, the attack by appellant was not preceded by any fight or altercation between him and Kyle. Thus, there could have been no way for Kyle to anticipate the attack.

Treachery may be appreciated even if the attack is frontal if it is sudden and unexpected, with the victims having no opportunity to repel it or defend themselves, for what is decisive in treachery is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.^[45]

II.a. The killing was not attended by evident premeditation.

Appellant claims that the prosecution failed to establish evident premeditation. Appellant points that the prosecution never raised the element of time during which there could have been opportunity for cool thought and for planning the alleged crime.^[46]

Notably, the trial court found no showing of evident premeditation. We fully concur with this finding. The following must be established in order to support a finding of evident premeditation: (1) the time when the accused determined (conceived) to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime (kill his victim); and (3) a sufficient lapse of time