

## **THIRTEENTH DIVISION**

**[ CA-G.R. CR NO. 35977, November 10, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELPIDIO LEAL Y MARON ACCUSED-APPELLANT.**

### **D E C I S I O N**

**DIAMANTE, J.:**

Assailed before this Court is the July 25, 2013 Decision<sup>[1]</sup> of the Makati City Regional Trial Court (RTC), Branch 145, in Criminal Case No. 12-386, finding accused-appellant Elpidio Leal y Maron ("Leal" for brevity) guilty beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code (RPC).

The facts are as follows:

An Information dated April 10, 2012<sup>[2]</sup> for Homicide under Article 249 of the RPC was filed against accused-appellant Leal. The Information reads:

"On the 5<sup>th</sup> day of April 2012, in the city of Makati, the Philippines (sic), accused with intent to kill did, then and there willfully, unlawfully and feloniously stab Bernardo C. Andulte on the neck thereby inflicting upon Andulte mortal wounds which directly caused his death.

CONTRARY TO LAW."

When arraigned, accused-appellant Leal, then assisted by his counsel, Atty. Michael Llaguno of the Public Attorney's Office (PAO), pleaded not guilty.<sup>[3]</sup> Trial on the merits thereafter followed.

The evidence for the prosecution consisted of the testimonies of Bernadette Andulte, Dr. Voltaire P. Nulud and PO3 (now SPO2) Alejandro Devalid. In the Brief<sup>[4]</sup> for the plaintiff-appellee, the Office of Solicitor General (OSG) summarized the facts as follows:

"On April 5, 2012 at around 5:00 in the morning, the dead body of Bernardo C. Andulte was found in the construction site at No. 2145 Chino Roces Avenue, Barangay Pio Del Pilar, Makati City. The victim was found about five (5) steps from the sleeping barracks he shared with appellant, with multiple stab wounds to the neck.

While on duty, PO3 Alejandro Devalid ("PO3 Devalid), a police officer of the Makati City Police Station, received a report of the said dead body

and thus, he proceeded to the crime scene and conducted his investigation.

Upon arriving thereat, PO3 Devalid interviewed appellant who narrated that he just saw the victim after their drinking session. PO3 Devalid likewise interviewed Allen Yanson, the construction site's security guard on duty at that time, Chuck Arreglo, another construction worker, and Jovit Dayon. Jovit Dayon told PO3 Devalid that the victim and appellant were engaged in a heated argument during a drinking session. During the course of the said misunderstanding, appellant kicked the victim on the face. The body of the victim was found thirty (30) to forty-five (45) minutes thereafter.

On the same day, or on August 5, 2012, the appellant and the witnesses were invited to the precinct for further investigation. After finding reasonable ground to conclude that appellant is the perpetrator of the crime, he was placed under arrest and detained at the detention cell of the Makati City Police.

Meanwhile, the victim's aunt, Bernadette Andulte ("Bernadette"), was informed of the death of his nephew. The following day, or on April 6, 2012, at about 10:00 in the morning, Bernadette went to the police station and met PO3 Devalid who asked several questions regarding her relationship with the victim. She was likewise asked to execute an affidavit, and subsequently thereafter, she asked permission from PO3 Devalid to see the suspected perpetrator of the crime.

Bernadette was then allowed to speak with appellant in the detention area. Speaking in the vernacular, she immediately asked appellant what happened. Appellant initially responded that he does not know. However, upon Bernadette's further questioning, appellant admitted that he, indeed, committed the crime. His exact words were: *"Sorry po, kasi po naka drugs po kami, patawarin ninyo po ako."*

Upon hearing the admission of appellant, Bernadette immediately called PO3 Devalid, who then accompanied her to the detention area. PO3 Devalid informed appellant of his constitutional rights to have his own counsel and the right to remain silent. Appellant, nonetheless, repeated his admission to Bernadette within earshot of PO3 Devalid."<sup>[5]</sup>

After the prosecution presented its witnesses and its Formal Offer of Exhibits<sup>[6]</sup> to which the defense filed a Comment and Objection<sup>[7]</sup> thereto, the defense filed a Demurrer to Evidence on February 8, 2013,<sup>[8]</sup> which the court *a quo* denied in its Resolution dated February 27, 2013.<sup>[9]</sup> Thereafter, the defense was directed to adduce its evidence.

The evidence for the defense consisted of the testimonies of Jonalyn Leal and accused-appellant himself. The defense' version of the events, as summarized in its Brief,<sup>[10]</sup> is as follows:

" xxx xxx

8. ELPIDIO LEAL knew the victim because he was his co-worker and they shared the same space in the construction barracks where they both worked.

He last saw the victim on April 5, 2012 at 4:00 o'clock in the afternoon when the latter was talking with one Jovit Dayon who was then trying to borrow money from the former. Jovit does not work there. He then left the duo and went to the canteen to buy food.

Thereafter, he went to play basketball and then *cara y cruz* which he played up to 4:00 o'clock in the morning of the next day. When he went back to the barracks, he was surprised and shocked to see the bloodied and lifeless body of the victim laid on the pavement face up. He then left the barracks and initially looked for the guard. However, the guard was sleeping so he decided to approach a bantay bayan officer, reported the death of the victim and requested the said officer to call a police. He also told the bantay bayan officer that he saw Jovit Dayon and two (2) unknown persons near the body of the victim but when the bantay bayan officer verified them, they were no longer there.

Police Investigator Devalid came over to investigate and invited him for questioning which he readily accepted without hesitation. At the police station, he did not tell the police of the identity of some possible suspect in the killing of the victim because he was confused and was not on himself. He also did not tell about Jovit Dayon although he saw him during the investigation. SPO2 Devalid asked him if he killed the victim which he denied. He also denied having admitted the alleged killing to Bernadette Andulte, the victim's aunt.

SPO2 Devalid brought him inside a room, ordered him to lie down on his face and body facing the ground and with both hands placed on his back. Thereafter, SPO2 Devalid handcuffed his hands and began to hit the back portion of his head using a rattan stick of about three (3) feet in length, while asking him to confess and own the killing of Bernardo. He was repeatedly hit four (4) times. He did not admit the killing despite such ordeal. Hence, he was brought back to the detention cell.

9. JONALYN LEAL is the accused's sister-in-law. Their family learned about the case of the accused and his detention in jail because of the letter of the accused sent to their province asking for help. Thus, on the last week of May 2012, she together with her husband and elder brother of the accused visited the latter inside the Makati City Jail.

Upon seeing the accused, she asked him what happened and the accused said that he is being held as a suspect in the killing of his co-worker Bernardo Andulte. Upon her repeated

questionings, the accused cryingly declared to her that he is innocent of the charge; and that somebody did it and have already escaped. She also noticed that the accused's forearms just below the wrists were swollen. She asked about it and the accused relayed to her that he was

handcuffed by the police; made to lie down and was hit on the back of his head. She admitted that without the knowledge of the accused she made a suggestion to Bernadette Andulte if they could talk. Her purpose in offering to talk with Bernadette was just to buy peace and avoid disturbance."<sup>[11]</sup>

On July 25, 2013, the court *a quo* promulgated its Decision<sup>[12]</sup> convicting accused-appellant Leal of the crime charged, the dispositive portion of which reads:

"**WHEREFORE**, finding the accused ELPIDIO LEAL y MARON guilty beyond reasonable doubt of ONE COUNT of **HOMICIDE**, he is sentenced to suffer an indeterminate penalty of imprisonment for 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum; and to pay to the heirs of the late Bermardo Andulte the amounts of P83,000.00, as actual damages, P50,000.00 as civil indemnity, P50,000.00 as moral damages, all of which shall bear six (6%) per cent interest per annum reckoned from finality of this judgment until fully paid.

The accused is also ordered to pay the costs.

SO ORDERED."<sup>[13]</sup>

Accused-appellant filed a Notice of Appeal<sup>[14]</sup> and Application for Bail Pending Appeal on July 29 and July 30, 2013, respectively.<sup>[15]</sup> The prosecution thereafter, filed an Opposition to the said Application for Bail on August 13, 2013.<sup>[16]</sup> On even date, the court *a quo* issued an Omnibus Order<sup>[17]</sup> giving due course to the Notice of Appeal but denying accused-appellant's Application for Bail Pending Appeal. In his Brief, accused-appellant Leal submitted the following assignment of errors:

### **ASSIGNMENT OF ERRORS**

#### **I**

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY OF THE ASSAILANT AS WELL AS ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.**

#### **II**

**THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT ON THE BASIS OF INSUFFICIENT CIRCUMSTANTIAL EVIDENCE.**

#### **III**

**THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO**

**OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.<sup>[18]</sup>**

The appeal is impressed with merit.

Article 249 of the Revised Penal Code (RPC) defines and punishes the crime of homicide, viz.:

Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

The elements of homicide are as follows: 1) a person was killed; 2) the accused killed him 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.<sup>[19]</sup>

Insofar as the first element of homicide is concerned, it is settled that a person, identified as Bernardo Andulte, was killed on April 5, 2012.<sup>[20]</sup> With respect to the other elements of the crime, the court a quo concluded that the same was proven in the case at bench, relying mainly on the following pieces of circumstantial evidence in convicting the accused, thus:

"First, the attitude and actuations of the accused towards the occurrence of the crime. He admitted that he and the victim were then sharing a common room in a construction barracks, yet he professed total lack of knowledge on who killed and at what time his companion Bernardo Andulte was killed;

Second, that after the discovery of the killing he did not cry, shout, tremble nor ran away;

Third, after his alleged discovery of the dead body of Bernardo Andulte, the accused did not report at once to the Guard-On-Duty Allen Yanson. Instead, he reported to a Bantay-Bayan Officer;

Fourth, the supposed act of the accused in admitting the authorship of the killing made before Bernadette Andulte, the aunt of the victim, and he even asked for forgiveness from her;

Fifth, the act of the accused in reiterating his admission of owning the killing of the victim Bernardo Andulte before the Police Investigator Devalid and in the presence of Bernadette Andulte;

Sixth, the act of the accused in attempting to settle the case during the progress of the trial by giving a piece of paper to Bernadette Andulte which paper contains the phone number of his sister-in-law, Jona Leal,