



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 188969

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR. and
LEONEN, *JJ*.^{*}

JOHN ALVIN PONDIVIDA,
Accused-Appellant.

Promulgated:

FEB 27 2013

X ----- X

DECISION

SERENO, *CJ*:

Before this Court is the 26 June 2009 Decision¹ of the Court of Appeals (CA), which affirmed the 10 January 2008 judgment of conviction² of the Regional Trial Court (RTC) of Bulacan in Criminal Case No. 2678-M-2005. The RTC found accused John Alvin Pondivida, alias “Scarface,” guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua*, as well as to pay civil indemnity and damages.

On 6 October 2005, the assistant provincial prosecutor of Malolos, Bulacan, charged accused-appellant Pondivida under the following Information:³

That on or about the 8th day of July 2005, in the municipality of Obando, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating

^{*} Additional member in lieu of Associate Justice Bienvenido L. Reyes per raffle dated 25 February 2013.

¹ In CA G.R. H.C. No. 03237, penned by Associate Justice Isaias Dicdican concurred in by Associate Justices Bienvenido L. Reyes and Marlene Gonzales-Sison; *rollo*, pp. 2-11.

² Penned by Judge Gregorio S. Sampaga; CA *rollo*, pp. 14-23.

³ *Id.* at 7.

and mutually helping one another, armed with firearm, and with intent to kill one Gener Bondoc y Cudia, with evident premeditation, abuse of superior strength and treachery, did then and there, wilfully, unlawfully, and feloniously, attack, assault and shoot with their firearm the said Gener Bondoc y Cudia, hitting the latter on his body and head, thereby inflicting upon him mortal wounds which directly caused his death.

Contrary to law.

Rodelyn Buenavista, witness for the prosecution, testified that at 3:30 a.m. of 8 July 2005, she was roused from sleep by incessant knocking and the sound of someone kicking the front door of their house. She immediately woke her common-law partner, Gener Bondoc. His brother, Jover Bondoc (nicknamed Udoy), was also awake and was peeping through the door of one of the rooms. Outside he saw accused George Reyes, John Alvin Pondivida, and Glen Alvarico who was carrying an armalite rifle.

When Rodelyn answered the door, the three men asked for the whereabouts of “Udoy” and “Bagsik,” both brothers of Gener. One of the men, later identified as accused George Reyes, searched the house and asked her who Gener was. Rodelyn merely replied that he was neither Udoy nor Bagsik, and that the persons they were looking for were not inside the house. In response, the men fired four shots, prompting her to plead that her children were sleeping upstairs.

Rodelyn recounted that the three men seemed to be discussing something near the well outside their house for a considerable period, before Reyes again approached them. He asked Gener to step outside the house to “have a conversation” with them, but Gener declined, stating that they were armed. Rodelyn again reminded Reyes that there were children inside the house and tried to prevent him from entering and going up the stairs.⁴

While Reyes was talking to Rodelyn, Pondivida and Alvarico suddenly entered through the window of the house and chased Gener. Both Reyes and Alvarico shot at Gener. Rodelyn heard the gunshots, but when she approached Gener to investigate, he was already sprawled on the floor with blood oozing from a wound in his head. Police later ascertained that both Pondivida and Alvarico had climbed the guava tree outside the house to gain access to the window located at the second floor. Jover further testified that both he and his brother Bagsik had an earlier altercation with a gasoline station employee who happened to be a friend of the assailants.⁵

Pondivida fled to Olongapo City for five months, but was apprehended upon returning to Obando, Bulacan. Co-accused Alvarico and

⁴ Id. at 4.

⁵ *Rollo*, pp. 4-5.

Reyes were never located and are currently at large. The RTC found accused-appellant Pondivida guilty beyond reasonable doubt of murder; imposed the penalty of *reclusion perpetua*; and ordered him to pay ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱25,000 as exemplary damages, ₱10,000 as actual damages, and the costs of suit.⁶ On intermediate appellate review, the CA affirmed the findings of the trial court, but clarified that the aggravating circumstance of abuse of superior strength was absorbed in the element of treachery in murder.⁷

Accused-appellant comes before this Court arguing that the prosecution's case was not proven beyond reasonable doubt, and that there was insufficient evidence to establish conspiracy among the accused. Both he and the Solicitor General manifested that their respective positions were already thoroughly discussed in the Briefs they had filed with the appellate court, and that they were thus no longer filing supplemental briefs.

After a judicious review of the records, this Court finds no cogent reason to disturb the findings of either the RTC or the CA. Accused-appellant Pondivida admitted in the Brief he submitted to the CA that on the evening of 8 July 2005, he went with Glen Alvarico and George Reyes to the house of Gener Bondoc; that he, Pondivida, was the one who knocked on the door; that he and his companions were able to enter the house; and that both Glen Alvarico and George Reyes shot the victim.⁸ Thus, his argument – that Rodelyn Buenavista's failure to witness the actual shooting constituted reasonable doubt of his guilt – is unconvincing. His admissions place him at the scene of the crime and confirm that he was with Reyes and Alvarico when they shot the victim. The RTC may still take cognizance of Rodelyn's eyewitness testimony on all the events, except the actual shooting, and properly appreciate it as positive identification through circumstantial evidence.

In *People v. Caliso*,⁹ the Court stated:

The identification of a malefactor, to be positive and sufficient for conviction, does not always require direct evidence from an eyewitness; otherwise, no conviction will be possible in crimes where there are no eyewitnesses. Indeed, trustworthy circumstantial evidence can equally confirm the identification and overcome the constitutionally presumed innocence of the accused. Thus, the Court has distinguished two types of positive identification in *People v. Gallarde*, to wit: (a) that by direct evidence, through an eyewitness to the very commission of the act; and (b) that by circumstantial evidence, such as where the accused is last seen with the victim immediately before or after the crime. The Court said:

⁶ Dispositive portion, RTC Decision, pp. 9-10; CA *rollo*, pp. 22-23.

⁷ Dispositive portion, CA Decision p. 8; *rollo*, p. 9.

⁸ CA *rollo*, p. 41.

⁹ G.R. No. 183830, 19 October 2011, 659 SCRA 666.

x x x. Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, **although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.** This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitnesses are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.¹⁰ (Emphases in the original)

Thus, while witness Rodelyn admittedly failed to see the actual shooting, her account properly falls under the second type of positive identification described above. To require her positive identification of accused-appellant as the actual shooter is absurd. She last witnessed her common-law husband held at gunpoint in their own house by the accused and his companions, a fact admitted by accused-appellant himself. Direct evidence is not the only means to prove commission of the crime.

In any case, accused-appellant conflates the purported lack of an eyewitness testimony with his own contention that conspiracy was not established by the prosecution. The pivotal question remains: whether it was sufficiently shown that accused Pondivida conspired with Reyes and Alvarico. He insists that the trial court erroneously convicted him on the basis of the weakness of the defense evidence, and not the strength of the prosecution's.¹¹ Before the shooting on 8 July 2005, Glen Alvarico and George Reyes had allegedly passed by his house and prevailed upon him to visit the house of Gener Bondoc. Alvarico poked a gun at him to force him to knock at the door. He saw Alvarico and Reyes kill Gener, but still

¹⁰ Id. at 677-678.

¹¹ CA *rollo*, pp. 48-49.

complied with all the instructions of his companions, only because he was afraid for his life.¹²

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests.¹³ Proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices.¹⁴ In a long line of cases, we have held thus:

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.¹⁵

In this case, the prosecution decisively established a community of criminal design among Alvarico, Reyes, and appellant Pondivida. While there is no evidence of any previous agreement among the assailants to commit the crime, their concerted acts before, during and after the incident establish a joint purpose and intent to kill.

As attested to by accused-appellant, they all went to the intended victim's house bearing firearms. Accused-appellant himself knocked on the door. After failing to locate "Udoy" and "Bagsik," and discovering that Gener was the latter's brother, they then engaged in a lengthy conversation, as they circled around a nearby well outside the house.¹⁶ Accused even admitted to shouting the name "Bagsik" over and over.¹⁷ They all asked Gener to step outside and speak with them. Upon his refusal, appellant Pondivida, together with Alvarico, entered the house through an upstairs window. Alvarico fired at George who was at the stairs. Reyes, from his vantage point at the front door, also shot at George.¹⁸ After fleeing the scene, appellant Pondivida admitted that he met with Alvarico in Novaliches. Alvarico gave him money, and the latter thereafter boarded a bus headed to Olongapo City.¹⁹

¹² Id. at 41.

¹³ *Aquino v. Paiste*, G.R. No. 147782, 25 June 2008, 555 SCRA 255, 260.

¹⁴ *People v. Amodia*, G.R. No. 173791, 7 April 2009, 584 SCRA 518, 541.

¹⁵ *People v. Medice*, G.R. No. 181701, 18 January 2012, 66 SCRA 334, 345-346; *People v. Anticamara*, G.R. No. 178771, 8 June 2011, 651 SCRA 489, 507, citing *People v. PO3 Tan*, 411 Phil. 813, 838 (2001); *People v. De Jesus*, 473 Phil. 405, 429 (2004).

¹⁶ CA rollo, p. 16.

¹⁷ Id. at 19.

¹⁸ Id. at 16.

¹⁹ Id. at 21.

The trial court correctly rejected Pondivida's claim that he feared for his life. His account of being held at gunpoint and forced to commit murder is incredible, considering that he accompanied the other assailants to the victim's house without resistance; banged and shouted at the front door without any prompting; willingly climbed the guava tree to enter the house and chase the victim; and accepted the money from Alvarico in order to escape. Most telling is the fact that accused himself banged at the front door and shouted the name "Bagsik" over and over. At no urging from his companions, he climbed a tree located right beside the second-floor window to gain entry.

These were not the acts of a man who purportedly "feared for his life." He was shown to have performed precisely those specific acts incidental to the commission of the crime with such closeness and coordination with his other co-accused. Their acts together were indicative of a common purpose, which was murder. We also concur with the trial court in finding that the actuations of the accused *after the murder* did not indicate in the slightest that he had been coerced. That he was able to tidy his things, pack a getaway bag, and even meet with his co-conspirators to receive money were not the acts of a scared, innocent man.

Jurisprudence dictates that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on the findings are accorded high respect, if not conclusive effect. This dictum would be more true if the findings were affirmed by the CA, since it is settled that when the trial court's findings have been affirmed by the appellate court, these findings are generally binding upon this Court."²⁰

In sum, we find no cogent reason to reject the Decision of the CA. Appellant is found guilty beyond reasonable doubt of the crime of murder, for which he is sentenced to suffer the penalty of *reclusion perpetua* and to pay complainant Rodelyn Buenavista ₱50,000 as civil indemnity *ex delicto*, ₱50,000 as moral damages, and ₱10,000 as actual damages. To conform to recent jurisprudence,²¹ exemplary damages in the amount of ₱25,000 awarded by the CA are hereby increased to ₱30,000.

WHEREFORE, we **AFFIRM** the 26 June 2009 Decision of the Court of Appeals in CA-G.R. H.C. No. 03237, with the modification that the award of exemplary damages is increased from ₱25,000 to ₱30,000.

²⁰ *People v. Adallom*, G.R. No. 182522, 7 May 2012; *Decasa v. Court of Appeals*, G.R. No. 172184, 10 July 2007, 527 SCRA 267, 287.

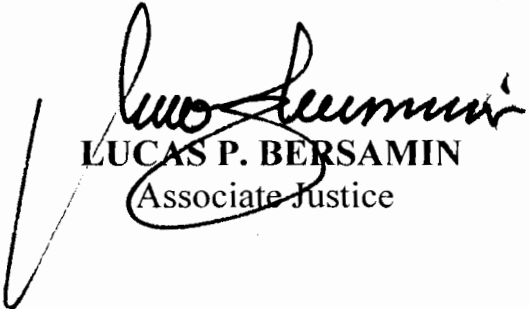
²¹ *People v. Dones*, G.R. No. 188329, 20 June 2012; *People v. Gonzales*, G.R. No. 195534, 13 June 2012; *People v. Villamor*, G.R. No. 187497, 12 October 2011, 659 SCRA 44, 55.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice