



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 194629

Present:

SERENO, C.J.,  
*Chairperson,*  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

DANTE DULAY,  
Accused-Appellant.

Promulgated:

APR 21 2014

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DECISION

REYES, J.:

For review is the Decision<sup>1</sup> dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03584 which affirmed the Decision<sup>2</sup> dated September 30, 2008 of the Regional Trial Court (RTC) of Cabarroguis, Quirino, Branch 31, finding accused-appellant Dante Dulay (Dulay) guilty beyond reasonable doubt of the complex crime of Murder and Frustrated Murder.

The following are the antecedent facts:

<sup>1</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Mario L. Guarifa III and Rodil V. Zalameda, concurring; *rollo*, pp. 2-13.

<sup>2</sup> Issued by Executive Judge Moises M. Pardo; CA *rollo*, pp. 12-15.

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[Dulay] entered a plea of “not guilty” to the indictment which reads as follows:

“That on or about 6:30 in the evening of December 30, 2002 in Ligaya, Aglipay, Quirino, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by using a grenade and by means of explosion, did then and there willfully and unlawfully and after removing the safety pin of the said grenade, throw it at the house of Orlando Legaspi Sr., producing a land explosion and as a consequence[,] the shrapnels hit ORLANDO LEGASPI SR. to [sic] the different parts of his body that caused his death.

That on the same occasion, said accused armed with the same grenade and by means of explosion did then and there willfully and unlawfully threw the grenade after removing its safety pin at the house of ORLANDO LEGASPI SR. causing loud explosion as the shrapnel of the grenade hit ORLANDO LEGASPI, JR. Thus accused performed all the acts of execution that would produce the crime of murder as a consequence but did not produce it because of timely medical assistance rendered unto ORLANDO LEGASPI JR. which prevented his death.

Acts contrary to law.”

The records reveal that in the evening of 30 December 2002 at around 6:30, Orlando Jr. (or simply “Junior”), a child about six years of age, was outside the kitchen of their house located in Ligaya, Aglipay, Province of Quirino. His father, the late Orlando Sr., was also somewhere in the yard and was asking Junior to hand him a chair. They had just finished dinner and were intending to watch the television later.

Wondering why the dog was barking loudly, Mrs. Engracia Legaspi peeped from inside the kitchen and noticed Dulay’s dog in the vicinity. She surmised that its master, [Dulay], was also present. Junior’s elder sister, Melanie went out to look for the dog-leash to transfer the mutt to another area.

Using the flashlight he was constantly prohibited from playing with, Junior directed a beam towards the grassy area where he discovered [Dulay] whom he recognized because of the characteristic “mumps” below his left ear. Melanie also saw [Dulay] as he was staring at Orlando Sr. Their uncle Dante suddenly threw something that resembled a ball, towards the cemented part of the yard. It turned out to be a grenade, and it landed about seven meters from where Junior and his father were. [Dulay] then went away on his bicycle towards the direction of his house. x x x.

When the grenade exploded, Junior was hurt in his pelvic area, while his father was fatally hit by shrapnel, causing his death. Melanie rushed to the succor of her bloodied father, barely noticing Junior who was likewise lying on the ground, but was still conscious and crying. Engracia hollered for help from the neighborhood. Because of the firecrackers in that New Year’s Eve, people did not readily render

assistance, until they realized the intensity of the explosion that shook the ground.

Police operatives who arrived at the crime scene instructed the assisting neighbors to locate the grenade fragments. In the early morning of 31 December 2002, three of the male neighbors continued the search and found a grenade safety lever, along with a torn-out pair of rubber shoes in the road near Dulay's house. Examining the rubber shoes which turned out to belong to the latter, the three men further recovered a grenade ring pin from inside the left shoe.

Orlando Sr. was rushed to the hospital but he expired shortly thereafter. His *Certificate of Death* states that he died of cardio-respiratory arrest due to hemorrhagic shock due to "transection of the right kidney, perforation of the duodenum, pancreas and stomach due to grenade blast injury."

[Dulay's] alibi consists of his purported trip from the house of his uncle Onofre Dulay in Gamis to his friend, Joel Ritualo in another barangay, Dibul. According to his story, he was Onofre's caretaker while the latter was in Manila. Since he had no electricity in Gamis, he went on a bike to Ritualo to have his Motolite battery recharged. While waiting for the recharging to finish, he went on a drinking spree with Ritualo and another man, Pepito Maluret, until around 7:30 p.m. when he bid the two liquor-companions goodbye. With the energized battery in tow, he left, but Ritualo insisted on accompanying him to the road as he was already drunk. Not long afterwards, Ritualo hailed the passenger jeepney that passed them which was driven by his uncle, witness Robert Daileg.

In convicting Dulay, the trial court noted that Junior had no ill-motive to testify falsely against his uncle. Against the self-serving alibi of the appellant, the prosecution witnesses positively identified the perpetrator because they were familiar with him, the court added.<sup>3</sup> (Citations omitted)

The RTC found Dulay guilty beyond reasonable doubt of the complex crime of Murder with Attempted Murder. The dispositive portion of the RTC ruling is as follows:

*WHEREFORE*, in view of the foregoing consideration, the Court finds accused Dante Dulay **GUILTY** beyond reasonable doubt with the complex crime of Murder with Attempted Murder and is hereby sentenced to **Reclusion Perpetua**.

1. He is further ordered to pay the heirs **Orlando Legaspi Sr.**, the sum of [□]50,000[.00] as civil indemnity, and moral damages in the amount of [□]50,000.00[.]
2. Also he must pay [□]30,000[.00] pesos as moral damages to **Orlando Legaspi, Jr.**

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<sup>3</sup> Rollo, pp. 2-5.

3. [□]115,956[.00] as actual expenses/damage[s] for the hospitalization of the two victims, namely: **Orlando Legaspi, Sr.**, and **Orlando Legaspi, Jr.**

**SO ORDERED[.]**<sup>4</sup>

On appeal, the CA affirmed the conviction with modification. The *fallo* of the judgment reads:

**WHEREFORE**, in view of the foregoing, the challenged *Decision* is **AFFIRMED** with **MODIFICATION**. Accordingly, the accused-appellant is convicted of the complex crime of murder and frustrated murder and is sentenced to suffer:

- 1) the penalty of *reclusion perpetua* without eligibility for parole;
- 2) the award of actual damages in the amount of [□]115,956.00 for the hospital expenses of the two victims;
- 3) the award of civil indemnity for the death of Orlando Sr., in the increased amount of [□]75,000.00;
- 4) the award of moral damages in the respective amounts of [□]75,000.00 and [□]55,000.00 for Orlando Senior and Junior; [and]
- 5) the award of exemplary damages in the amount of [□]30,000.00 each for both Orlando Senior and Junior.

**IT IS SO ORDERED.**<sup>5</sup>

The CA held that pursuant to Republic Act No. 9346, the penalty of death which would have been imposable is properly reduced to *reclusion perpetua* but the RTC erred in stating in the body of the decision that Dulay was guilty as well of “frustrated murder” as charged in the Information with respect to the bomb-injured Orlando Legaspi, Jr. (Junior), and yet convicted him in the dispositive part only of “attempted murder.” The prosecution was able to establish that all acts of execution, not merely preparatory acts, were performed to produce the felony as a consequence, but Junior nevertheless survived for reasons independent of the will of the perpetrator; that is, the timely medical assistance to him.<sup>6</sup>

The records of this case were then elevated to this Court pursuant to CA Resolution<sup>7</sup> dated August 5, 2010, which gave due course to Dulay’s notice of appeal.

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<sup>4</sup> CA *rollo*, p. 15.

<sup>5</sup> *Rollo*, pp. 12-13.

<sup>6</sup> Id. at 11.

<sup>7</sup> Id. at 17.

### Our Ruling

“It is settled that this Court will not interfere with the trial court’s assessment of the witnesses’ credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, especially where, as in this case, such assessment is affirmed by the CA. In the present case, we see no compelling reason to disturb the factual findings of the courts *a quo*.”<sup>8</sup>

Dulay averred that he was in Dibul, Saguday, Quirino, when the crime occurred. While defense witness Robert Daileg (Daileg) testified that Dulay rode as a passenger in the former’s jeepney from Dibul to Gamis one night, Daileg cannot even remember the exact date when this occurred. Consequently, Daileg cannot adequately support Dulay’s version of facts that the latter was somewhere else that fateful night.

For the defense of *alibi* to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.<sup>9</sup> Since Dulay was not able to prove that he was in Dibul when the crime was committed, both the CA and the RTC were correct in disregarding his *alibi*. Junior and Melanie, Junior’s elder sister, on the other hand, have both positively identified Dulay as the assailant. On this score, this Court has held in a number of cases that denial and *alibi* are weak defenses, which cannot prevail against positive identification.<sup>10</sup>

As regards the crime committed against Junior, the Court is in accord with the CA’s conclusion that Dulay is guilty of frustrated murder. The requisites of a frustrated felony are: (1) that the offender has performed all the acts of execution which would produce the felony; and (2) that the felony is not produced due to causes independent of the perpetrator’s will.<sup>11</sup>

Applying the foregoing to the case at bar, Dulay has performed all acts of execution in throwing the grenade which could have caused Junior’s death as a consequence, but because of immediate medical assistance, a cause independent of Dulay’s will, Junior survived.<sup>12</sup>

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<sup>8</sup> *People v. Baldomar*, G.R. No. 197043, February 29, 2012, 667 SCRA 415, 417.

<sup>9</sup> *People v. Delabajan*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 866.

<sup>10</sup> *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847.

<sup>11</sup> *People v. Orita*, 262 Phil. 963, 975-976 (1990).

<sup>12</sup> *People v. Dela Cruz*, 551 Phil. 406, 423 (2007).

The Court thus affirms the CA decision, with modification on the awarded indemnities.

First, the Court retains the award by the CA of ₱75,000.00 as moral damages, exemplary damages at ₱30,000.00 and civil indemnity at ₱75,000.00 to the heirs of Orlando Legaspi, Sr. (Orlando, Sr.) in conformity with our ruling in *People v. Barde*.<sup>13</sup> Next, the Court awards moral and exemplary damages to Junior in the amounts of ₱50,000.00 and ₱20,000.00, respectively. Furthermore, the Court upholds the CA's award of ₱115,956.00 as actual damages for the hospital expenses of both Orlando Sr. and Junior. Lastly, the Court imposes an interest of six percent (6%) *per annum* on the award of civil indemnity and all damages from the date of finality of judgment until fully paid consistent with prevailing jurisprudence.<sup>14</sup>

**WHEREFORE**, the appeal is **DENIED**. The Decision dated May 26, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03584 is **AFFIRMED WITH MODIFICATION** in that accused-appellant Dante Dulay is ordered: (a) to pay the heirs of Orlando Legaspi, Sr. the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages; (b) to pay Orlando Legaspi, Jr., the amount of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages; and (c) to pay ₱115,956.00 as actual damages for the hospital expenses of both Orlando Legaspi, Sr. and Orlando Legaspi, Jr. An interest of six percent (6%) *per annum* is imposed on the award of civil indemnity and all damages from the date of finality of this judgment until fully paid.

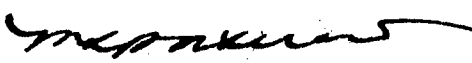
**SO ORDERED.**

  
**BIENVENIDO L. REYES**  
Associate Justice

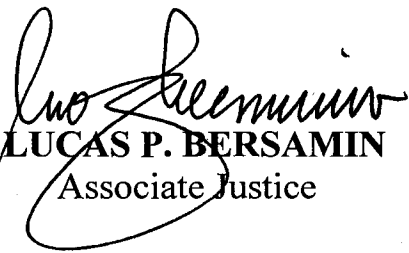
<sup>13</sup> G.R. No. 183094, September 22, 2010, 631 SCRA 187.


<sup>14</sup> *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512; *People of the Philippines v. Marvin Cayan*, G.R. No. 200080, September 18, 2013.

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
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