

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CABINAN @ KALBO, ACCUSED-APPELLANT.

Ponente: COSICO, J.

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COSICO, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 11 of Malolos, Bulacan in Criminal Case No. 1339-M-2001. The said decision declared accused-appellant Rolando Cabinan guilty beyond reasonable doubt of the crime of murder. Thus, he was sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim for damages.

The Facts

Herein accused-appellant Rolando Cabinan @ Kalbo was charged with the crime of murder penalized under the provisions of Article 248 of the Revised Penal Code via an information^[1] filed by 3rd Assistant Provincial Prosecutor Benjamin R. Caraig with the Regional Trial Court of Bulacan. The accusatory portion of the information reads—

“That on or about the 13th day of December, 2000, in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pill box and with intent to kill one Eleuterio Lucas, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and throw pill box on the said Eleuterio Lucas, hitting the latter on his head thereby inflicting serious physical injuries which directly caused his death.

“Contrary to law.”

Upon arraignment, accused-appellant Cabinan entered a plea of “not guilty.” After pre-trial, trial on the merits ensued.

Witnesses Roberto Policarpio, Maribel Lucas, Eleuterio Lucas, Sr. and Dr. Ivan Richard Viray testified for the prosecution. The following facts can be culled from their testimonies—

On December 13, 2000, between 9:00 o'clock and 10:00 o'clock in the evening, victim Eleuterio Lucas was having a drinking spree at his residence in upper Bigte, Norzagaray, Bulacan with a group that included his brother, his bestfriend and Orlando Cabinan, brother of the accused-appellant. A commotion broke out after an altercation ensued between Eleuterio's bestfriend and Orlando Cabinan. Eleuterio tried to pacify them. Orlando then left the place and went to a nearby billiard hall where his brother, accused-appellant Rolando Cabinan, was playing billiards. Orlando told the accused-appellant about the fight and immediately, the two (2) brothers proceeded to the house of Eleuterio.

When the Cabinan brothers reached Eleuterio's house, Orlando had a fistfight with one of the guests of victim Eleuterio. Eleuterio again tried to diffuse the fight, but accused-appellant Rolando threw the bottle of gin he was holding, hitting Eleuterio on the head. The bottle exploded due to the impact. Accused-appellant ran away after the explosion. Victim Eleuterio, on the other hand, was rushed to the hospital, but because of the injuries he

sustained, he still died at the East Avenue Medical Center in Quezon City.

Dr. Ivan Richard A. Viray, a medico-legal officer, conducted the autopsy on the cadaver of Eleuterio. Medico-legal Report No. MA-403-2000[2] embodying the results of his examination states that the cause of the victim's death is "intracranial hemorrhage as a result of a blast injury, head."

Only the accused-appellant testified for his defense. He alleged that on December 13, 2000, he was playing billiards at a billiard hall in Liwasan, Norzagaray, Bulacan when his brother Orlando, together with Roberto Policarpio, sought his help because of a mauling incident in Bigte. Immediately, they proceeded to the place of the incident and upon reaching the place, Roberto and Eleuterio engaged into a fistfight. Accused-appellant then saw a bottle of gin on the ground, picked up the bottle, and then threw it to the fighting duo. To his surprise, the bottle exploded. He then ran away from the scene of the fight.

The Ruling of the Trial Court

On June 26, 2004, the Regional Trial Court rendered its decision[3] finding the accused-appellant guilty beyond reasonable doubt of the crime of murder. Thus, the dispositive portion of its decision reads –

"WHEREFORE, this Court finds the accused, Rolando Cabinan, GUILTY beyond reasonable doubt of Murder under Art. 248 of the Revised Penal Code, as amended and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the deceased the following sums of money, to wit:

1. P60,000.00 as civil indemnity;
2. P50,000.00 as moral damages;
3. P60,000.00 as actual damages;

"SO ORDERED."

The Instant Appeal

Accused-appellant makes a lone assignment of error in his appeal brief:

THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

This Court's Ruling

In his appeal brief, accused-appellant argues that the element of intent to kill was not sufficiently proved by the prosecution. He claims that he picked up the bottle of gin without knowing that it was an explosive. He threw it not particularly to hit Eleuterio but only to diffuse the fight between the victim and Roberto.

We are not persuaded. After due study, this Court finds no error committed by the trial court in declaring herein accused-appellant guilty beyond reasonable doubt of the crime of murder. The following elements of the crime of murder were sufficiently and convincingly proved by the prosecution—

- that a person was killed;
- that the accused killed him;
- that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and

- that the killing is not parricide or infanticide.

Considering the differing versions between the prosecution and the defense as to what actually transpired in the evening of December 13, 2000, it is material to take into account the credibility of the witnesses presented in court. Settled is the rule that the evaluation of the testimony of witnesses by the trial court is accorded the highest respect on appeal because the court below had the opportunity to observe the witnesses on the stand and detect if they were telling the truth.[4] Appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[5]

We find no such error committed by the trial court. Its findings are fully supported by the records of the case and the transcripts of the witnesses' testimonies in court. It was fully established that the accused-appellant used a "home-made bomb" to kill victim Eleuterio. His knowledge that the bottle was an explosive and his intent to kill the victim can be reasonably deduced from the means and manner by which the attack was made. As per the prosecution witnesses' testimonies, accused-appellant deliberately positioned himself at the back of the victim before throwing the bottle and hitting the victim on the head. Death can be presumed from the use of the improvised bomb, considering the intensive damage that normally results from such weapon. True enough, Eleuterio died due to the degree of injuries he sustained. It is thus clear that accused-appellant really intended to cause the death of the victim rather than to simply quell the fight between Orlando and Eleuterio.

Accused-appellant's claim that he did not know that the bottle of gin was actually an explosive fails to persuade. He admitted having been at the scene of the crime because his brother sought his help after a mauling incident in Liwasan, Norzagaray. Evidently, he went to the crime scene purposely to take vengeance for his brother. If he really wanted to stop a duel he witnessed when he arrived there, then he could have resorted to peaceful and reasonable means to achieve this purpose. The circumstances that, first, the bottle of gin thrown against the victim turned out to be an explosive, and second, the victim was hit exactly in the head are clear indicators of the malicious intent of the accused-appellant.

The circumstance that qualified the instant case to the crime of murder was treachery. Given the foregoing facts that led to the death of the victim, it is clear that the two elements of treachery have been proved in the instant case: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the assailant consciously and deliberately adopted the particular means or method of attack employed by him.[6]

In assailing the decision of the trial court, accused-appellant also cites the alleged contradiction between the testimony of prosecution witness Maribel Lucas, wife of the victim, that Roberto Policarpio was among the group having a drinking spree, and the testimony of prosecution witness Roberto Policarpio that he was playing billiards with the accused-appellant on the night of the incident. This Court stresses that so long as the witnesses' testimonies agree on substantial matters, the inconsequential inconsistencies and contradictions dilute neither the witnesses' credibility nor the verity of their testimonies.[7] Inconsistencies on minor and collateral details, such as the one alluded to by the accused-appellant, do not go into the essential elements of the crime of murder; thus, they do not impair the credibility of the witnesses.

All told, this Court finds no reversible error committed by the trial court in finding herein accused-appellant guilty beyond reasonable doubt of the crime of murder, and accordingly, sentencing him to suffer the penalty of reclusion perpetua (Art. 63, subpar. 2 in relation to Art. 248, Revised Penal Code) and to indemnify the heirs of the victim.

Amount of Damages

In light of prevailing jurisprudence, the civil indemnity of P60,000.00 awarded in favor of the heirs of the victim is however reduced to P50,000.00. The award of P50,000.00 as moral damages is hereby sustained, because an award of moral damages is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[8]

The award of P60,000.00 as actual damages is hereby deleted because the heirs of the victim failed to substantiate such claim through the presentation of documentary evidence. Nonetheless, while only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake, or burial of the victim will be recognized in court, in line with new jurisprudence, temperate damages in the amount of P25,000.00 is hereby awarded to the victim's heirs, since they clearly incurred funeral expenses.[9]

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court, Branch 11 of Malolos, Bulacan is hereby **AFFIRMED** with **MODIFICATION** in that in lieu of the awards made by the trial court in favor of the heirs of victim Eleuterio Lucas, accused-appellant is ordered to pay the heirs of the victim the following amounts:

- (a) P50,000.00 as civil indemnity;
- (b) P50,000.00 as moral damages; and
- (c) P25,000.00 as temperate damages.

SO ORDERED.

Sundiam, and Librea-Leagogo, JJ., concur.

[1] Records, p. 1.

[2] Records, p. 118.

[3] Records, p. 156.

[4] *People v. Ruales*, 410 SCRA 127 (2003).

[5] *People v. Pidoy*, 405 SCRA 339 (2003).

[6] *People v. Gialolo*, 414 SCRA 278 (2003).

[7] *People v. Cañete*, 410 SCRA 544 (2003).

[8] *People v. Bajar*, 414 SCRA 494 (2003).

[9] *Ibid.*

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