

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BERNARDO Y FERNANDEZ, ACCUSED-APPELLANT.

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is an appeal interposed by Roberto Bernardo from the Decision dated May 24, 2010 by the Regional Trial Court (“RTC”) of Tuguegarao City, Branch 3 in Criminal Case No. 8905, the dispositive portion of which reads, as follows:

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“WHEREFORE, the accused ROBERTO BERNARDO y Fernandez is found GUILTY beyond reasonable doubt, as principal, of the offense of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 and is hereby sentenced to suffer the penalty of Reclusion Perpetua without possibility of parole. Said accused is ORDERED to pay the heirs of Rolando Arquero the amounts of P75,000.00 as civil indemnity; P25,000.00 as temperate damages; P50,000.00 as moral damages; and P25,000.00 as exemplary damages; all with interest at the legal rate of six percent (6%) per annum from this date until fully paid.

SO ORDERED.”

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THE ANTECEDENTS

Roberto Bernardo was charged before the RTC with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by The Death Penalty Law or Republic Act No. 7659 (“RA 7659”) under the following information:

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“That on or about May 25, 2001, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Roberto Bernardo y Fernandez, armed with a gun, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one, Roger Arquero y Cudiamat Alias Rolando, inflicting upon him fatal gunshot wounds on the different parts of his body which caused his death.

That in the commission of the offense the special aggravating circumstance of use of an unlicensed firearm was present.

Contrary to law.

Tuguegarao City, Cagayan, July 26, 2001.”[1]

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When arraigned on February 6, 2002, in Criminal Case No. 8905, the accused pleaded "not guilty" to the crime charged.[2] Thereafter, pre-trial was held and consequently terminated[3], and trial of the case ensued.

From the evidence adduced by the prosecution, it appears that on May 25, 2001, at about 6:00 a.m., Roger Arquero, aka "Rolando Arquero", fetched his brother-in-law, Rolando Licupa at Damortis, Sampaguita, Solana, Cagayan and went to his rice field about 300 meters away. While they were walking towards the other side of the paddy, accused Roberto Bernardo suddenly appeared from the hilly portion of the farm and shot the victim once using a homemade shotgun hitting his lower abdomen[4]. After the shooting, the accused ran away. Rolando Licupa shouted for help and Dionisio Evangelista arrived at the scene. Rolando Licupa and Dionisio Evangelista brought the victim to the house of Pedro Arquero[5]. Subsequently, the victim was transported to St. Paul Hospital. The policemen of Solana Cagayan arrived at the hospital and conducted an investigation of the incident. The victim expired at 10:31 a.m. of the same day.

On July 22, 2005, while on the witness stand, Rolando Licupa, testified on the circumstances of the death of Roger Arquero as well as on the details of the killing incident.[6] He positively identified the assailant as Roberto Bernardo[7] because he was the nephew[8] of the victim and he is also from Sampaguita, Solana, Cagayan. He narrated that at the time of the shooting, he was about 2 meters away from the victim and the latter was about 4 to 5 meters away from the accused[9]. He also testified that Roger Arquero and Rolando Arquero are one and the same person and adduced a Certification from the Barangay Captain of Sampaguita, Solana, Cagayan to prove that fact.[10]

Mercilyn Arquero, wife of the victim, also testified that on May 25, 2001 at about 7:00 a.m., while she was at home, she was informed that his husband was shot. She proceeded to St. Paul Hospital and upon seeing her husband, she asked who shot him. Her husband told her that Roberto Bernardo shot him. She stated that her husband was a farmer tilling more or less 3 hectares of land. They have 2 children ages 2 years and five months. She identified a list of expenses before the court.

Dr. Honorio Reyes[11], likewise took the witness stand and testified that: (1) he prepared the medico legal report and illustration of injuries of the victim; (2) the victim suffered "hypovolemic shock secondary to multiple gunshot wound in the abdomen and in the side in the upper portion of the leg transecting at external iliac vein; perforating the small intestines; sigmoid colon; urinary bladder"; (3) the immediate cause of death of the victim was hypovolemic shock, the massive loss of blood and the proximate cause of death is gunshot wounds or penetrating wounds ; (4) all the wounds suffered by the victim follows the same downward trajectory inside the body.

On the other hand, the defense presented the accused as its witness. Accused Roberto Bernardo had a different version of events which transpired on May 25, 2001. He narrated that on May 25, 2001 at about 7:00 a.m., he was with his family at their house in Sitio Masin, Iraga, Solana, Cagayan. They were sleeping when Roger Arquero, Loreto Arquero, Amboy, Rolando Licupa, Dionisio Arquero and Ambot Soriano fired gunshots at his house. According to him, this was motivated by the fact that in 1991, he was convicted for killing the brothers of Roger Arquero. He also stated that prior to the shooting, the assailants ordered his wife and children to go out of the house. When he was the only one left inside the house, they fired gunshots at the house. He escaped being shot because he dropped down. He testified that Roger Arquero was shot by his companion Rolando Licupa. He reported the incident to the police.

After the trial, the RTC rendered the assailed decision. On May 27, 2010, the accused timely filed his notice of appeal.[12]

THE ASSIGNED ERRORS

I.

WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE APPARENT INCEDIBILITY OF THE ALLEGED EYEWITNESS' TESTIMONY;

II.

WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO POSITIVELY ESTABLISH THE IDENTITY OF THE ASSAILANT.

The accused, now the appellant before us, argues that the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses. Dr. Honorio Reyes testified that the victim sustained 9 gunshot wounds which caused his eventual death. On the other hand, Rolando Licupa testified that the victim was shot only once. The physical evidence of 9 gunshot wounds is more consistent with his version of events which transpired on May 25, 2001. He insists that it was Rolando Licupa who accidentally killed the victim while their group were firing gunshots at his house. Accused-appellant claims that the prosecution's evidence failed to establish his guilt with moral certainty.

On the other hand, the Office of the Solicitor General ("OSG") counters that no conflict exists between the physical evidence and the testimony of the witnesses for the prosecution. The weapon used to inflict wounds was an unlicensed handmade shotgun. A shotgun is a firearm which uses a fixed shell to fire a number of spherical pellets. A standard shotgun shell normally holds 9 pellets. The nine gunshot wounds were the natural and logical resulting injuries from nine pellets fired from a single shotgun shell.

OUR RULING

The appeal is unmeritorious.

It is doctrinal in this jurisdiction that trial courts, who have an unmatched opportunity to observe the demeanor of the witnesses, are in a better position to pass upon their credibility. The rationale for this principle was reiterated in *People of the Philippines vs. Urban Salcedo Abdurahman, et., al.*[13],

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"As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case."

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Hence, absent any substantial and glaring factual oversight by the trial court, which would warrant a departure therefrom, the findings and conclusions of the trial court are entitled to the highest degree of respect, if not finality. Here, we find no cogent reason to disturb the RTC's findings of fact and evaluation of the witnesses'

credibility.

The RTC was correct in giving weight to the testimony of Rolando Licupa who witnessed the shooting incident. He testified in a candid and straightforward manner and the cross-examination conducted by the defense failed to debunk his coherent narration of events leading to the death of Roger Arquero. He positively identified the man who killed Roger Arquero as Roberto Bernado. His testimony to that effect went as follows:

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Testimony of Rolando Licupa:

“Q:

When you reached the ricefield of Rolando Arquero, what happened?

A:

While we were walking, my brother-in-law going to the other side of the paddy when Robertpo Bernardo suddenly appeared from the hilly portion of the farm and shot Rolando Arquero, sir.

Q:

How far was the accused Roberto Bernardo from the victim Rolando Arquero when he was shot.

Interpreter: (Witness is pointing to a distance to where he was seated up to the place of Roberto Bernardo which is about 4 to 5 meters.)

Q: And how far were you from the victim Rolando Arquero?

A: More or less two (2) meters, sir.

Q:

What kind of gun was used by Roberto Bernardo in shooting Rolando Arquero?

A: Homemade shotgun, sir.

Q: And what was he wearing at that time?

A: He was wearing black jacket, sir.

Q: After Roberto Bernardo shot Rolando Arquero, what happened next?

A: He ran away, sir.”[14]

He also prepared a sketch to identify the relative location of the house of Pedro Arquero and the ricefield of the victim, the hilly portion where the accused appeared and the spot where Dionisio Evangelista appeared.[15]

Mercilyn Arquero[16] and Raymundo Arquero[17], wife and brother of the victim, respectively, consistently testified that prior to the death of the victim, he told them that Roberto Bernardo shot him.

Roger Arquero was still alive after the shooting incident. He was able to confide the name of his assailant to Raymundo Arquero at the time he reached his father's house and to Mercilyn Arquero at the hospital. Rule 130, Section 37 of the Rules of Court, provides,

“Section 37. Dying declaration. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (31a)”

Jesus Geraldo and Amado Ariate vs. People of the Philippines[18], stated that,

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“A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.”

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The statement Roger Arquero made to his brother Raymundo Arquero and to his wife Mercilyn Arquero has complied with the requisites of a dying declaration. It is important to note that Roger Arquero, after being shot by accused-appellant, was brought home first and then to the hospital second, where he told Raymundo and Mercilyn that it was accused-appellant who had shot him. Clearly, the statement made was an expression of the cause and the surrounding circumstances of his death, and under the consciousness of impending death. There being nothing in the records to show that Roger Arquero was incompetent, he would have been competent to testify had he survived.

The accused-appellant's sole assigned error is that the physical evidence of 9 gunshot wounds is inconsistent with the testimony of prosecution witnesses that accused-appellant fired only one gunshot. The argument deserves scant consideration. It was established that the weapon used in the killing of Roger Arquero was a handmade shot gun. A shotgun is a firearm that uses the energy of a fixed shell to fire a number of small spherical pellets called shot. The shot pellets from a shotgun spread upon leaving the barrel, and the power of the burning charge is divided among the pellets. Hence, a single fire from a shot gun releases multiple pellets resulting to multiple gun shot wounds. In this case, the nine (9) pellets fired from a single shell of shot gun resulted in nine (9) gunshot wounds.

The qualifying circumstance of treachery attended the commission of the crime. Treachery is defined under paragraph 16, Article 14[19] of the Revised Penal Code. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by

him.[20] The “essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.”

The accused-appellant’s act of hiding behind the hilly portion of the ricefield and the suddenness of the attack constituted the qualifying circumstance of treachery. Here, accused-appellant surprised Roger Arquero when he suddenly and swiftly shot him with a handmade shotgun at his lower abdomen. The swift turn of events left Roger Arquero defenseless to protect himself, allowing accused-appellant to commit the crime without risk to his own person. Evidently, the means employed by accused-appellant assured himself of no risk at all arising from the defense which the victim might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. Without a doubt, treachery attended the killing.

As alleged in the Information[21], the killing was perpetrated with the use of an illegally possessed firearm. With the passage of RA 8294 on June 6, 1997[22], the use of unlicensed firearm in murder or homicide is not a separate crime but merely a special aggravating circumstance. After having been sufficiently proved by way of a Certification dated April 7, 2009[23] that the accused-appellant was not a licensed gun holder, an aggravating circumstance shall be appreciated against him pursuant to the above-mentioned law, which provides in part that “if homicide or murder is committed with the use of unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.”

The crime committed by the accused-appellant is murder qualified by treachery penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with reclusion perpetua to death. The proven use of an unlicensed firearm adds an aggravating circumstance to the crime pursuant to Republic Act No. 8294 and its established jurisprudence. Consequently, Article 63(1)[24] of the Revised Penal Code warranted the imposition of death penalty. However, we cannot impose the death penalty in light of the fact that Republic Act No. 9346 entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines” was signed into law on June 24, 2006. Section 2[25] of this law mandates that in lieu of the death penalty, reclusion perpetua must be imposed with no eligibility for parole under the Indeterminate Sentence Law.

We affirm the award of damages. It is a settled rule that that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[26]

The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the accused-appellant’s responsibility therefor. Prevailing jurisprudence[27] dictates an award of P75,000.00 to be paid by the accused- appellant to the heirs of Roger Arquero.

The RTC was correct in not awarding actual damages. The barren testimony of the widow in the absence of receipts to prove that the family of the deceased incurred funeral and incidental expenses is not sufficient to support this claim. However, under Art. 2224[28] of the Civil Code, temperate damages may be awarded as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Therefore, we sustain the award of the RTC of P25,000.00 for temperate damages.

We likewise affirm, pursuant to Articles 2216[29], 2217[30] and 2219[31] of the Civil Code, the RTC’s award of moral damages in light of the mental anguish that the widow of Roger Arquero suffered. Lastly, we similarly affirm the award of exemplary damages under Article 2230[32] of the Civil Code given the presence of the aggravating circumstance of use of an unlicensed firearm.

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages

interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Decision dated May 24, 2010 of the Regional Trial Court of Tuguegarao City, Branch 3 in Criminal Case No. 8905 is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulawahid, H. S., Chairperson, and Barza, R.F., JJ., concur.

[1] Record for Criminal Case No. 8905, p. 18.

[2] Record for Criminal Case No. 8905, p. 33.

[3] Record for Criminal Case No. 8905, p. 56.

[4] TSN dated July 22, 2005, p. 11.

[5] Pedro Arquero is the father of Roger Arquero, father-in-law of Rolando Licupa, TSN dated July 22, 2005, p. 10.

[6] TSN dated July 22, 2005, pp. 5-12.

[7] TSN dated July 22, 2005, p. 10.

[8] TSN dated July 22, 2005, p. 9.

[9] TSN dated July 22, 2005, p. 6.

[10] TSN dated July 22, 2005, p. 4-5.

[11] TSN dated July 31, 2009., pp. 1-23.

[12] Record for Criminal Case No. 8905, p. 373.

[13] GR No. 186523, June 22, 2011.

[14] TSN dated July 22, 2005, pp. 5-6.

[15] TSN dated July 22, 2005, pp. 8-9.

[16] See TSN dated July 11, 2007, pp. 6-7

[17] See TSN dated November 22, 2006, p. 6.

[18] G.R. No. 178608, November 20, 2008.

[19] Article 14, paragraph 16 of the Revised Penal Code states, “ That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.”

[20] People of the Philippines vs. Rogelio Dolorido y Estrada, G.R. No. 191721, January 12, 2011.

[21] Record for Criminal Case No. 8905, p. 18.

[22] “AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES."

[23] Record for Criminal Case No. 8905, p. 281.

[24] Article 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

[25] SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[26] People of the Philippines vs. Samuel Anod, G.R. No. 186420, August 25, 2009.

[27] People of the Philippines vs. Ramil Rarugal, G.R. No. 188603, January 16, 2013.

[28] Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

[29] Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

[30] Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[31] Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in Article 309;
- (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[32] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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