

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR MAT-AN Y ESCAD, ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

We review in this appeal the joint decision of the Regional Trial Court finding accused-appellant Oscar Mat-An y Escad guilty of the crimes of attempted homicide and murder.

The antecedents follow.

On April 8, 2009, at around 11:00 a.m., Oscar who just had a drinking session with his friend[1] entered the store of his mother-in-law Minda Babsa-ay and confronted her about the money remittances of his wife Ruby who was working abroad.[2] At that time, Minda was carrying and putting to sleep her 18-month old granddaughter Anthonette Ewangan, so she told Oscar not to create trouble and to return once he is sober. Thereafter, their neighbor Norma Gulayan heard Minda shout for help.[3] Immediately, Norma went inside the store and saw Oscar stabbed Minda with a kitchen knife.[4] Norma then pulled Oscar outside and assisted Minda who was in a crouching position over Anthonette.[5] Soon their neighbors came and rushed the victims to the hospital.[6] Anthonette sustained a superficial stab wound at the nape and was admitted for further observation[7] while Minda died at the emergency room due to multiple stab wounds[8] on the chest resulting in massive blood loss.

On the same day, PO1 Jose Mana-ar, Jr. arrested Oscar.[9] Later, on the basis of complaint-affidavits,[10] two separate informations were filed against Oscar before the Regional Trial Court involving the attempted homicide[11] of Anthonette and the murder[12] of Minda qualified by evident premeditation and abuse of superior strength docketed as Criminal Case Nos. 29335-R and 29336-R, respectively.

Oscar denied the charges. He admitted that he was drunk and could no longer recall what transpired after a brief exchange of words with her mother-in-law.[13] When he came to his senses, he was already at the roadside waiting for a taxi to go to his work when the police authorities arrested him.[14]

In a Joint Decision dated September 4, 2012,[15] the RTC convicted Oscar of the crimes of attempted homicide and murder, viz:

WHEREFORE, in view of the foregoing disquisitions, the Court, finding the guilt of the accused beyond reasonable doubt of the crimes of MURDER and ATTEMPTED HOMICIDE, imposes upon the accused the following penalties:

1. Criminal Case No. 29335-R for Attempted Homicide – the Indeterminate Sentence of six (6) months of Arresto Mayor as the minimum penalty to six (6) years and one (1) day of Prision Correccional as the maximum penalty, to indemnify the private complainant the amount of P929.00 as actual and compensatory damages, P25,000.00 as moral damages and P10,000.00 as exemplary damages;
2. Criminal Case No. 29336-R for Murder – Reclusion Perpetua and to indemnify the heirs of Minda Babsa-ay the amounts of P83,763.00 as actual and compensatory damages, P50,000.00 as civil indemnity, P25,000.00 as

moral damages and P25,000.00 as exemplary damages.

x x x x

SO ORDERED.[16]

Hence, this appeal. Oscar reiterated his defense of denial and invoked the constitutional presumption of innocence. Assuming he perpetrated the crimes, Oscar claimed that the RTC erred in appreciating the qualifying circumstances of evident premeditation and abuse of superior strength and in not considering intoxication in his favor.[17]

We find no merit in this appeal.

Prefatorily, it bears emphasis that Norma was certain about the identity of the assailant and his presence at the crime scene. She was consistent throughout her testimonies that it was Oscar who stabbed Minda and Anthonette. Notably, Norma could not have been wrong in identifying the accused because she had known him for a long time. More importantly, Norma personally witnessed the incident since she was inside the store where the crimes happened. Corollarily, these categorical declarations of the prosecution witness prevail over the uncorroborated denial of the accused[18] which is a negative and self-serving evidence undeserving of weight in law.[19] Lastly, Norma had no motive to perjure against Oscar. She was not moved by any reason other than to see that justice is done. Time-tested is the doctrine that the trial court's finding on the credibility of a witness is entitled to great weight, sometimes even with finality.[20] An appellate court will not interfere with that assessment, absent any indication that the trial court has overlooked some material facts or gravely abused its discretion.[21] Based on these considerations, We find Norma's identification of Oscar as the author of the crimes to be positive and conclusive.

In Criminal Case No. 29336-R, however, We find merit in Oscar's assertion that the RTC erroneously appreciated evident premeditation in the killing of Minda. The requirements to prove this qualifying circumstance are the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[22] None of these requisites can be inferred from the facts of this case.

The records do not show the time when Oscar resolved to kill Minda. Thus, if the time when the accused decided to commit the crime cannot be established with certainty, then it cannot be inferred that he clung to his determination to kill the victim.[23] Likewise, the lapse of time cannot be determined to prove that the commission of the crime was the result of meditation, calculation, reflection, or persistent attempt.[24] Here, the RTC cited instances when Oscar was drunk and threatened to kill Minda. It also surmised that Oscar was already carrying a knife when he entered the store. Nonetheless, these do not necessarily prove evident premeditation without showing that the accused performed acts manifestly indicating that he clung to his determination. Oscar's threat, unsupported by other evidence which would disclose his true criminal state of mind, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation.[25] Similarly, assuming Oscar was already armed with a knife when he confronted Minda, it was not shown that he intended to use it for the purpose of committing the crime. Settled is the rule that premeditation to kill must be plain and notorious. In the absence of clear and positive evidence, mere presumptions and inferences, no matter how logical and probable, are insufficient to prove evident premeditation.[26]

Oscar also disputes the RTC's finding that he killed Minda with abuse of superior strength. At this point, We stress that there are no fixed and invariable rules regarding abuse of superiority since it depends upon the relative

strength of the aggressor vis-a-vis the victim which the former must have taken advantage of to insure the commission of the crime.[27] It necessitates a showing of the relative disparity in the physical characteristics of the aggressor and the victim such as age, gender, physical size and strength. In this case, the RTC aptly observed that an attack made by a man with a deadly weapon upon an unarmed and defenseless old woman constitutes the qualifying circumstance of abuse of superior strength.[28] The use of a bladed weapon even if already superior in physical strength in killing the victim is indicative of the accused's unmistakable intent of taking advantage of his superior strength.[29] Moreover, the heavy build and 5'10" height of Oscar are obviously superior than Minda who is only 4'11" and burdened by a child of tender age at the time of the incident.[30] The disparity was even manifested in the way the victim was mercilessly stabbed fracturing her ribs.[31] Clearly, the killing of Minda was qualified to murder by abuse of superior strength, a circumstance specifically pleaded in the information and proved beyond reasonable doubt.

As to Criminal Case No. 29335-R, We cannot hold Oscar criminally liable for attempted homicide because there is no evidence that he had the intent to kill Anthonette. The prosecution merely proved that the victim was injured without any circumstance to show the homicidal intent of the accused. We stress that the intent to kill should not be drawn in the absence of circumstances sufficient to prove this fact beyond reasonable doubt.[32] Thus, when such intent is lacking but wounds were inflicted, the crime may be serious, less serious or slight physical injury.[33] Here, the physician who treated Anthonette testified that the stab wound was considerably superficial, hence, not life-threatening since no vital organ was hit. Also, there was dearth of evidence that the wound sustained by the victim required medical attendance for more than nine days. Verily, the offense is only slight physical injury.[34] Although the information charged Oscar with attempted homicide, a finding of guilt for the lesser offense of slight physical injury may be made considering that the latter offense is necessarily included in the former, and since the essential ingredients of physical injury constitute and form part of those constituting the offense of homicide.[35]

In both cases, Oscar seeks to mitigate his liability alleging intoxication. This alternative circumstance shall be taken as a mitigating circumstance only if the same is not habitual or subsequent to the plan to commit the felony.[36] Here, Oscar's allegation that he blacked out and could not remember anything due to intoxication cannot be considered in his favor because the records show that he is a habitual drinker. Indeed, his own daughter testified that he used the money remittances of his wife in satisfying his vices like drinking and gambling. Further, he was always drunk whenever he would confront Minda why his wife stopped sending money to him.[37]

In sum, Oscar is guilty beyond reasonable doubt of the crimes of slight physical injury and murder. Under the Revised Penal Code,[38] the penalty for slight physical injury is *arresto menor*. There being no mitigating or aggravating circumstance present in the commission of the crime, the penalty shall be in its medium period or twenty (20) days of *arresto menor*. With regard to the civil liability, the RTC properly awarded actual damages duly substantiated with receipts in the amount of P929.00.[39] However, We reduce the grant of moral damages to P5,000.00 in accordance with settled jurisprudence[40] and delete the award of exemplary damages absent any showing of highly reprehensible conduct or aberrant behavior of the offender.[41]

On the other hand, under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. The two penalties being indivisible, the RTC properly imposed the lesser penalty of *reclusion perpetua*[42] absent any modifying circumstance. Anent the award of damages, the RTC correctly ordered Oscar to pay the heirs of the victim of actual damages in the amount of P83,763.00[43] supported with sufficient receipts.[44] Nonetheless, We modify the amounts of civil indemnity to P75,000.00, moral damages to P50,000.00 and exemplary damages to P30,000.00 pursuant to prevailing jurisprudence.[45]

In both cases, the RTC failed to impose interest on damages. Consistent with existing jurisprudence, all damages

awarded shall earn interest at the rate of 6% per annum from date of finality of the judgment until fully paid.[46]

FOR THESE REASONS, the September 4, 2012 Decision of the Regional Trial Court of Baguio City, Branch 59, is AFFIRMED with the following MODIFICATIONS:

- In Criminal Case No. 29335-R, accused-appellant OSCAR MAT-AN Y ESCAD is found GUILTY of SLIGHT PHYSICAL INJURY and is meted a straight penalty of twenty (20) days of arresto menor, and further ORDERED to pay the victim the amounts of P929.00 as actual damages and P5,000.00 as moral damages, which shall earn interest at the rate of 6% per annum from date of finality of the judgment until fully paid.

- In Criminal Case No. 29336-R, accused-appellant OSCAR MAT-AN Y ESCAD is found GUILTY of MURDER and is sentenced to serve the penalty of reclusion perpetua, and further ORDERED to pay the heirs of the victim the amounts of P83,763.00 as actual damages, P75,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages, which shall earn interest at the rate of 6% per annum from date of finality of the judgment until fully paid.

SO ORDERED.

Reyes, J.C., JR., (Chairperson) and Inting, JJ., concur.

[1] TSN dated April 16, 2012, pp. 3-4.

[2] TSN dated June 15, 2011, p. 9.

[3] Id., pp. 7-8.

[4] Id., pp. 10-11.

[5] Id., pp. 12-14.

[6] Id., p. 15.

[7] TSN dated June 21, 2011, pp. 4-5.

[8] Id., pp. 5-7. See also records of Criminal Case No. 29336-R, p. 13, Medico-legal Certificate.

[9] TSN dated October 25, 2011, pp. 4-8. See also records of Criminal Case No. 29336-R, p. 12, Booking Sheet and Arrest Report.

[10] Records, Criminal Case No. 29335-R and Criminal Case No. 29336-R, pp. 6-11.

[11] Records, Criminal Case No. 29335-R, p. 1.

[12] Id, Criminal Case No. 29336-R, p. 1.

[13] TSN dated April 16, 2012, p. 5; May 7, 2012, p. 6.

[14] Id., pp. 6-7.

[15] Rollo, pp. 45-72.

[16] Id., pp. 71-72.

[17] Id., pp. 28-43.

[18] See *People v. San Juan*, 270 SCRA 693 (1997); *People v. Bundang*, 272 SCRA 641 (1997); *People v. Enciso*, 223 SCRA 675 (1993); *People v. Pidia*, 249 SCRA 687 (1995); and *People v. De Guzman*, 265 SCRA 228 (1996).

[19] See *People v. Gayon*, 269 SCRA 587 (1997); and *Caca v. Court of Appeals*, 275 SCRA 123 (1997).

[20] See *People v. Sagun*, February 19, 1999, 303 SCRA 382; and *People v. Villanueva*, January 29, 1999, 302 SCRA 380.

[21] See *People v. Gado*, 358 Phil. 956 (1998).

[22] See *People v. Base*, 329 SCRA 158 (2000); *People v. Espina*, G.R. No. 123102, February 29, 2000; *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999); and *People v. Realin*, 301 SCRA 495 (1999).

[23] See *People v. Dadivo*, G.R. No. 143765, July 30, 2002.

[24] See *People v. Eribal*, 305 SCRA 341 (1999).

[25] *Rabor v. People*, G.R. No. 140344, August 18, 2000, citing *People v. Fuentesuela*, 73 Phil. 553 (1942).

[26] See *People v. Chua*, 297 SCRA 229 (1998); and *People v. Timblor*, 285 SCRA 64 (1998).

[27] See *People v. Loreto*, G.R. No. 137411-13, February 28, 2003.

[28] See *U.S. v. Camiloy*, 36 Phil. 757; *U.S. v. Consuelo*, 13 Phil. 612; and *People v. Quesada*, 62 Phil. 446.

[29] *People v. Loreto*, *supra*.

[30] *Rollo*, p. 69.

[31] *Id.*, pp. 53-54.

[32] See *People v. Villacorta*, G.R. No. 186412, September 7, 2011, citing *People v. Pagador*, 409 Phil. 338 (2001).

[33] See *Palaganas v. People*, G.R. No. 165483, September 12, 2006; and *People v. Loreto*, G.R. No. 137411-13, February 28, 2003.

[34] See *People v. Villacorta*, *supra*, citing *Li v. People*, 471 Phil. 128 (2004).

[35] *Mupas v. People*, G.R. No. 172834, February 6, 2008, citing *People v. Vicente*, 423 Phil. 1065 (2001).

[36] Revised Penal Code, Article 15. See also *People v. Bato*, 348 SCRA 253 (2000).

[37] TSN dated November 9, 2011, pp. 6-8.

[38] Revised Penal Code, Article 266(1).

[39] Records, Criminal Case No. 29335-R, pp. 81-85.

[40] See *People v. Loreto*, *supra*.

[41] See *People v. Dalisay*, G.R. No. 188106; November 25, 2009; and *People v. Combate*, G.R. No. 189301, December 15, 2010.

[42] Article 63(2), Revised Penal Code. See also *People v. Macoy*, 338 SCRA 217 (2000); and *People v. Bautista*, 312 SCRA 475 (2000).

[43] Records, Criminal Case No. 29335-R, pp. 79-80.

[44] Records, p. 157.

[45] See *People v. Alinao*, G.R. No. 191256, September 18, 2013; *People v. Roman*, G.R. No. 198110, July 31, 2013; *People v. Ramos*, G.R. No. 190340, July 24, 2013; *Avelino v. People*, G.R. No. 181444, July 17, 2013; *People v. Corpuz*, G.R. No. 191068, July 17, 2013; *People v. Hatsero*, G.R. No. 192179, July 3, 2013; *People v. Vergara*, G.R. No. 177763, July 3, 2013; *People v. Credo*, G.R. No. 197360, July 3, 2013; and *People v. Jalbonian*, G.R. No. 180281, July 01, 2013.

[46] *Ibid.*

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