

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIMOTEO AMOGUIS Y AMPARADO, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

The Case

This is an Appeal[1] from the Decision[2] dated June 18, 2013 of the Regional Trial Court, Branch 50, Loay, Bohol in Criminal Case No. 1146 for Murder.

The Facts

In an Information[3] dated December 6, 2006, accused-appellant Timoteo Amoguis was charged with the crime of Murder, allegedly committed as follows:

“That on or about the 4[th] day of December 2006, in the Municipality of Guindulman, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with abuse of and/or taking advantage of superior strength and with treachery, did then and there wilfully, unlawfully and feloniously attack and stab one ISIDRO CASTULO with the use of a hunting knife hitting his stomach which caused his death, without affording the latter an opportunity to defend himself, who was inside his house, unarmed, defenseless and did not expect the impending attack against his person, thereby the above-named accused succeeded in employing means, methods or forms in the execution thereof which tends directly and specially to insure the commission of the crime of murder, to the damage and prejudice of the heirs of the victim in the amount to be proved during the trial.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended by R.A. 7659.”

Upon arraignment[4] on September 27, 2007, the accused-appellant pleaded not guilty of the crime charged.

Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The first prosecution witness Sofia Ampado testified[5] that on December 4, 2006, around 3:00 o'clock in the afternoon, while she was fetching water, she saw the accused-appellant enter the house of her father. Later on, when the accused-appellant went out of the said house, he was already bringing with him a blooded knife.

Sofia Ampado immediately rushed inside the house through the kitchen and saw her brother, the victim Isidro Castulo pressing his stomach. She asked the victim who his assailant was, and the latter replied that it was the accused-appellant, Timoteo Amoguis. She then saw the victim died.

The second prosecution witness Antonio Amoguis alleged[6] that he was a neighbor of the accused-appellant and was in his house on December 4, 2006, when around 3:30 in the afternoon, the accused-appellant asked for his assistance, since he wanted to surrender himself to the authorities. Antonio Amoguis then accompanied the accused-appellant to the house of Veronico Peligrino, then to the police station. At the station, accused-appellant

surrendered himself and the knife he used to stab the victim.

The third prosecution witness Veronico Peligrino narrated[7] that on December 4, 2006, the accused-appellant and Antonio Amoguis went to his house. He accompanied the two to the police station as the accused-appellant Timoteo Amoguis wanted to surrender for killing Isidro Castulo.

The fourth witness for the prosecution P/Insp. Ernesto Abueva alleged[8] that he was the one who issued a Certification as to the Police Blotter Entry.

The fifth and the rebuttal witness for the prosecution SPO2 Julius Janiola testified[9] that while he was on duty on December 4, 2006, a barangay tanod reported a stabbing incident that happened in barangay Basdio. He was then tasked to proceed to the crime scene, where he saw the lifeless body of the victim. There was also blood scattered on the part of the sala, near the kitchen. However, no blood was seen outside the house.

Evidence for the Defense

The defense presented the accused-appellant himself, who testified[10] that on December 4, 2006, he went to his banana plantation to gather young banana trees for his pigs. While doing so, he noticed the victim Isidro Castulo approaching him in a staggered manner. Without saying any word, the victim suddenly boxed him, consequently he fell down. When he was able to stand up, he stabbed the latter.

Accused-appellant then sought the help of Antonio Amoguis and Veronico Peligrino for his surrender to the authorities. He then immediately surrendered to the police and handed over the knife which he used to kill the victim.

The Ruling of the Regional Trial Court

In a Decision[11] dated June 18, 2013, the Regional Trial Court, Branch 50, Loay, Bohol found the accused-appellant guilty beyond reasonable doubt of the crime charged. The trial court however appreciated the mitigating circumstance of voluntary surrender in favor of the accused-appellant. The dispositive portion of the ruling reads:

“Premises considered, the court hereby finds accused Timoteo Amoguis y Amparado guilty beyond reasonable doubt of the offense of murder. In view of the mitigating circumstance, the imposable penalty is reclusion perpetua. Be that as it may, because of the latter penalty, the Indeterminate Sentence Law is inapplicable (People vs. Solangon, G.R. No. 172693, Nov. 21, 2007).

In accordance with existing jurisprudence, the accused is further ordered to indemnify the heirs of the victim P50,000 as death indemnify, and P50,000 as moral damages. No pronouncement as to actual damages as the prosecution did not present evidence to support any.

SO ORDERED.”[12]

Aggrieved with the decision, the accused-appellant interposed this appeal raising the sole issue, to wit:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.

The Ruling of this Court

The appeal is partly meritorious.

Indeed, the qualifying circumstances of treachery and abuse of superior strength cannot be appreciated against the accused-appellant. Therefore, he should only be convicted for the lesser offense of homicide, not murder.

[It] has been consistently held by (the Supreme) Court that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various indicia available but not reflected in the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth.[13]

For a person to be convicted of the offense of murder, the prosecution must prove that: (1) the offender killed the victim; and (2) that the killing was committed with any of the attendant circumstances under Art. 248 of the RPC, such as treachery. Particularly, *People v. Leozar Dela Cruz* enumerates the elements of murder, thus:

- That a person was killed.
- That the accused killed him.
- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.
- The killing is not parricide or infanticide.[14]

In the case at bench, there is no doubt that the first, second and fourth elements of the crime were present. The victim Isidro Castulo died due to the stab wound inflicted by the accused-appellant. The Certificate of Death[15] would show that the victim's cause of death was through hypovolemic shock due to a stab wound at the right epigastric area. More importantly, the records would also readily reveal that accused-appellant admitted the killing, but claimed that he did such an act because the victim assaulted him first. It was also neither a crime of parricide or infanticide.

However, as to the third element, which qualifies the crime to murder, Our view differs with that of the trial court.

To begin with, We find no reason to sustain the allegation of treachery as nothing in the records would convincingly prove the claim that the victim was asleep when he was stabbed by the accused-appellant. The testimony of the prosecution witness Sofia Ampado only showed that she saw the accused-appellant enter the house and afterwards, exited it with a blooded knife in his possession. Moreover, her testimony only states that she saw the victim pressing his stomach and later on, informed her the identity of his assailant.

Meanwhile, the testimony of the rebuttal witness SPO2 Julius Janiola depicts that he acquired his information from the other witnesses, particularly from the barangay tanod. These testimonies do not in any way convince Us that the victim was indeed asleep when he was stabbed by the accused-appellant. Evidently, it is beyond cavil that the prosecution miserably failed to establish the presence of treachery as none of their witnesses had personal knowledge of the circumstances before and during the stabbing incident.

There is therefore no proof that the victim had no opportunity to defend himself or to retaliate. Nor is there any evidence to show that the victim was unarmed. Even assuming *arguendo* that the attack (was) sudden, there is no evidence that the means of execution was deliberately adopted.[16]

In *People v. Latag*,[17] the Supreme Court aptly discussed treachery and the instances where it could be properly appreciated as an aggravating circumstance, viz:

We believe that, contrary to the trial court's finding, the prosecution failed to prove that treachery had attended the killing. For treachery to be present, it must be proven 1) that the means, methods or forms of execution gave the person attacked no opportunity for self-defense or retaliation; and 2) that these were deliberately and consciously adopted without danger to the attacker.[18]

In the present case, we find nothing in the records that shows the exact manner of the killing. Though Atienza turned around immediately after hearing a gunshot, he could not, and in fact did not, testify as to how the attack had been initiated. The fact that appellant was standing behind some shrubs when he shot the victim does not by itself sufficiently establish that the method of execution gave the latter no opportunity for self-defense. Nor was the attack deliberately and consciously adopted by the former without danger to himself.

Treachery cannot be presumed where the lone witness has not actually seen the commencement of the attack, as we held in *People v. Narit*:^[19]

"x x x. [Treachery] cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. For, as held in *U.S. vs. Perdon* where no particulars are known as to the manner in which aggression was made or how the act which resulted in the death of the victim began and developed, it can in no way be established from mere suppositions, drawn from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery. Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault."^[20]

Likewise, treachery must be as unequivocally proven as the crime itself, as we ruled in *People v. Rapanut*:^[21]

"x x x. We think, however, that the trial court erred in finding that the killing of Amado Somera was attended by treachery. Nobody witnessed the commencement of the attack. The prosecution witness Maximo Manuel said he saw the accused-appellants after the shooting. It was precisely because of the gun reports which he heard which attracted his attention. Circumstances which qualify criminal responsibility cannot rest on mere conjecture, no matter how reasonable or probable but must be based on facts of unquestionable existence. The rule is that such circumstances must be proved as indubitably as the crime itself. Therefore, as in this case, where the lone eyewitness did not see how the attack was carried out and he can not testify on how it began, the trial court cannot merely surmise from the circumstances of the case that treachery attended the commission of the crime."^[22]

Likewise, abuse of superior strength was not established, as the prosecution failed to prove that there exists a disparity in size, age and strength between the parties. Succinctly, the ruling elucidated in *People v. Beduya*^[23] proves instructive, as follows:

"Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime."^[24] "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim."^[25] The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.^[26] "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."^[27] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.^[28] (emphasis supplied)

Hence, (a)bsent any qualifying circumstance, the crime committed is not murder, but homicide.^[29]

Anent thereto, We agree with the trial court that the mitigating circumstance of voluntary surrender should be appreciated in favor of the accused-appellant. However, as to the alternative circumstance of intoxication, We cannot consider the same in favor of the accused-appellant, as it failed to meet the requisites for it to be treated as mitigating, pursuant to the ruling laid down in *People v. Mondigo*,^[30] thus:

The trial court erred in crediting appellant with the circumstance of intoxication as having mitigated his crimes because "the stabbing incident ensued in the course of a drinking spree."^[31] For the alternative circumstance of intoxication^[32] to be treated as a mitigating circumstance, the defense must show that the intoxication is not habitual, not subsequent to a plan to commit a felony and the accused's drunkenness affected his mental

faculties.[33] Here, the only proof on record on this matter is appellant's testimony that before Damaso, Anthony, and Delfin attacked him, he drank "about 3 to 4 bottles of beer." [34] The low alcohol content of beer, the quantity of such liquor appellant imbibed, and the absence of any independent proof that appellant's alcohol intake affected his mental faculties all negate the finding that appellant was intoxicated enough at the time he committed the crimes to mitigate his liability.

Correct Penalty

In arriving at the proper penalty, We take guidance in the ruling of *People v. Aquino*, [35] where the crime of murder was downgraded to homicide with the mitigating circumstance of voluntary surrender appreciated in favor of the accused, as follows:

Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. However, as the trial court found, the appellant voluntarily surrendered to Barangay Captain Conrado Cruz the day after the crime was committed. To be entitled to the mitigating circumstance of voluntary surrender, the same must be shown to have been spontaneous and made in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense that will be incurred in his search and capture. [36]

The surrender of the appellant to Barangay Captain Conrado Cruz was reflective of such intent. Thus, the trial court correctly appreciated the mitigating circumstance in his favor. Since the appellant is entitled to such mitigating circumstance of voluntary surrender, and there is no aggravating circumstance to offset it, the maximum of the penalty should be imposed in its minimum period, pursuant to Article 64(1) of the Revised Penal Code. Applying the Indeterminate Sentence Law, the appellant may, thus, be sentenced to an indeterminate penalty, the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, which is prision mayor, and the maximum of which should be within the range of reclusion temporal in its minimum period. Thus, the appellant may be sentenced to suffer an indeterminate penalty of from six (6) years and one (1) day of prision mayor in its minimum period, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as maximum. [37] (emphasis supplied)

Award of Damages

Now, as to the award of damages and considering the factual milieu of the case, We agree with the lower court that the award for civil or death indemnity should be P50,000.00 and for moral damages should also be P50,000.00. This is consistent with the principles laid down in a number of jurisprudence, as in the case of *People v. Lagman*, [38] to wit:

The CA affirmed the award of PhP 50,000 as civil indemnity in Criminal Case No. 02-200106 and PhP 25,000 as temperate damages in Criminal Case No. 02-200106.

People v. Combate reiterated the rule on civil indemnity and damages:

When death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In *People v. Tubongbanua*, interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases such as *Mendoza v. People*, *People v. Buban*, *People v. Guevarra*, and *People v. Regalario*. Thus, we likewise adopt this rule in the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all damages, i.e., actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

Moreover, considering that no actual damages can be awarded to the heirs of the victim, since no receipts were

submitted to substantiate the same, in lieu thereof, We award temperate damages in the amount of P25,000.00, as held in *People v. Gidoc*,^[39] to wit:

The award of P25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.^[40] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although the exact amount was not proved.^[41] Thus, this Court awards P25,000.00 as temperate damages for each count of murder.

WHEREFORE, the appealed Decision dated June 18, 2013 of the Regional Trial Court of Bohol, Branch 50, Loay, Bohol is hereby MODIFIED. This Court finds accused-appellant Timoteo Amoguis y Amparado GUILTY beyond reasonable doubt of Homicide. However, the mitigating circumstance of voluntary surrender is appreciated in favor of the accused-appellant, thus he is SENTENCED to an indeterminate penalty of from six (6) years and one (1) day of prision mayor in its minimum period, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as maximum. The awards for death or civil indemnity and moral damages are AFFIRMED.

Accused-appellant is further ORDERED to pay the heirs of the victim Isidro Castulo the amount of P25,000.00 as temperate damages, and six percent (6%) interest per annum should be imposed on all the awards of damages from the date of finality of judgment until fully paid.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 39-59.

[2] Rollo, pp. 21-34, 52-58; Records, pp. 160-166.

[3] Rollo, pp. 17-18, 18-20; records, pp.8-9.

[4] Refer to the Certificate of Arraignment, records, p. 31.

[5] See TSN dated November 20, 2008, pp. 1-15.

[6] See TSN dated February 26, 2009, pp. 1-11.

[7] See TSN dated May 21, 2009, pp. 1-12.

[8] See TSN dated May 27, 2010, pp. 1-7.

[9] See TSN dated October 25, 2012, pp. 1-9.

[10] See TSN dated April 14, 2011, pp. 1-9.

[11] Rollo, pp. 21-34, 52-58; Records, pp. 160-166.

[12] Rollo, p. 34, 58; records, p. 166.

[13] *Serrano v. People*, G.R. No. 175023, July 5, 2010, citing *People v. Lucena*, 408 Phil. 183 (2001).

[14] *People v. Gabrino*, G.R. No. 189981, March 9, 2011 citing *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

[15] Records, p. 6.

[16] *People v. Casingal*, G.R. No.132214, August 1, 2000, citing *People v. Geguira, et al.*, G.R. No. 130769, March 13, 2000.

[17] G.R. No. 153213, January 22, 2004.

[18] *People v. Latag*, G.R. No. 153213, January 22, 2004, citing *People v. Bayotas*, 348 SCRA 627, December 19, 2000; *People v. Baltar, Jr.*, 347 SCRA 579, December 11, 2000; *People v. Caber, Sr.*, 346 SCRA 166, November 28, 2000.

[19] See *People v. Latag*, G.R. No. 153213, January 22, 2004, citing *People v. Narit*, 197 SCRA 334, May 23, 1991.

[20] *Id.*, p. 351, per Davide Jr., J. (now CJ).

[21] *People v. Latag*, G.R. No. 153213, January 22, 2004, citing 331 Phil. 820, October 24, 1996, per Mendoza, J.

[22] *Id.*, p. 836, per Mendoza, J.

[23] G.R. No. 175315, August 9, 2010.

[24] *People v. Beduya*, G.R. No. 175315, August 9, 2010, citing *People v. Daquipil*, 310 Phil. 327, 348 (1995).

[25] *People v. Beduya*, G.R. No. 175315, August 9, 2010, citing *People v. Casingal*, 312 Phil. 945, 956 (1995).

[26] *People v. Beduya*, G.R. No. 175315, August 9, 2010, citing *People v. Escoto*, 313 Phil. 785, 800-801 (1995).

[27] *People v. Beduya*, G.R. No. 175315, August 9, 2010, citing *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 410.

[28] *People v. Beduya*, G.R. No. 175315, August 9, 2010, citing *People v. Moka*, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 386.

[29] *People v. Aytalin*, G.R. No. 134138, June 21, 2001, citing *People v. Nemeria*, 242 SCRA 448, March 20, 1995; *People v. Ganzagan, Jr.*, 247 SCRA 220, August 11, 1995.

[30] G.R. No. 167954, January 31, 2008.

[31] *People v. Mondigo*, G.R. No. 167954, January 31, 2008. (citation omitted)

[32] *People v. Mondigo*, G.R. No. 167954, January 31, 2008, citing Article 15, Revised Penal Code.

[33] *People v. Mondigo*, G.R. No. 167954, January 31, 2008, citing I Reyes, *The Revised Penal Code* 465, 467 (14th ed.).

[34] *People v. Mondigo*, G.R. No. 167954, January 31, 2008. (citation omitted)

[35] G.R. No. 147220, June 9, 2004.

[36] *People v. Aquino*, G.R. No. 147220, June 9, 2004, citing *People v. Flores*, G.R. Nos. 143435-36, November 28, 2003.

[37] *People v. Aquino*, G.R. No. 147220, June 9, 2004, citing *People v. Eribal*, 305 SCRA 341 (1999).

[38] G.R. No. 197807, April 16, 2012.

[39] G.R. No. 185162, April 24, 2009.

[40] *People v. Gidoc*, G.R. No. 185162, April 24, 2009, citing *People v. Dacillo*, G.R. No. 149368, 14 April 2004,

427 SCRA 528, 538.

[41] *People v. Gidoc*, G.R. No. 185162, April 24, 2009, citing *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

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