

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAYMUND DERIQUITO AND JOHN BALASA, ACCUSED,

Ponente: CAMELLO, J.

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CAMELLO, J.:

On appeal is the Decision dated December 2, 2010[2] of the Regional Trial Court, 12th Judicial Region, Branch 19, Isulan, Sultan Kudarat in Criminal Case No. 3910, convicting accused-appellant Raymund Deriquito of Murder.

This case arose from a shooting incident on February 19, 2008 at Barangay Keytodac, Municipality of Lebak, Province of Sultan Kudarat. Arraignment was held on May 5, 2008. A fire broke out and razed the Hall of Justice in August of 2008. Records had to be reconstituted as a result.

The Reproduced Information dated April 8, 2009 reads:[3]

xxx

That on or about 9:45 o'clock on the evening of February 19, 2008, at Barangay Keytodac, Municipality of Lebak, Province of Sultan Kudarat, Philippines and within the jurisdiction of the Honorable Court, the said above-named accused conspiring, confederating, and helping one another, armed with a firearm, a .45 cal. Pistol, with treachery and evident premeditation, and with a decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot from behind, one JENIE DONATO, thereby inflicted upon the latter fatal gunshot wounds at the back of the victim which was the direct and immediate cause of death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines.

At arraignment on May 5, 2008, accused-appellant entered a plea of not guilty.[4]

After the plea, and in the course of the ensuing trial, the prosecution filed a motion dated March 9, 2010, to amend the reproduced Information, as follows:[5]

xxx

That on or about 9:45 o'clock on the evening of February 19, 2008, at Barangay Keytodac, Municipality of Lebak, Province of Sultan Kudarat, Philippines and within the jurisdiction of the Honorable Court, the said above-named accused conspiring, confederating, and helping one another, armed with a firearm, a .45 cal. Pistol, with treachery and evident premeditation, and with a decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot from behind, one JENIE DONATO, who being unwarned of the attack was not able to protect or defend himself and thereby inflicted upon the latter fatal gunshot wounds at the back of the victim which was the direct and immediate cause of death.

CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines.

Defense counsel filed an Opposition to the Motion to amend reproduced Information[6] on the ground that the

amendment can only be made upon leave of court considering that it is a substantial amendment, and that accused had already been arraigned.

On May 4, 2010,[7] the trial court issued an Order and granted the motion, with the following rationale:

xxx

An examination of the intended amendment of the reproduced Information asked by the prosecution, the court believes that the same is not a substantial one. The information already incorporates an allegation that the crime was committed with treachery. The prayed amendment would only explain and make it clear why there was such treachery in the commission of the crime. This would even afford the defense enough information as to how the crime was committed and for it to prepare necessary and appropriate evidence. This will also be in compliance with the provisions of the rules.

The Court then finds the motion as well taken and will not in any manner prejudice the rights of the accused.

Consequently, the motion is hereby granted and the attached amended reproduced information is hereby admitted.

SO ORDERED.

The facts of the case as summarized in the Peoples' brief:[8]

In the evening of February 19, 2008, the victim, Jenie Donato, was in the barangay plaza of Keytodak, Lebak, Sultan Kudarat watching the game at the hantakan. Without warning, appellant held a gun and pointed at Donato's back. Appellant then shot Donato twice, first on his left shoulder and second on his back. Donato leaned on the bench and took two to three steps before falling down.

Appellant tried to go near Donato. Prosecution witness Tito Gura tried to grab the gun from appellant but co-accused John Balasa wrestled it and thereafter pointed the gun at Gura. Appellant and Balasa then escaped.

Gura reported the incident to their barangay chairman, who called for police assistance. SPO2 Ruben Benson, PO1 Jesus Gabriel Cabanilla, SPO3 Macailing, PO Flores and PO3 De Guzman proceeded to the crime scene. On their way, they saw a motorcycle with appellant and Balasa riding on it. While the police officers were approaching them, appellant and Balasa stopped the motorcycle. Appellant then went to PO1 Cabanilla, raised his hands and identified himself as "Toto Deriquito."

Donato died of cardio-respiratory arrest secondary to intra-thoraco abdominal hemorrhage due to multiple gunshot wounds. Based on the post-mortem examination conducted on the body of Donato, the following were the injuries sustained:

Gunshot wound entrance left suprescapular area 1 cm/diameter positive powder burn, no exit wound.

Gunshot wound right paravertebral area level T10 1 cm/diameter positive powder burn exit wound 2 cm/diameter and umbilical area omentum partly seen.

Gunshot wound entrance 1 cm/diameter left subcostal mid clavicular wine level T10 positive powder burn no exit wound.

After trial, the trial court rendered Decision on December 2, 2010, the dispositive portion reads:

WHEREFORE, premises all considered, the court finds the evidence presented by the prosecution sufficient and convincing to sustain it in finding the accused guilty as he is charged.

Consequently, accused Raymund Deriquito is hereby found "GUILTY" beyond reasonable doubt of the crime of murder for having treacherously shot and killed, Jenie Donato.

Accordingly, he is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua. He is further ordered to pay the heirs of his deceased victim, Jenie Donato the amount of P75,000.00 as indemnity for his death; the amount of P50,000.00 as moral; the amount of P30,000.00 as exemplary damages; and the amount of P35,000.00 as reasonable actual expenses incurred during the wake and burial of the victim.

In view then of the conviction of the accused for the crime of murder as he is charged in this case, his petition for bail is hereby denied for lack of merit.

SO ORDERED.

Dissatisfied with the adverse judgment, the accused brings on appeal with the following assignment of errors:[9]

1. THE COURT A QUO ERRED IN THE RECONSTITUTION OF THIS CASE; and
2. THE COURT A QUO ERRED IN APPRECIATING TREACHERY AND NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

The core question to be resolved is whether the amendment of the reproduced Information, by way of the additional allegation who being unarmed of the attack, was not able to protect of defend himself is a substantial amendment.

Appellant posits the affirmative, claiming that the amendment, done in the reconstituted proceeding, prejudiced the rights of the accused.

We do not agree.

In *Teehankee, Jr. v. Madayag*, [10] the High Court differentiated substantial from formal amendments:

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. Thus, the following have been held to be merely formal amendments, viz.: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

The test as to whether an amendment is only of form and an accused is not prejudiced by such amendment is whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence which the accused might have would be equally applicable to the information in one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.[11]

In *People v. Valdez*, [12] the High Court held:

For [a] complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements

of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.

In *People v. Valdez* case the averments of the informations to the effect that the two accused “with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did xxx assault, attack and employ personal violence upon” the victims “by then and there shooting [them] with a gun, hitting [them]” on various parts of their bodies “which [were] the direct and immediate cause of [their] death[s]” did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations. Unlike in the present case, wherein in the reproduced Information the acts and circumstances constituting treachery as an attendant circumstance in murder were already present when it alleged that the accused feloniously attack, assault and shoot from behind, one Jenie Donato, thereby inflicting upon the latter fatal gunshots wounds at the back of the victim. There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.[13] Thus, the additional allegation of who being unarmed of the attack, was not able to protect or defend himself in the reproduced amended information not considered substantial because there was no real change in the recital of facts constituting the offense charged as alleged in the body of the Information, as the allegations of qualifying circumstances were already clearly embedded in the original reproduced Information.

In the case at bar, accused-appellant undoubtedly is charged as a principal in the killing of Jennie whom accused-appellant is alleged to have shot the victim from behind while co-accused Balasa wrestled and pointed the gun to witness Tito Gura after grabbing the gun from appellant Donato. The addition of the phrase, “who being unarmed of the attack, was not able to protect or defend himself” does not change the nature of appellant’s participation in the killing of Jenie.

That appellant shot the victim is an undisputed fact. Appellant claims in defense, though, that he shot the victim on the shoulder, which cancels out any treacherous intent.

We do not agree.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense, which the offended party might make. For treachery to be appreciated, two conditions must concur:

(1)

The employment of means, methods or manner of execution that would ensure the offender’s safety from any defense or retaliatory act on the part of the offended party; and

(2)

The offender's deliberate or conscious choice of means, method or manner of execution.[14]

The circumstances of the case at bar warrant a finding of treachery in the killing of Donato. As the prosecution witnesses, Tito Gura and Ryan Esparagoza, candidly recalled appellant shot the victim from behind and did not afford him any chance to defend himself.

As ruled in *People v. Villarico*,^[15] the attendance of treachery did not depend on the position of the victim at the time of the attack, for the essence of treachery was in the element of surprise the assailants purposely adopted to ensure that the victim would not be able to defend himself. Donato was preoccupied with watching the games at the peryahan. He was oblivious of people and events in his surroundings and was unaware of the impending assault against him when appellant shot him in the back.

Without a doubt, treachery, in all its elements, characterized the shooting. His assailant gunned Donato down while he was preoccupied watching the games at the peryahan. He was absolutely unaware when appellant purposely positioned himself at the back and shot him, and the latter was, for that reason, in no position at all to even attempt to defend himself or to repel the attack.

The essence of treachery lies in the suddenness of the attack that leaves the victim unable to defend himself, which ensures the commission of the offense.[16] It is the suddenness of the attack coupled with the inability of the victim to defend himself or to retaliate that brings about treachery; consequently, treachery may still be appreciated even if the victim was facing the assailant.[17] We, thus agree with the trial court when it appreciated the qualifying aggravating circumstance of treachery in the killing of Donato.

Another issue raised by the accused-appellant is whether accused-appellant is entitled to the mitigating circumstance of voluntary surrender. The defense argues that the trial court ignored the fact that he voluntarily surrendered, despite the testimony of the prosecution witnesses to this effect. The People as represented by the Office of the Solicitor General disagreed with the defense on the following rationale:[18]

In this case, there is insufficient evidence pointing to appellant's voluntary surrender to the authorities. Appellant did not present himself voluntarily to the police officers. Based on the testimony of SPO2 Benson, authorities were on their way to the crime scene when appellant saw them. At this moment, appellant stopped the motorcycle and went to PO1 Cabanilla with hands raised.

From this, it can be gathered that appellant did not voluntarily present himself to PO1 Cabanilla. He did not spontaneously take it upon himself to surrender. That appellant offered no resistance and went peacefully with the authorities does not support his voluntary surrender. Rather, he was left with no other option but to surrender, given the presence of PO1 Cabanilla and the other police officers. It also did not help appellant that he denied any participation in the killing of Donato. This is not indicative of repentance or feeling of guilt.

We agree with the Office of the Solicitor General.

In order that the mitigating circumstance of voluntary surrender may be credited to the accused, the following requisites should be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary, must be spontaneous, i.e., there must be an intent to submit oneself unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him.[19] Absent either of these reasons, and if the only reason for an accused's supposed surrender is to ensure his safety, his arrest being inevitable, the surrender is not spontaneous, and hence, not voluntary.[20]

In the case at bar, while Deriquito submitted himself to the authorities, it was only because SPO2 Benson, PO1

Cabanilla, SPO3 Macailing, PO Flores and PO3 de Guzman met him and Balasa when that team of police officers proceeded to the crime scene. And it was while the team was approaching appellant and Balasa that they stopped the motorcycle and appellant went to Cabanilla, raised his hands and identified himself as Toto Deriquito.[21] That there was then no warrant of arrest yet nor information against him is of no moment. The police investigation officers had to go to the crime scene when they met the accused. Interestingly, the prosecution witnesses testimonies that accused-appellant Deriquito went to Cabanilla with hands raised even finds contradiction in the testimony given by appellant that he was forced to go with them because the police officers cocked their guns and he was nervous during that time, and that during the investigation he denied that he was present during the time of the incident.[22] Thus, there is no clear showing whether or not he presented himself voluntarily to the responding persons in authority. Clearly, the act of the accused-appellant in surrendering to the authorities does not show that he intended to submit himself unconditionally to them, nor to save them from trouble and expenses for his capture. The fact alone that he did not resist but went peacefully with the police officers does not mean that he voluntarily surrendered.[23] Remorse or repentance for a recognized wrongdoing underlies voluntary surrender.[24] But here, appellant Deriquito flatly denied the wrongdoing. Lacking with the requisites, the mitigating circumstance of voluntary surrender cannot be appreciated in favor of Deriquito.

The penalty for Murder is reclusion perpetua to death. There being no mitigating or aggravating circumstance, the lesser of the two indivisible penalties should be imposed. Hence, the trial court correctly sentenced appellant to suffer the prison penalty of reclusion perpetua.

Regarding the civil liability of the accused-appellant, however, modification is in order. The trial court ordered accused Raymund Deriquito to pay the heirs of the victim Jenie Donato the sum of P35,000.00 as reasonable actual expenses incurred during the wake and burial expenses, P75,000.00 as death indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages. We rule that the P35,000.00 awarded by the trial court as reasonable actual expenses incurred during the wake and burial expenses should be deleted considering that there was no proof submitted by the prosecution that such amount was spent for the funeral of the victim. As held in *People v. Jakosalem*, [25] for actual damages to be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable as to its actual amount, such as receipts or other documents to support the claim. In place of actual damages, however, We see fit to award temperate damages in the amount of P25,000.00.[26] We also hold, consonant with current case law on murder, that an award of P75,000.00 as moral damages instead of P50,000.00, and P30,000.00 as exemplary damages[27] in as much as the qualifying circumstance of treachery may also be considered as an aggravating circumstance attended in the killing of Jenie Donato are warranted.

FOR THE REASONS STATED, the appealed Decision is AFFIRMED with the MODIFICATION that accused-convict Raymund Deriquito is ORDERED to pay the heirs of the victim P75,000.00 as death indemnity, P75,000.00 as moral damages, P25,000.00 as temperate damages and P30,000 as exemplary damages. Legal interest on these awards is also called for.

Legal interest of 6% per annum from the commission of the crime up to the finality of judgment, and interest at the rate of 6% per annum from such finality of judgment until full payment will be imposed on all these monetary awards.²⁸ No costs.

SO ORDERED.

Inting and Perez, JJ., concur.

- [1] At large.
- [2] Record, pp. 570-594; Penned by Acting Presiding Judge Roberto L. Ayco [SC-Administrative Order No. 168-2009].
- [3] Record, p. 3, dated April 8, 2009.
- [4] Record, p. 44, Order dated May 5, 2008.
- [5] Record, pp. 466-467, Amended Reproduced Information dated March 9, 2010.
- [6] Record, pp. 469-470.
- [7] Record, pp. 481-482.
- [8] Rollo, pp.76-78, People's brief.
- [9] Rollo, p. 36, Appellant's brief.
- [10] G.R. No. 103102, 207 SCRA 134 [1992].
- [11] People v. Degamo, 402 SCRA 133 [2003].
- [12] G.R. No. 175602, January 18, 2012.
- [13] People v. Villanueva, 225 SCRA 353 (1993).
- [14] People v. Bohol, G.R. No. 178198 December 10, 2008.
- [15] G.R. No. 158362, April 04, 2011, citing People v. Valdez G.R. No. 127663, March 11, 1999.
- [16] People v. Sanchez, G.R. No. 188610, June 29, 2010.
- [17] People v. Aguilar, 88 Phil 693 (1951).
- [18] Rollo, p. 85, Appellee's brief, p. 12.
- [19] People v. Lee, 204 SCRA 900, 911 [1991].
- [20] Id.
- [21] RTC Decision, p. 11.
- [22] TSN of Raymund Deriquito dated June 8, 2010, p. 9.
- [23] People v. Camahalan, 241 SCRA 558 [1995].
- [24] People v. Marasigan, 70 Phil. 583 [1940].
- [25] 378 SCRA 254 [2002].**
- [26] People v. del Castillo, GR. No. 169084, January 18, 2012.
- [27] Ibid.
- [28] Nacar v. Gallery Frames, GR No. 189871, August 13, 2013.

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