

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GALILEE ROCERO Y TASOY, ACCUSED-APPELLANT.

Ponente: ROMILLA-LONTOK, J.

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ROMILLA-LONTOK, J.:

On appeal before this court is the decision of Branch 18, Regional Trial Court of Manila, National Capital Judicial Region, in Criminal Case No. 02-202224, the dispositive portion of which reads, to wit:

“WHEREFORE, viewed from the above observations and findings, herein accused Galilee Rocero y Tasoy is found guilty of the offense charged in the information (murder) qualified by treachery, defined and punished under Article 248 of the Revised Penal Code in relation to Section 6 of R.A. 7659 and Article 63 of the Revised Penal Code without any mitigating nor aggravating circumstance attendant to its commission without granting the accused the benefit of the indeterminate sentence law, accused Galilee Rocero y Tasoy is hereby sentenced to suffer the penalty of Reclusion Perpetua. He shall be credited with the full extent of his preventive imprisonment under Article 29 of the Revised Penal Code. His body is hereby committed to the custody of the Director of the Bureau of Correction, National Penitentiary, Muntinlupa City thru the City Jail Warden of Manila.

The accused is hereby ordered to indemnify the heirs of the victim the sum of P50,000.00 representing death indemnity plus the sum of P60,960.00 for burial expenses.

No civil liability for lost income is hereby pronounced there being no claim and proof of the same.

SO ORDERED.”

An Information dated May 9, 2002 was filed which charged accused Galilee Rocero y Tasoy alias Bambo of the crime of Murder committed as follows:

“That on or about May 5, 2002, in the City of Manila, Philippines, the said accused, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault, and use personal violence upon the person of one Ruben Baclayo Jr. y Colinares @ Junjun, by then and there shooting the latter with a homemade shotgun (SUMPAK), hitting him on his head, thereby inflicting upon said Ruben Baclayo Jr. y Colinares @ Junjun gun shot wound which was the direct and immediate cause of his death hereafter.”

CONTRARY TO LAW.”

Accused pleaded not guilty when arraigned.

Pre-trial was conducted on November 6, 2002.

The fact of death of Ruben Baclayo, Jr. and the identity of the accused were admitted by the defense. (Order, Nov. 6, 2002)

Trial on the merits was conducted.

The prosecution presented four (4) witnesses, namely: Princesita Colinares Baclayo, the victim's mother; Orcino Esidera, Jr., an eyewitness; Dr. Romeo P. Salen, the Medico Legal Officer; and SPO2 Virgo Villareal, the Police Investigator.

Princesita C. Baclayo testified that Ruben (Jonjon) Baclayo, Jr. is her son. At around midnight of May 5, 2002, somebody called her up that Jonjon was shot by Galilee Rocero and was brought to the Gat Bonifacio Hospital in Tondo, Manila. He died that same night. He was brought to the Sanctuary Chapel which charged her P18,500.00 for funeral services after which his remains were brought to the San Roque chapel where the wake took seven (7) days. She spent P40,980.00 inclusive of the funeral services. She knew that Galilee Rocero was also confined at the same hospital for a wound he sustained at the back (TSN, February 17, 2003, pp. 3-5). She likewise spent P1,500.00 for marble slab, a couple of flower vases and candle stand (TSN, March 12, 2003, p. 2).

The second prosecution witness was Orcino Esidera, Jr. He had resided inside the Parola Compound, Binondo, Manila since he was seven (7) years old. He was 18 years old at the time he testified. He knew Ruben Baclayo, Jr. whom he called Jonjon. They were friends. They attended a dance on May 5, 2002 together with some other friends. They left the party at about 12:30 in the morning. They were met by the group of Bambo. Bambo shot Jonjon with a homemade shotgun. Jonjon was hit on the head and fell to the ground. They ran inside the Parola. The Barangay tanods chased the group of Bambo. After a while they followed Jonjon at the hospital. Jonjon was already dead. They were investigated by SPO Virgo Villareal. He pointed to Bambo as the one who killed Jonjon. Bambo was also in the hospital. Bambo was hit by a shot fired by a barangay tanod. (TSN, March 18, 2003, pp. 3-5)

On cross-examination, Esidera confirmed that he was only 1½ arms length away when Bambo shot Jonjon. There were lighted lamp posts at the place. Bambo called "Hey, Jaymart" and immediately fired the shot. He actually saw Bambo shoot Jonjon. He came to know Bambo's name to be Galilee Rocero. (TSN, March 18, 2003, pp. 4-6)

The testimony of Dr. Romeo Salen was dispensed with after the genuineness and due execution of the following:

Exhibit "K" - Certificate of Identification and Consent for Autopsy Report signed by Princesita Baclayo

Exhibit "L" - Medico-Legal Report No. W-2000-19 signed by Dr. Romeo T. Salen

Exhibit "M" - Sketches prepared by Dr. Salen and submarkings

Exh. "N" - Certificate of Death of Ruben Baclayo, Jr.

were stipulated upon. (TSN, April 8, 2003, p.5)

SPO2 Virgo Villareal was called to the witness stand.

Several documents, namely: Advance Information (Exhibits "O", "O-1" and "O-2"); Booking Sheet and Arrest Report (Exhibit "E"); Referral Letter (Exh. "F") and the Sworn Statements of Orcino Esidera (Exh. "B") and Abel Gad (Exh. "D") were likewise stipulated upon to be genuine and duly executed. SPO2 Villareal was thereafter cross-examined by the defense counsel. He declared having talked with Orcino Esidera in the morning of May 5, 2002. He found out that the accused was in the same hospital where the victim was taken. The accused had gunshot wound on the right buttock. He arrested the accused on May 6, 2002. (TSN, April 8, 2003, pp. 7-10)

The prosecution rested its case.

Galilee Rocero himself was presented for the defense.

He denied the accusation against him. At about 12:30 in the morning of May 5, 2002, he and his companions were to alight from a truck to attend a dance in Area C, Parola Compound when somebody fired a gun and he saw

somebody fall. There was a commotion. He was about to run away when he was shot by a friend of Jaymart. He was not aware why he was shot. He became unconscious. He regained consciousness in the hospital. He did not know Orcino Esidera. Esidera had no reason to falsely testify against him. The place was lighted. (TSN, July 28, 2003, pp. 5-9)

A decision was rendered by the trial court which convicted Galilee Rocero of Murder.

He appealed on the following assigned errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION'S PRINCIPAL WITNESS.

II

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

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS GUILTY, THE LOWER COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

Murder is the unlawful killing of any person which is not parricide or infanticide provided that any of the following circumstances is present:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.

x x x x x x x x

5. With evident premeditation.

(Art. 248, Revised Penal Code)

The elements of murder are:

- 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.

The fact of death of the victim was established by the death certificate of Ruben Baclayo, Jr. (Exhibit "N"). The fact that it was accused Galilee Rocero who shot him and caused the wound which resulted to his death had been sufficiently established by the oral testimony and written statement of Orcino Esidera. In his written statement (Exh. "B") given to the Police Investigator on May 6, 2002, Esidera narrated the incident which led to Jonjon's death as follows:

"06. T – Ikwentong mo sa akin kung paano ang pangyayari. S – Ganito po iyon ng gabi na iyon ay pumunta kami sa sayawan sa Area C. Mga bandang alas 12:00 po ay umalis na kami sa sayawan at dumaan kami sa kalsada at ihahatid sana namin ang barkada namin na si Ferdie, Panat at J.R. Sa Gate 1. Ng malapit na kami sa Gate 52 ay bigla kaming sinalubong nina "Bambo" at mga kasama niya, at walang sabi-sabi bigla na lang sinumpak kami ni Bambo at tinamaan si JUN-JUN sa ulo ng bolitas at bigla siyang bumagsak na duguan sa ulo at nagtakbuhan

po kami ng mga kasama ko sa Gate 52 at nalaman ko po na hinabol ang grupo nina Bambo ng mga barangay at mga thirty minutes po ay nalaman ko po na namatay na si Junjun sa Gat Andres Bonifacio Hospital at pumunta po ako doon sa ospital.”

Bambo was also taken to the same hospital that same evening because “may tama siya ng baril sa puwit.” While in the hospital, Esidera pointed and identified Bambo as the one who shot Jun-jun. When asked, Bambo said his name is Rocero Galilee y Tasoy. He added he was then 21 years old, single with residence at 1023 Parola Compound, Tondo, Manila. (Records, p. 6)

Accused-appellant claims said written statement conflicts with Esidera's testimony in court. Esidera testified:

“Q – What time was that when you were at the dance party?

A – About 12:30 a.m.

Q – After attending that dance party, what did your group do?

A – We went home.

Q – Where did you pass?

A – Sa kalsada po ng “Parola Compound”.

Q – Who were with you when you were passing by at the Parola Compound?

A – Abel, Raymart and Jonjon.

Q – While you were at the Parola Compound, tell us what happened next.

A – Sinalubong po kami ng grupo ni Bamboo.”

Q – How many were with Bamboo at that time?

A – More or less seven, sir.

Q – You said that your group “ay sinalubong ng grupo ni Bambo, what happened after that?

A – Sinumpak po ni Bambo si Jonjon.

COURT:

Q – What do you mean by “sinumpak”?

A – He shot Jonjon with a homemade shotgun.

Q – You said he, to whom are referring?

A – Bamboo.

Q – Will you please look around this courtroom and tell this Honorable Court if Bamboo is present?

(Witness pointing to a man named Bamboo).

Q – When Bamboo fired his homemade shotgun how far was he from Jonjon?

A – More or less one arm length away.

Q – What happened after Bamboo fired that homemade shotgun at Jonjon?

A – Jonjon was hit in the head and fell down.

x x x x x x x x

(TSN, March 18, 2003, pp. 3-4)

Accused-appellant alleges that Esidera's narration of the incident in his written statement (Exhibit “B”) was “sinumpak kami nina Bambo”. (Appellant's Brief, p. 8, Rollo, p. 44). Accused interpreted it to mean that “there were many persons who fired shots at them without particularly referring to a specific intended victim.” That

allegation by accused-appellant, however, is inaccurate. The actual statement of Esidera reads” “x x x Mga bandang 12:00 po ay umalis na kami sa sayawan at dumaan kami sa kalsada at ihahatid sana namin ang barkada namin na si Ferdie, Panat at J.R. sa Gate 1. Ng malapit na kami sa Gate 52 ay bigla kaming sinalubong nina “Bambo” at mga kasama niya, at walang sabi-sabi bigla na lang SINUMPAK KAMI NI BAMBO at tinamaan si JUN-JUN SA ULO ng bolitas x x x.” The actual statement was “sinumpak kami ni Bambo” not “sinumpak kami nina Bambo. Esidera was thus firm that the assailant was Bambo. Bambo was the one who fired the shot which killed Jonjon (Jun-Jun). The phrase “sinumpak kami” meant that the shot was in the direction of Esidera's group which, however, included Jonjon. The fact that Jonjon was only an arm length away when Bambo fired the shot precludes any doubt as to his intention. Bambo intended the shot for Jonjon. This Court likewise finds nothing contradictory in Esidera's claim that he did not notice the coming of Bambo's group but heard him utter “Hey, Jaymart” immediately followed by the gunshot. It simply established that the appearance of Bambo and his group at the scene of the shooting was sudden and unexpected. The trial court, in its decision, found Esidera to have testified that “when the accused was about an arm length away from the victim, the former suddenly approached and shot the latter with a homemade shotgun on the right side of the head and fell to the ground” (Decision, April 12, 2004, p. 3, Rollo, p. 53). The finding of treachery was put in issue in this appeal. Accused-appellant argues that since Bambo called Jaymart before firing the gun, the victim and his group were forewarned and were, thus, afforded the opportunity to defend themselves.

In this case the attack was sudden and unexpected. Neither Jonjon nor anybody in his group had any idea that Bambo would shoot. There was not any slightest provocation on the part of the victim. The attack was not preceded by any quarrel nor any argument. The victim was unsuspecting that he would be shot.

In the case of *People vs. Tobona* (439 SCRA 292), the Supreme Court held that:

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

The presence of treachery or *alevosia* in instant case qualified the killing to murder. (*People vs. Saliling*, 249 SCRA 185)

The fact that accused-appellant had with him a shotgun shows that the attack is deliberate.

However, this Court observes that the lower court did not award any moral and exemplary damages in favor of the victim's family. Current jurisprudence dictates that moral damages in the amount of P50,000.00 be granted the heirs of the victim. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals the precious life of the deceased from his family but also deprives them forever of his love, affection and support, and often leaves them with a gnawing feeling that an injustice has been done to them.[1]

Exemplary damages in the amount of P25,000.00 must likewise be awarded, given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.[2]

WHEREFORE, the appealed decision of Branch 18, Regional Trial Court of Manila, dated April 12, 2004, finding the accused-appellant guilty beyond reasonable doubt of the crime of murder is hereby AFFIRMED with

MODIFICATION that he is ordered to pay the heirs of the victim P50,000.00 as moral damages and P25,000.00 as exemplary damages, in addition to the award of P50,000.00 as civil indemnity and P60,960.00 for burial expenses.

SO ORDERED.

Barrios, (Chairman) and Guariña, III, JJ., concur.

[1] People of the Philippines vs. Eric Baltazar y Villaruel, G.R. No. 143126. July 31, 2003.

[2] People of the Philippines vs. Larry Cagas, G.R. No. 145504. June 30, 2004.

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