

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE BARCENAL AND RANDY SOLIS, ACCUSED-APPELLANTS.

Ponente: VILLON, J.

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VILLON, J.:

Before us is an appeal interposed by accused-appellants Jose Barcenal and Randy Solis from the decision dated November 15, 2002 of the Regional Trial Court (RTC) of Iriga City, Branch 35[1] finding them guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, as amended by R.A. 7659, with the qualifying circumstance of treachery.

The information reads:

“The undersigned accuses JOSE BARCENAL Y TAÑADA, JIMMY BARCENAL Y TAÑADA, RANDY SOLIS Y PADUA, and two (2) JOHN DOES, who are presently detained at the District Jail (BJMP), La Purisima, Iriga City, of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 17th day of January, 2000 at about 3:30 o'clock in the afternoon, in the Municipality of Baao, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and helping one another, did then and there, with malice aforethought and with deliberate intent to take the life of one NELSON B. MOLINA, willfully, unlawfully, feloniously, suddenly, unexpectedly, and treacherously attack the latter with boloes, thereby inflicting several mortal wounds on the different parts of his body, which caused the direct and immediate death of the said Nelson B. Molina, to the great damage and prejudice of the latter's heirs.

ALL ACTS CONTRARY TO LAW.”[2]

Upon arraignment, appellants pleaded “Not Guilty”[3] to the charge and accusation against them. Accused Jimmy Barcenal and the two (2) unidentified accused remained at large.

The antecedent facts as summarized in the Appellee's Brief, which are supported by evidence on record, are as follows:

On January 17, 2000, at about 3:30 o'clock in the afternoon, while Zacarias Barcenal was watching his children asleep at their home in Barangay Perpetual Help, Iriga City, Nelson Molina arrived. Nelson, who was then wearing striped short pants and a sando, was carrying a bolo. He asked for the whereabouts of appellants Jose Barcenal and Randy Solis. Zacarias told Nelson that he did not know appellants' whereabouts. Soon thereafter, Nelson asked Zacarias to take care of him as he might suffer what had happened to a certain “Popoy” who was shot and killed. Nelson also intimated that appellants were mad at him because he caught them stealing bananas.[4]

After their conversation, Nelson went to his banana plantation. Bothered by Nelson's revelation concerning appellants' activities and by his plea to take care of him, Zacarias followed Nelson. On the way to the plantation, at a distance of about 25 meters, Nelson met his brother, Joseph Molina. Afterwards, Nelson proceeded to his

banana plantation, while Joseph went home. Zacarias followed Nelson for about 10 to 15 minutes before starting work in the plantation. Zacarias was removing dried coconut leaves when his son, Jasam, called him and informed him that Nelson was being mauled. In order for them not to be seen and be involved in the incident, Zacarias and Jasam sought cover under a tree, located at the upper portion of a hill. Nelson, appellants and the other assailants were on the lower portion of the hill about 20 meters from Zacarias and Jasam.[5]

At the time, Jasam heard Nelson shouting, two (2) men with masks hit Nelson with bamboo. They dragged Nelson to a grassy portion and tied his hands. Thereafter, the masked men asked appellants and accused Jimmy Barcenal to come out from where they were hiding. Appellants and Jimmy emerged, carrying bolos. The masked men then tied Nelson to a coconut tree. Soon after, Jimmy hacked the right hand of Nelson, almost cutting it off from his arm. Jose Barcenal on the other hand, hacked Nelson's left hand, almost cutting it off. Randy Solis followed by hacking Nelson's right foot almost severing it from his leg. The masked men gave a piece of wood to Jimmy who plucked out Nelson's eyes. Because of severe pain, Nelson shouted. Not long after, Jimmy cut off Nelson's head. Not satisfied, the masked men stabbed Nelson with "beinte nueve" twice on the chest, after which, Jimmy scalped Nelson's head. Jimmy told the group that if ever Nelson's mother, Milagros Molina, or his brother, Irvin, would pass by, they should also be attacked. After Jimmy covered the lifeless body of Nelson with coconut leaves, the assailants ran away passing by a canal.[6]

After the assailants left the crime scene, Zacarias and Jasam also left but they did not stay in their house for several days out of fear that the assailants might have seen them and that they might be involved, or worse, killed.[7] Instead, they proceeded to the house of Zacarias' parents. They did not tell anyone about the incident because they were afraid of Nelson's assailants.[8]

The following morning, appellants went to see Zacarias and asked him if they could engage in a cockfight. While Zacarias did not tell anyone what he and Jasam had witnessed, he entertained the idea that appellants might have seen them witness the crime because of appellants' gestures. It was only after Nelson's body was discovered in Baao Cemetery in Baao, Camarines Sur that Zacarias revealed that appellants and Jimmy Barcenal were the persons who killed Nelson. Zacarias was forced to reveal the perpetrators' identities since Jasam had already told his "ninong" and Nelson's brother, Manuel Molina, Jr., about it. What prevented Zacarias from revealing what he knew about the crime was fear that he might be killed. When Zacarias met appellants the morning following his revelation to Nelson's family, he told them that they "have a problem." Defiant, appellants retorted, "Do not tell us about the problem." Notwithstanding such threatening response, Zacarias reiterated to spouses Manuel and Milagros Molina that appellants were responsible for their son's death. The said spouses did not permit Zacarias to go home that day as he might be waylaid by Nelson's assailants. Zacarias slept in the Molina's house and went home the following day.[9]

Dr. Wilson Moll Lee, a medico-legal officer of the National Bureau of Investigation in Naga City, had the body of Nelson exhumed. The body was buried in a shallow grave at the Baao Municipal Cemetery. He conducted the autopsy examination. During the autopsy, Dr. Moll Lee found that Nelson had been dead for more than three (3) days. One Medy Medina identified Nelson's body on the basis of the t-shirt and shorts the victim had been wearing. Likewise recovered from Nelson's body were his wallet and driver's license.[10]

The medico-legal officer's exhumation report stated the following findings: Finding No. 1: Revealed that the cadaver was buried underground, in t-shirt and shorts, and already in the advanced stage of postmortem decomposition. Maggots were eating up the whole body. Finding No. 2: The head was already "skeletonized", meaning, the skull was devoid of any soft tissues. Nothing remained of the eyes, ears and muscles. Only the skull was left. Finding No. 3: All the internal organs had been converted into a pultaceous mass like a melted ice cream, particularly the brain, because it was already in the advanced stage of decomposition. Only the side part of the

head contained hair and it was possible that the hair had been scalped or removed. Dr. Moll Lee also found that the hands and feet of Nelson were missing. The head was devoid of soft tissues and had been separated from the body. A sharp bladed-instrument could have severed the bone connecting the body and the head.[11]

After weighing the evidence presented, the court a quo rendered judgment, the decretal portion of which reads:

“WHEREFORE, finding accused, RANDY SOLIS and JOSE BARCENAL guilty beyond reasonable doubt for the crime of Murder under Article 248 of the Revised Penal Code, they are sentenced to reclusion perpetua; pay an indemnity of P50,000.00 and actual damage of P60,000.00 and to pay the cost.

SO ORDERED.”[12]

Hence, this appeal.

Appellants assigned the following errors for consideration:

I. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PROSECUTION WITNESSES.

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE FACT THAT THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III. THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT THERE WAS A CONSPIRACY AND IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

IV. THE TRIAL COURT GRAVELY ERRED IN AWARDING ACTUAL DAMAGES.

Considering that the abovementioned assignment of errors are interrelated, the same shall be discussed jointly.

It is a well-entrenched doctrine that the trial court’s findings on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts and circumstances of weight and substance which would have affected the result of the case.[13] We quote with approval the lower court’s conclusion in finding appellants guilty of the crime of murder, thus:

“Jasam Barcenal, an 8 year old boy whose testimony was never controverted by the defense, was taught in school about good manners and proper conduct and understood the consequence of his oath before the court. He knew that he would only tell the truth and nothing but the truth. To tell lies is a sin and he would go to hell. There was no reason therefore, for an 8 year old boy to tell lies but only the truth. The Court believes the testimonies of Zacarias Barcenal and particularly, Jasam Barcenal that they saw Randy Solis, Jose Barcenal, Jimmy Barcenal and two (2) unidentified persons kill Nelson Molina. If ever there was delay to report the killing to the police authorities by Zacarias Barcenal, it was because of his fear of being killed by the accused. Their statements on the killing, in spite of minor inconsistencies were credible.”[14]

The testimonies of Jasam Barcenal and Zacarias Barcenal positively established appellants' direct and active participation in the commission of the crime. They are eyewitnesses to the whole incident, as they saw how appellants participated in the brutal killing of Nelson. As Jasam vividly recalled the important details of the crime:

“Q: You said that you went to fetch your father to have merienda, what happened?

A: I heard Manoy Nelson shouting and then I saw 2 men wearing masks hitting Manoy Nelson.

Q: What was that instrument used by the 2 men in mask hitting your Manoy Nelson?

A: Bamboo.

Q: Then what happened next?

A: Then they were dragging him and they said you get out and later Jose and Jimmy went out.

Q: After seeing that what happened next?

A: They dragged him to the grassy place and they tied his hands.

Q: In particular who dragged your Manoy Nelson?

A: The 2 men in masks.

Q: So, you were not able to recognize the 2 men wearing masks?

A: No, Your Honor.

Q: How about the 3 men being called by the masked persons, did they go out?

A: Yes, sir, and they were carrying bolos.

Q: In particular who were carrying bolos?

A: Jimmy, Randy and Jose.

Q: Where was your Manoy Nelson tied?

A: He was tied to the coconut tree.

Q: Who tied him?

A: The 2 men in masks.

xxx.

Q: After your Manoy Nelson Molina was tied in the coconut tree, what happened next?

A: They hacked his hand (witness pointing to his right hand).

Q: And who hacked the right hand of your Manoy Nelson?

A: Jimmy.

Q: And what happened to the hand of Nelson Molina?

A: It was almost cut.

Q: After Jimmy Barcenal hacked the right hand of Nelson Molina, what happened next?

A: And then Jose hacked the left hand of Nelson Molina.

Q: Again when Jose Barcenal hacked the left hand of Nelson Molina what happened next?

A: The hand was not separated.

Q: But it was cut?

A: Almost cut.

Q: When Jose Barcenal hacked the left hand of Nelson Molina what happened?

A: And then Randy cut again his right foot.

Q: And what happened when Randy Solis cut the right foot, what happened to the right foot of Nelson Molina?

A: It was almost separated.

Q: After that what happened next?

A: And the 2 men got a short piece of wood and gave it to Jimmy and Jimmy plucked out the eyes of Manoy Nelson.

Q: The eyes of Nelson?

A: Yes, sir.

Q: What did you observe on the eyes of Nelson when it was plucked out by Jimmy Barcenal?

A: He shouted and then after that his head was cut.

Q: Who cut the head of Nelson Molina?

A: Jimmy.

xxx

Q: And then what happened?

A: A "beinte nueve" was thrust on the chest of Nelson.

Q: How many times?

A: 2.

Q: Who stabbed Nelson Molina with a batangas knife?

A: The 2 men in masks.

Q: Then what happened?

A: He removed the scalp.

Q: Who removed the scalp?

A: Jimmy.

xxx.

Q: After Jimmy removed the scalp what happened?

A: I saw Jimmy left and passed by the canal. I also saw the 2 men removed their masks but they hid in the bamboo groove.

Q: Were you able to recognize the 2 men after they removed their masks?

A: No, sir.

Q: Why?

A: They ran away.

Q: Towards what direction?

A: They ran passing the canal. I did not recognize them.

Q: Where was Jose Barcenal and Randy Solis?

A: They were also running.

Q: Towards what direction?

A: Towards the canal also.

Q: So, all of them the five were going together?

A: Yes, sir.”[15]

Jasam emphatically gave a detailed account of the incident and maintained that he saw appellants and their cohorts perpetrate the crime. There is no reason to doubt his testimony. The testimony of Zacarias corroborated that of Jasam and is consistent with the exhumation report made by Dr. Moll Lee. It bears stressing that when the body of Nelson was exhumed, there were already no hands and feet and the head was almost severed from the body with his eyes plucked, which findings matched the credible testimonies of Jasam and Zacarias. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[16] It was shown that Jasam at his tender years as well as his father Zacarias, did not have any motive to falsely testify against appellants.

Appellants claim that, if at all, they are guilty only of homicide and not of murder, as it was not established beyond reasonable doubt that there was treachery employed by appellants in killing their victim.

We are not persuaded. There is *alevosia* when the offender commits any of the crimes against persons employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself from any defense which the offended party might make.[17] We agree with the lower court that appellants killed the victim with treachery. At that time, the victim was alone when he was mauled by two unidentified persons and later on was hacked by appellants. The attack was so sudden and unexpected that the victim had no opportunity either to avert the attack or to defend himself. The essence of treachery is the sudden and unexpected attack by the aggressor on the 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.[18] Then too, the prosecution was able to establish that there was conspiracy made by appellants together with other accused in the unexpected and sudden attack against the victim which renders the latter unable to defend himself by reason of the suddenness and severity of the attack.

Under paragraph 2, Article 8 of the Revised Penal Code, “a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” In conspiracy, what is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.[19] To establish the existence of conspiracy, direct proof is not essential as it may be shown by the conduct of the accused before, during and after the commission of the crime which are indicative of a joint purpose, concerted action and concurrence of

sentiments.[20] It is very much evident from the testimonies of the prosecution witnesses that conspiracy exists in this case due to the concerted efforts and joint purpose of appellants and other assailants to brutally kill Nelson Molina. They performed specific acts with closeness and coordination as to unmistakably indicate a common purpose and design to bring about the suffering and death of Nelson. Conspiracy among them was established with moral certainty.[21]

Finally, as aptly pointed out by the Solicitor General, aside from sentencing appellants to the penalty of reclusion perpetua and awarding the amount of P50,000.00 as civil indemnity, an award of moral damages in the amount of P50,000.00 and exemplary damages in the amount of P25,000.00 should be given to the heirs of the victim considering the violent death of the latter. It was held that in cases of violent death, moral damages are awarded even in the absence of proof because an untimely and violent death invariably brings about emotional pain and anguish on the part of the victim's family. Exemplary damages was also awarded because of the presence of the qualifying circumstance of treachery.[22] In the instant case, the victim's wife even testified that the death of her husband brought her much pain and sufferings.

The award, however, of actual damages by the court a quo in the amount of P60,000.00 is not proper considering that the prosecution failed to present receipts or any substantial evidence to support the claim for such damages resulting from the death of the victim. It was held that actual damages cannot be awarded based merely on a list of expenses presented, as such claim must be adequately supported by receipts.[23] However, temperate damages in the amount of P25,000.00 should be awarded to the heirs of the victim where no documentary evidence of actual damages were presented in the trial court because it is reasonable to presume that, when death occurs, the family of the victim necessarily incurred expenses for his wake and funeral.[24]

WHEREFORE, premises considered, the assailed decision of the Regional Trial Court of Iriga City, Branch 35 dated November 15, 2002 is hereby AFFIRMED with MODIFICATIONS that the award of actual damages is deleted. However, appellants are ordered to indemnify the heirs of the victim, in addition to the award of P50,000.00 as civil indemnity, the further amounts of P50,000.00 as moral damages, P25,000.00 as exemplary damages and P25,000.00 as temperate damages in lieu of actual damages.

SO ORDERED.

Asuncion, (Chairman) and Mendoza, JJ., concur.

[1] Hon. Alfredo D. Agawa, Presiding Judge.

[2] RTC Records, p. 1

[3] *ibid*, p. 74

[4] TSN, July 18, 2000, pp. 5-7

[5] TSN, July 18, 2000, pp. 10-14

[6] TSN, May 24, 2000, pp. 7-11

[7] TSN, July 18, 2000, pp. 18-20

[8] TSN, July 18, 2000, p. 23

[9] TSN, July 18, 2000, pp. 20-26

[10] TSN, June 26, 2000, pp. 9-13

[11] TSN, June 26, 2000, pp. 16-21

[12] Ibid, p. 389

[13] People vs. Bon, 396 SCRA 506

[14] Original Records, pp. 388-389

[15] TSN, May 24, 2000, pp. 7-12

[16] People vs. Toledo, G.R. No. 139961, May 9, 2001

[17] People vs. Escote, et al., G.R. No. 151834, June 8, 2004 citing People vs. Conde, 386 Phil. 859

[18] People vs. Tinampay, 403 SCRA 255

[19] People vs. Arizobal, 348 SCRA 143

[20] People vs. Mercado, 346 SCRA 256

[21] People vs. Caraig, 400 SCRA 67

[22] People vs. Pedrigal, 411 SCRA 339

[23] People vs. Magalona, 406 SCRA 546

[24] People vs. Buayaban, 400 SCRA 48

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