

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO TORTOSA Y BACLAO, ACCUSED-APPELLANT.*G.R. No. 116739. July 31, 2000*

Ponente: BUENA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-116739/>**BUENA, J.:**

On November 13, 1992, at around 6:00 o'clock in the evening, Eufresino Baclao sustained multiple wounds and was brought to Pantao District Hospital, Pantao, Libon, Albay. The resident physician of the said hospital, upon seeing him very pale and bleeding profusely, decided to transfer him to Albay Provincial Hospital. However, after about another ten minutes, he died.[1] At around 6:35 p.m., the autopsy was conducted at Pantao District Hospital which revealed that the deceased suffered six (6) wounds, three (3) of which were fatal, to wit:

- incised wound, face, 10 x 2 cm, right side
- incised wound, 14 x 3 cm., occipital area to base of anterior neck, right, 4 cm. depth
- incised wound, 19 x 4 cm., base of posterior neck to prearcular area, right, 4 cm. depth
- incised wound, 8 x 1 cm., occipital area
- incised wound, 14 x 3 cm., shoulder, right
- incised wound, 15 x 3 cm., shoulder, left (records, exhibit A, p. 16)

The next day, Jopet Fernandez, barangay captain of Barangay Pantao, personally appeared and reported to the police that Eufresino Baclao, a barangay resident of Pantao, was allegedly hacked several times by Ricardo Tortosa; that the victim was immediately rushed to the emergency hospital at Pantao, Libon, Albay and was later transferred to the Provincial Hospital of Legazpi City; that before arriving at the hospital the victim died; and, that Ricardo Tortosa fled after the incident.[2] On November 15, 1992, at around 3 o'clock in the afternoon, Ricardo Tortosa surrendered to the police station of Libon, Albay, admitting thereat that he hacked his cousin.[3] For this, Ricardo Tortosa was charged with murder, thus-

"That on or about 6:00 o'clock in the evening of November 13, 1992, at Barangay Pantao, Municipality of Libon, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a bolo with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and hack one EUFRESINO BACLAO from behind (sic) while the latter was completely unaware, hitting him at the different parts of his body resulting to his death, to the damage and prejudice of the legal heirs of said Eufresino(sic) Baclao.

ACTS CONTRARY TO LAW."[4]

Upon arraignment, the accused duly assisted by counsel, entered a plea of not guilty to the crime charged.

Cesar Medina, a barangay kagawad of Pantao, Libon Albay, narrated that at around eight o'clock in the morning

of that day, accused went to the barangay hall complaining against the victim for allegedly imputing to him the use of poison in the barangay. Thereafter, Medina sent for the victim who arrived around nine o' clock in the morning. When the victim was apprised of the complaint, he asked for forgiveness saying that since they are related he will not do such a thing against the accused.[5]

Later that day, at around 6:00 in the evening, Elena San Jose and her sister-in-law Nina San Jose were at the sari-sari store of Norlito Surwez to individually buy cigarette and kerosene. Norlito Surwez, at that time, was in the kitchen cooking. At the table outside the store, they saw the victim with Narlito's brother, Jimmy, having a drinking spree. Not long after, Jimmy left, leaving the victim drinking alone. While the victim was seated, the accused arrived from across the road and, using a bolo about 14 inches long, immediately hacked the victim which landed on the right side of his neck. The second blow landed on his back causing him to slump on the ground face down. This horrifying incident unfolded before them 2 to 3 meters away, causing them to scream and run away. Meanwhile, the thud and screams prompted Norlito Surwez to go out of his house. Thereat, he saw the victim sprawled on the ground, facedown, being hacked by the accused. Immediately after the accused left, the victim was brought to the hospital where he expired.

The trial court appreciated the aggravating circumstance of treachery qualifying the killing to murder after finding that the attack on the victim was spontaneously done, in a surprise manner without any risk on the life or limb of the accused, or any defense or resistance that may be put up by the victim. The aggravating circumstance of evident premeditation was likewise appreciated upon recognizing that there was no settlement on the issue threshed out at the barangay level in the morning of that fateful day such that the accused harbored ill-feelings against the victim, thereby planned to kill the victim that same morning, and clung to his determination to kill the victim later that day. Likewise, the court appreciated abuse of superior strength noting the physical defect of the victim, a polio victim, causing him to drag his right foot. According to the trial court, the aggravating circumstance of taking advantage of superior strength offsets the mitigating circumstance of voluntary surrender. In view of the foregoing findings, accused was convicted of murder and sentenced to suffer the penalty of reclusion perpetua. The decretal portion of the decision reads -

"WHEREFORE, premises considered, the court finds the accused RICARDO TORTOSA Y BACLAO, GUILTY beyond reasonable doubt of the crime of murder. ACCORDINGLY, he is sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalty provided for by law, and to pay the aggrieved party Twenty-five Thousand (P25,000.00) Pesos representing actual expenses and Fifty Thousand (P50, 000.00) Pesos as moral and exemplary damages, and to pay the costs.

"SO ORDERED."[6]

Accused appealed his conviction raising the following assignment of errors:

"ASSIGNMENT OF ERRORS

I

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE INSUFFICIENT PROOF TO ESTABLISH THE QUALIFYING CIRCUMSTANCES OF TREACHERY AND EVIDENT PRE-MEDITATION.

III

THE TRIAL COURT GRAVELY ERRED IN OFFSETTING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER BY THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH WHICH IS NOT ATTENDANT IN THE INSTANT CASE.

IV

THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION IN AWARDING EXEMPLARY DAMAGES AND EXCESSIVE ACTUAL EXPENSES."[7]

Appellant maintains that it was the prosecution witness, Norlito Surwez, who killed the victim. Appellant testified that the victim owns the property where the house of Norlito Surwez stands and the victim tried to evict Norlito Surwez because the latter gathered coconuts at nighttime. Thus, on November 13, 1992, at around six o' clock in the evening when he went to Norlito Surwez' store to buy sardines, he found the victim having an altercation with Norlito. As he tried to pacify the two, the victim unsheathed his bolo so he wrestled the bolo from the victim in order to defend Norlito. In the process, appellant hacked the victim on the left shoulder. Appellant avers that the wound inflicted was the result of his desire to defend Norlito, a stranger, for which a justifying circumstance of defense of a stranger should be credited in his favor.[8] Appellant recounted that upon hitting and seeing the victim fall to the ground, he walked away out of fear, leaving the bolo on top of the table outside the store. While doing so, Norlito entered the kitchen and when he came out of his house he was carrying a bolo. At a distance of around ten (10) meters, appellant claims that he saw Norlito continuously hack the victim.

The trial court did not err in giving full faith and credit to the testimonies of the prosecution witnesses. The testimonies offered by Nina and Elena San Jose were more credible and worthy of belief. At the time when appellant hacked the victim, both of them were just two (2) to three (3) meters away from the victim. Terrified, they screamed and fled from the scene of the crime. The shouts prompted Norlito to go out of the house and there he saw appellant continuously hack the victim while lying facedown on the ground. The record is bereft of any evidence to show that Nina, Elena, and Norlito had improper motives to testify falsely against appellant and the rule is well settled that absent evidence showing any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credit.[9] In the absence of evidence or any indicium that the prosecution's main witness harbored ill motives against the appellant, the presumption is that he was not so moved and that his testimony was untainted with bias.[10] Besides, appellant's version that he and the victim grappled for the bolo that led to the accidental hacking of the victim's shoulder is unbelievable and improbable. It is contrary to the nature and location of the wounds inflicted on the victim - located at the back of the head traversing to the neck towards the front, back of the neck traversing the right ear, horizontal wound to the back of the head, on the face and on the right and left shoulder.[11] In fact, Dr. Orbita who conducted the autopsy on the cadaver testified that the first wound inflicted was the horizontal wound to the back of the head, referring to wound no. 4 in the postmortem findings indicated above. The autopsy also revealed three (3) fatal wounds, which were all inflicted on the upper extremities of the victim - on the head, neck and lower part of the shoulder. These are physical evidence that the victim was not able to retaliate. Notably, with the nature of the wounds, Dr. Orbita affirmed that only one (1) weapon was used in inflicting them.[12] This is contrary to appellant's version that upon accidentally hacking the victim, he became afraid after he saw the Victim fall and immediately left. Thereafter, he saw Norlito enter the kitchen and later come out with a bolo, and with it, hack the victim continuously. If indeed an altercation existed between the victim and the prosecution witness Norlito prior to the intervention of herein appellant in grappling the bolo to defend Norlito, the latter could just use the bolo left on the table by appellant and not go inside the house to get another bolo. The story offered by appellant is hardly convincing and his testimony in this respect is wholly unreliable.

Appellant also assails the characterization of the crime as murder despite insufficient proof to establish the qualifying circumstances of treachery and evident premeditation and in offsetting the mitigating circumstance of voluntary surrender with abuse of superior strength. Appellant argues that even assuming that the victim was attacked, the attack was not in a surprise manner because the alleged attacker did not come from behind, and the fact alone that the fatal wounds were found at the back of the victim does not show that he was attacked from behind and could not by itself bring a finding of treachery.[13]

Appellant's argument that treachery was not present is founded mainly on the presumption that the victim saw the accused coming towards him, thereby eliminating the element of surprise. This argument contravenes the narration offered by prosecution witnesses, which established the suddenness of the attack, such that while the victim was sitting and drinking gin, appellant arrived and immediately hacked the victim without warning and no altercation nor exchange of words between the victim and the appellant transpired. The initial assault on the victim was made in a sudden and unexpected manner. The essence of treachery is that the attack is deliberate and without warning - done in a swift and unexpected manner, affording the hapless and unsuspecting victim no chance to resist or to escape.[14] It was established that when the victim was hacked, he was drinking gin, unsuspecting that somebody will kill him. In his intoxicated state and being a polio victim, an attack from behind while seated renders it impossible for him to put up any sort of resistance. Appellant purposely went to the store where the victim was and, armed with a bolo, hacked the victim. So sudden and unanticipated was the attack at the back of the victim, landing on the head, back, neck and shoulders that he was given no chance to defend himself. Three (3) of the wounds sustained, which were fatal, were found at the back. The attack was deliberate, sudden and unexpected and from behind. All of these are indicative of the fact that appellant employed means and methods which tended directly and especially to insure the execution of the offense without risk to himself arising from the defense which the offended party might have made.[15]

The investigation of the whole record produces moral certainty in an unprejudiced mind of appellant's culpability. The killing was attended by treachery, which qualifies the killing to murder. Nevertheless, no factual basis exists for the aggravating circumstance of evident premeditation. The testimony of the barangay kagawad that in the morning of that fateful day when appellant complained against the victim is not sufficient basis for considering evident premeditation. Evident premeditation may not be appreciated absent any proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out.[16] The premeditation must be evident and not merely suspected.[17] While appellant might have mused a grudge or resentment against the victim, that circumstance alone is not conclusive proof of evident premeditation.

With respect to the aggravating circumstance of superior strength, it was error for the trial court to offset it with the mitigating circumstance of voluntary surrender considering that abuse of superior strength is absorbed in treachery since it facilitated the commission of the crime.[18] As to voluntary surrender, all its requisites in order to mitigate appellant's liability were duly proven. Appellant's assertion that he surrendered was corroborated by SPO4 Remegio Baile, a prosecution witness, testifying on the entry in the police blotter that appellant voluntarily surrendered to the police for hacking the victim.[19]

Prior to the effectivity of Republic Act 7659 on December 31, 1993 reimposing death penalty, the penalty for murder was reclusion temporal, in its maximum period, to death. Considering that the crime was committed on November 13, 1992, the said penalty applies. Applying Article 64 (2) of the Revised Penal Code in relation to Indeterminate Sentence Law, the presence of the mitigating circumstance of voluntary surrender, there being no aggravating circumstance to offset it, impels the imposition of the minimum period of the applicable penalty. Thus, the maximum term for which the accused should be sentenced is reclusion temporal (maximum) and the minimum term of the indeterminate sentence is from prision mayor (maximum) to reclusion temporal (medium),

the penalty next lower from reclusion temporal.

As to the award of damages, Article 2230 of the Civil Code provides that "exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." There being no aggravating circumstance, the heirs of the deceased are not entitled to exemplary damages. Nonetheless, they shall be entitled to moral damages[20] for the anguish and mental anxiety suffered by them, which were duly proven, in the sum of P30,000.00. The award of actual damages in the sum of P25,000.00, supported by evidence on record,[21] is hereby affirmed plus P50,000.00 as indemnity ex delicto.[22]

WHEREFORE, the assailed decision of the Regional Trial Court, Branch 12, Ligao, Albay is AFFIRMED with modification that appellant is hereby sentenced to an indeterminate penalty of 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months, and 1 day of reclusion temporal, as maximum, and to pay the heirs of the victim P25,000.00 as actual damages, P30,000.00 as moral damages, and P50,000.00 as civil indemnity. No pronouncement as to costs.

SO ORDERED.

Mendoza, (Acting Chairman), Quisumbing, and De Leon, Jr., JJ., concur.
Bellosillo (Chairman), J., on official leave.

[1] TSN, pp. 3-5, April 22, 1993.

[2] Ibid., p. 4, May 21, 1993.

[3] Ibid., p. 5, *ibid.*

[4] Rollo, p. 6.

[5] TSN, pp. 5-6, June 18, 1993.

[6] Rollo, p. 49; Records, 145.

[7] Rollo, p. 28.

[8] Rollo, p. 33.

[9] *People of the Philippines vs. Amadeo I. Acaya*, G.R. No. 108381, March 7, 2000.

[10] *People of the Philippines vs. Benjamin Galano, et. al.* G.R. No. 111806, March 9, 2000.

[11] TSN, April 22, 1993, pp. 7-9.

[12] TSN, p. 10, April 22, 1993.

[13] Rollo, pp. 35-36.

[14] *Supra*, note # 9.

[15] *People of the Philippines, vs. Quitlong*, 292 SCRA 360.

[16] *People of the Philippines vs. Timblor*, 285 SCRA 64; *People vs. Medina*, 286 SCRA 44.

[17] *People of the Philippines vs. Yturriaga*, 86 PHIL 534.

[18] *People of the Philippines vs. Liston et. al.*, 179 SCRA 415.

[19] TSN, p. 5, May 21, 1993.

[20] Article 2217, Civil Code of the Philippines.

[21] TSN, p. 6, July 15, 1993; Exhibit "C" and "D", records, pp. 87-88.

[22] People of the Philippines, vs. Fern Mendoza, G.R. No. 133382, March 9, 2000.

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