

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO EREÑO Y AYSON, ACCUSED-APPELLANT.

G.R. No. 124706. February 22, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Accused Carlito A. Ereño appeals from the decision[1] dated October 27, 1995 of the Regional Trial Court, National Capital Region, Branch 72, Malabon, Metro Manila in Criminal Case No. 15944-MN finding him guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua for the death of ROSANNA HONRUBIA and ordering him to pay the heirs of the victim the total amount of P124,000.00.

The information[2] filed by Assistant Provincial Prosecutor Leandro C. Catalo against accused-appellant reads:

"That on or about the 21[st] day of June 1995, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon, one ROSANNA HONRUBIA, hitting the victim on different parts of her body, thereby inflicting upon the victim stab wounds which caused his (sic) immediate death.

CONTRARY TO LAW."

When arraigned, accused-appellant entered a plea of not guilty. Pre-trial was waived by the accused;[3] and trial on the merits ensued.

The trial court summed up the evidence as follows:

"The prosecution presented evidence substantially showing that on June 21, 1995, at 9:30 o'clock in the evening, Rosanna Honrubia was at N. Domingo Street in Tangos, Navotas, Metro Manila, sort of supervising and helping in the work being done on the busted electric line from which residents of that place were drawing electricity. Wilfredo Quibado and Arminggol Teofe were the once (sic) actually working thereon with Quibado the one in-charge of the work. Rosanna was from time to time giving a helping hand but most of the time she was the one holding the flashlight being used in the work that was being undertaken.

While Rosanna was holding the flashlight, accused Carlito Ereño approached and took from her the flashlight and brought the same with him to the interior of the place. Rosanna followed Ereño and when she returned she already had with her the flashlight which Ereño took with him. Ereño, however, followed Rosanna to the place where the work on the busted electric line was going on and confronted her about her taking back the flashlight. Rosanna explained that it was being used in the work that must be finished and when finished would be to the benefit of all the residents of the place. A heated argument followed which made Rosanna to move away to a place known thereat as "Bato" which place consists of a low hollow block fence.

Teofe followed her to the "Bato" and with another person sat beside Rosanna. Ereño also followed Rosanna and the argument between the two of them continued. Ereño himself sat at the Bato with Teofe and one other person separating him from Rosanna. Ereño all of a sudden stood up and drew a bladed weapon and with it

stabbed Rosanna at the back. This made Rosanna to run towards a tricycle which happened to be in said place but Ereño followed her again and gave chase to Rosanna resulting in a situation whereby the two of them would be running around the tricycle.

Rodolfo Dematera also happened to be in that place. He tried to pacify Ereño but was instead hit by the latter on his left arm. Teofe himself was shouting to Ereño to stop what he was doing but the latter ignored him.

Rosanna was able to run away from the tricycle but in the process stumbled and Ereño was able to catch up with her. Ereño then held Rosanna frontally by the hair and thereafter stabbed her at the chest twice. Rosanna slumped to the ground clutching her chest. At this point, Teofe approached Rosanna while Dematera called for Rosanna's parents.

Ereño again approached Rosanna but without actually reaching her, he ran away from the place.

Teofe tried to talk to Rosanna but Rosanna could not answer him anymore as blood was coming out of her mouth. Thereafter, Teofe boarded Rosanna on a tricycle with which her relatives brought her somewhere else.

In Court, Teofe identified Ereño as the assailant of Rosanna. He also identified the dagger which was recovered in another place as the one used by Ereño in stabbing Rosanna. Teofe maintained that he had seen said dagger before in the possession of Ereño.

Rosanna died by reason of the stab wounds she sustained at the back and at the chest (Exhs. C, C-1, D and F). Her mother Lita spent P24,000.00 in connection with her death and burial. She is also claiming P187,200.00 by way of lost income which Rosanna could have earned had she not been untimely killed. There was also a claim for moral damages brought about by the pain and sorrow caused by Rosanna's untimely demise.

SPO1 Benjamin Bacunata of the Navotas Police effected the arrest of Ereño shortly after he fled from the scene of Rosanna's stabbing. An alert/alarm was issued for Ereño who was spotted at the corner of Estrella and Naval Streets in Navotas and identified by one Hector Domingo. When frisked, Ereño was found to be in possession of a small improvised bladed weapon (Exh. G). Bacunata presented the dagger (Exh. H) that was recovered in another place and which Teofe identified as the fatal weapon.

Accused Carlito Ereño denied killing Rosanna whom he acknowledged he learned was stabbed to death by another person.

Ereño also denied the testimony of Teofe claiming that while he really returned the flashlight to Rosanna he never followed her back to the place where the work on the busted electric line was being done. Hence, there could have been no confrontation between the two of them.

Ereño also maintained that when Rosanna must have been stabbed he was already on board a passenger jeep bound for Monumento. He acknowledged that there was a check point in Navotas whereat the jeep he was riding on was stopped followed by somebody pointing to him. Policeman Bacunata then boarded Ereño on a mobile car and was brought to the police headquarters and detained.

Positive and clear are the appropriate words that can describe the testimony given by Teofe. He narrated in terms simple and distinctive the incident from the time work was started on the busted electric line to the taking of the flashlight from Rosanna by Ereño, to the return of the two to the place and the argument between them that followed. In the same vein, he described the stabbing of Rosanna by Ereño first at the back and then twice at the chest while Ereño was holding Rosanna by her hair. And Teofe was not shown to have been motivated in giving his testimony by any evil purpose or consideration.

On the other hand, we have Ereño's version consisting mainly of a denial and a claim that he was already somewhere else when Rosanna must have been stabbed to death. Ereño's version also included admissions concerning his having taken the flashlight from Rosanna and his having been arrested in a checkpoint after he was pointed to by Domingo which checkpoint according to the arresting officer was brought about by an alert

or alarm for the reported killer of Rosanna.

xxx.

In fine, the Court is convinced that Ereño is guilty as charged in this case. The offense committed by him was murder, for no other word could describe a killing initiated by a treacherous stab at the back followed by frontal stabbings while the victim was being frontally held by the assailant by the hair. More so, when the victim is a woman."^[4]

The dispositive portion of the trial court's decision dated October 27, 1995, reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding accused Carlito Ereño y Ayson guilty beyond reasonable doubt of the crime of murder and said accused is hereby sentenced to the prison term of reclusion perpetua.

Accused Ereño is also ordered to pay the following sums to the heirs of Rosanna Honrubia who died single:

1. P24,000.00 for the expenses incurred in connection with the death and burial of the victim;
2. P50,000.00 for the loss of the victim's life;
3. P50,000.00 by way of moral damages for the pain and sorrow suffered by the victim's family in connection with her untimely death. Sppedâ

The claim for lost income, not having been substantiated by any document that will show that Rosanna at the time of her death was earning P600.00 a day, six day (sic) a weak (sic) cannot be sustained. Costs against accused Ereño.

SO ORDERED."

Accused-appellant appeals his conviction citing as lone error that:

"THE TRIAL COURT A QUO ERRED IN CONVICTING THE ACCUSED CONSIDERING THAT HIS CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS ARRESTED WITHOUT A WARRANT UNDER CIRCUMSTANCES WHICH DO NOT WARRANT THE APPLICATION OF RULE 113, SECTION 5 OF THE 1985 RULES OF CRIMINAL PROCEDURE ALLOWING WARRANTLESS ARRESTS UNDER EXCEPTIONAL CIRCUMSTANCES."

Accused-appellant avers that late in the night of June 21, 1995 while riding in a tricycle, SPO1 Benjamin Bacunata, along with elements of the Navotas Police Station, arrested and detained him at the Navotas Police Station; that he was arrested without a warrant and was apprehended merely on the basis of a report of a certain Hector Domingo who did not have any personal knowledge of the identity of the accused and also of the circumstances described in the information charging him of the crime of murder; that both SPO1 Benjamin Bacunata and Hector Domingo were not present at the scene of the alleged crime and that Hector Domingo was not even presented as a witness by the prosecution; that at the time of the arrest, the accused was not doing any act which would give the arresting officers any reasonable suspicion to cause his arrest and/or to detain him; and that since his arrest is illegal, the bladed weapon which was presented by the prosecution as the murder weapon, must have been seized as a result of an illegal arrest and illegal search and therefore can not be presented as evidence against the accused. In short, the court a quo allegedly never acquired jurisdiction over the person of the accused-appellant.

On the other hand, the Office of the Solicitor General in its appellee's brief, contends that the warrantless arrest of accused-appellant by SPO1 Benjamin Bacunata at about 9:45 p.m. of June 21, 1995 shortly after the stabbing incident of Rosanna Honrubia was justified under Section 5 (b), Rule 113 of the 1985 Rules of Criminal

Procedure. Based on the report made to the Navotas Police Station by eyewitness Hector Domingo, which was shown to arresting officer SPO1 Benjamin Bacunata, the latter, in effect, was vested with personal knowledge of the facts surrounding the stabbing of Rosanna Honrubia a few hours before the arrest on June 21, 1995 of accused-appellant. Hence, SPO1 Benjamin Bacunata and the other arresting officers with him, were validly compelled, in the performance of their official duties, to arrest accused-appellant without a warrant. Besides, even if the warrantless arrest was unlawful and the evidence obtained (i.e., an improvised bladed weapon) inadmissible, the conviction of accused-appellant would still be in accordance with law and the evidence because eyewitness Arminggol Teofe positively identified him as the assailant of Rosanna Honrubia, and also identified the bladed weapon recovered in another place as the one used by accused-appellant in stabbing Rosanna.

We find no merit in the appeal.

Accused-appellant assails his conviction as improper and illegal asserting that the court a quo never acquired jurisdiction over his person because he was arrested without a warrant and that his warrantless arrest was not done under any of the circumstances enumerated in Section 5, Rule 113 of the 1985 Rules of Criminal Procedure.

Even granting that indeed there had been an irregularity attendant to the arrest of accused-appellant, it should, not having been raised at the opportune time, be deemed cured by his voluntarily submitting himself to the jurisdiction of the trial court. Not only did accused-appellant enter his plea during arraignment but also waived pre-trial and actively participated at the trial which constituted a waiver of any supposed irregularity in his arrest.[5]

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived.[6] We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment.[7] And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court[8] as was done by the accused-appellant in the instant case.

However, after a review of the entire records, we find that the trial court erred in finding accused Carlito Ereño y Ayson guilty of murder as charged. The crime committed is homicide.

The information filed against accused Carlito A. Ereño charged him with having wilfully, unlawfully and feloniously attacked, assaulted and stabbed with a bladed weapon one ROSANNA HONRUBIA thereby inflicting upon the victim stab wounds which caused her immediate death on June 21, 1995 and that the fatal stabbing of the victim was committed with the attendant circumstances of treachery and evident premeditation.[9]

In convicting the accused, the trial court relied solely on the testimony of witness Arminggol Teofe who narrated the successive incidents that transpired in the evening of June 21, 1995 which led to the fatal stabbing of Rosanna Honrubia. He testified that he was present and witnessed the entire incident from the time work was started on the busted electric line in N. Domingo Street in Tangos, Navotas; he saw the accused-appellant Ereño take the flashlight from Rosanna, brought the same to the interior of the place followed by Rosanna who retook the flashlight; the return of the two to the place of work and the argument between them that ensued. He described the stabbing of Rosanna by Ereño, first at the back and then twice at the chest while Ereño was holding Rosanna by her hair.

The qualifying circumstance of treachery was not established by convincing evidence.[10] There was no showing that the means, method or manner of attack was deliberately and consciously adopted by the accused and actually

carried out so swiftly and unexpectedly so as to ensure his safety while rendering his victim helpless and unable to defend herself.[11] There is no treachery when the killing results from a verbal altercation between the victim and the assailant such that the victim must have been forewarned of the impending danger as was found in the case at bar.[12] It bears stress that treachery is not presumed. It has to be proved as convincingly as the killing itself.[13] In fact, the well-settled rule is that any circumstance which would qualify a killing to murder must be proved as indubitably as the killing itself.[14] Thus, 'evident premeditation' cannot also be appreciated to qualify the killing of Rosanna by the accused to murder. No evidence had been adduced indicating that accused-appellant earlier planned and resolved to kill victim Rosanna Honrubia and that he clung to his plan and determination for a considerable length of time before he executed the same.[15] For evident premeditation to be appreciated as a qualifying circumstance, direct evidence must be adduced by the prosecution of the following: (a) the planning and preparation made and the time the offender determined to kill his victim; (b) an act of the offender manifestly indicating that he clung to his determination to kill his victim; and (c) sufficient lapse of time between the determination and the execution of the killing to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[16]

In view of the absence of evidence establishing the alleged qualifying circumstances of treachery and evident premeditation, the crime of fatally stabbing Rosanna Honrubia committed by the accused is not murder but only homicide.[17]

Accordingly, the appropriate penalty to be imposed is not reclusion perpetua but reclusion temporal.[18] Since there are neither aggravating nor mitigating circumstances found by the trial court, the penalty in this case shall be fixed in its medium period of reclusion temporal[19] which ranges from a minimum of fourteen (14) years, eight (8) months and one (1) day to a maximum of seventeen (17) years and four (4) months. Further, applying the Indeterminate Sentence Law,[20] the imposable penalty shall be within the range of the penalty next lower in degree, i.e. prision mayor as minimum to reclusion temporal in its medium period as the maximum.[21]

On the civil aspect of the case, the court a quo overlooked certain evidentiary facts in its award of damages. For instance, in seeking recovery for actual damages, it is necessary that the claimant produce competent proof or the best evidence obtainable such as receipts to justify an award therefor. Actual or compensatory damages cannot be presumed but must be proved and proved with reasonable degree of certainty.[22] Only substantiated and proven expenses or those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts.[23] The list of expenses incurred for the wake, funeral and burial of the victim amounting to P24,700.00 (Exh. "F-2") submitted by the victim's mother Lita Honrubia is self-serving and not substantiated. We cannot therefore affirm the trial court's award of P24,000.00 for actual expenses.

In line with current jurisprudence, we sustain the award of P50,000.00 as civil indemnity (ex delicto) which requires no proof other than the fact of death of the victim and assailant's responsibility therefor.[24]

We also sustain the award of P50,000.00 by way of moral damages for the pain and sorrow suffered by the victim's family in connection with Rosanna's untimely death. We find the award to be adequate, reasonable and with sufficient basis taking into consideration the pain and mental anguish suffered by the victim's family.[25]

The court a quo correctly denied for lack of factual basis the claim of the victim's mother for an award for loss of income or earning capacity of the deceased estimated by her at P600.00 per day, (Sunday excluded) or P15,600.00 a month or P187,200.00 a year.[26] This hand-written estimate of the deceased's daily income as a self-employed fish vendor during the past eight (8) years prior to her death on June 21, 1995, submitted by the victim's mother in the course of her testimony in court is not supported by competent evidence like income tax returns or receipts. It bears stress that compensation for lost income is in the nature of damages[27] and as such requires due proof of

the damages suffered;[28] there must be unbiased proof of the deceased's average income.[29] In the instant case, the victim's mother, Lita Honrubia, gave only a self-serving hence unreliable statement of her deceased daughter's income. Moreover, the award for lost income refers to the net income of the deceased, that is, her total income less her average expenses.[30] No proof of the victim's average expenses was presented. Hence, there can be no reliable estimate of the deceased's lost income.

WHEREFORE, the decision appealed from is hereby MODIFIED. Appellant CARLITO EREÑO Y AYSON is found GUILTY of HOMICIDE and sentenced to suffer a prison term of eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum. Appellant is also ORDERED to pay the heirs of Rosanna Honrubia P50,000.00 as civil indemnity plus P50,000.00 as moral damages. The trial court's award of P24,000.00 for alleged expenses incurred in connection with the death and burial of the victim is DELETED for lack of basis. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Per Judge Benjamin M. Aquino, Jr.

[2] Records, p. 1-A.

[3] Per Order of RTC Judge B. Aquino, Jr. dated July 19, 1995; Record, p. 14.

[4] RTC Decision, pp. 1-5; Rollo, pp. 22-26.

[5] People vs. Barrientos, 285 SCRA 221.

[6] People vs. Lopez, Jr., 245 SCRA 95; People vs. Rivera, 245 SCRA 42; People vs. Mahusay, 282 SCRA 80; People vs. Cabiles, 284 SCRA 199; People vs. Montilla, 285 SCRA 703; People vs. Tidula, 292 SCRA 596.

[7] People vs. Hernandez, 282 SCRA 387.

[8] People vs. Nazareno, 260 SCRA 256.

[9] Article 248 of the Revised Penal Code provides that the crime of murder is committed by any person who shall kill another with any of the following attendant circumstances:

- 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.
- In consideration of a price, reward or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity. Nexâ old
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

- [10] People vs. Ismael, 272 SCRA 95.
- [11] People vs. Castillo, 26 SCRA 493; People vs. Porras, 255 SCRA 514.
- [12] People vs. Bautista, 254 SCRA 621.
- [13] People vs. Villanueva, 265 SCRA 216.
- [14] People vs. Patamama, 250 SCRA 603; People vs. Cruz, 262 SCRA 237; People vs. Luayon, 260 SCRA 739; People vs. Sumaoy, 263 SCRA 460.
- [15] People vs. Escoto, 244 SCRA 87; People vs. Daen, Jr., 244 SCRA 382.
- [16] People vs. Derilo, 271 SCRA 633; People vs. Artiaga, 274 SCRA 685; People vs. Angeles, 275 SCRA 19.
- [17] People vs. Bautista, *supra*.
- [18] Revised Penal Code, Art. 249.
- [19] Revised Penal Code, Art. 64 (1).
- [20] Act No. 4103 as amended by Act No. 4225, Section 1.
- [21] The range of prision mayor is from 6 years and 1 day to 12 years. The span of reclusion temporal, medium, is from 14 years, 8 months and 1 day to 17 years and 4 months.
- [22] People vs. Fabrigas, Jr., 261 SCRA 436.
- [23] People vs. Jamiro, 279 SCRA 290; People vs. Degoma and Taborada, 209 SCRA 266.
- [24] People vs. Cordero, 263 SCRA 122; People vs. Ortega, 276 SCRA 166; People vs. Española, 271 SCRA 689; People vs. Panida, G.R. Nos. 127125 and 138952, July 6, 1999; People vs. Bautista, G.R. No. 96092, August 17, 1999; People vs. Samson Suplito, G.R. No. 104944, September 16, 1999.
- [25] TSN, August 4, 1995, p. 7.
- [26] Exhibits "F-3" and "F-4".
- [27] See Heirs of Raymundo Castro vs. Bustos, 27 SCRA 327, 334-335.
- [28] De la Paz vs. Intermediate Appellate Court, 154 SCRA 65, 76; Scott Consultants and Resource Development Corporation vs. Court of Appeals, 242 SCRA 393, 404-405; PNOC Shipping and Transport Corporation vs. Court of Appeals, 297 SCRA 402.
- [29] People vs. Mario Villanueva y Faustino, 302 SCRA 380.
- [30] Davila vs. Philippine Air Lines, 49 SCRA 497, 504-505; MD Transit, Inc. vs. Court of Appeals, 90 SCRA 542-545; Sanitary Steam Laundry, Inc. vs. Court of Appeals, 300 SCRA 20.

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