

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULIO HERIDA Y BERNABE @ “JUN TAGAY” AND NONITO JAMILA, JR., Y CANTO ACCUSED,

G.R. No. 127158. March 05, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Quezon City, Branch 78, in Criminal Case No. Q-95-61405, convicting appellant Julio Herida y Bernabe, alias "Jun Tagay," of murder and sentencing him to suffer the penalty of reclusion perpetua.

In an Information dated May 16, 1995, Julio Herida and Nonito Jamila, Jr., were charged by the City Prosecutor of Quezon City with murder, allegedly committed as follows:

That on or about the 14[th] day of May, 1995 in Quezon City, Philippines, the said accused, conspiring together, confederating with two (2) other persons whose true names, identities and personal whereabouts have not yet been ascertained and mutually helping one another, with intent to kill, qualified by treachery and with evident premeditation and taking advantage of superior strength, did, then and there wilfully (sic), unlawfully and feloniously attack, assault and employ personal violence upon the person of HERLITO DELARA[2] y VILLAS, by then and there mauling and stabbing him with the use of knives and bolos, hitting him on the different parts of the body, thereby inflicting upon said Herlito Delara serious and mortal stab wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Herlito Delara.

CONTRARY TO LAW.[3]

On July 31, 1995, Herida and Jamila, Jr., were arraigned. They respectively pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

The facts in this case are as follows: On May 14, 1995, the residents of Purok 4-B, Luzon Avenue, Barangay Culiati, Quezon City celebrated their fiesta. The affair had been unremarkable until about 6:30 P.M. when several gunshots shattered the early evening calm. Prosecution witness Tomas Baniquid was preparing his family's evening meal when he heard the shots. Shortly thereafter, he sensed a commotion right outside his house. Tomas peeped from his window and saw three armed men ganging up on a person already prostrate on the ground. Tomas could not immediately identify the prostrate figure as the latter's shirt had been pulled over his head. However, he recognized the three attackers as Edmund Tracilla, Edmund's brother-in-law who was known only as "Rene," and appellant Julio Herida. Rene hacked the man on the ground several times with a bolo. Edmund also held a bladed weapon and repeatedly stabbed the prostrate figure. Appellant bashed the chest and head of the victim with a 4-inch concrete hollow block. Despite his injuries, the latter managed to fend off his attackers and remove the shirt that covered his face. Tomas then recognized Herlito Delara. Delara rose and ran towards his house, which was 10 meters away. Edmund, Rene, and appellant pursued him.[4]

Delara reached his house bloodied from all the wounds he received. His common-law spouse, Delina Duyon[5] met him. He ordered her to close the door saying that certain persons were trying to kill him. Delina was about to close the door when she saw Rene, Edmund, and appellant approaching, followed by a fourth person, whom she later identified as Nonito Jamila, Jr. Nonito managed to insert his hands through the door and tried to pull Delara outside. Delina screamed for help. The attackers retreated and subsequently left.[6]

Delara was brought to a hospital, but eventually died as a result of the wounds he sustained.

Dr. Maria Cristina B. Freyra, medico-legal officer of the Philippine National Police Northern District Command Central Crime Laboratory, autopsied Delara's corpse. She found that the victim had sustained twenty-three (23) injuries, namely: four (4) hack wounds, four (4) incise wounds, two (2) laceration wounds, two (2) stab wounds, and ten (10) abrasions.[7] She identified the hack wound on the right side of the head, the lacerated wound in the same area, and the stab wound on the left chest as the fatal injuries.[8]

On the evening of May 14, 1995, Edmund, Nonito, and appellant were invited by barangay peace officers to shed light on the incident. Rene, who was not from the neighborhood, was nowhere to be found. Edmund claimed that he had a wounded foot as a result of a bottle-throwing incident earlier that day and asked permission to have it treated. It was granted but he went into hiding.[9] He and Rene were not criminally charged.

Both appellant and Nonito denied any participation in the killing of Delara. Nonito averred that he had known his co-accused only for five (5) months. At the time of the incident, he was inside his house, while talking to appellant who was outside. Suddenly, Delara arrived, brandishing a revolver and shouting that he was going to kill appellant. Nonito testified that he did not see Delara fire his gun, but claimed that the first shot almost hit him and his co-accused. Upon seeing Delara point his gun at appellant, Nonito pulled the latter inside and closed the door.[10]

Appellant's testimony essentially corroborated Nonito's story. He declared that at the time of the incident, Nonito and he were having a conversation when the latter suddenly pulled him inside the house. Once inside, Nonito allegedly told him that Delara was standing outside with a gun pointed at him. Appellant never saw the victim approach or fires his pistol. Once inside, however, he heard Delara shout that he was going to kill somebody. After that appellant heard five (5) gunshots.[11] He said that he had no quarrel with Delara at the time of the incident. He admitted, however, that Delara was angry at him because of a previous misunderstanding. Delara had previously hired appellant to do carpentry work on the former's house. Appellant, however, did not complete the task as he had another contract and recommended another carpenter who botched the job. This angered Delara.[12] Delara's animosity resulted in his stabbing appellant. For this, he filed a complaint against Delara.[13] Appellant insists, however, that they had amicably settled their differences before the May 14th incident.[14]

Jessie Suarez, the last defense witness, testified that at 6:00 P.M. on May 14, 1995, he was at the residence of a certain Junior Canis playing cards with him, Cris Ong, and the two accused. Delara then approached the house of Canis, threatening to kill appellant. Delara was carrying a .38 caliber revolver. Delara then fired six (6) times at appellant. All his shots missed appellant who was pulled into the house by Nonito, his co-accused. Delara then ran away, pursued by Edmund and Rene.[15]

On September 20, 1996, the trial court rendered judgment as follows:

WHEREFORE, the Court finds accused JULIO HERIDA y BERNABE GUILTY beyond reasonable doubt of the crime of MURDER, (as) defined and penalized by Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, there being no mitigating and aggravating circumstances, and further ordered to pay the heirs of Herlito Delara the amount of FORTY THOUSAND PESOS (P40,000.00) as actual damages, ONE HUNDRED THOUSAND

PESOS (P100,000.00) as moral damages and ONE HUNDRED THOUSAND PESOS (P100,000.00) as exemplary damages. As to the accused NONITO JAMILA y CANTO, he is hereby ACQUITTED of the crime of MURDER, as charged, defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused Nonito Jamila y Canto may now be released unless he is being held for some other legal cause.

SO ORDERED.[16]

Hence, the instant appeal. Appellant now assigns the following as errors allegedly committed by the trial court:

- THE LOWER COURT SERIOUSLY ERRED IN FINDING THAT ALL ELEMENTS TO QUALIFY THE KILLING OF DECEASED DELARA INTO MURDER WERE ESTABLISHED BEYOND REASONABLE DOUBT BY THE PROSECUTION.

- THE LOWER COURT SERIOUSLY ERRED WHEN IT DENIED THE ACCUSED-APPELLANT [WITH] HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY ACTING WITH OBVIOUS BIAS AND PREJUDICE DURING THE TRIAL OF THIS CASE.

- THE LOWER COURT ERRED IN AWARDING ACTUAL, MORAL AND EXEMPLARY DAMAGES DESPITE THE FACT THAT DELINA HERIDA IS NOT THE PROPER OR OFFENDED PARTY.

In his first assigned error, appellant contends that there is neither treachery nor evident premeditation present in this case. He relies on *People v. Escoto*, 244 SCRA 87 (1995) where we held that the aggravating circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution without risk to himself arising from the defense which the offended party might make.[17] We agree with appellant that nowhere in the assailed judgment is it shown how the trial court arrived at its conclusion that the killing of Delara was attended by treachery. In convicting appellant of murder qualified by treachery and evident premeditation, the trial court gave great weight to the testimony of prosecution eyewitness Tomas Baniquid. The latter testified, however, that he only peeped through the window some ten (10) minutes after the gunshots had ceased and after hearing a commotion outside his house. He saw the three assailants, appellant included, ganging up on the victim who was already lying on the ground, but nonetheless doing his best to fend off the attack. Clearly, when Baniquid looked outside, the tumult was already well in progress. There is absolutely no showing from his testimony how the attack commenced; no indicia whether the attack was so sudden and unexpected that it afforded the victim no chance to defend himself. In the absence of this information, treachery cannot be established from the circumstances. Treachery cannot be presumed; it must be proved by clear and convincing evidence as clearly as the killing itself.[18] Where the attack was not treacherous, the number of aggressors would constitute abuse of superior strength.[19] Abuse of superior strength, therefore, qualifies the killing as murder.[20]

In finding the killing aggravated by evident premeditation, the trial court characterized the method of attack as deliberately and consciously adopted by the three attackers. For evident premeditation to be appreciated, the following must be proven: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequences of his act.[21] In the instant case, however, there is no showing of the time when appellant and his confederates decided to commit the crime. Neither is there proof to show how appellant and the other two assailants planned the killing of the victim. Nor is there any evidence showing how much time elapsed before the plan was executed. Absent all these, the conclusion by the trial court that evident premeditation qualified the killing of Delara is devoid of any factual mooring.

Appellant next claims that there is absolutely no showing that assailants conspired to kill Delara. He insists that the record does not show that he participated in the planning, preparation, and killing of Delara. Appellant contends that, assuming without admitting, that he did bash the victim with a concrete hollow block, his acts were spontaneous and independent of the attack with the bladed weapons of the other two assailants. He could only be liable for the abrasions caused by the blows he delivered with a concrete hollow block, which were neither fatal nor the primary cause of death.

Conspiracy is deemed to arise when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime.[22] It may be inferred from the mode and manner in which the offense was perpetrated, or from the acts of the accused before, during, and after the crime which point to a joint design, concerted action and commonality of sentiment or interest.[23] Once proved, the act of one becomes the act of all. All the conspirators are answerable as co-principals regardless of the extent or degree of their participation. In this case, the prosecution's evidence indubitably shows that appellant acted in concert with Edmund and Rene to kill Delara. First, while Rene and Edmund were hacking and stabbing the victim, appellant was with them, pounding him with a concrete hollow block. Evidently, appellant was performing overt acts, which directly or indirectly contributed to the execution of the crime. Second, after the victim somehow managed to fend off his attackers and flee, all three attackers pursued him. This is a transparent manifestation of their common sentiment to inflict harm and injury upon Delara. Clearly, the aforementioned acts point to a common purpose, concert of action, and community of interest among the assailants. In conspiracy, it is immaterial who inflicted the fatal blows. A conspirator, no matter how minimal his participation, is as guilty as the principal perpetrator of the crime.

On the second assigned error, appellant avers that the trial court judge exhibited bias or prejudice against him. Appellant points out that over seventy percent (70%) of the testimonies of the prosecution's material witnesses were elicited by the judge, while the cross-examination of the defense witnesses was to a large extent conducted by the judge himself. He submits that under these circumstances, his right to a fair and impartial trial was violated.

The transcripts of the proceedings show that the trial court did intensively question the witnesses. For instance, of the 182 questions asked of prosecution eyewitness Tomas Baniquid, 79 or roughly 43% of the total came from the judge. However, we note that the judge also intensively questioned witnesses of the defense. When appellant took the stand, 63 questions were added, with 27 or approximately 43% asked by the judge. The intensive questioning of the witnesses, however, was necessary. The sworn affidavits of the material witnesses were adopted as their direct testimonies, subject to cross-examination. Since affidavits are generally taken ex parte and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer,[24] the trial court had to ask many questions to clarify important matters. The judge's behavior under this circumstance cannot be considered biased or prejudiced. Judges are, after all, not mere referees in a boxing bout, whose only task is to watch and decide the results.[25] Judges have as much interest as counsel in the orderly and expeditious presentation of evidence and have the duty to ask questions that would elicit the facts on the issues involved, clarify ambiguous remarks by witnesses, and address the points that are overlooked by counsel.

On the third assigned error, appellant questions the award of damages in favor of the victim's common-law wife, since she is neither a legal heir of the victim nor the offended party in this case.

A careful reading of the decretal portion of the assailed judgment will show, however, that no such award was made to Delina Duyon a.k.a. "Delina Delara." Rather, the award of damages was made in favor of "the heirs of Herlito Delara."

To reiterate, prosecution eyewitness Tomas Baniquid positively identified appellant as one of the three assailants

who, acting in concert, assaulted and killed Herlito Delara. Appellant has shown no reason why Baniquid, who has been his long-time neighbor, should falsely testify against him. Against such positive identification, appellant's bare denial of any participation in the killing of Delara must fall.[26] The testimony of a single witness, when positive and credible, is sufficient to sustain a conviction even for murder.[27] We find that the prosecution has successfully proven appellant's guilt beyond reasonable doubt, and the award of damages to "the heirs" of the victim is legally justified.

Some modifications in the award of damages, however, are necessary. The trial court awarded the heirs of the victim P40,000.00 as actual damages, P100,000.00 as moral damages and P100,000.00 as exemplary damages. Award for actual damages are given only to claims that are duly supported by receipts.[28] In the present case, the records show that the claims duly supported by receipts are the funeral services amounting to P18,000.00[29] and P1,380.00 representing the cost of materials[30] for the wooden crate used in shipping the remains of the victim to Occidental Mindoro for burial. All the other claimed expenses lack documentary proof. The actual damages awarded must therefore be reduced to P19,380.00, as substantiated by the evidence. Moral damages can be awarded only upon sufficient proof that the aggrieved party is entitled thereto.[31] Here, the fact that the heirs of Herlito Delara suffered mental anguish, nervous shock or serious anxiety was not adequately shown. We must, therefore, delete the award of moral damages. The award of exemplary damages must likewise be struck down, since no aggravating circumstance attended the commission of the crime.[32] Finally, we note that the trial court did not grant an indemnity ex delicto which current jurisprudence sets at P50,000. Hence, it is now in order to award such amount to the victim's heirs.

WHEREFORE, the decision of the Regional Trial Court of Quezon City, Branch 78, in Criminal Case No. Q-95-61405 finding appellant Julio Herida y Bernabe @ "Jun Tagay" guilty of murder and sentencing him to reclusion perpetua is **AFFIRMED**. He is also ordered to pay the heirs of Herlito Delara the amounts of P50,000 as death indemnity and P19,380.00 as actual damages. Costs against appellant.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Records, pp. 115-122.

[2] Also spelled as "De Lara" or "de Lara" in the records.

[3] Supra, note 1 at 1.

[4] Exhibit "A"; TSN, August 28, 1995, pp. 13-16; TSN, September 18, 1995, pp. 5-7.

[5] While often referred to in the records as "Delina Delara," she admitted that she was not married to the victim. See TSN, October 4, 1995, p. 7. Hence, our use of her proper name.

[6] Exhibit "D"; TSN, October 4, 1995, pp. 9-14.

[7] Exhibits "J" and "L."

[8] TSN, October 18, 1995, p. 5; Exhibit "K."

[9] Exhibit "B"; pp. 9-13.

[10] Exhibit "1"; TSN, February 21, 1996, pp. 4-12, 14-16.

[11] Exhibit "2"; TSN, March 4, 1996, pp. 8-10.

- [12] Id. at 4-6.
- [13] TSN, March 4, 1996, p. 6.
- [14] Id. at 10.
- [15] TSN, April 29, 1996, pp. 4-16.
- [16] Rollo, p. 57.
- [17] *People v. Forca, et al.*, G.R. No. 134938, June 8, 2000, p. 14 citing *People v. Sumalpong*, 284 SCRA 464, 482 (1998).
- [18] *People v. Flores*, G.R. No. 116794, June 23, 2000, p. 7, citing *People v. Albao*, 287 SCRA 129, 156 (1998).
- [19] *People v. Silva*, 321 SCRA 647, 657 (1999).
- [20] Rev. Penal Code, Art. 248 (1); *People v. Gaviola*, G.R. No. 126125, March 9, 2000, p. 5.
- [21] *People v. Jose*, G.R. No. 130666, January 31, 2000, p. 12, citing *People v. Sarabia*, 317 SCRA 684, 694 (1999).
- [22] *People v. Roche, et al.*, G.R. No. 115182, April 6, 2000, p. 20, citing *People v. Andales*, 312 SCRA 738, 749 (1999).
- [23] *People v. Conde, et al.*, G.R. No. 133647, April 12, 2000, p. 8, citing *People v. Antonio*, 303 SCRA 414, 428 (1999); *People v. Barredo*, 297 SCRA 246, 259 (1998); *People v. Nardo*, 270 SCRA 672, 688 (1997); *People v. Alberca*, 257 SCRA 613, 632 (1996); *People v. Gomez*, 251 SCRA 455, 468 (1995).
- [24] *People v. Perez*, 307 SCRA 276, 292-293 (1999), citing *Sumalpong v. CA*, 268 SCRA 764, 772 (1997), *Naval v. Panday*, 275 SCRA 654, 686 (1997).
- [25] *People v. Lascuna*, 225 SCRA 386, 402 (1993).
- [26] *People v. Araneta*, G.R. No. 137604, July 3, 2000, p. 7, citing *People v. Abdul*, 310 SCRA 246, 264-265 (1999).
- [27] *People v. Mumar*, G.R. No. 123155, June 8, 2000, p. 11, citing *People v. De la Cruz*, 298 SCRA 36, 44 (1998).
- [28] *People v. Guillermo*, 302 SCRA 257, 275 (1999) citing *Sanitary Steam Laundry, Inc. v. Court of Appeals*, 300 SCRA 20, 34 (1998).
- [29] Exhibits "G-1" and "G-3."
- [30] Exhibit "G-2."
- [31] Civil Code, Art. 2217; *People v. Manegdeg*, G.R. No. 115470, October 13, 1999.
- [32] Civil Code, Art. 2230; *People v. Go-od, et al.*, G.R. No. 134505, May 9, 2000, p. 12, citing *People v. Apelado, et al.*, G.R. No. 114937, October 11, 1999.

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