PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL PINCA Y HUARDE, ACCUSED-APPELLANT.

G.R. No. 129256. November 17, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Republic Act 7659 defines the so-called heinous crimes. Not all convictions involving such crimes automatically warrant the imposition of the death penalty. There are specific qualifying and/or aggravating circumstances that must both be alleged in the information and proven during the trial, before the criminal offenders may be sentenced to death. Absent any of these specific qualifying and/or aggravating circumstances, the capital penalty cannot be imposed. Accordingly, in the present case, while the appellant can be convicted of murder on the basis of the established facts, the penalty must be reduced to reclusion perpetua, because the prosecution failed to prove any aggravating circumstance.

The Case

In an Information[1] dated May 22, 1995 filed by 2nd Assistant Provincial Prosecutor Reinerio S. Namocatcat, Appellant Joel Pinca y Huarde was charged with murder, committed as follows:

> "That on or about the 16th day of January, 1995, in the [M]unicipality of Balilihan, [P]rovince of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a round piece of wood, with intent to kill, and without justifiable motive, with evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously and suddenly attack, assault and strike one Conrado Angcahan who was unarmed and unaware of the said attack, hitting the latter on the vital parts of his body resulting [in] his death, and without giving the victim an opportunity to defend himself; to the damage and prejudice of the heirs of the deceased in the amount to be prove[n] during the trial."

Upon his arraignment on August 11, 1995, the accused-appellant duly assisted by his counsel, Atty. Alfonso Damalerio, pleaded not guilty to the charge.[2] Thereafter, trial ensued.[3] On January 8, 1997, the 3-page "Judgment"[4] was promulgated, finding accused-appellant guilty as charged but, quite faultily, sentencing him to the penalty of "reclusion perpetua to death." The dispositive portion of the Judgment reads:

> "WHEREFORE, premises considered, the Court finding accused Joel Pinca GUILTY beyond reasonable doubt of the crime of murder, hereby sentences him to suffer the penalty of reclusion perpetua to death qualified by treachery and evident premeditation punishable under Art. 248 of the Revised Penal Code in relation to Sec. 6 of R.A. 7659, [an] [A]ct to impose the death penalty on certain heinous crimes, and to indemnify the heirs of the victim [in] the amount of P50,000.00, with cost de oficio."

The case was elevated to this Court for automatic review, in view of the death sentence.[5]

The Facts

Version of the Prosecution

The trial court summarized the prosecution evidence as follows:[6]

> "Evidence for the prosecution disclosed that in the afternoon of January 16, 1995, witness Gerry Abenir after disembarking from a passenger bus which he rode from Tagbilaran City to Balilihan, Bohol, together with a friend, entered the Madona's Bake Shop located at the public market of Balilihan, Bohol. Upon entering, Gerry Abenir saw accused Joel Pinca [who] made a remark that somebody splashed [him with] liquor [and that] if it were not for the presence of the shop owner, he would have inflicted injuries to the person responsible. At about 7:00 P.M. Gerry and the accused rode on a passenger motorcycle (habal-habal) driven by one Wilfredo Lumantas on their way home to Del Carmen Weste and Dorol, Balilihan, Bohol. When they were about to reach Gerry's place, they passed by the victim, Conrado Angcahan walking on the road in an unsteady manner. The motorcycle stopped and both Gerry and the accused disembarked. The accused told Gerry that he would wait for the victim for he was the person who splashed [on] him liquor earlier in the afternoon. The accused got a piece of wood, waited for the victim and once near, the accused suddenly and without warning, struck the victim hitting the latter on the head rendering the victim unconscious and deprived of a chance to defend himself. Gerry Abenir, who was gripped with fear, ran away towards his house and never reported the matter to the police. However, at 5:00 o'clock in the morning of the next day, he started to dress up to report the incident but police officer Victor Llano arrived and made an inquiry fo [sic] the incident of which he (Gerry) obliged. After receiving the report, police officer Llano together with Gerry Abenir proceeded to the house of the accused. The accused denied any participation. Gerry Abenir went home to his house but moments later, two (2) police officers arrived and again they returned to the house of the accused, who was no longer around. They proceeded to the police station and took down the written statements of Gerry Abenir."

Version of the Defense

On the other hand, the testimony of accused-appellant was summed up in this wise:[7]

> "For his defense, the accused declared that at around 6:30 in the evening of January 16, 1995, Gerry Abenir together with a friend entered Madona's Bake Shop and ordered beer and then offered to drink with them. While drinking, Conrado Angcahan approached Gerry Abenir and asked for cigarettes. Gerry Abenir refused to give the victim causing the latter to murmur and went away. At about 7:00 in the evening, the accused and Gerry Abenir rode on a passenger motorcycle driven by Wilfredo Lumantas and proceeded to their home. While on their way, they passed by the victim and Gerry remarked that the said person Conrado Angcahan was the one who asked him cigarette. The motorcycle stopped and both Gerry Abenir and the accused disembarked. Gerry Abenir called the victim and once the victim got near to Gerry, the two boxed each other. Gerry ran and got a piece of wood and used it in hitting the victim. The victim fell to the ground despite defending himself using his forearm. While the victim was [on] the ground, Gerry Abenir struck the latter hitting the head. He was told by Gerry not to talk. The following morning, police officer Llano arrived at his residence together with Gerry Abenir. Because Gerry made signs not to talk, the accused did not give information to the police. After the police investigation, he proceeded to Tagbilaran City to fetch his wife. While in Tagbilaran City, he received an information that the police of Balilihan, Bohol were looking for him. He presented himself to the police and he was placed in jail."

Ruling of the Trial Court

To justify his conviction of the accused, the trial judge summarily wrote:[8]

> "The Court, after evaluating the conflicting versions of the prosecution and the defense, is inclined to give credence to the former. Firstly, there was motive on the part of the accused to inflict injuries to the victim considering that the victim was responsible in splashing liquor [on] the accused a few hours before the incident. There was therefore a score [to settle] on the part of the accused. Secondly, Gerry Abenir's testimony that the victim was hit on the nape was ably supported by the Autopsy Report (Exhibit 'C') made by Dr. Jude Doblas. There is no showing in the autopsy report that the forearms of the victim suffered injuries which [was]

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> contrary to the claim made by the accused that the victim used his forearm in defending himself from the striking blows made by Gerry Abenir. Thirdly, it contrary to human experience for Gerry Abenir to assault the victim, who did nothing wrong nor provoked him."

With nary a discussion, the judge peremptorily concluded, "[T]he crime was committed [with] treachery, thus, qualifying the crime of murder."

Issues

In his 27-page Brief,[9] appellant through his counsel de oficio[10] submits the following assignment of errors:

> "I.
>
> The trial court's decision is inconsistent with the evidence.
>
> A. the trial court erred in finding that there was motive on the part of the accused to inflict injuries on the victim.
>
> B. the trial court erred in finding that only the testimony of the prosecution witness, Gerry Abenir, [was] supported by the autopsy report.
>
> C. the trial court erred in finding that there was no motive on the part of the prosecution witness, Gerry Abenir, to assault the victim.
>
> II.
>
> The trial court's decision is inconsistent with law and jurisprudence.
>
> A. the trial court erred in appreciating the qualifying circumstance of treachery.
>
> B. the trial court erred in appreciating the aggravating circumstance of evident premeditation.
>
> C. the trial court erred in not appreciating voluntary surrender as a mitigating circumstance.
>
> III.
>
> The trial court violated the constitutional presumption of innocence as it resolved all doubts against the appellant.
>
> IV.
>
> The sentence of death imposed by the trial court is an unconstitutional penalty and thus void.
>
> <0iv align="justify">A. murder as defined by R.A. No. 7659 is not a heinous crime.
>
> B. there is no compelling reason to reimpose the death penalty for murder."

In his Reply Brief,[11] appellant further submits that in the event his conviction is upheld, intoxication should be appreciated as a mitigating circumstance.

In sum, there are really three issues being raised by the appellant: (1) the credibility of the witnesses and the sufficiency of the prosecution evidence; (2) the presence of the modifying circumstances of treachery, evident premeditation, voluntary surrender and/or intoxication; and (3) the constitutionality of the death penalty for the crime of murder.

The Court's Ruling

We affirm that Appellant Joel Pinca is guilty of murder. However, there being no aggravating circumstance

warranting the imposition of death, the proper penalty is reclusion perpetua. Since the factual circumstances do not merit the death penalty as prescribed under RA 7659, the Court finds it unnecessary to tackle the constitutional question raised by appellant. In addition, we grant actual damages to the heirs of the victim, consistent with current jurisprudence.

First Issue:
Credibility of the Witnesses and Sufficiency of the Prosecution Evidence

The issues of which witnesses and whose testimonies are to be believed are best addressed by the trial judge, who had the unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude on the witness stand.[12] Undeniably these are significant factors in evaluating a witness' honesty, sincerity and credibility; and in unearthing the truth, especially in the face of conflicting testimonies. Because of his direct observations of the entire proceedings, the trial judge is in the best position to determine reasonably whose testimonies to accept and which witnesses to believe or disbelieve.[13]

Thus, the trial court's assessment of the credibility of witnesses and their testimonies is generally entitled to great respect and will not be disturbed on appeal,[14] unless (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood or misinterpreted;[15] (3) the trial judge gravely abused his or her discretion;[16] or (4) the judge who penned the appealed decision was not the same one who had presided over the trial and heard the witnesses testify.[17]

In view of the scanty discussion in the assailed Decision, we thoroughly perused the transcripts of the witnesses' testimonies and examined the other pieces of evidence on record. After evaluating the evidence proffered by both the prosecution and the defense, we see no reason to reverse or modify the trial court's findings on the credibility of the prosecution witnesses and their testimonies.

Other than the victim who has been muted forever, there were only two eyewitnesses to the crime. One was the principal prosecution witness, Gerry Abiner;[18] the other was appellant himself. Interestingly, each points to the other as the culprit. Their respective testimonies must, therefore, be carefully evaluated in detail to find out which one is truthful and credible.

The following is Prosecution Witness Abiner's version of the incident:[19]

> "Q.
>
> On January 16, 1995 did you report to your work at Quad Motors here in the City of Tagbilaran?
>
> A.
>
> Yes, Sir.
>
> x x x x x x x x x
>
> Q.
>
> Did you also go home at the afternoon of that day?
>
> A.
>
> Yes.
>
> Q.

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And about what time did you arrive at Balilihan, Bohol?

A.

At about 6:00 o'clock in the evening.

Q.

Upon arriving at Balilihan did you immediately go home to your place at Del Carmen, Balilihan, Bohol?

A.

Not yet, Sir.

Q.

Where did you go instead?

A.

I entered in the bakeshop or bakery yet.

Q.

Who is the owner of that bakery?

A.

Bebbie Chatto.

Q.

And what did you do there?

A.

[I] and my companion Mer entered the bakery in order to drink.

Q.

And what did you drink there?

A.

We dr[a]nk beer.

Q.

Did you see the accused Joel Pinca at the bakery?

A.

Yes.

Q.

And then, what did you do to Joel Pinca?

A.

I offered my glass [of] beer and he also drank.

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Q.

How long did you, together with Mer and the accused drink at the bakery?

A.

Almost one (1) hour.

Q.

While drinking beer at the bakery, what did accused Joel Pinca tell you, if any?

A.

Joel Pinca said: '[A] while ago Pare, kanina Pare, someone splashed on me some drink'.

Q.

What else did the accused tell you?

A.

He said that if not because of Bebbie he would have boxed (banatan) that person.

Q.

Did Joel Pinca tell this in Visayan or Tagalog?

A.

In the Tagalog language.

Q.

Now, you said that you drank beer at the bakery of Bebbie Chatto, for about one (1) hour from 6:00 o'clock in the early evening of January 16, 1995[;] one (1) hour after where did you proceed?

A.

We rode on the Habalhabal driven by Fredo Lumantas in xxx going home [-- I] and Joel Pinca.

Q.

Do I understand correctly that his habalhabal is an improvised motorcycle for the purpose of public riding?

A.

That is correct.

Q.

Now, you told the court a while ago that you and the accused Joel Pinca rode on the habalhabal driven by one Fredo Lumantas[;] towards where, did the two of you ride on the habalhabal?

A.

We were on our way home.

Q.

By the way, what place in Balilihan is this Joel Pinca residing?

A.

He is residing at Dorol, Balilihan, Bohol.

Q.

Which is nearer to the Poblacion, Balilihan, your barangay of Del Carmen Weste or Dorol?

A.

Their barangay Dorol is farther than my barrio.

Q.

But xxx did he pass in Del Carmen, Balilihan?

A.

That is correct.

Q.

This is the reason why the two of you, you and the accused were riding on the habal-habal, motorcycle?

A.

That is correct.

Q.

While you were nearing the place where you would disembark at Del Carmen, whom did you see, if any?

A.

While the habal-habal was still running we passed by at Dodong Conrado Angcahan.

Q.

Now, you are telling this Honorable Court that Dodong Conrado Angcahan was walking on the road towards Del Carmen, [E]ste?

A.

Yes, he was walking.

Q.

Did you notice the manner he was walking?

A.

Yes, I saw him walking as if he was dragging and sometimes he stumble[d], as if he was dr[u]nk.

Q.

Eventually, did you reach the place of that road where you would disembark?

A.

We disembarked at the corner in going home.

Q.

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Were you only the one who disembarked at that time?

A.

We disembarked both of us and he told me, 'I will disembark here Pare, because the person who splashed drink on me is in this place.'

Q.

To whom was the accused referring as the person who splashed drink on him?

A.

This Conrado Angcahan.

Q.

Why do you know that he was referring to Conrado Angcahan?

A.

Because he was the very person whom we passed and there is no other person except Conrado Angcahan.

x x x x x x x x x

Q.

After both of you disembarked from the habal-habal driven by Fredo Lumantas, what happened if any?

A.

Joel picked up something to strike and struck this Dodong Conrado.

Q.

What was that something that the accused got and later on struck on Conrado Angcahan?

A.

He picked-up a piece of wood, he used this piece of wood in striking Conrado Angcahan.

Q.

Where did the accused get that piece of wood?

A.

Joel got that piece of wood from the pile of woods right at that place.

Q.

Right at the side of the road where you disembarked?

A.

Yes.

Q.

What is the distance of the place from the very place [where] you disembarked?

A.

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About two (2) meters.

Q.

You actually saw that piece of wood?

A.

Yes.

Q.

You said that with that piece of wood Joel Pinca struck Dodong Conrado Angcahan[;] was Conrado Angcahan hit?

A.

Yes.

Q.

What portion of Conrado Angcahan's body was hit?

A.

Hit right on the back side of his neck.

INTERPRETER:

Witness is touching the back portion of his neck.

FISCAL UCAT:

Q.

How far were you from the victim and the accused at the very time the accused beat the victim with the piece of wood?

A.

About ten (10) meters.

Q.

What was the probable time when the incident happened?

A.

More or less [at] 7:00 o'clock in the evening.

Q.

Of January 16, 1995?

A.

Yes.

Q.

So, that beating incident happened in the evening[;] how [were] you able to see Joel Pinca beating the victim with the piece of wood?

A.

It was moonlight night.

Q.

And what happened to Conrado Angcahan after he was hit at the back of his head?

A.

What I saw after Dodong was hit, he staggered towards the ground.

Q.

What about you, what did you do upon seeing the accused beat the victim?

A.

I ran towards our house."

The consistency and the coherence of Abiner's tale are easily perceptible. In contrast, appellant's version is as follows:[20]

"Q.

On January 16, 1995 in the afternoon of that date where were you?

A.

I was at the store of Madona's Bakery.

Q.

Where is this Madona's Bakery located?

A.

It is situated at Poblacion, Balilihan, Bohol.

Q.

What were you doing at Madona's Bakery at that time?

A.

I was working.

Q.

May we know what is your work at Madona's Bakeshop?

A.

Sometimes I [bake] bread and I help in the bakery.

Q.

Do you know a certain Gerry Abiner of Balilihan, Bohol?

A.

I do not know his name yet but I know his face.

Q.

On January 16, 1995 in the afternoon thereof, can you recall if this Gerry Abiner was in the Madona's bakeshop of Poblacion, Balilihan, Bohol?

A.

He was there.

Q.

About what time did you see Gerry Abiner at the bakeshop?

A.

About 6:30 in the evening.

xxx xxx xxx

Q.

And when Gerry Abiner entered the bakeshop what did he do?

A.

When Gerry Abiner entered the store on the bakeshop Dodong asked cigarettes from him.

Q.

Do you know the real name of Dodong and [his] family name?

A.

The name is Conrado Angcahan.

Q.

When this Conrado Angcahan asked cigarettes from Gerry Abiner how far were you?

A.

About where I am [seated] now to the place of the Interpreter measuring 1 1/2 meters.

xxx xxx xxx

Q.

Is that within your hearing distance[,] that 1 1/2 meters?

A.

Yes.

Q.

This Gerry Abiner what did he say when he asked cigarettes from Conrado Angcahan?

A.

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Gerry asked Conrado saying '[W]hat are you, are you a policeman that you are asking cigarettes from me?'

Q.

Did Conrado Angcahan answer that statement from Gerry Abiner?

A.

Conrado Angcahan murmured and immediately thereafter went out.

Q.

And after Conrado Angcahan went out what did Gerry Abiner do?

A.

Gerry ordered drinks.

Q.

What drinks [did] Gerry Abiner [ordered]?

A.

He ordered beer.

xxx xxx xxx

Q.

So after Gerry Abiner ordered the drinks do you know what time did Gerry Abiner [go] out [of] the store?

A.

I cannot remember the time.

Q.

Did you somehow have some conversation with Gerry Abiner?

A.

No, he just called me and offered me saying 'let us have the shot Pare.'

Q.

When Gerry Abiner stated 'Pare have a shot' were you asked what may that shot [be]?

A.

He offered [it] to me.

Q.

Did you accept the offer of Gerry Abiner?

A.

Yes.

Q.

And did you ha[ve] any conversation after you accept[ed] the offer of Gerry Abiner?

A.

No more, but I just accepted the offer.

Q.

After drinking in the bakeshop what [did] Gerry Abiner do?

A.

He also [drank] with his companion.

Q.

Until what time?

A.

[Until about] 7:00 o'clock in the evening.

Q.

What time did the store close?

A.

About 7:00 o'clock, that was the moment I was about to close the store.

xxx xxx xxx

Q.

Do you know where [does] Gerry Abiner live?

A.

He goes home [to] Carmen.

Q.

What mode of transportation did you take in going home?

A.

I rode on a motorcycle service, habal-habal.

Q.

What about Gerry Abiner do you know what mode of transportation did he take in going home?

A.

We rode together in the motor service called habal-habal.

Q.

When you stated you rode together, you mean you and Gerry Abiner rode on the same motor service in going to the respective places?

A.

Yes.

Q.

How many passengers were there in the habal-habal together with you and Gerry Abiner?

A.

We were three; myself, Gerry and the driver.

Q.

Upon riding the habal-habal, you will be going to your place in Dorol, is that correct?

A.

Yes, this is correct.

x x x x x x x x x

Q.

On January 16, 1995 at about 7:00 o'clock in the evening together with Gerry Abiner riding on the motor service [do] you remember if there was anything that happened?

A.

When we were riding going home to Dorol we passed by a person.

Q.

The person that you passed by [--] where was this particular place when you saw a certain person you passed by?

A.

Near the place where Gerry Abiner disembarked.

Q.

When you passed by that person with Gerry Abiner did any unusual event [happen]?

A.

Not yet.

Q.

You said nothing happened yet, [was] there anything [that] happened?

A.

When we passed by that person while Gerry disembarked he called that person by saying, 'shit-shit, he called by sound which is in the vernacular sitsit.

Q.

After Gerry called shitshit that person did the person response[d]?

A.

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That person answered.

Q.

What did that person answer?

A.

That person said 'what?'.

Q.

And then Gerry Abiner, what [did he] say if any?

A.

What I saw [was] they boxed each other already.

Q.

This person whom Gerry called, [when] you disembarked [from] the motor service did you recognize that person?

A.

I kn[e]w his name but I did not know his face.

Q.

What is the name of that person?

A.

Dodong.

Q.

Do you know the family name of Dodong?

A.

Angcahan.

Q.

You stated earlier that when Gerry Abiner entered the Madona's Bakeshop one person by the name of Dodong Angcahan approached Gerry Abiner and asked for cigarettes, please tell the Honorable Court what [is the] relation, if any, [of] this Dodong Angcahan whom you saw in Madona's Bakeshop [to the] Dodong Angcahan whom you said you passed by and later on have fist fight with Gerry Abiner?

A.

He is the very same person.

x x x x x x x x x

Q.

And then while they were having the fist fight what did Gerry Abiner do?

A.

Gerry Abiner ran to get a piece of wood.

Q.

Then what did Gerry Abiner do with his piece of wood?

A.

He used it in striking Dodong.

Q.

When Gerry Abiner struck [Dodong Angcahan with] a piece of [wood] xxx where was Conrado Angcahan hit?

A.

Dodong was parrying the blow but Gerry Abiner continued to strike xxx Dodong and when Dodong [fell] to the ground this Gerry continued to strike him using the wood on his back.

Q.

When Gerry Abiner struck Conrado Angcahan who was already on the ground can you please tell the Honorable Court xxx what particular part of the body was Conrado Angcahan hit?

A.

Right here, he was hit on the back side of his neck.

INTERPRETER:

Witness is touching xxx the back side of his neck.

Q.

Now, what about you[,] upon seeing Gerry Abiner striking at Conrado Angcahan what did you do?

A.

I sat down because I was afraid.

Q.

Did you not help Conrado Angcahan so that he [would] be able to escape from the striking of Gerry Abiner?

A.

No, because I was [in] shock because of my fear.

Q.

Now, after Gerry Abiner struck at Conrado Angcahan what next did Gerry Abiner do?

A.

After the striking blow made by Gerry Abiner on Dodong Gerry advised me not to report about the incident.

Q.

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Upon being told by Gerry Angcahan not to report the incident what did you do?

A.

I went home.

Q.

What about Gerry Abiner where did he go?

A.

That I don't know because I already went home."

Even a cursory reading of the above testimony immediately casts doubts on its veracity. Such doubts swell as one goes through appellant's statements during the cross-examination, which we quote at length as follows:[21]

"Q.

Who made [the] arrangement with Alfredo Lumantas that you and Gerry Abiner would ride on his motorcycle?

A.

I also requested Alfredo Lumantas that I xxx ride his motorcycle.

Q.

Do I therefore understand correctly that you told Alfredo Lumantas that you were to disembark at Dorol?

A.

Yes sir.

Q.

You told Alfredo Lumantas that you were to disembark at Dorol because that was your destination, correct?

A.

That is correct.

Q.

By the way, how far is Dorol from Del Carmen Weste?

A.

More than one kilometer.

Q.

That place where [G]erry Abiner disembarked from the motorcycle, that was already part of del Carmen Weste, correct?

A.

Yes sir.

Q.

And so if Gerry Abiner disembarked from the motorcycle, it was because he had arrived at his destination,

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correct?

A.

That is correct.

Q.

Did I get you right that near the place where Gerry Abiner disembarked, you passed by a certain person?

A.

That is correct.

Q.

That person turned out to be Conrado An[g]cahan nicknamed Dodong, the victim in this case?

A.

That is correct.

Q.

And what was Dodong doing at the precise time that you and Gerry Abiner, together of course with Alfredo Lumantas passed by him?

A.

He was walking.

Q.

Did you notice that Dodong could not walk straight?

A.

I did not notice but we passed by him.

Q.

That place where you saw Dodong, how far is it from the place where Gerry disembarked?

A.

A distance of less than ten meters.

Q.

Immediately before Gerry Abener disembarked from the motorcycle, what did he tell you if any?

A.

He asked cigarette from me.

Q.

Besides asking cigarette from you, did Gerry Abener do anything to you?

A.

Gerry said that person we passed by was the person who asked cigarette from me.

Q.

That was all that Gerry Abener told you, correct?

A.

Yes sir.

Q.

Did he do anything to you immediately before he disembarked?

A.

None.

Q.

After Gerry Abener disembarked from the motorcycle, what did he do to you if any?

A.

None.

Q.

After Gerry Abener disembarked from the motorcycle, what did he tell you if any?

A.

None.

Q.

After Gerry Abener disembarked form the motorcycle at del Carmen Weste, did Alfredo Lumantas continue driving towards Dorol with you riding on the motorcycle?

A.

No more sir because at the time Gerry Abener disembarked from the motorcycle, it was also the time when the victim passed and Gerry called by whistling [at] the victim.

Q.

You mean to tell this Honorable Court that after Gerry Abener disembarked from the motorcycle, you also disembarked?

A.

Yes I also disembarked.

Q.

How did it happen that you disembarked at del Carmen Weste when according to you earlier, you even told Alfredo Lumantas that your destination was Dorol more than one kilometer still from del Carmen Weste?

A.

Because Gerry Abener told me that we [would] just [disembark] here in this place.

x x x x x x x x x

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Q.

Was that all Gerry Abener told you 'Let us just [disembark] here?

A.

[Those were] the only words Gerry A[b]ener told me and when he was about to disembark, that was also the time the victim passed by and immediately thereafter, he whistled [at] the victim, and that was the time they were boxing each other.

Q.

And when Gerry A[b]ener told you 'Let us just disembark here', what did you tell him if any?

A.

I did not make an answer.

x x x x x x x x x

Q.

In other words you did not even tell Gerry Abener that [your] destination was just yet Dorol?

ATTY. DAMALERIO:

The witness said I just did not tell Gerry Abener anything.

COURT: For clarification.

Witness:

I was not able to tell him.

(Fiscal Ucat to witness)

Q.

So why did you consent to Gerry Abener when he told you to disembark at del Carmen Weste when your destination was Dorol?

A.

He told me that we [would] just disembark here, but I was not able to say any word because the person passed by which he called by whistling."

Despite the paraphrasing of the question several times, appellant could not give a clear and categorical answer. In fact, at some point the trial court castigated him for being evasive and admonished him to give truthful answers to the questions asked.[22] At another time, the public prosecutor, exasperated that he could not get a responsive answer from him, simply opted to proceed to another topic.[23]

Indeed, appellant equivocated when queried by the public prosecutor. He failed to answer satisfactorily why he disembarked together with Abiner, when his destination was still a kilometer away. His vague reply bolsters apprehensions about his credibility. Why indeed would he readily disembark a kilometer away from his destination, simply because Abiner had told him to? He neither protested, nor even remarked that he had earlier contracted with the habal-habal driver to bring him farther to Dorol, Balilihan, Bohol. What stunning effect did the sight of Angcahan and the sound of Abiner's whistling have on him that prevented him from uttering any

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word?

Moreover, the statement of appellant ("when [Abiner] was about to disembark, that was also the time the victim passed by and immediately thereafter, he whistled [at] the victim, and that was the time they were boxing each other") could only be pure fallacy. First, he stated earlier that Abiner disembarked about ten meters from the place where they had seen and passed by Angcahan. Second, appellant stated during his direct examination that in calling the attention of the victim, Abiner said "shit-shit," or "sit-sit" in the vernacular. On cross-examination, however, appellant alleged that Abiner had whistled. Third, the alleged fistfight between Abiner and Angcahan could not have occurred immediately after the former disembarked because, if that were so, the habal-habal driver would have witnessed at least part of the incident. However, the driver, who testified for the prosecution, stated that he did not know what transpired after his two passengers disembarked.[24]

Furthermore, the alleged fistfight that led to the death of Conrado Angcahan was detailed by appellant as follows:[25]

> "Q.
>
> In the fight between Gerry Abener and Dodong, was Dodong able to defend himself?
>
> A.
>
> Yes because they continued fighting and boxing.
>
> Q.
>
> And using both their hands?
>
> A.
>
> Yes sir.
>
> Q.
>
> And Dodong even used both his arms when he was beaten by Gerry Abener with a piece of wood?
>
> A.
>
> They ha[d] fist fight and Gerry Abener ran away[,] then when Gerry Abener ran he picked up a piece of wood and used it in striking Dodong.
>
> Q.
>
> Do I therefore understand from you correctly that the forearms of Dodong [were] not hit by the pi[e]ce of wood which Gerry Abener used?
>
> A.
>
> While Gerry Abener kept on striking Dodong, Dodong continued to parry the blow.
>
> Q.
>
> So from your answer, do I get you right that the forearms of Dodong were hit by that piece of wood?
>
> A.
>
> Yes because he kept on parrying the blow.
>
> Q.

The forearms of Dodong were hit several times by that piece of wood?

A.

I did not count how many blows, more than once.

Q.

Were the blows which landed on the forearm of Dodong hard blows?

A.

Yes because he fell."

Appellant's statements are not supported by the autopsy report of Municipal Health Officer Jude Doblas, which stated:[26]

"FINDINGS:

1) LACERATED WOUND ABOUT 3 INCHES IN LENGTH OVER THE RIGHT OCCIPITO-PARIETAL REGION OF THE HEAD

2) CONTUSION WITH HEMATOMA OVER THE ANTERIOR FACE

CASE OF DEATH:

1) CARDIO-RESPIRATORY ARREST

2) INTRA-CEREBRAL HEMORRHAGE

3) LACERATED HEAD WOUND"

Significantly, no contusions were found on the other parts of the victim's body, particularly his arms. Certainly, there should have been some if there was truth to appellant's account that the victim parried Abiner's successive hard blows with his forearms. We can only conclude that, altogether, appellant's testimony was full of material inconsistencies and equivocations. It was not creditworthy.

On the other hand, Witness Abiner's clear and unequivocal account is more compatible with the evidence on record and consistent with experience and reason. When he got down at his home from the habal-habal, the appellant also did although his point of destination was the next barrio. The latter told him that the person (referring to Angcahan) who had earlier spilled liquor on him was at that place, thus indicating that he had a definite purpose in mind against that person.

Appellant then proceeded to pick up a piece of wood before approaching and then hitting the back of the head of Angcahan who was wobbling like a drunk, causing the latter to fall face down immediately.

This blow explains the laceration found on the back of the head of Angcahan, the contusion on his face as reported by Dr. Doblas, and the bloodied piece of wood found by the police that same evening near his body.[27] The interval of time that elapsed from the moment appellant got down from the habal-habal, picked up a piece of wood about two meters away, until he approached the victim allowed the habal-habal driver to leave the premises without witnessing the murder incident.

Based on the foregoing, the Court concludes that the prosecution evidence has established beyond reasonable doubt the guilt of the appellant as the perpetrator of the murder of Conrado Angcahan.

Second Issue:

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Attendance of Modifying Circumstances

Treachery

For treachery to be considered a qualifying circumstance, two conditions must concur: (1) the offender employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method or manner of execution was deliberately adopted. The essence of treachery is the deliberateness and the unexpectedness of the attack, which give the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[28]

In the case at bar, the victim, Conrado Angcahan, was just walking by the roadside unsteadily, seemingly drunk. On the other hand, appellant who recognized him as he passed by, first picked up a piece of wood, then used it to whack the unsuspecting victim from behind, hitting him at the back of his head. With the severe force of the blow, the totally oblivious Angcahan simply slumped to the ground face down.

The appellant's attack from behind, being sudden and deliberate, was treacherous indeed. The victim was utterly unsuspecting, thus, unable to put up any resistance or defense. These elements make up the very essence of treachery.[29]

Evident Premeditation

For evident premeditation to be appreciated as an aggravating circumstance, there must be clear and convincing proof of the following: (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that he clung to his determination, and (3) a sufficient lapse of time between such determination and the execution that allowed the criminal to reflect upon the consequences of his act.[30]

The above elements were not established by the evidence. It was not shown that appellant had resolved to kill Angcahan well before the habal-habal that transported him passed by the victim. Rather, it seems that there was no sufficient period of time within which appellant was able to reflect upon the grave consequences of his evil intent. Evident premeditation could not, therefore, aggravate his commission of the offense.

Voluntary Surrender

For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender has not been actually arrested, (2) the offender surrendered to a person in authority, and (3) the surrender was voluntary.[31] If the only reason for the supposed surrender is to ensure the safety of the accused whose arrest is inevitable, the surrender is not spontaneous and hence not voluntary.[32]

According to appellant himself, when the police came to his house the morning after the incident, he completely denied any knowledge of the murder incident. He learned that he was a suspect when he was in Tagbilaran City later that morning to fetch his wife, who told him that the police had come looking for him at her place of work. It was only when he got back to Balilihan, Bohol that he proceeded to the police station "to clear his name." But being the prime suspect, he was instead incarcerated.[33]

Appellant's actions after the incident are not marks of voluntary surrender. Denying to the police any personal knowledge of the crime, he even tried to distance himself from the place of the incident by going to Tagbilaran City. It was only when he learned that he had become a suspect and that the police were looking for him even in Tagbilaran that he finally went to the police station, but only "to clear his name." Such acts do not show any intent to surrender unconditionally to the authorities.

Intoxication

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Ordinarily, intoxication may be considered either aggravating or mitigating, depending upon the circumstances attending the commission of the crime. Intoxication has the effect of decreasing the penalty, if it is not habitual or subsequent to the plan to commit the contemplated crime; on the other hand, when it is habitual or intentional, it is considered an aggravating circumstance.[34] A person pleading intoxication to mitigate penalty must present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime, sufficient to produce the effect of obfuscating reason. At the same time, that person must show proof of not being a habitual drinker and not taking the alcoholic drink with the intention to reinforce his resolve to commit the crime.[35]

Appellant belatedly pleads in his Reply Brief that intoxication should mitigate his penalty. He relies merely on the prosecution's narration of facts which supposedly "indicate that the accused-appellant himself was intoxicated at the moment of the attack," and "there was no evidence presented that [his] state of intoxication was 'not habitual or subsequent to the plan to commit said felony.'"

Appellant cannot simply rely on those statements of the prosecution. He himself must present convincing proof of the nature and the effect of his intoxication. What appears undisputed in the records, however, is that he had a glass of beer prior to the murder incident. Under normal circumstances, a glass of beer is not so intoxicating as to diminish a man's rational capacity. It was not proven at all that such amount of alcohol blurred his reason. This element is essential for intoxication to be considered mitigating.

Third Issue:
Constitutionality of the Reimposition of the Death Penalty on the Crime of Murder

Appellant additionally avers that RA 7659, insofar as it classifies murder as a heinous crime and metes the death penalty therefor, is unconstitutional.

The Court does not find the resolution of this issue the very lis mota of the case.[36] Absent any aggravating circumstance in appellant's commission of murder, the death penalty as prescribed under RA 7659 cannot be imposed upon him. In other words, the determination of the constitutional question is not essential to the disposition of his appeal. "It is a well established rule that a court should not pass upon a constitutional question and decide a law [or part of it] to be unconstitutional or invalid, unless such question is raised by the parties, and that when it is raised, if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises in which a decision upon such question will be unavoidable."[37]

Proper Penalty

The Revised Penal Code, as amended by RA 7659, prescribes the penalty range of "reclusion perpetua to death" on the crime of murder.[38] Where the law prescribes a penalty composed of two indivisible penalties, the applicable rules are as follows:[39]

> "ART. 63. Rules for the application of indivisible penalties. -- In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be prescribed.

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser

penalty shall be applied.

- When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

- When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation."

As discussed earlier, no aggravating or mitigating circumstance attended the commission of the offense. Hence, pursuant to Item 2 above, the lesser penalty -- reclusion perpetua -- should be imposed upon the appellant.[40]

Damages

While the appellee does not question the non-award by the trial court of damages in favor of the heirs of appellant's victim, the Court takes issue thereon, in the exercise of its power in criminal appeals to review and correct such errors as may be found in the appealed judgment even if they have not been raised.[41]

The victim's wife submitted and affirmed in the trial court the truth of the actual expenses incurred by the family during the wake and the burial of the victim, as well the prayer ceremonies for him.[42] Consistent with jurisprudence, the Court gives credence to those expenses that appear to have been genuinely incurred in connection with the death, the wake and the burial of the victim.[43] Based on the evidence, these expenses add up to P4,600.

WHEREFORE, the Decision appealed from is hereby AFFIRMED, with the MODIFICATION that Appellant Joel Pinca y Huarde shall serve the penalty of reclusion perpetua, not death, and shall pay the heirs of Conrado Angcahan P50,000 as indemnity ex delicto and P4,600 as actual damages. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

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[1] Rollo, p. 6; records, p. 17.

[2] Before Acting Presiding Judge Dionisio R. Calibo Jr.; records, p. 28.

[3] Before Presiding Judge Teofilo B. Buslon Jr. The case was docketed as Crim. Case No. 9344.

[4] Penned by Judge Buslon Jr.; rollo, pp. 16-18.

[5] The case was deemed submitted for resolution upon receipt by this Court of appellant's Reply Brief on May 17, 1999.

[6] Assailed Judgment, p. 2; rollo, p. 17.

[7] Ibid., pp. 2-3; rollo, pp. 17-18. See also appellant's Brief, pp. 7-8; rollo, pp. 37-38.

[8] Ibid., p. 3; rollo, p. 18.

[9] Rollo, pp. 31-57. The Brief was signed by Atty. Gilda E. Guillermo of the Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force.

[10] After noting appellant's letter informing the Court that his counsel de parte had died and that he would be

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glad to have any available lawyer appointed by the Court to handle his case, a Resolution dated January 13, 1998 was issued, appointing the Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force as appellant's counsel de oficio.

[11] Rollo, pp. 99-107.

[12] People v. De Guzman, 188 SCRA 405, 410-411, August 7, 1990; People v. Atop, 286 SCRA 157, February 10, 1998; People v. Gaorana, 289 SCRA 652, April 27, 1998; People v. Castillo, 289 SCRA 213, April 20, 1998; People v. Oliano, 287 SCRA 158, March 6, 1998; People v. Bahatan, 285 SCRA 282, January 28, 1998; People v. Siguin, GR No. 126517, November 24, 1998.

[13] People v. Pili, 289 SCRA 118, April 15, 1998.

[14] People v. Lapay, GR No. 123072, October 14, 1998; People v. Lozano, 296 SCRA 403, September 25, 1998.

[15] People v. Bersabe, 289 SCRA 685, April 27, 1998; People v. Albao, 287 SCRA 129, March 6, 1998; People v. Obello, 284 SCRA 79, January 14, 1998; People v. Sta. Ana, 291 SCRA 188, June 26, 1998; People v. Villamor, 284 SCRA 184, January 16, 1998; People v. Quinao, 269 SCRA 495, March 13, 1997; People v. Pili, supra; People v. Siguin, supra.

[16] People v. Sabalones, 294 SCRA 751, August 31, 1998.

[17] People v. Cawaling, 293 SCRA 267, July 28, 1998; People v. Daraman, 294 SCRA 27, August 7, 1998; People v. Tayaban, 296 SCRA 497, September 25, 1998; People v. Navarro, GR No. 129566, October 7, 1998; People v. Balmoria, 287 SCRA 687, March 20, 1998; People v. Llaguno, supra.

[18] Sometimes spelled "Abener" in the TSNs.

[19] TSN, October 4, 1995, pp. 4-8.

[20] TSN, February 28, 1996, pp. 5-9.

[21] TSN, February 29, 1996, pp. 3-6. [Italics supplied.]

[22] Ibid., p. 8.

[23] Ibid.

[24] TSN, November 15, 1995, p. 4.

[25] TSN, February 29, 1996, p. 9.

[26] Exh. C.

[27] TSN, January 10, 1996, p. 28. The piece of wood was marked "Exh. A."

[28] People v. Laudemar de La Cruz, 291 SCRA 164, June 26, 1998; People v. Cawaling, 293 SCRA 267, July 28, 1998; People v. Sabalones, 294 SCRA 751, August 31, 1998; People v. Castillo, supra; People v. Sumalpong, supra.

[29] People v. Ombrog, 268 SCRA 93, February 12, 1997; People v. Eubra, 274 SCRA 180, June 19, 1997.

[30] People v. Castillo, supra; People v. Sumalpong, supra; People v. Pallarco, 288 SCRA 151, March 26, 1998.

[31] People v. Sumalpong, supra; People v. Alberto Medina, 286 SCRA 44, February 6, 1998.

[32] People v. Sumalpong, supra.

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[33] TSN, February 28, 1996, pp. 13-14; February 29, 1996, pp. 12-13.

[34] Art. 15, Revised Penal Code.

[35] People v. Belaro, GR No. 99869, May 26, 1999; People v. Fortich, 281 SCRA 600, November 13, 1997.

[36] See People v. Malabago, 265 SCRA 198, December 2, 1996.

[37] Sotto v. Comelec, 76 Phil 516, 522, April 16, 1946, per Feria, J. See also Lalican v. Vergara, 276 SCRA 518, July 31, 1997; Co Chiong v. Dinglasan, 79 Phil 122, 126, August 29, 1947.

[38] Art. 248, RPC, as amended by RA 7659.

[39] Art. 63, RPC.

[40] People v. Rebamontan, GR No. 125318, April 13, 1999; People v. Yam-id, GR No. 126116, June 21, 1999; People v. Mante, GR No. 129694, August 18, 1999.

[41] People v. Llaguno, 285 SCRA 124, 147, January 28, 1998; People v. Atop, 286 SCRA 157, 174, February 10, 1998.

[42] Exh. B.

[43] People v. Cordero, 263 SCRA 122, October 11, 1996; People v. Salcedo, ibid.; People v. Ortega Jr., 276 SCRA 166, July 24, 1997; People v. Jamiro, 279 SCRA 290, September 18, 1997.

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