PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN YRAT Y BUGAHOD AND RAUL JIMENA Y POLLESCAS ALIAS “BOBONG”, ACCUSED-APPELLANT.

G.R. No. 130415. October 11, 2001

Ponente: BUENA, J.

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BUENA, J.:

For the death of Benjamin Aca-ac, appellants Alvin Yrat and Raul Jimena were charged with the crime of murder based on an Information which reads:

> "That on or about the 27[th] day of December, 1995, at about 6:45 o'clock in the evening, in barangay Biasong, municipality of Lopez Jaena, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, with treachery and with abuse of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit, box and shot one BENJAMIN ACA-AC, thereby inflicting upon the latter fatal gunshot wounds which caused his immediate death.
>
> "CONTRARY TO LAW, with the presence of the qualifying circumstance of treachery and generic aggravating circumstance of abuse of superior strength."[1]

Arraigned on May 21, 1996, accused Jimena, assisted by counsel, entered a plea of not guilty. As accused Alvin Yrat was then still at large, the case with respect to accused Jimena proceeded to trial with the prosecution presenting Dr. Rachel T. Micarandayo, eyewitnesses Virginia and Violeta Singcay, Allan Garganera, Roger Rebosura, victim's wife, Julia Aca-ac and rebuttal witness Avelino Barbajo.

For his part, accused Jimena presented Nercua, Henry Yabo and Emma Jimena.

On September 3, 1996, appellant Yrat was arrested. Upon arraignment, with the assistance of counsel, on September 6, 1996, he also pleaded not guilty. For his defense, appellant adopted all the evidence, both testimonial and documentary, presented by accused Jimena. He was likewise utilized by accused Jimena as witness.

The prosecution's case established that on December 27, 1995, on the eve of the town fiesta of Biasong, Lopez Jaena, Misamis Occidental, Benjamin Aca-ac, together with his wife, Julia and one Father Naron, were in the house of Avelino "Boy" Barbajo. At about 1 o'clock that afternoon, appellant, accused Jimena and his wife Emma arrived. (As Father Naron had another appointment,) the three bade their host goodbye and proceeded to the video house operated by Violeta and Virginia Singcay. At around 2 o'clock, Benjamin returned to Barbajo's house and joined appellant and accused Jimena. In the course of their conversation, Benjamin and accused Jimena had an altercation regarding the local game masiao, or jai-alai, and nearly engaged in a fistfight were it not for the timely intervention of Barbajo. Appellant was heard saying to Benjamin, "you cannot even reach this New Year." To avoid trouble in his house, Barbajo requested the group to leave,[2] who proceeded to the videoke bar. They saw Julia Aca-ac talking to Violeta Singcay, approached her and told her that Benjamin is ill-mannered. Appellant

likewise said that "you tell your husband that he will not reach the morning."[3] Thereafter, the two left the place. Alarmed by the threats of appellant, Julia left the videoke bar to warn her husband. Not having seen him, she proceeded home.[4]

Between five and six o'clock in the evening, appellant returned to the videoke bar and ordered a bottle of beer. Later, accused Jimena and his wife Emma arrived. While accused Raul Jimena was looking for a place to park his motorcycle, Emma approached appellant and told the latter that Benjamin was following them.[5] When Benjamin arrived, accused Raul stopped the former and talked to him. Benjamin did not alight from the motorcycle.[6] Upon seeing Benjamin, appellant proceeded towards the two men at the same time pulling out a pistol. Walking behind Benjamin, appellant hit him at the right side of the neck with the butt of his gun. Simultaneously, accused Jimena hit Benjamin on the cheek causing the latter to tilt a little backward. At that instance, appellant Yrat pointed his pistol and fired, but the gun did not explode. He then went in front of Benjamin and fired two more shots hitting him on the middle portion of his breast and on the face. Benjamin fell down, and was pinned by his motorcycle.[7] After the incident, spouses Jimena left the place while appellant threw the gun towards the bushes and camote plantation. He went back to the videoke bar and ordered beer and cigarettes. He warned Virginia not to report to the authorities.[8]

The body of Benjamin Aca-ac was examined by Dr. Rachel Micarandayo and was found to have sustained the following wounds:

> "1. Gunshot wound, entrance, 1 ¼ inch in diameter lacerated in character, left cheek.
>
> "2. Gunshot wound, entrance, ½ inch, oval, along the left sternal line, at the level of the 5[th] intercostal space.
>
> "3. Gunshot wound, exit, ¾ inch diameter, everted, at the level of the 7[th] intercostals space, back, left."[9]

Appellant Yrat admitted shooting Benjamin but claims that he only acted in self-defense. He narrated that on December 27, 1995, he was invited to the house of Boy Barbajo. Benjamin Aca-ac, who was with them, allegedly drunk, left the place together with a certain Father Naron and returned shortly thereafter on a motorcycle with a policeman. Without any provocation on his part, Benjamin slapped him. He did not retaliate, instead, he left the house and headed for his house in Barangay Canubay, Oroquieta City. He took his firearm and returned to Lopez Jaena. He proceeded to the videoke bar operated by Violeta Singcay, knowing that Benjamin will pass by that place. After waiting for about two hours, he saw Benjamin.[10] He approached the latter and asked why he slapped him. Benjamin allegedly pulled out a gun so he stepped back, drew his firearm and shot Benjamin twice.

Accused Raul Jimena, on the other hand, claimed that on December 27, 1995 at about 3 o'clock in the afternoon, he, together with his wife, went to Boy Barbajo's house in Biasong, Lopez Jaena. From the house of Boy Barbajo, they proceeded to the residence of Boy Bulawin. As the latter was not yet ready to serve them food, they went home, returned later in the afternoon to Bulawin's house. At about 5 o'clock, they left the house and passed by the videoke bar owned by Virginia Singcay. Emma went inside while accused Jimena looked for a place to park his motorcycle. He saw Santos, an ex-barangay captain of Barangay Dampalan. While talking, they heard a gun explosion. Accused Jimena looked for his wife and then left the place. While the remains of the deceased was brought to his house, Julia Aca-ac shouted to accused Jimena who resides nearby, "Bong, where is the man whom you wanted to be killed."[11]

After weighing the evidence presented by the parties, the trial court rendered a decision the decretal portion of which reads:

> "WHEREFORE, finding accused Alvin Yrat, as principal, and Raul Jimena, as an accomplice, guilty beyond reasonable doubt of the crime of Murder, committed without an aggravating or mitigating circumstance present

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> and applying the provisions of the Indeterminate Sentence Law as regards Raul Jimena, the Court thereby sentences accused Alvin Yrat to suffer the penalty of RECLUSION PERPETUA, and accused Raul Jimena to suffer an indeterminate penalty of imprisonment from SIX (6) YEARS and ONE (1) DAY of prision mayor as its minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, both to indemnify jointly and severally the heirs of Benjamin Aca-ac P50,000.00 as death indemnity, P20,000.00 for funeral expenses, P50,000.00 for the loss of earning capacity of the deceased and P60,000.00 for moral damages and to pay the costs.
>
> **"SO ORDERED."[12]**

Both accused appealed the decision to this Court.

On June 10, 1998, accused Raul Jimena filed a motion to withdraw the appeal which was granted by this Court per Resolution dated September 20, 1999.[13]

In his appeal, appellant made a lone assignment of error-

> "THAT THE TRIAL COURT ERRED IN NOT FINDING ACCUSED-APPELLANT GUILTY ONLY OF HOMICIDE."

Appellant argues that he cannot be sentenced to murder because of the absence of the qualifying circumstance of treachery. He argues that the deceased Benjamin Aca-ac was shot by him frontally.

We find no cogent reason to reverse the decision of the trial court. The trial court correctly appreciated aleviosa as having qualified the killing of the victim to murder.

Treachery is present when the offender employs means, methods, or forms in the execution of the crime which tend directly and especially to insure its execution without risk to himself arising from any defensive or retaliatory act which the victim might make.[14] Thus, for treachery to be considered, two (2) elements must concur, to wit: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[15]

Benjamin Aca-ac was talking to accused Jimena when appellant approached him from behind. With the butt of his gun, appellant hit Benjamin from behind. Almost simultaneously, accused Jimena boxed Benjamin on the face. The latter has not yet recovered from such sudden attack when appellant went in front of Benjamin and shot him face to face. Under this situation, Benjamin was not given any time at all to react. The suddenness of the attack made it impossible for him to defend himself. He was unarmed and totally defenseless when appellant shot him.[16] Appellant employed means of execution which gave Benjamin no opportunity at all to defend himself and that the manner of execution was deliberately and consciously adapted. While Benjamin was assaulted frontally, this does not make such attack less treacherous. Treachery exists - even if the attack is frontal - if it is sudden and unexpected, giving the victim no opportunity to repel it or defend himself. What is decisive is that the execution of the attack, without the slightest provocation from the victim who was unarmed, made it impossible for the victim to defend himself or to retaliate.[17]

Going now to the trial court's award of damages, we find the award of loss of earning capacity not in order. It bears stressing that compensation for loss of income is in the nature of damages and as such requires due proof of the damages suffered.[18] The prosecution failed to present evidence to show the deceased's monthly earnings. What was presented in evidence was only the testimony of the wife that the deceased was earning P50,000.00. We have held that "for lost income due to death, there must be unbiased proof of the deceased's average income. Self-serving, hence, unreliable statement is not enough."[19]

The award of P20,000.00 for funeral expenses should likewise be deleted in the absence of evidence to prove the same. To justify a grant of actual damages, it is necessary to show the amount of actual loss with the best evidence obtainable.[20] The testimony of Julia Aca-ac that she spent P20,000.00 for the wake and burial of her husband, without presenting any receipts, is not sufficient to support the claim for funeral expenses. We have consistently ruled that only expenses supported by receipts and which appear to have been actually incurred shall be allowed.[21] It is a settled rule that there must be proof that actual or compensatory damages have been suffered, and evidence of its actual amount. In the present case, since no receipt was presented to support the claim for funeral expenses, the same cannot be allowed.[22]

In lieu of the aforesaid damages, the heirs of the deceased Benjamin Aca-ac should be awarded the amount of P15,000.00 as temperate damages pursuant to Article 2224 of the Civil Code which provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot, from the nature of the case, be proved with certainty.[23]

We, however, 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] Article 2206 of the Civil Code provides that when death occurs as a result of the crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof. The award of moral damages in the amount of P60,000.00 should also be sustained taking into consideration the pain and anguish of the victim's family.

WHEREFORE, the decision of the Regional Trial Court of Oroquieta City, Branch 12, is hereby AFFIRMED with the MODIFICATION that the awards of P50,000.00 for loss of earning capacity of the deceased, and P20,000.00 for funeral expenses, be deleted.

SO ORDERED.

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

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[1] Records, p. 1.

[2] TSN, February 20, 1977, pp. 8-12.

[3] TSN, July 9, 1996, p. 5; TSN, July 25, 1996, p. 4.

[4] TSN, July 25, 1996.

[5] TSN, July 9, 1996, pp. 1-7.

[6] TSN, Ibid., p. 7; July 22, 1996, p. 4.

[7] TSN, July 9,1996, pp. 8-9.

[8] TSN, July 9, 1996, p. 11.

[9] Exhibit "B," Certificate of Death, p. 3 Original Records.

[10] TSN December 5, 1996, p. 17.

[11] TSN, September 13, 1996, p. 11.

[12] RTC Decision, pp.11-12, Records.

[13] Rollo, p. 104:

"G.R. No. 130415 (People of the Philippines vs. Alvin Yrat, et.al.-Considering the motion of accused-appellant Raul Jimena to withdraw his appeal as well as his letter dated 3 August 1999 stating that he is withdrawing his appeal voluntarily, knowingly and intelligently, forwarded to this Court by Alfredo B. Gozon, P/Superintendent, Davao Prison and Penal Farm, by way of compliance with the resolution of 16 June 1999 requiring the latter to verify the voluntariness of said withdrawal of appeal, the Court RESOLVES to GRANT the motion of appellant Raul Jimena to withdraw his appeal and to DECLARE this case insofar as said appellant is concerned CLOSED and TERMINATED."

[14] People vs. Tan, 314 SCRA 422 [1999]; People vs. Mangahas, 311 SCRA 384, 403 [1999]; People vs. Tomolin, 311 SCRA 507 [1999].

[15] People vs. Penaflor, 313 SCRA 572 [1999]; People vs. Dela Cruz, 207 SCRA 632, 650 [1992; People vs. Garcia, 209 SCRA 164, 178 [1992]; People vs. Tampon, 258 SCRA 115, 132 [1996]; People vs. Tumaob, Jr., 291 SCRA 133, 138-139 [1998]; People vs. Molina, 312 SCRA 135-136 [1999]; People vs. Quilang, 312 SCRA 314 [1999].

[16] People vs. Wilfredo Riglos, G.R. No. 134763, September 4, 2000.

[17] People vs. Tan, supra.

[18] People vs. Carlito Ereño, 326 SCRA 157 [2000].

[19] People vs. Sanchez, 313 SCRA 272 [1999], citing People vs. Mario Villanueva, 302 SCRA 380 [1999].

[20] People vs. Macahia, 307 SCRA 404, 422 [1999].

[21] Supra at note 19.

[22] People vs. Gerry Nablo, 319 SCRA 784 [1999].

[23] People vs. Antonio dela Tongga, 336 SCRA 687 [2000]; citing People vs. Lopez, 312 SCRA 684 [1999]; People vs. Oliano 287 SCRA 158 [1998].

[24] People vs. Carlito Ereño, supra.; People vs. Espanola, 271 SCRA 689 [1997].

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