

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO AQUINO A.K.A. ARTEM AND ERNESTO AQUINO A.K.A. ERNING, ACCUSED.***G.R. No. 130613. October 05, 2000*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-130613/>**BELLOSILLO, J.:**

The brothers ARTEMIO AQUINO a.k.a. Artem and ERNESTO AQUINO a.k.a. Erning were charged with murder for the killing of Ricardo Junio on 29 July 1984 in Sitio Parongking, Bgy. San Miguel, Calasiao, Pangasinan. Soon after, Ernesto Aquino was apprehended, tried, but eventually acquitted, while Artemio Aquino remained at large until he was finally arrested sometime in December 1996. Thereafter he was tried. On 23 May 1997 the Regional Trial Court - Br. 43 of Dagupan City found Artemio Aquino guilty of murder; hence, this appeal pertains only to him.

The evidence for the prosecution adduced through witness Eduardo Barte was that at around 6:00 o'clock in the evening of 29 July 1984 he was in Sitio Parongking, Bgy. San Miguel, Calasiao, Pangasinan, to buy cigarettes when he saw accused Artemio Aquino stab Ricardo Junio. Artemio first approached Ricardo who was seated on a bamboo bench and talked to him. After a short while, Artemio stabbed the unsuspecting Ricardo with a 10-inch bladed weapon. Wounded, Ricardo stood up and ran towards the makeshift bamboo bridge; Ernesto pursued him. In the process, the victim fell from the bamboo bridge into the water. Artemio then proceeded to his house nearby. According to Eduardo, he pulled Ricardo out of the water but the latter was already dead so Eduardo placed his body on the river bank and informed Rosario, wife of Ricardo, about the incident.

Artemio denied participation in the crime. He averred that at the time of the incident he was at home taking care of his children.

Finding the qualifying circumstance of treachery to have attended the commission of the crime, the court a quo convicted accused Artemio Aquino of murder and sentenced him to suffer the penalty of reclusion perpetua and to pay the heirs of Ricardo Junio P50,000.00 as civil indemnity, P50,000.00 as moral damages, P38,700.00 as actual damages, plus the costs of the suit.[1]

Accused-appellant Artemio Aquino submits that the testimony of prosecution witness Eduardo Barte was fabricated as he did not see the actual stabbing.

This contention is untenable. Other than this sweeping conclusion, the defense did not cite instances, much less present evidence, that would persuade this Court to conclude that Eduardo's testimony was a mere concoction.

The trial court found the testimony of Eduardo Barte to be "direct, clear cut, straightforward and positive." On the credibility of witnesses, appellate courts accord the highest respect to the assessment made by the trial court because of the trial judge's unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination. These are significant factors in evaluating the sincerity and

credibility of witnesses in the process of unearthing the truth.[2] Unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of the witnesses must be respected.[3] In the instant case, we agree with the trial court that Eduardo Barte identified accused-appellant as the assailant. His identification was positive, categorical, consistent and without any showing of ill motive which should prevail over the negative, unsubstantiated, and self-serving evidence of alibi and denial of accused-appellant.[4]

Accused-appellant next claims that the trial court erred in appreciating the qualifying circumstance of treachery. This insistence is meritorious. Circumstances qualifying a killing to murder, such as treachery, must be proven as indubitably as the crime itself. Thus, the elements of treachery in a given case must be proved as well: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) that said means of execution were deliberately or consciously adopted.[5]

In the instant case, Eduardo first saw accused-appellant and the victim engage in a casual conversation prior to the attack, but when he looked at them again accused-appellant was already stabbing Ricardo with a 10-inch knife. Admittedly, the attack was frontal as shown by the stab wound sustained by the victim. Ricardo was unarmed and totally unsuspecting of the attack. Nonetheless, the prosecution failed to show by clear and convincing evidence that accused-appellant deliberately adopted such means of execution. Significantly, Eduardo did not even testify on how the attack was commenced -

Pros. Finez: Sometime on July 29, 1984 at about 6:00 o'clock in the evening, do you remember where you were?

Witness Barte: Yes, sir x x x x I was at Barangay Parongking, sir.

Q:

Who were your companions at that time 6:00 p.m.?

A:

I was alone, sir.

Q:

Why did you go to Parongking on that day?

A:

Because I intended to buy a cigarette in a certain store, sir.

Q:

Were you able to buy a cigarette on that day?

A:

Not anymore, sir.

Q:

Why, Mr. Witness?

A:

Because I already witnessed a crime involving the stabbing of Ricardo Junio by Ernesto Aquino and Artemio

Aquino, sir.

Q:

What was that crime about?

A:

That crime about the stabbing of Ricardo Junio by Artemio Aquino, sir.

Q:

What kind of weapon was used in stabbing Ricardo Junio by Artemio Aquino?

A:

A bladed weapon, sir x x x x Around ten (10) inches in length, sir.

Q:

What was the position of Ricardo Junio when he was stabbed by Artemio Aquino?

A:

He was seated, sir.

Q:

How about Ernesto Aquino, what was his participation if any in stabbing Ricardo Junio?

A:

x x x x when Ricardo Junio was about to leave, he still chased him, sir.

Q:

When Ricardo Junio was stabbed by Artemio Aquino, what did Ricardo Junio do, if any?

A:

He stood up and ran, sir.

Q:

To what direction when he ran?

A:

He intended to cross the bridge at Sitio Balani, sir.

Q:

Was he able to cross the bridge?

A:

He was not able to cross the bridge, sir x x x x [b]ecause he was chased by Ernesto Aquino, sir.

Q:

And what happened after that chasing?

A:

He fell on the bridge, sir.

Q:

When you saw Ricardo Junio fell from the bridge, what did you do, if any?

A:

I went down to the river, sir x x x x To help him sir.

Q:

Were you able to help Ricardo Junio?

A:

Not anymore because when I lifted his body from the river, he is (sic) already dead, sir.

Q:

What did you do after lifting the body of Ricardo Junio?

A:

I placed his body on the bank of the river, sir.

Q:

By the way, have you signed any sworn statement in connection with this case?

A:

Yes, sir.[6]

The attendance of treachery in the commission of the crime when alleged in the information qualifies the killing to murder. As a qualifying circumstance, treachery must be established by proof beyond reasonable doubt. In the instant case, we find that the second requisite for treachery to be present, i.e., that the accused deliberately adopted the means of execution, was not satisfactorily proved. It was not even established how the initial attack was launched. In *People v. Adoc*[7] we held that the failure of the prosecution to present evidence as to the manner in which the altercation started precludes a finding that the killing was qualified by treachery. Thus, in the instant case, treachery could not be properly appreciated to qualify the killing to murder. Accused-appellant is, therefore, guilty only of homicide.

Under Art. 249 of The Revised Penal Code, homicide is punishable by reclusion temporal the range of which is from twelve (12) years one (1) day and twenty (20) years. Applying the Indeterminate Sentence Law and there being no modifying circumstance, the minimum of the imposable penalty shall be taken from the penalty next lower in degree or prision mayor the range of which is from six (6) years and one (1) day to twelve (12) years, in any of its periods, while the maximum shall be taken from reclusion temporal medium or from fourteen (14) years eight (8) months and one (1) day to seventeen (17) years and four (4) months.

The trial court erred in awarding P38,700.00 as actual damages to the heirs of Ricardo Junio, the same not having been adequately established. No receipts were presented to support the claim. However, we deem it proper to award P10,000.00 by way of nominal damages pursuant to *People v. Candare*[8] -

Anent accused-appellant's civil liability, the award of P30,165.00 actual damages for the expenses incurred as a result of the death of the victim should be deleted as there were no receipts presented evidencing the same. However, as the heirs of the victim clearly incurred funeral expenses, P10,000.00 by way of nominal damages should be awarded. This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification.

WHEREFORE, the Decision appealed from is AFFIRMED with the MODIFICATION that, instead of convicting accused-appellant of MURDER and sentencing him to reclusion perpetua, the Court declares ARTEMIO AQUINO a.k.a. Artem guilty of HOMICIDE and imposes upon him an indeterminate prison term of eight (8) years two (2) months and ten (10) days of prision mayor medium as minimum to fourteen (14) years ten (10) months and twenty (20) days of reclusion temporal medium as maximum, and orders him to pay the heirs of Ricardo Junio P50,000.00 as civil indemnity, P50,000.00 as moral damages, P10,000.00 as nominal damages, and the costs of the suit. The award of P38,700.00 as actual damages is DELETED for lack of sufficient factual basis.

**SO ORDERED.**

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Decision penned by Judge Silverio Q. Castillo, RTC-Br. 43, Dagupan City, on 23 May 1997; Rollo, pp. 16-25.

[2] *People v. Geral*, G.R. No. 122283, 15 June 2000.

[3] *People v. Caverte*, G.R. No. 123112, 30 March 2000.

[4] *People v. Monieva*, G.R. No. 123912, 8 June 2000.

[5] See Note 2.

[6] TSN, 13 February 1997, pp. 3-5.

[7] G.R. No. 132079, 12 April 2000.

[8] G.R. No. 129528, 8 June 2000.

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