

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. OSCAR PEREZ, APPELLANT.*G.R. No. 134485. October 23, 2003*

Ponente: CALLEJO, SR., J.

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This is an appeal from the Decision[1] dated May 15, 1998 of the Regional Trial Court of Malolos, Bulacan, Branch 85, in Criminal Case No. 747-M-95, finding appellant Oscar Perez guilty beyond reasonable doubt of the crime of murder for the killing of Ildefonso Balite, imposing on him the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim the sum of P50,000.

The Antecedents

The Spouses Ildefonso Balite and his wife Rowena lived in a tenement housing unit located at Maria Ramona Subdivision, Barangay Tabang, Plaridel, Bulacan.[2] The Spouses Artemio and Emerencia Santos and their son-in-law Oscar Perez occupied the unit next door. Rowena Balite was the niece of the Spouses Santos.

The unit of the Santos Spouses had no electrical services. They shared their electrical power supply with the Balite Spouses through an improvised electrical extension wire plugged into an electrical socket inside the latter's unit. The two families shared the payment of the electric bills.

At about 9:00 p.m., on April 28, 1995, Ildefonso came home with two companions, Gardo and Dolphy.[3] He noticed an electrical spark from the overloaded electrical socket that supplied electrical power to the Santos.[4] He immediately proceeded to their unit and asked permission from Emerencia if he could temporarily disconnect their electric power supply to forestall any untoward incident.[5] Emerencia, however, flatly refused.[6] She thereupon proceeded to Oscar's room to wake him up.[7] In the meantime, Gardo and Dolphy left the place.[8] Momentarily, Oscar, with his wife in tow, went outside and confronted Ildefonso.[9] The latter pleaded and explained that it would only be temporary but Oscar was not convinced.[10] Shortly, the two exchanged heated words and grappled with each other.[11] Artemio arrived and intervened. He advised the protagonists to forget their differences. Ildefonso backed off and proceeded to his mother-in-law's house.[12] Oscar, however, refused to be pacified.

Ildefonso, followed by his wife Rowena, went out of the gate of the tenement's compound, while Oscar surreptitiously followed.[13] Ildefonso passed by Maricel Santos, Rowena's younger sister,[14] who was in a store nearby chatting with friends.[15] Maricel saw Ildefonso being trailed closely by Oscar.[16]

Oscar called out and told Ildefonso to wait up. Ildefonso did and faced Oscar. Suddenly, Oscar drew out the gun which was tucked in his waist and aimed it at Ildefonso. Petrified, Ildefonso raised his hands.[17] Oscar shot Ildefonso on the chest.[18] The latter fell to the ground.[19] Oscar came closer and shot the victim anew on the head.[20] Rowena was so shocked at the turn of events and could only cry out, "Huwag, huwag," all to no avail.[21] Thereafter, Oscar fled from the scene.[22] With the help of Jeffrey de Vera and some other neighbors,

Ildefonso was boarded on a jeep and brought to the County Hospital, Plaridel, Bulacan, where he was declared dead on arrival.[23]

Dr. Alberto Bondoc of the Provincial Health Office of Malolos, Bulacan, conducted an autopsy on the cadaver.[24] He found that Ildefonso sustained two fatal gunshot wounds.[25] The first was on the right side of the temple, with a point of entry, around 8 x 10 mm., surrounded by gunpowder tattooing with a diameter of 31 mm., directed medially, superiorly and slightly anteriorly, lacerating the anterior pole of the right frontal lobe of the cerebrum, lacerating the anterior lips of the sella turcica and lacerating the left parietal lobe of the cerebrum and finally fracturing the left parietal bone. This wound had no exit point as the slug was found and extracted at the left portion of the victim's skull. The second gunshot wound was in the left side of the chest, directed posteriorly and slightly superiorly and medially, puncturing the left ventricle of the heart.[26]

Elucidating on his report, Dr. Bondoc explained that gunpowder tattooing occurs when a person is shot at close range. He said that the gunpowder tattooing found on the victim's cadaver was small - only 31 mm., a finding compatible with the theory that the victim was shot at close range. He opined that the muzzle of the gun could have been fired at a distance of about four to six inches. Dr. Bondoc, however, could not say with certainty which of the two wounds was first inflicted on the victim. The immediate cause of death was brain injuries and hemorrhagic shock due to gunshot wounds in the head and chest.[27]

The following afternoon or on April 29, 1995, Rowena went to the Plaridel Police Station and executed before PO3 Reynaldo S. Rivas a statement regarding the shooting incident.[28] Five days thereafter, Maricel Santos likewise executed her statement about the killing incident.[29]

On June 28, 1995, an Information for murder was filed against Oscar. The accusatory portion of the Information reads:

That on or about the 28th day of April, 1995, in the Municipality of Plaridel, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill one Ildefonso Balite y Bautista, did then and there willfully, unlawfully and feloniously, with treachery and evident premeditation, with the use of a firearm, attack, assault and shoot the said Ildefonso Balite y Bautista, hitting the latter on his head and chest, thereby causing him gunshot wounds which directly caused his death.

Contrary to law.[30]

At his arraignment on October 30, 1995,[31] Oscar, assisted by his counsel, entered a plea of not guilty to the charge.

The Evidence of the Accused

Oscar denied the charge. Oscar testified that Ildefonso was a good neighbor, and a person with whom they had no misunderstanding.[32] He testified that at about 9:00 p.m. on April 29, 1995, he was at home sleeping when Emerencia, his mother-in-law, woke him up to check out their sudden lack of electrical power.[33] The house was in total darkness.[34] As he stepped out of their unit, he saw Ildefonso with his two burly[35] companions reeking of alcohol.[36] He asked Ildefonso what had happened and the latter wryly explained that he disconnected the electric power because they were not paying their share.[37] Oscar pleaded to Ildefonso to reconnect the power and offered to pay their share of the electric bills the next day. Ildefonso refused. Thereupon, Ildefonso, with his two companions, approached Oscar and uttered, "Pare lumigpit ka na at baka maligpit ka pa." [38] (You better lay aside, or else you will be laid to rest.) Suddenly, Ildefonso's two companions ganged up on Oscar, kicking and boxing him.[39] Oscar managed to evade the fist blows. Oscar saw Ildefonso pull out a gun.[40] Fearing for his life, Oscar lunged at Ildefonso and grappled with him for the gun's possession. The two rolled on the ground and

wrestled.[41] A gunshot rang out and hit the victim. At that moment, Oscar was left too stunned to recall who had actually squeezed the trigger.[42] Oscar's parents-in-law, the Santos spouses, however, added that they did not see who fired the shot.[43]

On May 15, 1998, the trial court rendered a decision convicting the accused of murder qualified by treachery, the decretal portion of which reads:

In view of the foregoing, this Court finds accused Oscar Perez GUILTY beyond reasonable doubt of the crime of murder qualified by treachery for the killing of Ildefonso Balite. There being no mitigating or aggravating circumstance attendant in this case, he is hereby sentenced to suffer an imprisonment of reclusion perpetua and ordered to indemnify the heirs of the deceased Ildefonso Balite the amount of P50,000.00, and to pay the costs.

SO ORDERED.[44]

The appellant asserts that based on the evidence presented by the prosecution, he could be convicted only of homicide, and not of murder. He avers that the victim was amply forewarned of any impending attack since there was a previous heated altercation between them before the killing. This, according to the appellant, would discount the finding of treachery:

10 - That considering the versions of the two (2) parties, the prosecution and the defense, in analyzing the incident, it is humbly submitted that the accused-appellant did not provoke the quarrel, that the accused-appellant was not holding any gun as no one had testified where the gun came from since the killing of the deceased resulted from the altercation, it is submitted that the accused-appellant is not guilty of Murder and should only be charged of the crime of Homicide because of the quarrel, there is no alevosia committed by the accused-appellant as they confronted each other face to face. It was just lucky for the accused-appellant not to be killed considering the number of the victim and his companions was able to survive from the quarrel as there were three (3) attackers against the accused-appellant.[45]

We do not agree. Given the factual milieu of the case, this Court is in accord with the trial court's finding that the killing of Ildefonso was attended by alevosia.

There is treachery (alevosia) when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[46]

The two elements that must be proved to establish treachery are: (1) the employment of means of execution which would ensure the safety of the offender from defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself, and (2) the means, method and manner of execution were deliberately and consciously adopted by the offender.[47] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor without the slightest provocation on the part of the victim.[48]

In the case at bar, there is no question that the elements of alevosia were proved by the prosecution. As vividly narrated by the two prosecution witnesses, the victim, Ildefonso, had absolutely no opportunity to defend himself from the appellant's aggression. The attack was sudden. The victim was clueless of the impending attack. He was on his way home, with the appellant surreptitiously following from behind. At a distance of two meters, the appellant called his name. When the victim faced the appellant, the victim raised his hands. The appellant suddenly shot him. Ildefonso had no opportunity to anticipate the imminence of the appellant's attack; nor was he in a position to defend himself or repel the aggression because he was unarmed. The appellant shot the victim again on the head after the latter had already fallen to the ground, mortally wounded by the first shot.

That the appellant deliberately and consciously adopted the means to ensure his criminal purpose without risk to himself was undoubtedly also proven by the prosecution. The appellant obviously left the tenement armed with a gun. The victim was fatally shot on the chest at an assured range, and by way of a coup de grace, the appellant shot the victim on the head. The appellant's overt acts in conjunto are irrefragable evidence of the appellant's intention to kill the victim. Only a killer without compunction would shoot such a defenseless and innocent victim.

As a rule, there can be no treachery when an altercation ensued between the appellant and the victim. However, the evidence on record shows that after the altercation, Ildefonso left the scene to go back home. He was unaware that the appellant had followed him and was armed with a deadly weapon.

That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the latter to defend himself or to retaliate.[49]

The Information alleged two other modifying circumstances, namely, evident premeditation and the use of a firearm, but the trial court found that the prosecution failed to prove evident premeditation. Neither did it consider the appellant's use of an unlicensed firearm in the commission of the crime.

We agree with the trial court.

For evident premeditation to be appreciated, it is necessary that the prosecution must prove the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime, to allow the accused to reflect upon the consequences of the act.[50] And like other qualifying circumstances, the elements of evident premeditation must be established with equal certainty and clarity as the criminal act itself before it can be appreciated as a qualifying circumstance.[51] None of these elements could be gathered from the evidence on record. The appellant shot the victim shortly after their altercation. There was no evidence that the appellant had sufficient time to reflect on the consequence of killing the victim.

The appellant's use of a firearm to consummate the crime cannot likewise be considered as a special aggravating circumstance because there was no allegation in the Information that the appellant had no license to possess the same, as mandated by Section 9,[52] Rule 110 of the Rules of Criminal Procedure. The lack of a license to possess firearms is an essential element of the crime of violation of P.D. No. 1866, as amended by Republic Act No. 8294, whether as an independent crime or as an aggravating circumstance in murder or homicide.[53] Hence, such circumstance cannot aggravate the crime of murder and the penalty therefor; otherwise, the appellant would be deprived of his right to be informed of the nature of the charge against him. Although the crime was committed before the effectivity of the said Rule, the same should be applied retroactively as it would be favorable to the appellant.[54]

The penalty for murder under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, is reclusion perpetua to death. Since aside from the qualified circumstance of treachery, no other modifying circumstance was attendant in the commission of the crime, the proper penalty therefor is reclusion perpetua, conformably to Article 63(2) of the Revised Penal Code, as amended.

The trial court correctly ordered the appellant to pay to the heirs of the victim Ildefonso Balite the amount of

P50,000 as civil indemnity ex delicto, in accord with current jurisprudence.[55] We cannot, however, award moral damages in the absence of proof of mental or physical suffering on the part of the heirs of the victim.[56] Lastly, given the attendance of the qualifying circumstance of treachery, an award of exemplary damages to the heirs of the victim in the amount of P25,000,[57] in accordance with Article 2230 of the Civil Code,[58] is in order.

WHEREFORE, the Decision dated May 15, 1998 of Branch 85 of the Regional Trial Court of Malolos, Bulacan, in Criminal Case No. 747-M-95, finding appellant Oscar Perez GUILTY beyond reasonable doubt of the crime of murder is AFFIRMED WITH MODIFICATION. The appellant is ordered to pay to the heirs of the victim Ildefonso Balite P50,000 as civil indemnity and P25,000 as exemplary damages.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Judge Ma. Belen Ringpis Liban.

[2] TSN, 17 November 1995, p. 6.

[3] Records, p. 7.

[4] TSN, 17 November 1995, p. 8.

[5] Ibid.

[6] Id. at 9.

[7] Id.

[8] TSN, 19 January 1996, p. 8.

[9] TSN, 17 November 1995, p. 9.

[10] Id. at 10.

[11] Id.

[12] TSN, 12 August 1997, p. 8.

[13] TSN, 17 November 1995, p. 11.

[14] Id. at 12.

[15] TSN, 30 October 1995, p. 13.

[16] Records, p. 9.

[17] Ibid.

[18] Id. at 14.

[19] Id.

[20] Id.

[21] Id. at 15.

[22] TSN, 30 October 1995, p. 11.

[23] Records, p. 8.

[24] TSN, 11 December 1995, p. 10.

[25] Ibid.

[26] Id. at 10-14.

[27] Id. at 12-14.

[28] Records, pp. 7-8.

[29] Id. at 9-10.

[30] Id. at 4.

[31] Id. at 38.

[32] TSN, 15 July 1997, p. 8.

[33] Id. at 3.

[34] Id. at 6.

[35] Id. at 10.

[36] Id. at 4.

[37] Id.

[38] Id. at 6.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

[43] TSN, 22 July 1997, p. 25; TSN, 12 August 1997, p. 9.

[44] Records, p. 174.

[45] Rollo, pp. 40-41.

[46] Article 14, paragraph 16, Revised Penal Code.

[47] *People v. Malabago*, 265 SCRA 198 (1996).

[48] *People v. Ortiz*, 361 SCRA 274 (2001).

[49] *People v. Patoc*, G.R. No. 140271, 21 February 2003.

[50] *People v. Cabansay*, 353 SCRA 686 (2001).

[51] *People v. Bello*, G.R. No. 139054, 9 December 2002.

[52] Sec. 9. Cause of the Accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in

the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the Court to pronounce judgment.

[53] *People v. Adame*, 346 SCRA 373 (2000).

[54] *People v. Gallego*, 338 SCRA 21 (2000).

[55] *People v. Aguilos*, G.R. No. 121828, June 27, 2003.

[56] *People v. Abut*, G.R. No. 137601, April 24, 2003.

[57] *People v. Catubig*, 363 SCRA 621 (2001).

[58] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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