

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTORIANO ERNOSA (ACQUITTED), ROSENDO ERNOSA, AND
NICOLAS S. TARASONA @ “FELAGIO” (DECEASED), ACCUSED,
ROSENDO ERNOSA, ACCUSE...**

G.R. No. 137273. September 17, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused-appellant Rosendo Ernosa appeals from the decision[1] of the Regional Trial Court of Bacolod City, Branch 49, in Criminal Case No. 94-16753, convicting him of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

The information filed against accused-appellant and his two co-accused, reads:

That on or about the 23rd day of September, 1994, in the Municipality of Salvador Benedicto, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first above-named accused, in company of his other co-accused, Rosendo Ernosa and Nicolas Tarasona alias “Felagio”, armed with bladed weapons and stones, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, taking advantage of their superior force, and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, stone and hack one CARLOS MAGNO y CLARO, thereby inflicting multiple hack wounds upon the body of the latter which caused his instantaneous death.[2]

Upon arraignment on May 30, 1995, accused-appellant and his son, accused Victoriano Ernosa pleaded not guilty.[3] Accused Nicolas Tarasona, on the other hand, was not arraigned as he was killed while escaping from jail.

In the morning of September 23, 1994, Carlos Magno, the victim, and Joselito Bacordo were cutting grass on the former’s lot situated at Barangay Bagong Silang, Don Salvador Benedicto, Negros Occidental. At around 8:00 a.m., accused-appellant and accused Nicolas Tarasona approached them. Accused-appellant was armed with a wooden stick and a bolo, while accused Tarasona was holding two bolos. Aware of the animosity between accused-appellant and the victim, Joselito Bacordo tried to pacify the former. Bacordo told the victim to run, which he did, but accused-appellant and accused Tarasona chased and pelted him with stones. Bacordo ran after them. The victim asked passers-by Efren Solivio[4] and Zaldy Sabolbura[5] for help, but the two told him to keep running. When the assailants were about to catch up with the victim, the latter, holding his bolo, stopped and faced them.[6] Solivio tried to stop accused-appellant and accused Tarasona who were ganging up on the victim but they ignored him. Accused Tarasona stabbed the victim from behind, hitting him on the left arm. The victim in turn stabbed accused-appellant on the stomach and hacked him on the left eyebrow causing him to fall to the ground. Meanwhile, the victim and accused Tarasona continued fighting until they both fell to the ground. As the victim was getting up, accused-appellant attacked him. The victim tried to return the blows but accused Tarasona hacked him at the back causing him to fall again, face up. At this point, accused-appellant hacked the victim on

the head and stabbed him on the chest.[7]

When Solivio was about to ask for help, accused Victoriano Ernosa arrived together with Sgt. Porras and Renato Torbiso. Upon learning that it was the victim who wounded accused-appellant, accused Victoriano rushed to the victim who was lying still on the ground and repeatedly stabbed him. Accused Victoriano was later pacified and disarmed by his companions.[8]

Dr. Benjamin Gonzaga, who conducted the autopsy on the cadaver of the victim, testified that the multiple wounds sustained by the victim were caused by single edged and double bladed weapons. The most fatal were the two stab wounds on the chest and the hack wound on the face transecting the spinal column.[9]

To prove the qualifying circumstance of evident premeditation, the prosecution presented Jaime Pangaral who declared that four days before the incident, he heard the three accused talking about killing the victim. He advised them not to do it but they were determined to kill him.[10]

Accused-appellant Rosendo Ernosa vehemently denied the charges against him. He testified that he and the victim had a land dispute. In the early morning of September 23, 1994, while he was on his way to the farm, he chanced upon the victim and Nicolas Tarasona having a heated argument. He tried to pacify them but the victim suddenly hacked him on the left eyebrow causing him to fall unconscious. When he regained consciousness, he saw Nicolas Tarasona sitting beside the dead body of the victim. Then, he was brought to the hospital where he saw his son, accused Victoriano Ernosa.[11]

Accused Victoriano Ernosa declared that in the morning of September 23, 1994, Zaldy Sabolbura informed him that his father, accused-appellant Rosendo Ernosa, was wounded in a fight. After eating breakfast, he fetched accused-appellant from the Philippine Army detachment and brought him to the hospital.[12]

On September 24, 1998, the trial court rendered a decision convicting accused-appellant Rosendo Ernosa and acquitting accused Victoriano Ernosa. The court ruled that Victoriano's act of stabbing the dead body of the deceased could not give rise to murder but some other crime. The dispositive portion of the said decision reads:

WHEREFORE, in view of all the foregoing, the accused Rosendo Ernosa having been found by this Court to be guilty beyond reasonable doubt of the crime of Murder and considering the mitigating circumstance of an act analogous to voluntary surrender, is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the heirs of Carlos Magno y Claro the sum of P50,000.00 as indemnification for the death of Carlos C. Magno, compensatory damages of P15,000.00 and moral damages of P30,000.00 and to pay the cost.

Accused Victoriano Ernosa is hereby acquitted of the crime of Murder for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.[13]

Hence, the instant appeal. Accused-appellant contends -

I

THAT THE HONORABLE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED OF MURDER DESPITE THE CLEAR ABSENCE OF SUFFICIENT QUALIFYING EVIDENCE TO SUPPORT ITS CONCLUSION.

II

THAT THE HONORABLE TRIAL COURT LIKEWISE SERIOUSLY ERRED IN DECLARING THAT THE ACCUSED INFLICTED HACK BLOWS ON THE VICTIM DESPITE THE CLEAR ABSENCE OF EVIDENCE TO SUPPORT SAID CONCLUSION.[14]

The core issue raised in the case at bar is the credibility of prosecution witnesses Joselito Bacordo and Efren Solivio. It is well-settled that the credibility of the witnesses is best left to the discretion of the trial court. This is so because the trial court is in an advantageous position in determining the actual conduct of the witness. Thus, as a general rule on appeal, its evaluation of the testimony of the witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case.[15]

In the case at bar, the Court finds no such exceptional facts or circumstances that would warrant a reversal of the rule. Joselito Bacordo and Efren Solivio who witnessed the entire incident vividly narrated the details of the killing of the victim. We find their testimony convincing and worthy of credence. Significantly, no ill-motive could be ascribed to these witnesses in testifying against accused-appellant. Where there is no evidence to indicate that the prosecution witnesses have been actuated by improper motive, and absent any compelling reason to conclude otherwise, their testimony is ordinarily accorded full faith and credit.[16]

The defense of denial put up by accused-appellant cannot prevail over the direct and positive assertion of the prosecution witnesses that accused-appellant and his companion conspired in hacking the victim to death.[17] In the same vein, we find no merit in accused-appellant's claim that the victim was the unlawful aggressor. As testified by the prosecution witnesses, it was in fact accused-appellant and his companion who accosted, stoned, and even pursued the victim when he attempted to flee. Indeed, the wounds sustained by accused-appellant were inflicted by the victim in the process of defending himself from accused-appellant's attack. Even assuming that the victim was the unlawful aggressor, the danger to the life of accused-appellant had already ceased at the time he delivered the fatal blow on the victim. This is because the victim was already defenseless and lying on the ground when he stabbed him on the chest and hacked him on the head.

The trial court, however, erred in appreciating the qualifying circumstance of evident premeditation. Evident premeditation requires proof of: (1) the time when the offender has appeared determined to commit the crime; (2) the act evidently indicating that the offender has clung to his determination; (3) sufficient lapse of time between the determination to commit the crime and the execution thereof during which the offender could have reflected upon the consequences of his act. These circumstances are manifested by the planning and preparation undertaken by the offender prior to the commission of the crime.[18]

In the instant case, instead of ensuring impunity, accused-appellant and his companion executed the crime in broad daylight and in the presence of persons who could easily identify them. These facts do not bear the earmarks of a carefully planned murder.[19] Moreover, the bare allegation of Jaime Pangaral that he heard the three accused conversing about killing the victim and that he advised them to settle the matter amicably is not sufficient to prove the elements of evident premeditation.

In *People v. Apongan*,[20] the Court held that to acknowledge the presence of evident premeditation, there must be direct evidence of the plan and preparation to kill after the plan is conceived, other than the bare testimony of a witness alleging that appellant was present when the plan was conceived and he volunteered to execute it.

Likewise, treachery cannot be appreciated against accused-appellant. There is treachery when the offender commits any of the crimes against a 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. Two essential elements must, therefore, be established, to wit: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the said means of execution was deliberately or consciously adopted. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

In the case at bar, the victim was not caught completely off-guard because the infliction of the fatal blow was preceded by a fight. In fact, the victim wounded his opponents in the process of defending himself. This negates the existence of the first element of treachery, i.e., a sudden attack giving the victim no opportunity to defend himself or to retaliate. Thus, in *People v. Iglesia*,^[21] the Court ruled that the existence of a struggle before the fatal blow was dealt on the victim shows he was forewarned of the impending attack and that he was afforded the opportunity to put up a defense. In addition, accused-appellant and his companion declared their intention to kill the victim and thereafter chased him before the combat begun. This would be sufficient to forewarn the victim of the danger on his life. Moreover, no evidence was presented to show that accused-appellant consciously adopted his mode of attack in order to insure the execution of the crime without risk to himself. The second element, i.e., adoption of means, methods, or forms to ensure the commission of the crime, was thus not proved by the prosecution.

Nonetheless, abuse of superior strength qualified the killing of the victim to murder. It must be stressed that though the victim defended himself with a bolo, accused-appellant was armed with a wooden stick and a bolo while accused Tarasona was armed with two bolos. Accused-appellant positioned himself in front while accused Tarasona, at the back of the victim precluding the escape of the latter. Their simultaneous act of stabbing and hacking, certainly show that they took advantage of their superior combined strength over the victim who died of multiple stab wounds.^[22]

The mitigating circumstance analogous to voluntary surrender should not have been appreciated in favor of accused-appellant considering that the records are barren of facts that would substantiate the same. While said circumstance was mentioned in the dispositive portion of the decision, there was no discussion by the trial court as to why it should benefit accused-appellant. At any rate, the said mitigating circumstance will not affect the imposable penalty. The penalty for murder is reclusion perpetua to death. Under Article 63 of the Revised Penal Code, when the penalty prescribed is composed of two indivisible penalties and there are some mitigating but no aggravating circumstances, or when there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied.

In the instant case, other than the qualifying circumstance of abuse of superior strength, no aggravating circumstance that would raise the penalty to death was proven by the prosecution. Hence, regardless of whether the mitigating circumstance analogous to voluntary surrender was proven, the appropriate imposable penalty is still the lesser penalty of reclusion perpetua.

We affirm the awards of P50,000.00 as civil indemnity for the death of the victim, the same being in line with prevailing jurisprudence,^[23] and of P15,000.00, representing compensatory damages for burial expenses which were duly substantiated by receipts.^[24] The award of moral damages, however, should be increased from P30,000.00 to P50,000.00, pursuant to the Court's current policy.^[25] In *People v. Cabote*,^[26] we held that moral damages may be awarded in murder cases despite the absence of proof of mental and emotional suffering of the victims' heirs. A violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. With or without proof, this fact can never be denied; since it is undisputed, it must be considered proved.

The Court further awards exemplary damages in the amount of P25,000.00, inasmuch as the qualifying circumstance of abuse of superior strength attended the commission of the crime. In *People v. Catubig*,^[27] we emphasized that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of P25,000.00 is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime.^[28]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Bacolod City, Branch 49, in Criminal Case No. 94-16753, finding accused-appellant Rosendo Ernosia guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with **MODIFICATION**. Accused-appellant is ordered to pay the heirs of the deceased the amounts of P50,000.00 as civil indemnity, P15,000.00 as compensatory damages and P50,000.00 as moral damages. He is also ordered to pay the amount of P25,000.00 as exemplary damages.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.

[1] Penned by Judge Othello M. Villanueva.

[2] Rollo, p. 8.

[3] Records, pp. 43-44.

[4] Also spelled as “Solibio” in the records.

[5] Sometimes spelled as “Sabolbora” and “Sabulbura” in the records.

[6] TSN, July 5, 1995, pp. 136-146.

[7] TSN, February 29, 1996, pp. 235-259.

[8] TSN, February 29, 1996, pp. 242-244.

[9] TSN, January 19, 1996, pp. 303-305.

[10] TSN, May 2, 1996, pp. 325-329.

[11]] TSN, January 17, 1997, pp. 398-406.

[12] TSN, April 4, 1997, pp. 447-458.

[13] Rollo, pp. 29-30.

[14] Rollo, p. 42.

[15] *People v. Realin*, 301 SCRA 495, 509 [1999] ; citing *People v. Padilla*, 242 SCRA 629 [1995] ; *People v. Malunes*, 247 SCRA 317 [1995] ; *People v. Gomez*, 251 SCRA 455 [1995] .

[16] *People v. Dimailig*, 332 SCRA 340, 350 [2000] , citing *People v. Alfeche*, 294 SCRA 352 [1998] .

[17] *People v. Ugang*, G.R. No. 144036, May 7, 2002, citing *People v. Villanueva*, 339 SCRA 482 [2000] .

[18] *People v. Flores*, G.R. No. 138841, April 4, 2001, citing *People v. Morin*, 241 SCRA 709 [1995] ; *People v. De la Cruz*, 242 SCRA 129 [1995] .

[19] Ibid.

[20] 270 SCRA 713, 731-732 [1997] , citing *People v. Ganzagan, Jr.*, 247 SCRA 220 [1995] .

[21] G.R. No. 132354, September 13, 2001, citing *People v. Langit*, 337 SCRA 323 [2000] .

[22] *People v. Badon*, 308 SCRA 175, 190 [1999] , citing *People v. Alitao*, 194 SCRA 120 [1991] ; *People v. Verzo*, 21 SCRA 1403 [1967] .

[23] *People v. Callet*, G.R. No. 135701, May 9, 2002.

[24] Exhibit “B”, Records, p. 271.

[25] *People v. Dumalahay*, G.R. Nos. 131837-38, April 2, 2002; citing *People v. Tumanon*, 351 SCRA 676 [2001] .

[26] G.R. No. 136143, November 15, 2001, citing *People v. Panado*, 348 SCRA 679 [2000] .

[27] G.R. No. 137842, August 23, 2001.

[28] *People v. Samson*, G.R. No. 124666, February 15, 2002.

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