

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DENNIS TORPIO Y ESTRERA, APPELLANT.

G.R. No. 138984. June 04, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 5217-0, finding appellant Dennis Torpio y Estrera guilty beyond reasonable doubt of murder. The trial court sentenced him to suffer reclusion perpetua and ordered him to pay the victim's heirs the total amount of P200,000 as civil indemnity, actual damages and attorney's fees.

The appellant and his father Manuel Torpio were charged with murder for the killing of Anthony Rapas in an Amended Information that reads:

That on or about the 11th day of October 1997, at around 12:00 o'clock midnight at Zone 3, Brgy. Camp Downes, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused: DENNIS TORPIO y Estrera and MANUEL TORPIO, conspiring together, confederating with and mutually helping and aiding one another, with treachery, evident premeditation and intent to kill, did then and there wilfully, unlawfully and feloniously stab, hit and wound the victim herein ANTHONY RAPAS, without giving the latter sufficient time to defend himself, thereby inflicting upon said Anthony Rapas mortal wounds which caused his instantaneous death. Autopsy report is hereto attached.

In violation of Article 248, RPC, as amended by RA 7659.

Ormoc City, November 4, 1987.[2]

At their arraignment, the two accused, assisted by counsel, pleaded not guilty to the charge. Trial ensued.

The Case for the Prosecution

As culled by the trial court from the evidence on record, the case for the prosecution is as follows:

As found by the Court, it was October 11, 1997 in Zone 3, Barangay Camp Downes, Ormoc City. A family of seven, Manuel Torpio and wife included, together with an old woman visitor named Fausta Mariaca, were taking their supper. Anthony Rapas knocked and asked for Dennis Torpio who, after eating, went and left home with Anthony upon the latter's invitation for a drinking spree. They have (sic) some round of drinks at a nearby store together with another companion. Not contented, they left and proceeded to the seashore where in a cottage there were people also drinking. Joining the group, Anthony and Dennis again drank. Later, the two and their companion transferred to another cottage and there they again drank now with gin liquor except Dennis who did not anymore drink. For one reason or another, because Dennis did not drink, Anthony got angry and he then bathed Dennis with gin, and boxed or mauled him and tried to stab him with a batangas knife but failed to hit Dennis as the latter was crawling under the table. He got up and ran towards home. His family was awaken[ed], his mother shouted as Dennis was taking a knife and appearing (sic) bloodied. Manuel Torpio woke up and tried to take the knife from Dennis but failed and, in the process, wounded or cut himself

in his left hand. Dennis left with the knife, passed by another route towards the seashore and upon reaching the cottage where Anthony and their companion Porboy Perez were, looked for Anthony. Anthony upon seeing Dennis sensed danger and he fled by taking the seashore. But Dennis, being accustomed to the place and having known the terrain despite the dark (sic) knew, upon being suggested by somebody whom Dennis claimed to be Rey Mellang, that there is only one exit Anthony could make and, thus, he went the other way through the nipa plantation and he was able to meet and block Anthony. Upon seeing the shining knife of Dennis, Anthony tried to evade by turning to his left and Dennis thus hit the back portion of Anthony. Anthony ran farther but he was caught in a fishing net across the small creek and he fell on his back. It is at this juncture (sic) Dennis mounted on (sic) Anthony and continued stabbing the latter. He left the place but did not proceed to (sic) home, instead, he went to the grassy meadow near the camp and there slept until morning. He then went to a certain police officer to whom he voluntarily surrendered and together they went to the police headquarters.[3]

The case for the accused is, likewise, summarized by the trial court in its decision based on the evidence, as follows:

... [O]n October 11, 1997 at about 7:00 o'clock in the evening, while he and his family, Manuel, his father and mother and an old woman visitor named Fausta Mariaca included, were having dinner, Anthony Rapas knocked at their door. Anthony invited Dennis for a drinking spree. Both left after dinner, went to the store of a certain Codog and there started drinking. The store was about 70 meters away from Dennis' house, in Barangay Camp Downes, Ormoc City. They consumed a half gallon of tuba, drinking with a companion named Porboy Perez. Two small bottles of Red Horse beer were added, after which the three proceeded to the seashore, in a cottage of a beach resort there named Shoreline. Arriving there, there were some people drinking also and they offered them drinks and the two obliged. Afterwards, they went to a cottage and later Porboy arrived bringing with him a liquor gin. Dennis did not drink the gin, only Anthony and Porboy did. [T]hen after drinking the gin, Anthony tried to let Dennis drink the gin and as the latter still refused, Anthony allegedly bathed Dennis with gin and mauled him several times. Dennis crawled beneath the table and Anthony tried to stab him with a 22 fan knife but did not hit him. Dennis got up and ran towards their home. Upon reaching home, he got a knife and as his mother was alarmed and shouted, a commotion ensued. Manuel, his father, awoke and tried to scold Dennis and confiscate from him the knife but he failed, resulting to Manuel's incurring a wound on his hand (see TSN of October 8, 1998, p. 7 et seq.). He went back to the cottage by another route and upon arrival Porboy and Anthony were still there. Upon seeing Dennis, Anthony allegedly avoided Dennis and ran by passing the shore towards the creek. Rey Mellang went out of his house at this time and said "meet him 'Den,'" alluding to Anthony and to Dennis, respectively (TSN of October 8, 1998, p. 31 et seq.). Dennis did meet him, virtually blocked him and stabbed him. When he was hit, Anthony ran but then he got entangled with a fishing net beside the creek and Anthony fell on his back, and Dennis mounted on (sic) him and continued stabbing him. After stabbing (sic), Dennis left and went to the grassy meadow at Camp Downes and slept there. At about 7:00 in the morning, he went to a known police officer named Boy Estrera in San Pedro Street, Ormoc City and to whom he voluntarily surrendered. He was later turned over to the police headquarters (TSN, supra, pp. 31-38).[4]

The trial court rendered judgment acquitting accused Manuel Torpio but convicting the appellant of murder qualified by treachery or evident premeditation and appreciating in his favor the following mitigating circumstances: (a) sufficient provocation on the part of the offended party (the deceased Anthony) preceded the act; (b) the accused acted to vindicate immediately a grave offense committed by the victim; and, (c) voluntary surrender. The decretal portion of the decision reads:

Wherefore, from all of the foregoing, the Court finds the accused Dennis Torpio guilty beyond reasonable doubt of the crime of murder and hereby sentences him after appreciating the existence of mitigating circumstances, to the imprisonment of forty (40) years reclusion perpetua, and to pay the offended party P50,000.00 as indemnity, P100,000.00 as actual damages, P50,000.00 for and as attorney's fees. If said

accused is detained, [the] period of imprisonment shall be credited to him in full if he abides in writing by the term for convicted prisoners, otherwise, for only four-fifths (4/5) thereof.

On the accused Manuel Torpio, the Court finds him not guilty of the crime charged and hereby acquits him therefrom. If he is detained, he shall be discharged immediately from prison unless he is held for other lawful cause.

SO ORDERED.[5]

Dennis Torpio, now the appellant, appealed the judgment of the trial court alleging as sole error that –

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME, THUS, QUALIFYING THE SAME TO MURDER.[6]

According to the appellant, treachery was not attendant when he killed the victim because he did not consciously adopt a mode of attack to ensure the accomplishment of his criminal purpose without any risk to himself arising from the defense that the victim might offer. He posits that his act of stabbing Anthony was preceded by a quarrel between them; hence, the victim had been forewarned of the danger to his life and limb.

The appellant asserts that evident premeditation was not, likewise, attendant because the prosecution failed to prove that he had planned and prepared any plot to kill the victim. Further, no direct and positive evidence had been shown that sufficient time had elapsed between his determination to commit the crime and its execution to enable him to reflect upon the consequences of his act. He argues that he is guilty only of homicide as defined in Article 249 of the Revised Penal Code, as amended.

The appeal is meritorious.

Significantly, apart from its statement that “[f]rom the evidence adduced, the Court is of the considered opinion that the killing of Anthony by Dennis Torpio was attended with treachery and evident premeditation as to qualify it to murder,”[7] the trial court did not state the factual basis for its conclusion.

It is axiomatic that qualifying and aggravating circumstances, like treachery and evident premeditation, must be proven with equal certainty as the commission of the crime charged.[8] Such circumstances cannot be presumed; nor can they be based on mere surmises or speculations.[9] In case of doubt, the same should be resolved in favor of the accused.[10]

There is treachery when the offender employs means, methods or forms in the execution of the crime which tends directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[11] There must be evidence showing that the mode of attack was consciously or deliberately adopted by the culprit to make it impossible or difficult for the person attacked to defend himself or retaliate.[12] Further, the essence of treachery is the swift and unexpected attack without the slightest provocation by the victim.[13]

In this case, the record is barren of evidence showing any method or means employed by the appellant in order to ensure his safety from any retaliation that could be put up by the victim. The appellant acted to avenge Anthony’s felonious acts of mauling and stabbing him. Although the appellant bled from his stab wound, he ran home, armed himself with a knife and confronted Anthony intentionally. When the latter fled, the appellant ran after him and managed to stab and kill the victim.

To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites:

... (a) the time when the offender [was] determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[14]

The qualifying circumstance of evident premeditation requires that the execution of the criminal act by the accused be preceded by cool thought and reflection upon a resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[15] Evident premeditation needs proof of the time when the intent to commit the crime is engendered in the mind of the accused, the motive which gives rise to it, and the means which are beforehand selected to carry out that intent. All such facts and antecedents which make notorious the pre-existing design to accomplish the criminal purpose must be proven to the satisfaction of the court.[16]

Nothing in the records supports the trial court's conclusion that evident premeditation attended the commission of the crime in this case. It was not shown by the prosecution that, in killing Anthony, the appellant had definitely resolved to commit the offense and had reflected on the means to bring about the execution following an appreciable length of time.

According to Manuel, the father of the appellant, the latter told him, "I have to kill somebody, 'Tay, because I was boxed." To the Court's mind, this utterance is not sufficient to show that the crime was a product of serious and determined reflection. The interval between the time when the appellant made this statement and when he actually stabbed Anthony was not sufficient or considerable enough as to allow him to reflect upon the consequences of his act. There was no sufficient interregnum from the time the appellant was stabbed by the victim, when the appellant fled to their house and his arming himself with a knife, and when he stabbed the victim. In a case of fairly recent vintage, we ruled that there is no evident premeditation when the fracas was the result, not of a deliberate plan but of rising tempers, or when the attack was made in the heat of anger.[17]

Without any proof of any circumstance that would qualify it, the killing could not amount to murder. The appellant should, thus, be held liable only for homicide for the death of Anthony.

The Court agrees with the trial court that mitigating circumstances should be considered in the appellant's favor. However, only two out of the three mitigating circumstances[18] considered by the trial court can be credited to the appellant. The trial court properly appreciated the mitigating circumstance of voluntary surrender as it had been established that the appellant, after he killed Anthony, lost no time in submitting himself to the authorities by going to Boy Estrera, a police officer.

The mitigating circumstance of having acted in the immediate vindication of a grave offense was, likewise, properly appreciated. The appellant was humiliated, mauled and almost stabbed by the deceased. Although the unlawful aggression had ceased when the appellant stabbed Anthony, it was nonetheless a grave offense for which the appellant may be given the benefit of a mitigating circumstance.[19] But the mitigating circumstance of sufficient provocation cannot be considered apart from the circumstance of vindication of a grave offense. These two circumstances arose from one and the same incident, i.e., the attack on the appellant by Anthony, so that they should be considered as only one mitigating circumstance.[20]

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. However, considering that there are two mitigating circumstances and no aggravating circumstance attendant to the crime, the impossible penalty, following Article 64(5)[21] of the Revised Penal Code, is prision mayor, the penalty next lower to that prescribed by law, in the period that the court may deem applicable. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of prision mayor, while the minimum shall be taken from within the range of the penalty next lower in degree, which is prision correccional. Hence, the impossible penalty on the appellant is imprisonment from six (6) years of prision

correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

It is, likewise, necessary to modify the damages awarded by the trial court. The award of P100,000 as actual damages representing funeral and wake expenses should be deleted as there were no receipts or any other tangible documents presented to support the said award.[22] However, the award of attorney's fees in the amount of P50,000 is proper considering that the records showed that the heirs of the victim engaged the services of a private prosecutor. The recovery of attorney's fees in the concept of actual or compensatory damages is allowed under the circumstances provided in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[23] The award of P50,000 as civil indemnity[24] to the heirs of Anthony, as well as P25,000 as temperate damages,[25] is, likewise, warranted pursuant to prevailing jurisprudence.

WHEREFORE, the Decision dated March 18, 1999 of the Regional Trial Court of Ormoc City, Branch 35, in Criminal Case No. 5217-0 is **AFFIRMED WITH MODIFICATIONS**. The appellant Dennis Torpio y Estrera is found guilty beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code and is sentenced to suffer an indeterminate penalty from six (6) years of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor in its medium period, as maximum. He is further ordered to pay the heirs of the said victim, the amounts of Fifty Thousand Pesos (P50,000) as civil indemnity, Twenty-Five Thousand Pesos (P25,000) as temperate damages and Fifty Thousand Pesos (P50,000) as attorney's fees.

SO ORDERED.

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

[1] Penned by Judge Fortunito L. Madrona.

[2] Records, p. 16.

[3] Id. at 286-287.

[4] Id. at 285.

[5] Id. at 289.

[6] Rollo, p. 63.

[7] Records, p. 288.

[8] *People v. Loterono*, 391 SCRA 593 (2002).

[9] See *People v. Matore*, 387 SCRA 603 (2002).

[10] See *People v. Mahilum*, 390 SCRA 91 (2002).

[11] *People v. Caloza, Jr.*, 396 SCRA 329 (2003).

[12] Ibid.

[13] *People v. Adoc*, 330 SCRA 626 (2000).

[14] *People v. Baldogo*, 396 SCRA 31 (2003).

[15] *People v. Recepcion*, 391 SCRA 558 (2002).

[16] Ibid.

[17] *People v. Guerrero, Jr.*, 389 SCRA 389 (2002).

[18] In appreciating the mitigating circumstances, the trial court ratiocinated, thus:

... [T]he Court considers for appreciation the following (see Art. 13, nos. 4, 5, and 7, Revised Penal Code): (1) that sufficient provocation on the part of the offended party (the deceased Anthony Rapas) preceded the act, this is shown by the mauling of Dennis, his being bathed with liquor, and the deceased's having tried to stab Dennis at the cottage before Dennis went home and got his knife. The prosecution failed to rebut, refute, or destroy this particular testimonial evidence of the defense in this respect. They could have presented Porboy Perez in order to refute or rebut the testimony of Dennis on this point. For having thus failed, the quantum of proof shifted to the prosecution and the weight of evidence tilts against them; (2) the act of killing was committed in the immediate vindication of a grave offense to the one committing the felony (in this case, Dennis Torpio). "Immediate" means proximate and, hence, an interval of time may lapse from the commission of the grave offense to the crime in vindication thereof (*People vs. Parano*, 64 Phil. 331, cited in Antonio Gregorio, *Fundamentals of Criminal Law Review*, 1971 Third Edition, Quezon City: Central Lawbook Publishing Co., p. 57). This was proven by the wrong done on Dennis by Anthony prior to the stabbing incident. The injury he sustained, the mauling, the humiliation he suffered, the near attempt at killing Dennis, these constitute some grave offense and an interval of time elapsed before the accused returned and did the commission (sic) of a felon which is killing. (3) [T]he voluntary act of surrender to a person in authority, as shown by Dennis' act of going to a police officer named Boy Estrera and to the police headquarters supported not only by testimony but also by documentary evidence, the certification of the excerpt of police blotter (Exhibit "E" for the prosecution and adopted as Exhibit "I" for the defense).

(Records, pp. 287-288.)

[19] *David v. Court of Appeals*, 290 SCRA 727 (1998).

[20] *Ibid.*

[21] The provision reads in part:

Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

...

- When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

[22] *People v. Diaz*, 395 SCRA 52 (2003).

[23] *People v. Bergante*, 286 SCRA 629 (1998).

[24] *People v. Aposaga*, G.R. No. 127153, October 23, 2003.

[25] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003.

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