# PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VICTORIANO M. ABESAMIS, APPELLANT.

*G.R. NO. 140985. August 28, 2007*

Ponente: CORONA, J.

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**CORONA, J.:**

This is an automatic review of the decision[1] dated July 30, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 21860 finding accused-appellant Victoriano M. Abesamis guilty of murder and meting out the penalty of reclusion perpetua to him.

This is a story of a game of billiards with a tragic ending.

At around 6:00 p.m. of September 18, 1994, accused-appellant and his brother, Rodel Abesamis, were in the billiard hall located at Cruz corner Pepin Streets in Sampaloc, Manila. Accused-appellant played a game of billiards with Rogelio Mercado, Jr. called "rotation" where the first player who garners 61 points wins the game. A P40 bet was on the line. Ramon Villo stood as "spotter" for them.

Accused-appellant was ahead with 59 points when he pocketed the number 3 ball. Ramon erroneously scored it for Rogelio. Aggrieved, accused-appellant protested. Matters got worse when Rogelio suddenly rearranged the balls on the table and the game turned into a shouting match between Rogelio and accused-appellant. Ramon tried to mediate but accused-appellant vented his ire on him, sparking a heated argument.

Ramon decided to leave and proceeded to go out of the hall. However, Rodel, accused-appellant's brother, pursued him and caught up with him in front of Andok's lechon manok store a few meters away. A fistfight between the two ensued. While the two were trading blows, accused-appellant ran to a Ford Fiera[2] parked nearby and got a foot-long butcher's knife. He then rushed to where Ramon and Rodel were fighting. He stabbed Ramon in the back. The victim turned around to face accused-appellant but Rodel grabbed his hands and held them from behind. Accused-appellant then stabbed Ramon two more times, one in the upper right portion of the chest and another in the lower left portion of the chest. Thereafter, accused-appellant and Rodel boarded the Ford Fiera and drove away.

Greatly weakened by the mortal wounds inflicted on him, Ramon managed to take a few steps before slumping on the pavement. His mother[3] and brother[4] soon arrived. He was brought to the University of Sto. Tomas Hospital but his wounds were fatal and he was declared dead on arrival.

Dr. Manuel Lagonera[5] performed an autopsy on Ramon's cadaver. His report stated:

**EXTERNAL FINDINGS:**

> - Stab wound, right anterior thorax, 51 inches from heel, 5 cms. from anterior midline, measuring 20x6 cms., directed slightly downwards backwards towards right lateral, transecting the sternum at the level of 1st intercostal space, incising the upper lobe of the right lung, transecting the right sub-clavian artery and ascending aorta. Depth - 11 cms.

- Stab wound, left lower anterior thorax, 43 - inches from heel, 17 cms. from anterior midline, measuring 5x2 cms., directed upwards, backwards towards midline, lacerating the diaphragm, and spleen. Depth - 13 cms.

- Stab wound, left lower posterior thorax, 41 inches from heel[,] 10 cms. from posterior midline, incising the lower lobe of the left lung. Depth - 10 cms.

**INTERNAL FINDINGS**

- Injuries to organs and tissues as indicated in the internal extensions of the stab wounds, with massive bleeding in the thoracic and abdominal cavities.

- About one glassful of partially digested meaty materials with slight alcoholic odor was recovered from the stomach.

**CAUSE OF DEATH**

**STAB WOUNDS.[6]**

An information[7] for murder was filed against the brothers accused-appellant and Rodel in the Regional Trial Court (RTC) of Manila, Branch 41. It read:

> That on or about September 18, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating...and helping one another, did then and there willfully, unlawfully and feloniously with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one RAMON VILLO y MANGALINDAN... thrice with a butcher's knife, hitting him on the different parts of his body thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter.[8]

However, accused-appellant and his brother remained at-large. Thus, the case was temporarily archived. It was reactivated when accused-appellant was arrested on March 26, 1996.

Accused-appellant pleaded not guilty when arraigned. During the trial, he admitted stabbing Ramon with a butcher's knife but claimed that he did so only to defend himself. He claimed that when he questioned the victim why ball number 3 was credited to Rogelio, he suddenly cussed him and threatened to kill him. When he tried to leave the billiards hall, Ramon blocked his way and tried to stab him with a balisong. He evaded the thrust and ran outside to get a butcher's knife from the Ford Fiera. Ramon pursued him but he stood his ground. The victim tried to stab him again, this time hitting him in the left arm. He fought back and stabbed Ramon several times.

He then boarded the Ford Fiera and drove towards España Street in Manila. He encountered heavy traffic along the way and abandoned the vehicle somewhere in Forbes Street, Manila. He wanted to surrender to the police but was advised by his relatives not to do so because Ramon's relatives might kill him. He then went to his hometown in Calamba, Laguna. He managed to elude arrest until March 26, 1996.

On April 1, 1998, the trial court rendered its decision.[9] It ruled that, while it was established that accused-appellant killed Ramon, the prosecution failed to prove the existence of either evident premeditation or treachery. Thus, the trial court found accused-appellant guilty of homicide and sentenced him to suffer the penalty of eight years and one day of prision mayor as minimum to fourteen years, eight months and one day of reclusion temporal as maximum. It also ordered him to pay the heirs of the victim P50,000 as indemnity and P100,000 "for other damages":

> WHEREFORE, judgment is hereby rendered finding the accused guilty of Homicide and[,] with the application of the Indeterminate Sentence Law[,] sentencing him to suffer the penalty of eight (8) years and


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> one (1) day of prision mayor to fourteen (14) years[,] eight (8) months and one (1) day of reclusion temporal, as minimum and maximum respectively and to pay the heirs of the victim the amount of P50,000.00 for the latter's life and P100,000.00 for other damages, with legal interest from the time this decision has become final until the same is fully paid.
>
> SO ORDERED.[10]

On appeal, accused-appellant's conviction was affirmed with modification by the CA.[11] It ruled that the evidence sufficiently established that Ramon was killed with treachery: he was first stabbed in the back while he was engaged in a fistfight with Rodel, then twice in front when he turned around to face accused-appellant, with his hands held behind him by Rodel. He was completely unaware and caught off-guard when he suffered the first stab. He was defenseless when he was stabbed again. Thus, the appellate court found accused-appellant guilty of murder, sentenced him to reclusion perpetua and certified the case to this Court for review:

> IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Court a quo is hereby AFFIRMED with the modification that the Appellant is hereby found guilty of "Murder" qualified by treachery defined and penalized by Article 248 of the Revised Penal Code and is hereby meted the penalty of "RECLUSION PERPETUA." However, considering the penalty imposed on the Appellant, the Court hereby certifies this case to the Supreme Court for appropriate review.
>
> The Clerk of Court of this Court is hereby ordered to elevate all records of this case, including documentary and testimonial evidence, to the Supreme Court for appropriate review.
>
> SO ORDERED.[12]

Accused-appellant faults the appellate court for (1) disregarding his claim that he was only acting in self-defense when he inflicted the mortal wounds on Ramon and (2) finding that the killing was attended by treachery.

In a letter dated June 12, 2007, Julio Arciaga, assistant director for prisons and security of the Bureau of Corrections, informed the Court that accused-appellant was granted parole by the Board of Pardons and Parole (Board) on March 5, 2003 and released from the custody of the Bureau of Corrections on March 20, 2003.[13]

We are thus confronted with the following issues:

- whether the grant of parole rendered this case moot;
- whether accused-appellant only acted in self-defense and
- whether the victim was killed with treachery.

The appeal has no merit.

ACCUSED-APPELLANT'S RELEASE ON PAROLE DID NOT RENDER THE CASE MOOT

The appeal was not mooted by accused-appellant's release on parole. His release only meant that, according to the Board, he had already served the minimum penalty imposed on him[14] and that he was "fitted by his training for release, that there [was] reasonable probability that [he would] live and remain at liberty without violating the law and that such release [would] not be incompatible with the welfare of society."[15] Should he violate the conditions of his parole, accused-appellant may be ordered rearrested, to serve the remaining unexpired portion of the maximum sentence.[16]

Parole refers to the conditional release of an offender from a correctional institution after he serves the minimum term of his prison sentence.[17] The grant thereof does not extinguish the criminal liability of the offender. Parole is not one of the modes of totally extinguishing criminal liability under Article 89 of the Revised Penal Code.[18]

Inclusio unius est exclusio alterius.

Similarly, accused-appellant's release on parole did not extinguish his civil liability.[19] Article 113 of the Revised Penal Code provides:

> ART. 113. Obligation to satisfy civil liability. - Except in case of extinction of his civil liability as provided in the next preceding article,[20] the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon commutation of sentence or any other reason. (emphasis supplied)

Thus, accused-appellant's civil liability subsists despite his release on parole.

Moreover, the grant of parole would be improvident if the CA decision finding accused-appellant guilty of murder and sentencing him to suffer the penalty of reclusion perpetua were to be affirmed by this Court. In such a case, the determination of the Board that accused-appellant would have already served the minimum penalty imposed on him would turn out to be erroneous. Worse, in basing its determination of accused-appellant's eligibility for parole on the penalty imposed in the RTC decision, the Board effectively ignored the decision of the CA.

Furthermore, the Board violated its own rules disqualifying from parole those convicted of an offense punished with reclusion perpetua.[21] Thus, the Board should be warned in no uncertain terms for acting ultra vires, carelessly disregarding the CA decision and improvidently granting parole to accused-appellant.

We will now proceed to consider the merits of the appeal.

ACCUSED-APPELLANT DID
NOT ACT IN SELF-DEFENSE

He who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (a) unlawful aggression on the part of his victim; (b) reasonable necessity of the means employed to prevent or repel it and (c) lack of sufficient provocation on his part. By invoking self-defense, the burden is placed on the accused to prove the elements thereof clearly and convincingly.[22]

While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim.[23] If no unlawful aggression is proved, no self-defense may be successfully pleaded.[24] Here, both the trial and appellate courts found that there was no unlawful aggression on Ramon's part and that, in fact, it was accused-appellant who was the unlawful aggressor. Thus, accused-appellant's claim of self-defense cannot stand.

The nature, number and location of the wounds sustained by the victim disprove accused-appellant's claim of self-defense.[25] On this account, the appellate court correctly ruled that the accused-appellant's version that he fought face to face with the victim was inconsistent with the fatal stab wound at the victim's back. Moreover, the wounds inflicted by accused-appellant on the victim indicated a determined effort to kill and not merely to defend.[26]

Accused-appellant's failure to surrender, his escape to Laguna and hiding for more than a year until his eventual capture and arrest also contradicted his claim that he acted in self-defense. Flight is indicative of guilt.

Furthermore, whether or not accused-appellant acted in self-defense is a question of fact. It is a matter that is properly addressed to the trial court, not to this Court. In fact, the trial and appellate courts amply evaluated and carefully considered the issue. Their identical conclusions were based on competent evidence. There is therefore no reason to disturb their findings.

TREACHERY ATTENDED THE
KILLING OF THE VICTIM

According to the CA, Ramon was defenseless when accused-appellant stabbed him in the back. And he was completely at the mercy of accused-appellant when he was repeatedly stabbed in front while Rodel was holding his hands from behind. Thus, the CA ruled that Ramon was killed with treachery.

We agree.

Accused-appellant perpetrated the killing in such a manner that there was absolutely no risk to himself arising from the defense which the victim might have made. Ramon was unarmed, had his back turned to accused-appellant and was fighting with another person when stabbed in different parts of the body. He was caught totally by surprise and did not even have a chinaman's chance to survive the attack. As we ruled in People v. Fabrigas, Jr.:[27]

> Treachery is present where the assailant stabbed the victim while the latter was grappling with another thus, rendering him practically helpless and unable to put up any defense. (emphasis supplied)

THE AWARD OF "OTHER
DAMAGES" WAS IMPROPER

The trial court correctly awarded P50,000 to the heirs of the victim as civil indemnity for his death. This did not need any evidence or proof of damages. However, the award of P100,000 "for other damages" was wrong.

Under the law, there are various kinds of damages.[28] They differ as to the necessity of proof of pecuniary loss, the purpose of and grounds for their award and the need for stipulation. Thus, the rule is that, in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision.[29]

Nonetheless, every person criminally liable for a felony is also civilly liable.[30] Hence, this Court may go through the records to determine the civil liability of accused-appellant. Moreover, an appeal in a criminal proceeding opens the entire case for review.[31] This includes a review of the indemnity and damages involved.[32]

The award of actual damages is proper only if the actual amount of loss was proven with a reasonable degree of certainty.[33] It should be supported by receipts.[34] While the victim's mother, Lolita Villo, testified that she incurred expenses in connection with the victim's death (e.g., funeral and burial expenses), she failed to substantiate her claim. Thus, actual or compensatory damages cannot be awarded.

Current jurisprudence, however, allows the grant of P25,000 as temperate damages when it appears that the heirs of the victim suffered pecuniary loss but the award thereof cannot be established with certainty.[35] Thus, Lolita may be given P25,000 as temperate damages. She is also entitled to an award of P50,000 moral damages for the mental anguish and distress she suffered for the death of her son.[36] Exemplary damages are not warranted because no aggravating circumstance attended the crime.

Accordingly, the decision dated July 30, 1999 of the Court of Appeals in CA-G.R. CR No. 21860 finding accused-appellant Victoriano M. Abesamis guilty of murder, sentencing him to suffer the penalty of reclusion perpetua and affirming the trial court's order for him to pay the heirs of Ramon Villo P50,000 as civil indemnity is hereby AFFIRMED with the modification that he is ordered to pay said heirs P50,000 as moral damages and P25,000 as temperate damages. Accused-appellant is further ordered to pay the costs of suit.

The grant of parole to accused-appellant by the Board of Pardons and Parole is hereby declared NULL and VOID


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for lack of legal and factual basis. Accused-appellant is hereby ordered to be REARRESTED immediately to forthwith serve the remaining period of his sentence.

The members of the Board of Pardons and Parole are hereby WARNED to never again disregard its rules and the decision of the Court of Appeals.

**SO ORDERED.**

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Romeo J. Callejo, Sr. (who subsequently became a member of the Supreme Court, now retired) and concurred in by Associate Justices Quirino D. Abad-Santos, Jr. (retired) and Mariano M. Umali (retired) of the Sixth Division of the Court of Appeals. CA rollo, pp. 121-142.

[2] The vehicle was owned by Cesar Tapia, accused-appellant's brother-in-law. Accused-appellant used it in going to the billiards hall.

[3] Lolita Villon.

[4] Ronaldo Villon.

[5] A medico-legal officer.

[6] RTC records, p. 62.

[7] Id., pp. 1-2.

[8] Id.

[9] Penned by Judge Rodolfo A. Ponferrada. Id., pp. 247-256.

[10] Id., p. 256.

[11] Decision dated July 30, 1999 of the Court of Appeals in CA-G.R. CR No. 21860, supra note 1.

[12] Id.

[13] Rollo, p. 42.

[14] Section 5, Act No. 4103, as amended, otherwise known as "The Indeterminate Sentence Law."

[15] Id.

[16] See Section 8, Indeterminate Sentence Law.

[17] Rules on Parole dated March 7, 2006.

[18] ART. 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:

> - By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
>
> - By service of the sentence.
>
> - By amnesty, which completely extinguishes the penalty and all its effects.
>
> - By absolute pardon.


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- By prescription of the crime.

- By prescription of the penalty.

- By the marriage of the offended woman, as provided in article 344 of this Code.

[19] Under Article 112 of the Revised Penal Code, civil liability is extinguished in the same manner as other obligations, in accordance with the provisions of civil law. In this connection, Article 1231 of the Civil Code provides that obligations are extinguished by the following: (1) payment or performance, (2) loss of the thing due, (3) condonation or remission of the debt, (4) confusion or merger of the rights of creditor and debtor, (5) compensation, (6) novation, (7) annulment, (8) fulfillment of the resolutory condition and (9) prescription.

[20] Please see immediately preceding note.

[21] Section 15(a), part IV of the Revised Rules and Regulations of the Board of Pardons and Parole dated November 26, 2002 (the rules on parole applicable at the time accused-appellant was granted parole) provided:

IV. PAROLE
x x x x x x x x x

SEC. 15. Disqualification for Parole - The following prisoners shall not be granted parole:

a. Those convicted of an offense punished with Death penalty, reclusion perpetua or Life

Imprisonment;
x x x x x x x x x

[22] People v. de la Cruz, G.R. No. 139970, 06 June 2002, 383 SCRA 250.

[23] Id.

[24] Id.

[25] Guevarra v. Court of Appeals, G.R. No. 41061, 16 July 1990, 187 SCRA 484.

[26] People v. Pateo, G.R. No. 156786, 03 June 2004, 430 SCRA 609.

[27] 330 Phil. 137 (1996) citing People v. Lingatong, G.R. No. 34019, 29 January 1990, 181 SCRA 424.

[28] Under Article 2197 of the Civil Code, damages may be (a) actual or compensatory, (b) moral, (c) nominal, (d) temperate or moderate, (e) liquidated or (f) exemplary or corrective.

[29] People v. Masagnay, G.R. No. 137364, 10 June 2004, 431 SCRA 572.

[30] Article 100, Revised Penal Code.

[31] See People v. Dagani, G.R. No. 153875, 16 August 2006, 499 SCRA 64.

[32] People v. Rabanillo, 367 Phil. 114 (1999).

[33] People v. Masagnay, supra.

[34] Id.

[35] Id.

[36] TSN, July 18, 1996, p. 18.

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