

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SPO2 JOSE MAGNABE JR., APPELLANT.

G.R. No. 143071. August 06, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

By invoking self-defense, the accused admits killing the victim. Hence, the constitutional presumption of innocence is effectively waived, and the burden of proof shifts to the appellant. Where aggression on the part of the victim is not proved, the prayer for acquittal collapses and conviction becomes inevitable. Notwithstanding the foregoing, we clarify that the implied admission of a killing does not include that of the qualifying circumstance of treachery. When the prosecution fails to prove treachery, the accused may be held liable only for homicide, not murder.

The Case

SPO2 Jose T. Magnabe Jr. appeals the March 30, 2000 Decision[1] of the Regional Trial Court (RTC) of Quezon City, Branch 219, in Criminal Case No. Q95-63296. The RTC found him guilty of murder beyond reasonable doubt and sentenced him to reclusion perpetua, as follows:

“WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged in the Information, the Court hereby sentences the accused:

a] to suffer the penalty of Reclusion Perpetua;

b] to pay the heirs of Sgt. Cajucom the amount of P50,000.00 as actual damages; P50,000.00 as moral damages; P75,000.00 as indemnity for his death; P50,000.00 as exemplary damages; and P863,452.80 for the loss of his earning capacity plus interest from the date of his death at the rate of six (6%) percent per annum; and

c] to pay the costs.”[2]

In an Information dated October 2, 1995, Assistant City Prosecutor Restituto A. Sevilla charged appellant in these words:

“That on or about the 17th day of September 1995, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill and by means of treachery, evident premeditation and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SPO2 PERFECTO CAJUCOM Y CUYA, by then and there, shooting him with a gun several times, hitting him on different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the late SPO2 PERFECTO CAJUCOM Y CUYA.”[3]

Upon his arraignment on March 20, 1996,[4] appellant, assisted by his counsel,[5] pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief,[6] the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

"About 10:30 p.m. of September 17, 1995, Emilio Andan, a Barangay Kagawad, together with a certain Delmo, Popoy Ortega and Jose Manabo, another Kagawad, went to Tyler's Videoke Bar located at the corner of E. Rodriguez Blvd. and Lopez Jaena St., Quezon City. They each ordered a bottle of beer.

"About five (5) minutes later, a certain Noel, a friend of Kagawad Manabo, joined the group. About twenty (20) minutes later, a group of five (5) youngsters, including Jomel Magnabe, son of appellant, arrived.

"Almost an hour later, the group of the youngsters started making trouble inside Tyler's. They kicked, punched and hit with bottles of beer the group of Kagawad Andan.

"Kagawad Andan, not knowing that his side was hit with a dart by a member of Jomel Magnabe's group rushed out of the bar. Outside, he chanced upon SPO2 Perfecto Cajucom and asked for help.

"SPO2 Cajucom was then with Ma. Cristina Crisanta Manabo, his teammate in bowling. The two had just finished taking a snack at the Goodies Carinderia along Sto. Tomas Street. They were on their way to visit Ms. Manabo's friend.

"As soon as Kagawad Andan informed SPO2 Cajucom of the commotion, the former pointed to two (2) malefactors standing some fifteen (15) meters away. The two (2) immediately ran and SPO2 Cajucom shouted 'Tigil, pulis ako!'. The latter then pulled out his gun, fired a warning shot and ran after the two (2).

"Kagawad Andan, on the other hand, looked for a tricycle and proceeded to the Jose Reyes Memorial Hospital for treatment.

"Ms. Manabo followed SPO2 Cajucom when he ran after the two. Said police officer was able to catch up with one of them at the door of a house selling La Paz Batchoy, along Cordillera Street.

"Ms. Manabo was then beside a lam[p]post just opposite said house selling La Paz Batchoy. The area was well lighted, there being many lights and a night club adjacent to said house.

"SPO2 Cajucom told the one he caught, 'Halika, sumama ka!'. However, the latter refused to go with the former. Besides, the people inside the house were trying to pull him away from SPO2 Cajucom who refused to let go of his hold.

"While the tagging and dragging was going on, a taxicab arrived bearing herein appellant SPO2 Jose Magnabe. He alighted, watched what was happening, pulled a gun and, while at the back of SPO2 Cajucom, pointed the same at the latter's neck.

"Barely five (5) meters away, Ms. Manabo was able to recognize SPO2 Magnabe who is familiar with the latter, being assigned in Galas, Quezon City where she lives.

"When SPO2 Cajucom turned his head and shoulder to his right, appellant immediately shot him on the clavicle. Said victim was then no longer holding his gun, being preoccupied with pulling with both his hand[s] Jomel Magnabe the person he caught.

"After the shot, appellant pushed SPO2 Cajucom inside the house. The man the latter caught then pulled him inside, and appellant closed the door. Thereafter, Ms. Manabo heard gunshots, and shouts of women.

"When appellant later came out, Ms. Manabo immediately ran to him, told him what she saw, and asked where SPO2 Cajucom was. SPO2 Magnabe answered 'Anong sinasabi mo, wala akong alam sa sinasabi mo'. And

when told that she witnessed him shoot SPO2 Cajucom, SPO2 Magnabe just stared at Ms. Manabo.

“Ms. Manabo got scared and immediately ran away. Along E. Rodriguez Avenue, she met a mobile patrol car and briefly related what she witnessed. She then pointed to appellant who was still staring at her.

“When confronted by the responding police officers, appellant uttered ‘Walang papasok. Wala munang makikialam. Hintayin natin ang imbestigador’.

“Despite the arrival of another mobile car, appellant continued to refuse to allow entry inside the house.

“On the other hand, still afraid, Ms. Manabo ran and went home.

“The body of said victim was later autopsied by Dr. Ma. Cristina Freyra, a medico-legal officer who issued Medico-Legal Report No. M-1443-95 wherein it was stated that SPO2 Cajucom died of ‘multiple gunshot wounds’.

“During the autopsy, Dr. Freyra found that SPO2 Cajucom [sustained] five (5) wounds, four (4) of which were gunshot wounds and one (1) lacerated wound. Wound No. 1 was located on the left supraclavicular region and had tattooing near it. Wound No. 2 was a lacerated wound on the left parietal region. Wound No. 3 was a gunshot wound in the epigastric region which went through and through. Wound No. 4 was a gunshot wound on the left anterior lumbar region. Wound No. 5 was a gunshot wound on the left coastal region.

“Dr. Freyra declared that all the gunshot wounds were fatal because they penetrated the vital organs. The first gunshot wound penetrated the upper lobe of the liver and the lungs. The second wound reached the left dome of the diaphragm and the left lobe of the liver and the pancreas. The third wound found its way up to the loops and mesentery of the large intestine. The fourth wound slipped up to the left dome of the diaphragm, loops of the large intestine, and both kidneys.”[7] (Citations omitted)

Version of the Defense

Invoking self-defense, appellant narrates his version of the facts in the following manner:[8]

“On September 17, 1995, an advance birthday party was given to the grandson of accused. After Rodnel had helped in the preparation of the food at about 5:00 in the afternoon, Rodnel sought x x x permission from accused’s wife, Teresita, to leave the house. When he failed to see the person he would meet he proceeded to a carinderia named Foodchow located just near the accused’s house at the other side of E. Rodriguez Street. He just sat there until [his] brother, Roger Padilla, with three (3) friends, namely: Edgar, Lloyd and Roland, arrived at about 11:30 in the evening.

“Meantime, at x x x Magnabe’s birthday, the visitors started to go home and among them were Josephine Moreno and her son. Since it was already late in the evening, accused and his sons, upon the request of Josephine accompanied the latter to Novaliches on board a taxicab.

“On the other hand, brothers Rodnel and Roger Padilla, in the company of Edgar, Lloyd and Roland went to Tyler’s Videoke-Bar (Tyler’s for short)[.] They sat at the table located at the right side of the door and ordered only five (5) bottles of beer. Thereafter, one of his companions, Roland, caused a loud sound with the use of a Humpty-Dumpty, chichiria wrapper. It immediately caught the attention of the group of eight (8) persons, one of them later identified as the deceased Sgt. Cajucom, who [was] seated at the other table. One of them remarked: ‘Pare, HAPPY NEW YEAR, para sa ating lahat iyan’ - After two of Rodnel’s companions left the place, five (5) persons stood up from the other table and approached Rodnel’s group and asked ‘Pare, ano ba’ng problema ninyo?’ Rodnel answered: ‘Wala, pare . . . walang problema sa amin!’

“Trouble then ensued. Lloyd and Roland were hit with bottles and a chair while Rodnel was punched by one of the five (5) men on his right cheek. Rodnel ran out and he was pursued by the other three (3) persons, namely, the deceased [Sgt.] Cajucom who was in civilian clothes, wearing a white T-shirt; and Kagawads Andan and

Manabo. While he was at the vicinity of [F]oodchow, he saw that the two kagawads still pursued him while [Sgt.] Cajucom had stayed in the middle of the road.

“Then a fistfight ensued between Rodnel and the two kagawads and Rodnel having been able to subdue his two attackers tried to run towards the accused’s house whereupon he was accosted by Sgt. Cajucom who said: ‘Huwag kang tatakbo, pulis ako!’ which the former answered back, saying: ‘Pulis ka pala, kanina pa kami nagsusuntukan, hindi mo kami inawat[,]’ and continued running towards his house[.] Sgt. Cajucom followed him and when he turned his head back he saw [Sgt.] Cajucom pulling a gun from his belt bag strapped in his waist[.] Then Rodnel felt pains at his right leg as he was hit at his right ankle.

“Despite his injury, Rodnel was able to reach the accused’s house but Sgt. Cajucom followed him. Inside the house, Sgt. Cajucom held Rodnel by his waist and pointed his gun, a .38 caliber revolver, at his head. Surprised by what was happening inside the house, the wife of the accused pleaded ‘Sandali . . . sandali baka pwede nating pag-usapan ito . . . ano bang nangyari? . . . Pulis din naman ang asawa ko . . . baka pwede nating hintayin ang asawa ko at pag-usapan natin?’ But the gun-wielding man reasoned out: ‘Ayoko . . . hindi pwede . . . pulis pa rin ako!’ and continued pulling Rodnel outside. While the pleadings of the accused’s wife were being made, Sgt. Cajucom was pointing his gun to those inside the sala at that time so no one could approach him.

“At that moment, the accused was coming home and while still on board the taxicab, he noticed many people milling in front of their house and one was shouting to him, saying ‘Mang Jun . . . Mang Jun . . . may tao sa loob ng bahay ninyo, may baril!’ By police instinct, the accused walked cautiously towards the door and saw at their sala, Sgt. Cajucom pointing his gun at the head of his nephew Rodnel.

“The accused asked Sgt. Cajucom: ‘Pare, ibaba mo iyang baril mo baka may matamaan dito sa pamilya ko’ or words of similar [import]. But Sgt. Cajucom who appeared to be not in his senses ‘parang wala sa sarili . . . lasing’ ignored him. The accused continued to approach Sgt. Cajucom and [pleaded] with him to put his gun down, afraid that his family might be hurt. Accused’s wife introduced him to Sgt. Cajucom and told him that he was also a policeman. Accused also introduced himself pleading ‘Brod, baka puwedeng ibaba mo ‘yang baril mo at pag-usapan natin ito dahil pulis din naman ako[,]’ and, further, saying ‘Pareho tayong pulis.’ [B]ut the latter answered back, in hostile language saying, ‘Eh ano kung pulis ka!’ and/or ‘Hindi kita kilala! and/or ‘Wala akong pakialam kung pulis ka!’ The accused continued pleading, saying: ‘Hindi . . . pag-usapan na lang natin ito . . . pulis Galas ako . . . hindi mo ako kilala.’ which was answered by Sgt. Cajucom in this wise ‘Ah . . . basta hindi kita kilala.’

“After saying those words, Sgt. Cajucom let go of Rodnel and thereafter, faced the accused, and [pointed] his gun at him. The accused instinctively grabbed and raised the left hand of Sgt. Cajucom which held the gun and parried it assuring himself that if it would go off it would not hit any member of his family. As it happened, the gun held by Sgt. Cajucom went off hitting the ceiling of their house. Accused at once brought down the left hand of Sgt. Cajucom which still held the gun and signaled his family to move out of the way.

“The accused tried to shove his wife, and turned to his right towards his wife but the gun went off for the second time hitting his left buttock. Fearing for his life and those of his family, and still feeling the hot sensation running over his behind and at the verge of losing consciousness, the accused drew his .45 caliber service pistol from his right waist line and fired it once [directed] at Sgt. Cajucom’s left shoulder. To insure their safety, he fired again his gun as he was still ‘sumusugod sa akin’. Thereafter, he lost consciousness and when he had regained it, a mobile patrol car had arrived.

“Operatives of the Police Station 11 in Galas, Quezon City, in the persons of PO3 Rodolfo Mercado and one PO3 Asigan likewise responded to the call for police assistance and proceeded to the scene of the incident. Cristina Donaire, a civilian police photographer, took pictures of Sgt. Cajucom, including those items encircled with chalk markings identified as the recovered slugs as well as the area where blood had spilt.

“While they were in the process of taking photographs, another investigator arrived in the person of PO3 Rene Goyena who ordered Cristina Donaire to take pictures of everything inside the house and among the pictures she had taken [was] that of the birthday cake and a poster indicating the greeting, HAPPY BIRTHDAY!

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“Meantime, while the policemen were investigating the incident and taking photographs, the accused was rushed to St. Luke’s Hospital in Quezon City in a stretcher and treated for gunshot wound. His X-ray examination showed a foreign body lodged at the left lumber area.” (Citations omitted)

Ruling of the Trial Court

The trial court found that “the respective versions of the parties are diametrically opposed. The prosecution’s version is that the killing transpired outside the house of the accused while that of the defense is that it took place inside the house.”[9]

However, the RTC ruled that the prosecution, through the credible and convincing testimony of its witness Cristina Manabo, was able to establish the guilt of appellant beyond reasonable doubt. Manabo was with the victim, SPO2 Perfecto Cajucom, when trouble began outside Tyler’s. She followed him up to a point near the doorstep of appellant’s house. There he was shot by appellant on the clavicle and thereafter pushed inside and shot three more times.

The trial court rejected the testimonies of the defense witnesses, saying they “were not credible when they took the witness stand. They appeared tentative and evasive in giving their answers and, therefore, not convincing. Instead of a clear picture of the shooting incident, what had been depicted was a blurred presentment of what they claimed to have transpired. The Court could not make anything out of their contradictory and irreconcilable testimonies.”[10]

Likewise, the RTC overruled the contention of self-defense proffered by appellant, “as his witnesses failed to present a consistent and coherent story.”[11] It further held that treachery had qualified the shooting to murder.

Hence, this appeal.[12]

Issues

In his Brief, appellant raises the following alleged errors for our consideration:

“I

The lower court erred in giving credence to the testimony of Prosecution Witness Cristina Manabo that the victim was shot outside the house.

“II

The lower court erred in ruling that the testimonies of appellant’s witnesses are contradictory and irreconcilable.

“III

The lower court erred in not ruling that appellant acted in self-defense.

“IV

The lower court erred in not acquitting appellant, his guilt not having been proved beyond reasonable doubt.

“V

The lower court erred in ruling that the offense charged was qualified by the attending circumstance of treachery.”[13]

In the main, these issues can be lumped into three: (1) the credibility of Prosecution Witness Cristina Manabo, (2) the viability of appellant’s self-defense argument, and (3) the presence of treachery as a qualifying circumstance.

The Court’s Ruling

The appeal is partly meritorious. Appellant should be convicted of homicide, not murder.

First Issue:

Credibility of the Prosecution Witness

Appellant assails the credibility of Cristina Manabo, claiming that she had not seen him shoot Sergeant Cajucom on the clavicle before the latter was pushed inside the house. In addition, she allegedly did not hear the subsequent gunshots inside or accost appellant to ask about the victim’s whereabouts.

Time and time again, this Court has said that the assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court, because it has the opportunity to observe the witnesses firsthand and to note their demeanor and conduct on the witness stand. Its findings on such matters, absent any arbitrariness or oversight of facts or circumstances of weight and substance, are final and conclusive upon this Court and will not to be disturbed on appeal.[14]

In this case, the RTC found the prosecution witnesses to be credible and convincing. It observed that Manabo had appeared very candid and truthful on the witness stand. She remained steadfast, notwithstanding the grueling cross-examination conducted by the defense lawyer. In her narration she said that she was outside the house of appellant, about six meters away from the door, when he shot Sergeant Cajucom.[15] She positively stated that, earlier, while the victim was pulling with both hands the person he had caught, appellant alighted from a taxi and approached Sergeant Cajucom from the back. Appellant poked his .45 caliber pistol at the nape of the victim. When the latter turned around, the former immediately opened fire, hitting the victim on the clavicle. Manabo testified thus:

“PROS. CHUA CHENG:

Q: When Sgt. Magnabe arrived while the back of Sgt. Cajucom was towards Sgt. Magnabe, what did Sgt. Magnabe do, if any?

A: I saw him [point] his gun at the nape of Sgt. Cajucom, mam.

Q: What side of the nape?

A: At this side, mam. I am not sure if it is in the middle.

INTERPRETER:

Witness pointing to the base of her neck.

ATTY. ABIVAS:

The word nape is enough.

WITNESS:

A: I am not sure if it is in the center of the nape or what, mam.

PROSECUTOR CHUA CHENG:

Q: When Sgt. Magnabe poked his gun at the back of Sgt. Cajucom, at the nape area, what did Sgt. Cajucom do,

if any?

A: When he turned his head around “binaril ho agad siya”.

Q: Will you please demonstrate to us how Sgt. Cajucom turned his head?

A: Like this, mam.

INTERPRETER:

Witness turning her head towards the left shoulder with movement.

PROS CHUA CHENG:

Q: You are Sgt. Magnabe and the interpreter is Sgt. Cajucom.

A: When the gun of Sgt. Magnabe was pointed to the nape of Sgt. Cajucom, Sgt. Cajucom turned his head with shoulder movement, turned towards the right then Sgt. Magnabe shot him on his clavicle, mam.

ATTY. ABIVAS:

Your Honor please, we just make it of record the exact position of the body of this Sgt. Cajucom when the accused allegedly fired his gun because it would appear that the right side of the victim was facing Sgt. Magnabe.

COURT:

Q: Was there a shoulder movement?

A: Yes, your Honor.

ATTY. ABIVAS:

We again let the witness demonstrate, your Honor. May it be reflected in the record that the right side of the victim was facing the front of the alleged assailant, Sgt. Magnabe, when the shot was made, your Honor.

May we know the distance, your Honor.

WITNESS:

A: Less than a foot, your Honor.

INTERPRETER:

Witness pointing to the area of the clavicle, a portion below the shoulder but above the chest.”[16]

After firing once, appellant pushed the victim inside the house, stepped in, and closed the door behind them. Manabo, who was left standing outside the closed door, heard two to four more gunshots. She further testified in this wise:

“PROS CHUA CHENG:

x x x x x x x x

Q: After he was shot at by Sgt. Magnabe, what happened next, if any?

A: He was pulled by the man he was holding at the time he was shot and then Sgt. Magnabe pushed him inside the house, mam.

Q: How about Sgt. Magnabe?

A: He closed the door, mam.

COURT:

Q: Who closed the door?

A: Sgt. Magnabe, your Honor.

PROS CHUA CHENG:

Q: Sgt. Magnabe also went inside the house?

A: Yes, mam.

Q: What happened next?

A: I heard gunshots, mam.

X X X X X X X X

COURT:

Q: How many gunshots did you hear inside the house?

A: From 2 to 4 shots, your Honor.”[17]

Manabo executed her affidavit before a police investigator on September 19, 1995, or less than 36 hours after the shooting incident on September 17, 1995. On the other hand, the witnesses for the defense executed theirs long after the incident and in the presence of appellant’s counsel. Obviously, Manabo hardly had an opportunity to concoct her clear and convincing story. Interwoven, her affidavit and testimony complement each another.

Verily, there is no cogent reason to overturn the findings of the trial court on the credibility of the witnesses.

Second Issue:

Self-Defense

Similarly without merit is the contention of appellant that he was able to establish the elements of self-defense. The defense witnesses’ conflicting, inconsistent and unreliable testimonies betray his claim.

By invoking self-defense, appellant admits to killing Sergeant Cajucom and thereby incurs the burden of proving the following: (a) that the victim was guilty of unlawful aggression, (b) there was reasonable necessity of the means employed by appellant to prevent or repel the aggression, and (c) that there was lack of sufficient provocation on appellant’s part.[18]

It is crucial to ask whether the victim Cajucom was an unlawful aggressor. We answer this question in the negative. Aggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense or to others whom that person is seeking to defend. According to Manabo’s testimony, appellant was behind while, with both hands, Sergeant Cajucom was pulling the person he had caught towards the door. This was the scenario that appellant chanced upon when he arrived at the scene. The victim’s demeanor at that moment did not constitute unlawful aggression. There was no actual or imminent threat of bodily harm to appellant or to Jomel or to any other person.

Without unlawful aggression, appellant cannot successfully invoke self-defense. Even assuming that he tried to defend a stranger, his defense will not prosper. In the defense of a stranger, unlawful aggression on the part of the victim is also indispensable.[19]

Appellant alleges that the physical evidence supports his self-defense argument. He asserts that no blood was spilt or bullet shell recovered outside the door of his house, thus giving credence to his claim that no actual shooting had occurred there. Furthermore, he points to a crack in the wall inside the house, allegedly hit by a bullet fired from the victim’s .38 caliber revolver.

We are not convinced. It is a hornbook doctrine that one who invokes self-defense must rely on the strength of one's own evidence, not on the weakness of that of the prosecution.[20] Having admitted to killing the victim, appellant had the duty to present clear and convincing evidence in order to absolve himself.

The physical evidence relied upon by appellant does not convince the Court that he must be acquitted. Indeed, of no moment is the claim that no bullet shell or blood was found outside the house. The defense failed to establish that the investigating policemen had actually examined the area outside the house. There is not even any assertion in this direction. The blood from the victim did not spill anywhere outside the house because, before he fell, he was immediately pushed inside by appellant. That no bullet shell was recovered outside the house is consistent with the evidence indicating that the investigating policemen readily examined the inside of the house, but not the outside. Whatever its source, the wall crack inside does not negate the fact that the victim's body was found there riddled with bullets.

Third Issue:

Treachery

Contrary to the trial court's finding, we believe that the prosecution failed to prove that treachery had attended the killing of the victim. For treachery to be present, the means, methods or forms of execution should give the person attacked no opportunity for self-defense or retaliation. And it must be proven that these were deliberately and consciously adopted without danger to appellant.[21]

Appellant could not have deliberately and consciously adopted his mode of attack for, upon alighting from a taxi outside his residence, he merely chanced upon the victim. That treachery was absent when the former first shot the latter outside the house was thus correctly ruled by the RTC.

However, the Court disagrees that treachery attended the subsequent shots fired by appellant inside the house, for the proven facts do not support this finding. We quote from the assailed Decision as follows:

"The Court would not speculate on how the accused sustained the gunshot wound on his left buttock but it could not have been the scenario the defense presented considering all the inconsistencies and contradictions. The accused said that it was when he shoved his wife that the second shot rang out and hit his left buttock. The slug may have come from the .38 firearm of Sgt. Cajucom, but the Court believes that he could not have fired it because he was no longer in control. When Sgt. Cajucom was shot by the accused, he was pushed inside the house while the others from the inside pulled him in. When he was already inside, the door was closed to the exclusion of everyone except family members. There he was repeatedly shot." [22]

After a thorough review of the records of the instant case, we hold that the court a quo could not have ascertained what had actually transpired behind the closed door. Its own findings cited above belie its ruling that treachery was present. Other than plain speculation, there is no clear and convincing showing that the victim had no opportunity to defend himself; or that appellant deliberately and consciously employed means, methods or forms of execution without any danger to the latter. Aside from hearing the gunshots and the screams of the women inside the house, Manabo could not and did not testify on what had actually transpired behind the closed door.

Even after sustaining a fatal injury from the first gunshot wound, it is possible that the victim put up a last-ditch effort to defend himself against appellant. They might have grappled for the latter's .45 caliber service pistol. It is also possible that the victim himself, with his last ounce of strength, pulled the trigger of his .38 caliber revolver while aiming at appellant. The available evidence shows that the latter was indeed hit by a bullet fired from the former's revolver.[23] We cannot ascertain the immediate sequence of events leading to the exchange of gunfire inside the house. Thus, doubt still lingers as to whether treachery attended the shooting there, simply because the door was closed and the prosecution eyewitness could not see what was going on inside.

To appreciate treachery, the facts constituting this circumstance cannot be left to mere speculation, but must be proven beyond reasonable doubt. Appellant, in asserting self-defense, admits to killing the victim, but his admission does not include the fact that treachery attended the killing. Treachery cannot be presumed. It cannot be carved out from mere suppositions.[24] Since treachery has not been proven beyond reasonable doubt in the present case, appellant should be convicted only of homicide, not murder.

The penalty for homicide under Article 247 of the Revised Penal Code is reclusion temporal. Because no aggravating or mitigating circumstances were proven, the appropriate penalty is reclusion temporal in its medium period.[25] Appellant is also entitled to the benefits of the Indeterminate Sentence Law.

Civil Liability

The award of P50,000 as actual damages must be reduced. The trial court based this award mainly on the assertion of the wife of the victim. She claimed that she had spent that much for his burial; however, only P15,955 was supported by receipts.[26] Only this latter amount may thus be awarded, in line with the rule that only damages supported by evidence on record shall be allowed.[27] Moral damages awarded by the RTC in the amount of P50,000 is reasonable, considering the grief and sorrow suffered by the wife of the victim at the sudden loss of her husband.[28] However, there being no aggravating circumstance, the award of P50,000 as exemplary damages is hereby deleted. Furthermore, the P75,000 civil indemnity for the victim's death is reduced to P50,000. The trial court erred in relying on *People v. Victor*,[29] because the P75,000 award there is applicable only when a crime is qualified by any of the circumstances under which the death penalty is authorized.

After recomputation, the award for loss of earning capacity is increased from P863,452.80 to P925,128.[30] Sgt. Cajucom's monthly income at the time of his death was P8,566.[31] His annual income, computed at the rate of P8,566 per month multiplied by 12 months, is P102,792. To this amount would be deducted his necessary and incidental expenses estimated at fifty percent (50%) thereof, leaving a net annual income of P51,396. Being fifty-three (53) years old at the time of his death,[32] his life expectancy of 18 more years is derived using this formula: $\frac{2}{3} \times [80 - (\text{age of victim at the time of death})]$. Multiplying his net annual income of P51,396 to his remaining life expectancy of 18 years, we arrive at P925,128 as his loss of earning capacity.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant is CONVICTED of homicide and SENTENCED to an indeterminate penalty of eight years of prision mayor medium, as minimum; to fourteen years and eight months of reclusion temporal medium, as maximum. The award for civil damages is hereby MODIFIED to P15,955 for actual damages, P50,000 for moral damages, P50,000 for indemnity ex delicto, and P925,128 for loss of earning capacity. No costs.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Written by Judge Jose Catral Mendoza.

[2] RTC Decision, p. 31; rollo, p. 87; records, p. 729.

[3] Information, p.1; rollo, p. 10; records, p. 1.

[4] Order dated March 20, 1996; records, p. 154.

[5] Atty. Marcelo J. Abibas Jr.

[6] Appellee's Brief was signed by Asst. Solicitors General Carlos N. Ortega and Magdangal M. de Leon and Solicitor Bernard G. Hernandez.

[7] Appellee's Brief, pp. 3-8; rollo, pp. 253-259.

- [8] Appellant's Brief, pp. 5-16; rollo, pp. 127-138. The Brief was signed by Atty. Salvador D. Lorbes of Aquino Lorbes & Associates.
- [9] RTC Decision, p. 20; rollo, p. 76.
- [10] Ibid., pp. 22 & 78.
- [11] Id., pp. 20 & 76.
- [12] This case was deemed submitted for decision on October 25, 2001, upon receipt by this Court of appellant's Reply Brief.
- [13] Appellant's Brief, pp. 21-22; rollo, pp. 143-144. Original in upper case.
- [14] People v. Alo, 348 SCRA 702, December 27, 2000; People v. Palec, 345 SCRA 654, November 23, 2000.
- [15] TSN, January 20, 1997, p. 40.
- [16] Ibid., pp. 46-50.
- [17] Id., pp. 53-56.
- [18] People v. Caber Sr., 346 SCRA 166, November 28, 2000.
- [19] People v. Navarro, 295 SCRA 139, September 3, 1998.
- [20] People v. Belaje, 345 SCRA 604, November 23, 2000.
- [21] People v. Bayotas, 348 SCRA 627, December 19, 2000; People v. Baltar Jr., 347 SCRA 579, December 1, 2000; People v. Caber Sr., 346 SCRA 166, November 28, 2000.
- [22] RTC Decision, p. 28; rollo, p. 84.
- [23] TSN, September 7, 1999, pp. 53-54.
- [24] People v. Baltar Jr., supra, at 589; People v. Belaje, 345 SCRA 604, November 23, 2000.
- [25] As provided for under paragraph 1, Article 64 of the Revised Penal Code.
- [26] Exhibits "K," "K-1," "K-2" and "K-3"; records, pp. 397-398.
- [27] People v. Ricafranca, 323 SCRA 652, January 28, 2000.
- [28] TSN, June 11, 1997, pp. 30-31.
- [29] 292 SCRA 186, July 9, 1998.
- [30] Based on People v. Laut, 351 SCRA 93, February 1, 2001, the computation is as follows:
- annual income = (monthly income) x (12 months) or
(weekly income) x (48 weeks)
- net annual income = (annual income) – (necessary and incidental expenses computed at 50% of annual income)
- life expectancy (in years) = $(2/3) \times [80 - (\text{age of victim at the time of death})]$
- loss of earning capacity = (net annual income) x (life expectancy)
- [31] September 1995 Pay Slip; records, p. 406.
- [32] Certificate of Death; records, p. 385.

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