

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUFINO MALLARI Y ILAG, APPELLANT.

*G.R. No. 145993. June 17, 2003*

Ponente: DAVIDE JR., C.J.

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### DAVIDE JR., C.J.:

In its decision of 16 June 2000, in Criminal Case No. 9621-B, the Regional Trial Court, Branch 25, of Biñan, Laguna, convicted appellant RUFINO MALLARI y ILAG of murder and sentenced him to suffer the penalty of death for having fatally bumped Joseph Galang with an Isuzu Canter Elf truck.

On 12 December 1996, an information[1] for Murder was filed against Rufino, the accusatory portion of which reads:

That on or about July 7, 1996, in the Municipality of Sta. Rosa, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused Rufino Mallari y Ilag, with intent to kill, with evident premeditation, treachery and with the use of motor vehicle, did then and there willfully, unlawfully, and feloniously hit and bump with his driven Brand New Isuzu Canter Elf with conduction sticker number 33 LAB one Joseph Galang, thereby inflicting [on] him mortal wounds on the head which directly cause[d] his death, to the damage and prejudice of his surviving heirs.

That the crime was committed by means of a motor vehicle as a qualifying circumstance.

CONTRARY TO LAW.

At his arraignment, Rufino pleaded not guilty to the crime charged. At the trial on the merits, the prosecution presented as witnesses Liza Galang, Edgar Bawar, and Dr. Erwin Escal; while the defense presented Rufino himself, Myrna Mallari, Dr. Divina Palarca, and Dr. Escal.

Liza Galang testified that on 7 July 1996 at around 4:00 p.m., her common-law husband Joseph admonished Rufino and his brothers Ino and Felix Mallari not to drive fast while passing by Joseph's house. Rufino and his brothers, who were then hot-tempered, challenged Joseph to a fight. The latter just ignored the challenge; and, instead he and his own brothers Radi and Manny asked apology from Rufino.[2]

Later that afternoon, while Joseph and Liza were watching a basketball game at the barangay basketball court, Rufino and his brothers, who were then carrying bladed weapons, arrived and attempted to stab Joseph; but Joseph was able to run away. When they were not able to catch up with him, Rufino boarded and drove the truck parked near the basketball court and continued chasing Joseph until the truck ran over the latter, which caused his instantaneous death.[3]

Liza further testified that at the time of his death, Joseph was 37 years old. He was a foreman in a construction firm with a daily income of P350 and also a carpenter and mason with a daily income of P250. She spent less than P20,000 for the coffin, tomb, funeral, and other expenses during the wake of Joseph.[4]

Edgar Bawar, a friend of Joseph, testified that at 6:24 p.m. on 7 July 1996, while Joseph was watching a basketball game, Rufino and his brothers Ino and Felix, who were carrying bladed weapons, arrived and chased Joseph. Joseph ran away, and Rufino pursued him with the truck. Upon catching up with him, Rufino bumped Joseph, as a result of which the latter died on the spot.[5]

Dr. Erwin Escal testified that the cause of death of Joseph, as stated in the Medico-Legal Report,[6] was "[c]rushing injury on the head secondary to vehicular accident." Joseph's head was deformed with multiple skull fractures and lacerations and brain tissue evisceration.[7]

The defense had a different story. Rufino testified that on 7 July 1996 at around 6:30 p.m., while he was driving a truck at a speed of eighty kilometers per hour, with his wife Myrna seated on the passenger side, he saw Joseph on the road about four meters away from him. Rufino, who was then on his way to the garage to park the truck, blew thrice the horn. But Joseph went to the middle of the road and threw stones, which went through the windshield and hit Rufino on the chest. As a result thereof, Rufino lost control of the truck, and ran over Joseph. Because of fear, Rufino did not alight from the truck; instead, he proceeded to the municipal hall of Sta. Rosa, Laguna, where he surrendered and was immediately detained.[8]

Myrna Mallari testified that prior to the incident in question, she saw Joseph at the basketball court. He was apparently drunk and was carrying a "balisong." Much to her consternation, he gave her a dagger look. Myrna reacted by simply crying and going inside her house. She corroborated Rufino's testimony that while Rufino was driving the truck, Joseph threw stones, which went through the windshield and hit the chest of Rufino.[9] As a result of which, Rufino had chest pains and vomited blood while in detention.

Dr. Divina Palarca testified that she examined Rufino on 29 October 1996 and found him to be suffering from pulmonary tuberculosis, which possibly could have afflicted him six months prior to its discovery.[10] Dr. Escal confirmed the testimony of Dr. Palarca, as in fact, it was he who diagnosed the illness of Rufino.[11]

The trial court gave full credence to the testimonies of prosecution witnesses Liza Galang and Edgar Bawar that Rufino deliberately bumped Joseph. Appreciating the qualifying circumstance of use of motor vehicle, it convicted Rufino of murder and sentenced him to suffer the death penalty and to pay the victim's heirs P100,000 as compensatory damages; P75,000 as moral damages; P50,000 as exemplary damages; and costs.[12]

The case is now before us on automatic review pursuant to Article 47 of the Revised Penal Code, as amended.

In his Appellant's Brief, Rufino imputes to the trial court the following errors:

I

... IN FINDING THAT THE INCIDENT WHICH KILLED JOSEPH GALANG WAS DONE BY ACCUSED-APPELLANT WITH CRIMINAL INTENT AND MALICE.

II

... IN CONSIDERING THE USE OF A MOTOR VEHICLE AS A QUALIFYING CIRCUMSTANCE IN THE IMPOSITION OF THE DEATH PENALTY.

III

... IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[13]

We note that in his prayer in the Appellant's Brief, Rufino seeks his acquittal of the crime of murder, or in the alternative, his conviction for homicide only. In his discussion of his first and second assignments of error, however, Rufino does not seek his acquittal but merely the downgrading of his crime from murder to homicide on the grounds that no evident premeditation was proved and that the motor vehicle was merely incidental to the commission of the crime. In his third assignment of error, Rufino argues that voluntary surrender should have

been appreciated as a mitigating circumstance in his favor, considering that after the bumping incident, he proceeded to the municipal hall of Sta. Rosa, Laguna, where he was immediately detained.

In its Appellee's Brief, the Office of the Solicitor General (OSG) seeks the affirmance of Rufino's conviction but argues that the penalty to be imposed on him should be reclusion perpetua only because of the presence of the mitigating circumstance of voluntary surrender.

In view of the diametrically opposed versions of the prosecution and the defense, the resolution of the present case hinges on the credibility of the witnesses who had come forward to testify. We have long recognized that the assessment of the credibility of witnesses and their testimonies lies within the province and competence of the trial court because it has the direct opportunity to observe the witness' attitude, demeanor, deportment, and manner of testifying,[14] all of which aid in determining whether the witness is telling the truth or merely prevaricating. Thus, the trial court's evaluation of the credibility of witnesses is accorded great weight and respect and even finality by appellate courts[15] unless some fact or circumstance of weight and substance which could affect the result or disposition of the case was ignored, misapplied, misunderstood, or overlooked by the trial court or when the finding of fact was reached arbitrarily or capriciously.[16] We find no cogent reason to disturb the trial court's assessment of the credibility of the witnesses and its factual findings as to what actually happened, the same being amply supported by evidence.

Neither the prosecution nor the defense disputes two important facts: one, Joseph died instantly after he was hit by the truck; and second, the truck was driven by Rufino. There being no question on the identity of the person responsible for Joseph's death, what is left to be resolved is whether Rufino deliberately bumped Joseph with the truck he was driving.

The antecedent events show that, indeed, Rufino deliberately ran over Joseph. At around 4:00 p.m. of 7 July 1996, when Rufino passed by Joseph's house while driving the truck, he got angry when Joseph admonished him not to drive at high speed in front of Joseph's house. Rufino, already in a fighting mood, challenged Joseph to a fight, but the latter just ignored it. To put an end to the argument, Joseph and his brothers apologized to Rufino.

Apparently, Rufino was not appeased by the apology and continued to harbor ill-feelings against Joseph. Rufino got the chance to vent his anger not long thereafter. At around 5:30 p.m., while Joseph was watching a basketball game at the basketball court located beside Rufino's house, Rufino and his brothers Ino and Felix, carrying with them bladed weapons, attempted to stab Joseph. But before they could do it, Joseph was able to run away. They chased Joseph, but were unable to catch up with him. Instead of giving up on his evil design, Rufino went back to the basketball court, boarded the truck parked nearby, and resumed his pursuit of Joseph. Upon seeing Joseph on the road, Rufino hit him with the truck.

We note that the testimonies of Liza and Edgar were consistent with their respective sworn statements,[17] which they gave to the police investigator in the morning of 8 July 1996. Considering that less than twenty-four hours had elapsed from the time of the bumping incident, Liza and Edgar could not have concocted a story to pin down Rufino for the death of Joseph. Thus, there is no reason to doubt the veracity of the sworn statements and the testimonies of Liza and Edgar.

Moreover, the defense has not shown any reason why Edgar, who corroborated Liza's testimony about the incident, would perjure himself to pin down Rufino. Absent any evidence showing any reason or motive for the prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit.[18]

In comparison, Rufino and Myrna gave inconsistent testimonies. Myrna wanted the court to believe that her

husband was in no way at fault by stating that Rufino was driving at a slow pace,[19] while Rufino himself declared that he was driving at a speed of eighty kilometers per hour.[20] Myrna's attempt to cover up the misdeed of her husband is obvious; hence, the integrity of her declarations becomes questionable.

Rufino himself made inconsistent statements. At first, in the course of the direct examination, Rufino declared that prior to the bumping incident he saw Joseph pass by his house, walking in a zigzag manner.[21] This testimony was an attempt to give credence to his allegation that Joseph was drunk, which was why he threw stones at the truck for no reason at all. But when he was asked during his cross-examination about his altercation with Joseph earlier that fateful day, Rufino made a complete turnaround and declared that he saw Joseph for the first time at the place where he was run over.[22]

Moreover, the testimonies of Rufino and Myrna do not inspire belief for being improbable and not in accord with human experience. It is axiomatic that for testimonial evidence to be credible, it should come not only from the mouth of a credible witness, but should also be credible, reasonable, and in accord with human experience.[23]

According to Rufino, he saw Joseph when the truck was four meters away from the latter and he blew his horn three times. This is altogether unbelievable. At a speed of eighty kilometers per hour, a four-meter distance could easily be covered by the truck in a split second, and there would be no time for the driver to blow the horn before the impact. Much less could there be time for a person on the road to pick up a stone and hurl the same to an oncoming truck. Thus, it is simply impossible that Joseph was able to hurl a stone at the truck before he was run over.

Neither can we believe Rufino's testimony that he first saw Joseph on the road when the truck was just four meters away from him. According to Rufino, the road was clear because only Joseph and the truck he was driving were on the road. He testified as follows:

Q Mr. Witness, when you saw for the first time Joseph Galang along the road, there was no other vehicle from [the] opposite direction where you were heading?

A None, sir.

Q So that your driven vehicle and Joseph Galang were the only [ones] in that road?

A

Yes, sir.

Q And the road could accommodate two (2) ten wheeler trucks?

A Yes, sir.

Q And you said likewise that when you first saw Joseph Galang, he was about four (4) meters away from your driven vehicle?

A Yes, sir.[24]

From Rufino's own testimony, it appears that his view was unobstructed. He could have seen Joseph from afar and could therefore have avoided bumping the latter had he really wanted to.

Obviously, the stone-throwing incident was concocted by the defense as a last ditch effort to have Rufino absolved from his criminal act. Unlike the prosecution witnesses who executed their sworn statements on the morning after the subject incident, Rufino's sworn statement[25] was executed only on 15 August 1996, or more than one month after the incident. Thus, Rufino had enough time to reflect and come up with a plot. Unfortunately for him, the story he concocted is so incredible that we are not inclined to believe it.

To prove that Rufino's driving ability was adversely affected by his illness, the defense presented a medical certificate[26] stating that Rufino was treated at the Sta. Rosa Community Hospital for "Minimal PTB, Bilateral with partial collapse of Right Upper Lobe" on 1 November 1996, or almost four months after the bumping incident. That certificate is not competent evidence to prove that at the time, Rufino was already suffering from pulmonary tuberculosis. But even granting *arguendo* that Rufino was already suffering from said illness at the time of the incident, there is no evidence that it had affected his driving ability to the extent that Rufino was no longer able to control the vehicle he was driving.

In view of the foregoing, we affirm the trial court's finding that Rufino deliberately bumped Joseph with the truck he was driving.

Rufino's culpability having been resolved, we now come to the penalty to be imposed. The trial court imposed the death penalty on the ground that the qualifying circumstance of use of motor vehicle is present. Rufino, however, argues that the use of a motor vehicle was only incidental, considering that he resorted to it only to enable him to go after Joseph after he failed to catch up with the latter. The fallacy of this argument is obvious.

The evidence shows that Rufino deliberately used his truck in pursuing Joseph. Upon catching up with him, Rufino hit him with the truck, as a result of which Joseph died instantly. It is therefore clear that the truck was the means used by Rufino to perpetrate the killing of Joseph.

The case of *People v. Muñoz*[27] cited by Rufino finds no application to the present case. In the said case, the police patrol jeep was merely used by the accused therein in looking for the victim and in carrying the body of the victim to the place where it was dumped. The accused therein shot the victim, which caused the latter's death. In the present case, the truck itself was used to kill the victim by running over him.

Under Article 248 of the Revised Penal Code, a person who kills another "by means of a motor vehicle" is guilty of murder. Thus, the use of motor vehicle qualifies the killing to murder.[28] The penalty for murder is reclusion perpetua to death. Since the penalty is composed of two indivisible penalties, we shall apply Article 63(3) of the Revised Penal Code, which reads:

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

In the present case, the aggravating circumstances of evident premeditation and treachery, which were alleged in the information, were not proved. What was proved was the mitigating circumstance of voluntary surrender through the testimonies of Rufino and Myrna, which were not rebutted by the prosecution.

We have held that for voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (3) the surrender was voluntary.[29] A surrender is considered voluntary if it is spontaneous and shows the intention of the accused to submit himself unconditionally to the authorities because he either acknowledges his guilt or wishes to save the government the trouble and expense necessarily included for his search and capture.[30] All these requisites are present in this case.

In view of the absence of an aggravating circumstance and the presence of one mitigating circumstance, reclusion

perpetua, not death, should be the penalty to be imposed on Rufino.

We now discuss the damages to be awarded.

The trial court's award of P100,000 compensatory damages is erroneous because it was without basis. The records show that the prosecution presented only two receipts, for the amounts of P9,000[31] and P200[32] representing payment for the casket and funeral services, and the niche, respectively, or a total of P9,200. Only expenses supported by receipts and which appear to have actually been expended in connection with the death of the victim should be allowed for actual damages.[33] Hence, the award of P100,000 should be reduced to P9,200.

We sustain the court's award of moral damages but at a reduced rate of P50,000, consistent with recent jurisprudence. In cases of violent death, moral damages is awarded even in the absence of proof because an untimely and violent death invariably brings about emotional pain and anguish on the part of the victim's family.[34] In addition, the amount of P50,000[35] as indemnity for the death of Joseph should be awarded to his heirs.

The award of exemplary damages is proper in view of the qualifying aggravating circumstance of use of a motor vehicle. However, the amount of P50,000 awarded by the trial court should be reduced to P25,000 pursuant to current case law.

Finally, we note that the prosecution offered the testimony of the victim's widow on the age and daily income of her husband, without supporting the same with documentary evidence.

The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[36]

There is no showing that the victim was self-employed or employed as a daily-wage worker with an average daily income of less than the minimum wage provided under the labor laws in force at the time of his death. In the absence of such proof, the exception cannot be applied to this case. Hence, no award for loss of earning capacity can be granted in favor of the victim's heirs.

WHEREFORE, the appealed decision of the Regional Trial Court, Branch 25, of Biñan, Laguna, in Criminal Case No. 9621-B convicting appellant RUFINO MALLARI y ILAG of the crime of murder is hereby AFFIRMED with the following modifications:

1. The penalty is reduced from death to reclusion perpetua;
2. The award of exemplary damages in the amount of P50,000 is reduced to P25,000, and the awards of actual and moral damages are reduced to P9,200 and P50,000, respectively; and
3. Appellant Rufino Mallari y Ilag is further ordered to pay the heirs of Joseph Galang an indemnity ex delicto in the amount of P50,000.

Costs de oficio.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

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- [1] Original Record (OR), Vol. 1, 1; Rollo, 9.
- [2] TSN, 27 May 1997, 14-15.
- [3] TSN, 27 May 1997, 7-9.
- [4] Id., 11-13.
- [5] TSN, 8 July 1997, 9-14.
- [6] Exhibit "E," OR, 90.
- [7] TSN, 21 July 1997, 5-6.
- [8] TSN, 29 July 1997, 10-15; TSN, 22 September 1997, 5-8, 18-20.
- [9] TSN, 22 October 1997, 4-7, 10-11.
- [10] TSN, 17 May 1999, 4-5.
- [11] TSN, 14 March 2000, 4.
- [12] OR, Vol. 2, 49-57; Rollo, 20-28. Per Judge Hilario F. Corcuera.
- [13] Rollo, 54-55.
- [14] People v. Bolivar, G.R. No. 130597, 21 February 2001, 352 SCRA 438, 451; People v. Barnuevo, G.R. No. 134928, 28 September 2001, 366 SCRA 243, 250; People v. Rama, G.R. No. 144386, 23 January 2002.
- [15] People v. Abella, G.R. No. 127803, 28 August 2000, 339 SCRA 129, 144.
- [16] People v. Cachola, G.R. No. 135047, 16 March 2001, 354 SCRA 577, 584; People v. Pacantara, G.R. No. 140896, 7 May 2002.
- [17] Exhibits "A" and "B," OR, 2-5.
- [18] People v. Barnuevo, supra note 14; People v. Fernandez, G.R. No. 137647, 1 February 2001, 351 SCRA 80, 90.
- [19] TSN, 22 October 1997, 7-8.
- [20] Id., 18.
- [21] TSN, 29 July 1997, 15.
- [22] TSN, 22 September 1997, 20-21.
- [23] People v. Atad, G.R. No. 114105, 16 January 1997, 266 SCRA 262, 275-276.
- [24] TSN, 22 September 1997, 18.
- [25] Exhibit "1," OR, Vol. 1, 12-13.
- [26] Exhibit "2," OR, Vol. 1, 117.
- [27] 194 Phil. 300 [1981].
- [28] People v. Soriano, G.R. No. L-57575, 25 February 1985, 134 SCRA 542, 552; People v. Enguito, G.R. No.

128812, 28 February 2000, 326 SCRA 508, 524.

[29] *People v. Hanasan*, 140 Phil. 148 (1969); *Estacio v. Sandiganbayan*, G.R. No. 75362, 6 March 1990, 183 SCRA 12, 24.

[30] *People v. Abella*, supra note 15, at 148.

[31] Exhibit "D," OR, Vol. 1, 83.

[32] Exhibit D-1," OR, Vol. 1, 82.

[33] *People v. Cual*, G.R. No. 131925, 9 March 2000, 327 SCRA 623, 648.

[34] *People v. Panado*, G.R. No. 133439, 26 December 2000, 348 SCRA 679, 690; *People v. Caboquin*, G.R. No. 137613, 14 November 2001, 368 SCRA 654, 659-660; *People v. Caraig*, G.R. Nos. 116224-27, 28 March 2003.

[35] *People v. Cual*, supra note 33, at 647; *People v. Castillo*, G.R. No. 139339, 19 January 2001, 349 SCRA 732, 744.

[36] *People v. Pajotal*, G.R. No. 142870, 14 November 2001, 368 SCRA 674, 689; *People v. Caraig*, supra note 34.

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