

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONNIE R. RABANAL, ACCUSED-APPELLANT.

G.R. No. 146687. August 22, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In the early dawn of August 11, 1996, a drunken and armed Roberto Pascua was fatally shot by the security guard of a building in Dagupan City, Pangasinan. The prosecution asserts that Pascua was treacherously shot while the defense contends that it was an act of self-preservation.

The security guard, Bonnie R. Rabanal, was charged with Murder committed as follows:

That on or about the 11th day of August 1996, in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused BONNIE R. RABANAL, being then armed with a gun, with treachery and with intent to kill one ROBERTO PASCUA, did then and there willfully, unlawfully and criminally attack, assault and use personal violence upon the latter by shooting him, hitting him several times on vital parts of his body with the said gun, thereby causing his death shortly thereafter due to “Cardio Respiratory Arrest, Massive Intra-thoracic and Intra-Abdominal Hemorrhage, Gunshot Wound[s]” as per Autopsy Report and Certificate of Death, both issued by Dr. Thomas G. Cornel, to the damage and prejudice of the legal heirs of said deceased, ROBERTO PASCUA, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code, as amended by R.A. 7659.[1]

The case was docketed as Criminal Case No. 96-01443-D of the Regional Trial Court of Dagupan City, Branch 44. Accused-appellant entered a negative plea when arraigned.[2] The case thereafter proceeded to trial.

The prosecution’s version of the incident:

At 2:00 a.m. of August 11, 1996, Freddie Soriano, a security guard of the CSI building in Dagupan City, saw accused-appellant Bonnie Rabanal, a security guard of the McDonald’s restaurant located in the same building, repeatedly shoot at close range the victim Rudy Pascua, the security coordinator of the building. After the victim fell down, accused-appellant fired another shot and then took the victim’s gun and fled.[3]

The victim was rushed to the Pangasinan Provincial Hospital, Dagupan City, where he was declared dead on arrival. The victim suffered four gunshot wounds on the chest, all of which were fatal.[4]

Accused-appellant, on the other hand, asserts that the fatal shooting of Rudy Pascua was an act of self-defense. He alleges that on August 11, 1996, at 2:00 a.m., Pascua, who was armed and reeking of alcohol, approached him at his usual post in front of the McDonald’s restaurant and suddenly kicked the podium, causing it to fall on him. When accused-appellant asked what was the matter, Pascua uttered, “You’re hard-headed security guards, I told you to give me P100.00 per head monthly but you refused to give, are you going to give me or not?” He then drew his firearm and said, “If that’s the thing you want to happen, I better kill you.”[5]

Accused-appellant pleaded for his life while Pascua demanded that he surrender his firearm. While Pascua was reaching for accused-appellant's holster, the latter pushed him and grabbed his gun. Pascua lost his balance and staggered backwards. At that instant, accused-appellant drew his pistol and pulled the trigger four times. Pascua fell to the ground. Accused-appellant then took the gun from Pascua's hand and brought it to the security agency as proof that somebody attempted to kill him.[6]

That same day, accused-appellant voluntarily surrendered himself and Pascua's firearm to Supt. Enrique Galang at Camp Crame. He did not surrender at Dagupan because of Pascua's influence as bodyguard of Belen Fernandez. He was brought to the Lingayen Police Station the following day.[7]

On October 24, 2000, the trial court rendered judgment convicting accused-appellant and imposing on him the supreme penalty of death, thus:

WHEREFORE, the Court finds accused Bonnie R. Rabanal guilty beyond reasonable doubt of the crime of Murder attended by the aggravating circumstance of cruelty and not offset by any mitigating circumstances, and pursuant to law, accused Bonnie R. Rabanal is sentenced to suffer the Death Penalty and to pay an indemnity of P50,000.00 to the heirs of the deceased.

The accused is ordered to pay P100,000.00 representing expenses during the wake and P60,000.00 for the coffin and tomb; P5,440,800.00 as indemnity for loss of earnings; and P50,000.00 as moral damages.

The Service Revolver (caliber .38 with Serial No. 54913 [Exhibit 9]) and the firearm with Serial Number FG66801, 9 mm pistol, Colt MK IV, Exhibit "10", all in the possession of the City Prosecutor, are ordered confiscated and forfeited in favor of the Government. The evidence custodian in the City Prosecutor's Office, Dagupan City, is ordered and directed to turn over the firearms immediately to the Firearms and Explosives Division, Camp Crame, Quezon City.

With costs against the accused.

SO ORDERED.[8]

Before us on automatic review, accused-appellant argues that:

A. THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ALL ELEMENTS OF SELF-DEFENSE WERE NOT OBTAINING BASED ON CONJECTURAL, PREPOSTEROUS, AND ILLOGICAL REASONS.

B. THE TRIAL COURT GRAVELY ERRED IN FINDING TREACHERY. THERE WAS NO TREACHERY IN A FACE TO FACE ENCOUNTER WITH DECEASED WHOSE FIREARM WAS WITHIN EASY REACH. FURTHERMORE ACCUSED-APPELLANT NEVER EMPLOYED MEANS TO ENSURE SUCCESS WITHOUT RISK TO HIMSELF.

C. THE TRIAL COURT GRAVELY ERRED FINDING CRUELTY BASED ON THE NUMBER OF ALLEGED MORTAL WOUNDS SUSTAINED BY THE DECEASED. IT IS SUBMITTED THAT CRUELTY REFERS TO THE MANNER OF EXECUTION AND NOT THE NUMBER OF MORTAL WOUNDS INFLICTED IN SELF-DEFENSE.

D. THE TRIAL COURT GRAVELY ERRED IN FINDING THAT SINCE ACCUSED-APPELLANT SURRENDERED AT CAMP CRAME AND NOT AT DAGUPAN VOLUNTARY SURRENDER MUST NOT BE APPRECIATED. NO OTHER SUBMISSION COULD BEST ADDRESS SUCH RULING THAN THAT THE PROFFERED REASON IS UTTERLY WHIMSICAL, TWISTED, AND SHAMEFUL IN A SOCIETY OF THINKING MEN.

E. THE TRIAL COURT GRAVELY ERRED IN COMMITTING HIGHWAY ROBBERY BY AWARDING AN

UNCONSCIONABLE AMOUNT OF DAMAGES.[9]

For self-defense to prosper, accused-appellant must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[10] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete.[11] In other words in self-defense, unlawful aggression is a primordial element. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude – at the time the defensive action was taken against the aggressor.[12]

In the case at bar, even if we sustain the version of accused-appellant that the initial act of aggression came from the deceased, we cannot uphold his plea of self-defense. While indeed, the drunken victim initially brandished his handgun and aimed it at accused-appellant, the evidence shows that he laid it down on the nearby concrete porch shortly before he was shot several times by accused-appellant.[13]

When the deceased laid down his gun, unlawful aggression had already ceased and it was no longer necessary for accused-appellant to have fired successively the way he did at the victim.[14] Furthermore, we note that accused-appellant had shoved the intoxicated victim who staggered backwards. Hence, it was accused-appellant who became the aggressor when he, despite such prevailing conditions, not to mention the inebriated physical state of the deceased, proceeded to fire several shots at the victim. His act can no longer be interpreted as an act of self-preservation but a perverse desire to kill.[15]

Accused-appellant, however, insists that the unlawful aggression of the victim was a “continuing one whether or not he momentarily tripped, lost his balance or did similar acts of temporary character.”[16] Thus, he argues that even if the deceased lowered his guard at some point, he was still the aggressor. He also cites the fact that the victim was “predisposed to using violence and intimidation while accused-appellant was simply a security guard doing his job;” and that the victim was armed with the more powerful and sophisticated .9mm Colt MK IV series 80, while accused-appellant merely had an inferior .38 caliber pistol.[17]

These arguments fail to persuade.

There is unlawful aggression when the peril to one’s life, limb or right is either actual or imminent. Actual peril to one’s life means that the danger must be present, that is, actually in existence, or imminent in that the danger is on the point of happening.[18] This cannot be said in this case because the victim was unarmed when he was shot by accused-appellant.[19] Indeed, the danger had already ceased when the victim laid his gun down on the pavement, thus enabling accused-appellant to push him away.

Furthermore, even assuming that the victim was a gun club member armed with a more powerful handgun than that of accused-appellant, it must be pointed out that the deceased was at the time of the incident a middle-aged and drunken 46 year-old,[20] with impaired and slowed physical reflexes on account of his intoxication. Accused-appellant, on the other hand, was a youthful and sober 27 year-old security guard, in full possession of his physical faculties.[21] Accused-appellant stands 5’5”[22] while the victim’s height was only 5’2”.[23] Suffice it to state that under such conditions, it would have been easy for the bigger, sober accused-appellant to subdue the intoxicated and already unarmed victim.

It must be remembered that the means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression.[24] What the law requires is a rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is

exposed, and the instinct more than reason, that moves or impels the defense; and the proportionateness thereof does not depend upon the harm done, but upon the imminent danger of such injury.[25]

In other words, whether or not the means employed is reasonable will depend upon the nature and quality of the weapon used by the aggressor, his physical condition, character, size and other circumstances and those of the person defending himself as well as the place and occasion of the assault.[26]

In the case at bar, assuming *arguendo* that the aggression was continuing, the means employed by accused-appellant in repelling the assault of the unarmed victim was not reasonable. It must be noted that the deceased sustained four (4) gunshot wounds fired at close range, all of them concentrated on the chest area and each of them fatal.[27] It bears repeating in this regard that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important indicia which disprove the plea for self-defense because they demonstrate a determined effort to kill the victim and not just defend oneself.[28]

All told, the Court finds no reason to reverse the ruling of the court *a quo* insofar as accused-appellant's culpability is concerned.

This brings us to the second issue, concerning the propriety of the imposition by the trial court of the death penalty on the ground that the killing was qualified by treachery and aggravated by cruelty.

It must be borne in mind that qualifying and aggravating circumstances which are taken into consideration for the purpose of increasing the degree of the penalty imposed must be proven with equal certainty as the commission of the act charged as criminal offense.[29]

Murder is the unlawful killing of any person when qualified by any of the circumstances listed under Article 248 of the Revised Penal Code.[30] Treachery or *alevosia*, which is alleged in the information, is one such qualifying circumstance.

We do not agree with the trial court that the killing of Rudy Pascua was attended by *alevosia*. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[31] In this case, the two elements of treachery are not present, i.e. (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[32] The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the part of the victim.[33]

For treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[34] Where no particulars are known as to how the killing began, its perpetration with treachery cannot merely be supposed.[35] In the case at bar, there was neither a description of how the attack was commenced – whether it was sudden, unexpected and whether the victim was caught totally unaware – nor has there been a showing that the method of execution in the commission of the crime was consciously or deliberately adopted by the malefactor.

To reiterate, the existence of *alevosia* must be based on positive or conclusive proof, not mere suppositions or speculations,[36] and must be proved as clearly and as convincingly as the killing itself.[37] Any doubt as to the existence of treachery must be resolved in favor of the accused.[38]

Likewise, the aggravating circumstance of cruelty cannot be appreciated in this case. There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical

pain in the consummation of the criminal act.[39] In other words, for cruelty to be appreciated, it must be shown that the accused, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully as he inflicted on him unnecessary physical and moral pain. The crime is aggravated because by deliberately increasing the suffering of the victim, the offender denotes sadism and, consequently, a marked degree of malice and perversity.[40]

The test for determining the presence of cruelty is whether the accused deliberately and sadistically augmented the victim's suffering.[41] Consequently, there must be proof that the victim was made to agonize before he was killed.[42] In this case, the wounds sustained by the victim came from four (4) gunshots fired in quick succession. Furthermore, other than the number and location of the wounds, there is absolutely no evidence that would show accused-appellant's cruelty and sadism. The mere fact of inflicting several wounds successively upon a person to cause his death, with no appreciable time intervening between the infliction of said injuries to show that the malefactor wanted to prolong the suffering of the victim, is not sufficient to prove the existence of this aggravating circumstance.[43]

The mitigating circumstance of voluntary surrender cannot be appreciated given the factual milieu of this case. For voluntary surrender to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[44] For the circumstances of voluntary surrender, it is sufficient that it be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or wishes to save the authorities the trouble and expense which will necessarily be incurred in searching for and capturing him.[45]

In the case at bar, accused-appellant fled after the commission of the crime, taking with him the victim's gun, although the Dagupan City Police Station was just a few meters away from the locus criminis. His supposed fear for the victim's influence in the community has no basis, and, if at all, even betrays his feelings of guilt at what transpired. As has been aptly ruled in *People v. Herrera*:^[46]

Flight strongly indicates a guilty mind and betrays the existence of a guilty conscience. Indeed, flight is an implied admission of guilt and accused-appellant's act of fleeing to Batangas after shooting the victims cannot but betray his guilt and his desire to evade responsibility therefor. Certainly, a righteous individual will not cower in fear and unabashedly admit the killing at the earliest possible opportunity if he were morally justified in doing so. (Emphasis and italics supplied) If the accused-appellant honestly believed that his acts constituted self-defense against the unlawful aggression of the victim, he should have reported the incident to the police instead of escaping and avoiding the authorities.

The circumstances that accused-appellant neither resisted arrest nor did he struggle to free himself when he was taken into custody by the authorities do not amount to voluntary surrender.^[47] Indeed, it was only later that he decided to turn himself in. Needless to state, his surrender can hardly be deemed spontaneous.

In the absence of the qualifying circumstance of treachery, the crime committed is Homicide and not Murder.^[48] The penalty therefor, under Article 249 of the Revised Penal Code, is Reclusion Temporal, to be imposed in its medium period considering that there is no modifying circumstance to aggravate or to mitigate criminal liability.^[49] Applying the Indeterminate Sentence Law, accused-appellant shall be entitled to a minimum term, to be taken from the penalty next lower in degree, Prison Mayor. Thus, accused-appellant shall be sentenced to an indeterminate penalty of eight (8) years and one (1) day of Prison Mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal, as maximum.

Coming now to the matter of damages, we affirm the award of civil indemnity in the amount of P50,000.00,

pursuant to prevailing jurisprudence.[50] Such award requires no proof other than the death of the victim.[51] Likewise, the award of moral damages in the amount of P50,000.00 is consistent with controlling case law taking into consideration the pain and anguish of the victim's family brought about by his death.[52]

However, the award of P26,000.00 for the Eternal Garden plot, P60,000.00 for the coffin of the victim and P100,000.00 for the wake and other expenses incurred in connection with the death of the deceased, amounting to a total of P186,000.00, should be modified. The trial court did not present any computation to justify such an amount. In fact, other than the bare allegations of the victim's widow to this effect, the records are totally bereft of any receipt or voucher to justify the trial court's award for burial and other expenses. The rule is that every pecuniary loss must be established by credible evidence before it may be awarded.[53] Credence can be given only to claims which are duly supported by receipts or other credible evidence.[54] Thus, the amount of actual damages should accordingly be reduced to P66,000.00, which is borne out by the evidence.[55]

In the same vein, loss of earning capacity cannot be awarded to the victim's heirs in the absence of competent proof thereof. While the widow in this case testified on the victim's income,[56] the same can no longer serve as basis for lost earnings, in the light of our recent ruling in *People v. Panabang*,[57] and reiterated in *People v. Cuenca*.^[58] There we held that indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven; and a self-serving statement, being unreliable, is not enough. For lost income to be recovered, there must be an unbiased proof of the deceased's average, not just gross, income.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Dagupan City, Branch 44, in Criminal Case No. 96-01443-D is MODIFIED. Accused-appellant Bonnie R. Rabanal is found GUILTY beyond reasonable doubt of Homicide and is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of Prison Mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal, as maximum. He is ORDERED to pay the heirs of the victim, Roberto Pascua, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P66,000.00 as burial and other expenses. The award of damages for lost income is DELETED. The decision under review is AFFIRMED in all other respects.

SO ORDERED.

Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Carpio, Austria-Martinez, and Corona, JJ., concur.
Davide, Jr., C.J., on official leave.
Sandoval-Gutierrez, J., on leave.

[1] Record, p. 1.

[2] *Ibid.*, p. 59.

[3] TSN, 18 November 1996, pp. 5-6, 10-12, 20.

[4] *Id.*, p. 41.

[5] TSN, 27 April 1998, pp. 28-30; TSN, 17 July 1998, 10:15 a.m., pp. 17-18.

[6] TSN, 17 July 1998, 10:15 a.m., pp. 17-35.

[7] *Ibid.*, pp. 31-35.

[8] *Id.*, pp. 404-421, at 420-421; penned by Judge Crispin C. Laron.

[9] Rollo, pp. 57-58.

[10] *People v. Galvez*, G.R. No. 130397, 17 January 2002.

[11] *People v. Dela Cruz*, G.R. No. 139970, 6 June 2002.

[12] *People v. Galvez*, *supra*.

[13] TSN, 18 November 1996, 9:15 a.m., pp. 6, 12, 30-32; Exhibits F, F-1.

- [14] *People v. Antonio*, G.R. No. 144933, 3 July 2002.
- [15] *People v. Tampon*, 258 SCRA 115, 124-125 1996; *People v. Ganzagan, Jr.*, 247 SCRA 220 1995; *People v. Jotoy*, 222 SCRA 801 1993; *People v. Gomez*, 235 SCRA 444 1994.
- [16] Appellant's Brief, p. 25.
- [17] *Ibid.*, pp. 28-29.
- [18] I Reyes, Revised Penal Code, pp. 146-148, 14th Ed. (1998).
- [19] Exhibit F-1.
- [20] Exhibit D.
- [21] Exhibit F.
- [22] TSN, 17 July 1998, 10:15 a.m., p. 20.
- [23] Exhibit B.
- [24] I Reyes, Revised Penal Code, *supra*, at p. 173.
- [25] *People v. Encomienda*, 46 SCRA 522, 534 1972.
- [26] I Reyes, Revised Penal Code, *supra*, at p. 174.
- [27] TSN, 18 November 1996, 2:00 p.m., p. 34; Exhibits B and C.
- [28] *People v. Zeta*, G.R. Nos. 140901-02, 9 May 2002.
- [29] *People v. Latupan*, G.R. Nos. 112453-56, 28 June 2001.
- [30] II Reyes, Revised Penal Code, p. 472, 14th Revised Ed. (1998).
- [31] *People v. Fernandez*, G.R. No. 134762, 23 July 2002.
- [32] *People v. Galam*, 325 SCRA 489 2000.
- [33] *People v. Garcia*, G.R. No. 129216, 20 April 2001.
- [34] *People v. Bautista*, 312 SCRA 214, 235 1999; *People v. Sioc*, 319 SCRA 12, 22, 1999; *People v. Maldo*, 307 SCRA 424, 440-441 1999.
- [35] *People v. Leal*, G.R. No. 139313, 19 June 2001; *People v. Silvestre*, 307 SCRA 424, 440-441 1999.
- [36] *People v. Tawas*, 303 SCRA 86; *People v. Silva*, 321 SCRA 647 .
- [37] *People v. Aytalin*, G.R. No. 134138, 21 June 2001.
- [38] *People v. Santos*, 332 SCRA 394, 401 2000.
- [39] *People v. Ballenas*, 330 SCRA 519, 536 2000.
- [40] *People v. Magayac*, 330 SCRA 767, 775 2000.
- [41] *People v. Ricafranca*, 323 SCRA 652, 663 2000; *People v. Lebumfacil*, 96 SCRA 573 1980 .
- [42] *People v. Panida*, 310 SCRA 66 1999; *People v. Domantay*, 307 SCRA 1 1999.
- [43] *People v. Basao*, 310 SCRA 743 1999.
- [44] *People v. Manlansing*, G.R. No. 131736-37, March 11, 2002.
- [45] *People v. Alo*, 348 SCRA 702, 712 2000.
- [46] G.R. Nos., 140557-58, 5 December 2001.
- [47] *People v. Siojo*, 61 Phil. 307 1935.
- [48] *People v. Fernandez*, G.R. No. 134762, 23 July 2002.
- [49] Revised Penal Code, Article 64 (1).
- [50] *People v. Amion*, G.R. No. 140511, 1 March 2001.
- [51] *People v. Concepcion, et al.*, G.R. No. 131477, 20 April 2001.
- [52] *People v. Pardua, et al.*, G.R. No. 110813, 28 June 2001; *People v. Ereneo*, 326 SCRA 157 2000 .
- [53] *People v. Bayang*, G.R. No. 134402, 5 February 2001.
- [54] *People v. Dulay*, 348 SCRA 239, 251 2000 .
- [55] Exhibits J, N, N-1 to N-12.
- [56] TSN, 23 December 1996, pp. 15-17; TSN, 2 January 1997, pp. 21.

[57] G.R. Nos. 137514-15, January 16, 2002.

[58] G.R. No. 143819, January 29, 2002.

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