

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDGAR DUMADAG Y CAGADAS, APPELLANT.

*G.R. No. 147196. June 04, 2004*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

Before us on appeal is the Decision[1] of the Regional Trial Court of the City of Malaybalay, Bukidnon, Branch 8, finding appellant Edgar Dumadag y Cagadas, guilty beyond reasonable doubt of murder; sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim P50,000 as civil indemnity and P50,000 as moral damages.

#### The Indictment

The appellant was charged with murder in an Information filed before the Regional Trial Court of Malaybalay, the accusatory portion of which is herein quoted:

That on or about the 24th day of June 1999, in the afternoon, at Barangay Impalutao, Municipality of Impasugong, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery, armed with a sharp bladed weapon, did then and there willfully, unlawfully and criminally attack, assault and stab FERNANDO PRUDENTE, inflicting upon the latter a mortal stab wound which caused the instantaneous death of FERNANDO PRUDENTE, to the damage and prejudice of the legal heirs of FERNANDO PRUDENTE in such amount as may be allowed by law[2]

#### The Evidence of the Prosecution[3]

June 24, 1999 was the feast of St. John. Fernando “Ondo” Prudente, with his friends, including Marlyn Meliston, agreed to meet at the Gantungan swimming pool in Impalutao, Impasugong, Bukidnon, to celebrate the occasion.[4] At about 5:00 p.m., Ondo and his friends headed back home. By then, there was heavy downpour. They decided to take shelter at the store of a certain Mr. Salvaña. Jovy Baylin, who had just come from the house of his sister, Enecita Abacajin, approximately one hundred (100) kilometers away, was also in the store.[5] Two men, one of whom was the appellant, were having some drinks.[6] When they saw Ondo, the appellant and his friend offered him a drink of Tanduay.[7] Ondo, declined, saying “Bay, I am not drinking now.”[8] Thereafter, Ondo left. The appellant was peeved. He rose from his seat and followed Ondo. The appellant then took hold of Ondo’s right shoulder, took out a stainless knife and stabbed the latter on the breast.[9] The appellant left the scene, walking towards the direction of the lower area of Cagayan de Oro.[10] Jovy Baylin, who was about five meters from the scene of the crime, was stunned, and was unable to do anything.[11] Ondo’s companions saw the stabbing and immediately flagged down a vehicle.

Mortally wounded, Ondo ran towards the vehicle and fell inside it.[12] Ondo’s companions brought him to the Bethel Baptist Hospital, Inc., in Malaybalay City, where he was pronounced dead on arrival.[13] Dr. Leslie Joan M. Arcadio signed Ondo’s death certificate and indicated that the cause of death was “stab wound, right

chest.”[14]

The Evidence of the Appellant[15]

The appellant denied the charge. He testified that in the afternoon of June 23, 1999, he was at Vista Villa, Sumilao, Bukidnon,[16] looking for some way to get money. He saw Richard Masicampo, Sr., the owner of a 2.5 hectare riceland in the same sitio and borrowed money from him.[17] The latter agreed, but required the appellant to cut the grass in his riceland the next day.

On the aforesaid date, the appellant, along with Richard, cut grass in the ricefield. At around 11:00 a.m., they stopped and had lunch in Richard’s house.[18] Because it rained the whole afternoon, they were unable to go back to the ricefield. They stayed in the house and had drinks.[19] After consuming five (5) bottles of “fighter wine,” the appellant fell asleep. At 5:30 p.m., he woke up and went home. He returned the next day to finish the job.[20]

The appellant was arrested in his house on July 4, 1999. He denied knowing Ondo and Jovy Baylin.[21]

On November 21, 2000, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is entered (sic) finding accused Edgar Dumadag guilty beyond reasonable doubt of the offense of murder qualified by treachery. Accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua, and to indemnify the heirs of his victim Fernando Prudente the sum of P50,000.00 and moral damages of P50,000.00.[22]

The Present Appeal

On appeal, the appellant asserts that:

## I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR THE CRIME OF MURDER AND IN DISREGARDING ACCUSED-APPELLANT’S DEFENSE OF ALIBI BECAUSE IN THE WORDS OF THE TRIAL COURT “ALIBI IS ONE OF THE WEAKEST DEFENSE AND EASY TO CONCOCT.”

## II

ASSUMING FOR THE SAKE OF ARGUMENT THAT ACCUSED IS GUILTY FOR THE DEATH OF FERNANDO PRUDENTE, THE TRIAL COURT ERRED IN CONVICTING HIM OF THE CRIME OF MURDER INSTEAD OF SIMPLE HOMICIDE.[23]

The appellant insists that the prosecution failed to prove his guilt for the crime charged beyond reasonable doubt. He asserts that although his defense of alibi is weak, he should be acquitted because the evidence of the prosecution is also weak.

The appellant, likewise, contends that, assuming that he is guilty of the crime charged, he can only be convicted of homicide because the prosecution failed to prove beyond reasonable doubt the qualifying circumstance of treachery. He avers that he could not have deliberately and consciously adopted a plan to kill the victim because they never knew each other. Citing our ruling in *People vs. Aguiluz*,[24] the appellant points out that where the sudden attack is not preconceived and intended as the means, but is merely triggered by the sudden infuriation on the part of the accused because of an act of the victim, or where the meeting is purely accidental, the killing would not be attended by treachery.

The Office of the Solicitor General (OSG) avers that the prosecution, through Baylin’s direct and straightforward testimony, proved that the appellant stabbed the victim to death. The OSG asserts that the appellant’s defense of

denial and alibi are weak and cannot be given probative weight in light of Baylin's testimony, and that the admission made by the appellant during the pre-trial that he was at the scene of the crime belied his alibi.

The OSG, however, agrees that the appellant is guilty only of homicide because the prosecution failed to prove the qualifying circumstance of treachery. It posits that the altercation between the appellant and the victim that preceded the commission thereof forestalled the attendance of treachery.

We agree with the trial court that the appellant stabbed the victim.

Time and again, we have consistently ruled that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, as well as its conclusions on its findings, are accorded high respect if not conclusive effect.[25] This is because of the unique advantage of the trial court to observe, at close range, the conduct, demeanor and deportment of the witnesses as they testify.[26] In this case, the trial court gave credence and probative weight to the testimony of Jovy Baylin. After a careful review of the records of this case, we find no cogent reason to overrule the trial court's findings that the appellant stabbed the victim.

As long as it is positive, clear and credible, the testimony of a single prosecution witness on which judgment of conviction is anchored, is sufficient. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused. Truth is established not by the number of witnesses but by the quality of their testimonies.[27]

The trial court found Baylin to be a credible witness. The denial and alibi of appellant cannot prevail over the positive identification and eyewitness account of Baylin.[28] Baylin testified, thus:

ASST. PROS. TORIBIO: (continuing)

Q:

After Edgar Dumadag invited Ondo Prudente to have a drink of Tanduay, what did Ondo Prudente do, if any?

A: He declined the offer.

Q: How did Ondo Prudente decline the offer of Dumadag?

A: He said, "Bay, I am not drinking now," and then he left.

Q: After Ondo Prudente left, what happened next, if any?

A: Dumadag followed Prudente, held his right shoulder and stabbed him.

Q: Now, how many time[s] did this Dumadag stabbed (sic) Ondo Prudente?

A: Once.

Q: Was Prudente hit?

A: Yes.

COURT: (to the witness)

Q: What part of his body?

A:

On his breast.

Q: What did the accused use in stabbing?

A: A stainless knife.

ASST. PROS. TORIBIO

Q:

Now, when this Dumadag followed Ondo Prudente after he declined the offer, did you see already Dumadag carrying with him a knife (sic)?

A: No, he was running.

Q: When for (sic) the first time you saw the knife of Dumadag?

A: When he held the shoulder (sic).

Q: Where did he get the knife?

...

A: From his side.[29]

On the other hand, the appellant's alibi is weak. It is settled that for the defense of alibi to prosper, the appellant must prove with clear and convincing evidence not only that he was some place else when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity when the crime was committed.[30] To prove his alibi, the appellant testified as follows:

Q:

Mr. Dumadag, you said that you borrowed money from Richard Masicampo, [Sr.] from where is this Richard Masicampo?

A: From our sitio.

Q: Meaning to say at Kibenton?

A: No, from our place.

Q: What place?

A: Kilabong.

Q: Vista Villa, Sumilao, Bukidnon?

A: Yes.

Q:

Mr. Dumadag, from Kilabong, Vista Villa going to Impalutao, how many minutes or hours it will (sic) take you when you ride?

A: I do not know because the distance is far.

However, the appellant failed to prove that it was physically impossible for him to be at the scene of the crime, considering his claim that he was only a few kilometers away when the stabbing occurred.

Moreover, during the pre-trial conference held on November 4, 1999, the appellant, assisted by his counsel, admitted that he was at the place of the incident at the time of the commission of the crime. The same was reduced into writing, signed by the appellant, approved by the trial court and formed part of the records of the case.[32] Under Section 5 of Republic Act No. 8493, otherwise known as "The Speedy Trial Act of 1998," stipulations entered into during the pre-trial which were approved by the Court shall bind the parties, limit the trial

to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.[33]

#### The Crime Committed by the Appellant

We agree with the appellant and the OSG that the prosecution failed to prove treachery in the commission of the crime.

Treachery is not presumed.[34] Treachery must be proven as clearly and as cogently as the crime itself.[35] There is treachery (alevosia) when the offender commits any of the crimes against the person, 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.[36] Two conditions must concur for treachery to be present, viz: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and, (2) the said means of execution were deliberately or consciously adopted.[37] Treachery cannot be appreciated if it has not been proved beyond reasonable doubt that the assailant did not make any preparation to kill the victim in such a manner as to insure the killing or to make it impossible or difficult for the victim to defend himself.[38] The prosecution must prove that the killing was premeditated or that the assailant chose a method of attack directly and specially to facilitate and insure the killing without risk to himself.[39] The mode of attack must be planned by the offender and must not spring from the unexpected turn of events.[40]

In the case at bar, the trial court merely relied on the suddenness of the attack on the unarmed and unsuspecting victim to justify treachery. As a general rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was deliberately adopted by him with the purpose of depriving the victim of a chance to either fight or retreat. The rule does not apply if the attack was not preconceived but merely triggered by infuriation of the appellant on an act made by the victim.[41] In the present case, it is apparent that the attack was not preconceived. It was triggered by the appellant's anger because of the victim's refusal to have a drink with the appellant and his companions.

For failure of the prosecution to prove beyond reasonable doubt the attendance of the qualifying circumstance of treachery, the appellant can only be convicted of homicide. The penalty of homicide under Article 249 of the Revised Penal Code is reclusion temporal. There being no mitigating or aggravating circumstances attendant, the maximum of the indeterminate penalty shall be taken from the medium period of reclusion temporal. The minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, namely, prision mayor. Thus, the appellant may be sentenced to an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor, in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum.[42]

#### Civil Liabilities of the Appellants

The trial court correctly awarded P50,000 by way of civil indemnity to the heirs of the victim Fernando "Ondo" Prudente. However, the award of P50,000 for moral damages should be deleted, there being no proof that the heirs of the victim suffered wounded feelings, mental anguish, anxiety and similar injury. The said heirs are, instead, entitled to an award of P25,000 as temperate damages, conformably to current jurisprudence.[43]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of the City of Malaybalay, Bukidnon, Branch 8, is **AFFIRMED WITH MODIFICATIONS**. The appellant Edgar Dumadag y Cagadas is found **GUILTY** beyond reasonable doubt of Homicide under Article 249 of the Revised Penal Code, as amended by Rep. Act No. 7659 and is sentenced to suffer the indeterminate penalty of from Eight (8) years and One (1) day of prision mayor in its medium period, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day of

reclusion temporal in its medium period, as maximum. The appellant is ORDERED to pay Fifty Thousand Pesos (P50,000) as civil indemnity and Twenty-Five Thousand (P25,000) as temperate damages to the heirs of the victim. The award of moral damages is deleted.

No costs.

**SO ORDERED.**

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

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[1] Penned by Judge Vivencio P. Estrada, Records, pp. 57-60.

[2] Records, p. 26.

[3] The prosecution presented only one witness, Jovy Baylin.

[4] Records, p. 15.

[5] TSN, 27 April 2000, p. 3.

[6] Id. at 4.

[7] Id. at 5.

[8] Id. at 6.

[9] Id.

[10] Id. at 10.

[11] Id. at 8.

[12] Id. at 7.

[13] Exhibit "A," Records, p. 5.

[14] Ibid.

[15] The defense presented the appellant and Richard Masicampo, Sr. as witnesses.

[16] TSN, 5 July 2000, p. 3-4.

[17] TSN, 20 June 2000, p. 3.

[18] Id. at 4.

[19] Id.

[20] Id. at 5-6.

[21] TSN, 5 July 2000, p. 5; Records, p. 20.

[22] Records, p. 60.

[23] Brief for the Accused-Appellant, p. 1.

**[24] 207 SCRA 187 (1992).**

[25] Peoples v. Alex Flores, G.R. Nos. 143435-36, November 28, 2003.

[26] People v. Jerryvie Gumayao, G.R. No. 138933, October 28, 2003.

[27] Peoples v. Sibonga, G.R. No. 95901, June 16, 2003.

[28] People v. Bienvenido dela Cruz, G.R. No. 140513, November 18, 2003.

[29] TSN, 27 April 2000, pp. 6-7.

[30] People v. Marcos Gialolo, G.R. No. 152135, October 23, 2003.

[31] TSN, 5 July 2000, pp. 6-7.

[32] Records, p. 34.

[33] The pertinent provisions of Rep. Act No. 8493, are as follows:

Sec. 2. Mandatory Pre-Trial in Criminal Case. - In all criminal cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan, the justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

- (a) Plea Bargaining;
- (b) Stipulation of facts;
- (c) Marking for identification of evidence of parties;
- (d) Waiver of objections to admissibility of evidence; and
- (e) Such other matters as will promote a fair and expeditious trial.

Sec. 3. Pre-Trial Agreement. -All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise, the same shall not be used in evidence against the accused. The agreements in relation to matters referred to in Section 2 hereof is subject to the approval of the court. Provided, that the agreement on the plea of the accused to a lesser offense may only be revised, modified, or annulled by the court when the same is contrary to law, public morals, or public policy.

...

Sec. 5. Pre-Trial Order – After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of and control the course of action during the trial, unless modified by the court to prevent manifest injustice.

[34] People v. Percival Gonza, G.R. No. 138612, November 11, 2003.

[35] People v. Real, 308 SCRA 244 (1999).

[36] People v. Oscar Perez, G.R. No. 134485, October 23, 2003.

[37] People v. Percival Gonza, *supra*.

[38] People v. Alex Flores, *supra*.

[39] People v. Abalos, 84 Phil. 771 (1949).

[40] People v. Santillana, 308 SCRA 104 (1999).

[41] People v. Academia, 307 SCRA 229, 234 (1999).

[42] People v. Roger dela Cruz, G.R. No. 152176, October 1, 2003.

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

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