

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP HAMMER AND RODOLFO HAMMER (AT LARGE), ACCUSED. PHILIP HAMMER, ACCUSED-APPELLANT.

G.R. No. 147836. December 17, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] dated March 30, 2001 of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 94-139125, finding accused-appellant Felipe Hammer y Baque alias “Philip Hammer”, guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua.

Accused-appellant and his brother, Rodolfo Hammer, were charged with Murder in an information,[2] which reads:

That on or about December 25, 1993, in the City of Manila, Philippines, the said accused, conspiring and confederating together with another whose true name, identity and present whereabouts are still unknown and helping one another, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one ROMEO CASTILLO y PATRIMONIO, by then and there stabbing the latter with a bladed weapon hitting him on the different parts of the body, thereby inflicting upon said ROMEO CASTILLO y PATRIMONIO serious stab wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.

At his arraignment, accused-appellant pleaded not guilty to the crime charged. His co-accused, Rodolfo Hammer, remained at large. Trial thereafter ensued as against accused-appellant only.

The records show that in the afternoon of December 25, 1993, Romeo Castillo of 129 Balut, Tondo, Manila, came home drunk after having attended a neighbor’s baptismal party.[3] He fell asleep near the door inside his house. At 3:00 p.m., Philip Hammer and Rodolfo Hammer went to Romeo’s house. Accused-appellant Philip entered the house while Rodolfo stood watch outside. Philip stabbed Romeo about nine (9) times with a hunting knife.[4]

Teresita Castillo, wife of the victim, was inside the house when accused-appellant stabbed her husband. She cried, “ay, ay”, then jumped out of the window of their house and sought help from her neighbors.[5]

The victim was rushed to the Tondo General Hospital but was declared dead on arrival.[6]

Prosecution witness Luz Benero, a neighbor of Romeo, testified that she was at a store located right in front of the victim’s house when she saw the accused-appellant barge into Romeo’s house by pulling the door which was only fastened with a piece of wire.[7] Thereafter, she heard a commotion from inside the house and the wife of the victim shouting, “ay, ay”. When she turned to where the shouting came from, she saw the victim lying down and parrying the knife thrusts of accused-appellant. Thereafter, she saw accused-appellant leave the house holding a bloodied knife.[8]

On the other hand, accused-appellant denied killing Romeo Castillo. He claimed that he was in Cabanatuan on the day of the incident and left for Manila only on January 4, 1994.[9]

On March 30, 2001, the trial court rendered a decision convicting accused-appellant Philip Hammer of the crime of murder, the dispositive portion of which reads:

WHEREFORE, accused Philip Hammer is hereby convicted of the crime of murder under Article 248 of the RPC, with the aggravating circumstance of dwelling and sentenced to suffer the penalty of death by lethal injection and to pay the costs. He is further ordered to pay the legal heirs of the victim moral and nominal damages in the respective sums of P250,000.00 and P100,000.00, and compensation for the loss of the victim's life in the sum of P50,000.00 with interests thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.[10]

On April 19, 2001, the court a quo rendered an amended decision, which states:

It appearing that at the time the crime of murder, subject of this case was committed, i.e., on December 25, 1993, the death penalty has not yet been reinstated, the Court hereby motu proprio resolves to modify the dispositive portion of its decision, dated March 30, 2001, to read as follows:

WHEREFORE, accused Philip Hammer is hereby convicted of the crime of murder under Article 248 of the RPC and sentenced to suffer the penalty of reclusion perpetua together with all the accessories (sic) penalties prescribed by law. He is further ordered to pay the legal heirs of the victim, moral and nominal damages in the respective sums of P250,000.00 and P100,000.00, and compensation for the loss of the victim's life in the sum of P50,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.

SO ORDERED.[11]

Hence, the instant appeal based on the following assignment of errors:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE LOWER COURT ERRED IN FINDING THAT TREACHERY WAS PRESENT IN THE INSTANT CASE.

III

THE LOWER COURT ERRED IN AWARDING THE AMOUNT OF P250,000.00 AS MORAL DAMAGES AND THE AMOUNT OF P100,000.00 AS NOMINAL DAMAGES.

The errors raised by the accused-appellant boil down to the issue of credibility of witnesses. It is firmly settled that the findings of the trial court deserve the highest degree of respect and may be disregarded only where substantial errors have been committed or determinative facts have been overlooked and which otherwise would have dictated a different conclusion or verdict.[12] Having observed the witnesses' deportment and manner of testifying during trial, the trial court judge is always in a better position to determine their credibility.[13] In the case at bar, accused-appellant failed to cite any misappreciation of fact or erroneous conclusion on the part of the trial court such as to warrant a departure from this doctrine.

Accused-appellant's defense of alibi was properly rejected by the trial court. Settled is the rule that the defense of

alibi is inherently weak, for it is easy to contrive and concoct. For alibi as a defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime occurred. He must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[14] Similarly, a denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and should not be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[15]

In the case at bar, accused-appellant alleged that at the time of the commission of the crime, he was in Cabanatuan, Nueva Ecija and left for Manila only on January 4, 1994. His alibi cannot overcome his positive identification by prosecution witnesses Teresita Castillo and Luz Benero, considering that they both knew him[16] and that the incident happened in broad daylight. A trip from Cabanatuan, Nueva Ecija to Metro Manila can easily be negotiated within three to four hours, thus, it was not impossible for accused-appellant to have been in Manila at three o'clock in the afternoon of December 25, 1993 and return to Nueva Ecija immediately thereafter.

Accused-appellant, likewise, failed to show any ill-motive on the part of witnesses Teresita Castillo and Luz Benero for testifying against him. There being no showing of improper motives on the part of the prosecution witnesses for identifying the accused as the perpetrator of the crime, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[17]

In qualifying the crime to murder, the trial court correctly appreciated the circumstance of treachery. For treachery to be considered, two (2) elements must concur: (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and, (b) the means of execution were deliberately or consciously adopted. [18] Treachery clearly attended the killing as the victim was killed while he was asleep.[19] The victim's wife testified that accused-appellant suddenly barged into their house and stabbed her husband several times, while he was sleeping near the door; and that the latter was in no position to flee or defend himself. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[20]

The trial court, however, erred in appreciating the aggravating circumstance of dwelling. The Revised Rules of Criminal Procedure[21] now require that the information or complaint allege not only the qualifying but also the aggravating circumstances, otherwise the same cannot be properly appreciated. This provision may be given retroactive effect in the light of the well settled rule that "statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent." [22] Moreover, the said rule is more favorable to the accused. Since dwelling was not alleged in the Information, it cannot be considered as an aggravating circumstance in this case.

The killing was committed on December 25, 1993, or before the enactment on December 31, 1993 of Republic Act No. 7659 which amended Article 248[23] of the Revised Penal Code by increasing the imposable penalty for murder from reclusion perpetua to death. At the time of the commission of the offense, the penalty prescribed for murder was reclusion temporal in its maximum period to death.[24] There being neither aggravating nor mitigating circumstances, the penalty should be reclusion perpetua, the medium period of the penalty under Article 248 of the Revised Penal Code.

Lastly, the trial court ordered accused-appellant to pay the heirs of Romeo Castillo the amounts of P250,000.00 as moral damages and P100,000.00 as nominal damages. The amount of P250,000.00 as moral damages is excessive and should be reduced to Fifty Thousand Pesos (P50,000.00), keeping in mind that the purpose for awarding moral damages is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[25]

The prosecution failed to present any receipt to prove the amount of actual damages, other than the self-serving testimony of Teresita Castillo, widow of Romeo Castillo. For lack of evidentiary basis, the Court is correct in not awarding the same. It being clear, however, that the heirs of Romeo Castillo really incurred funeral expenses, they are hereby awarded the amount of P10,000.00 by way of nominal damages. This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification.[26] Nonetheless, the civil indemnity of P50,000.00 is affirmed, in line with our prevailing jurisprudence.[27]

WHEREFORE, in view of the foregoing, the decision dated March 30, 2001, amended on April 19, 2001, of the Regional Trial Court of Manila, Branch 18, finding accused-appellant guilty of Murder and sentencing him to reclusion perpetua, is **AFFIRMED** with **MODIFICATION**. Accused-appellant is ordered to pay the heirs of the victim, Romeo Castillo, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P10,000.00 as nominal damages.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Judge Perfecto A.S. Laguio, Jr; Rollo, p. 73.

[2] Rollo, p. 6.

[3] TSN, July 19, 2000, pp. 3-4, 6.

[4] Ibid., p. 4

[5] Id., p. 5.

[6] Records, p. 7.

[7] TSN, July 26, 2000, pp. 2-5.

[8] Ibid., pp. 6-7.

[9] TSN, September 8, 2000, p. 3.

[10] Rollo, pp. 14-15.

[11] Rollo, p. 18.

[12] *People v. Sarmiento*, 357 SCRA 447 (2001).

[13] *People v. Atad*, 266 SCRA 262 (1997).

[14] *People v. Cirilo*, 346 SCRA 648 (2000).

[15] *People v. Manzano*, G.R. No. 138303, November 26, 2001.

[16] TSN, July 19, 2000, p. 10; TSN, July 26, 2000, p. 24.

[17] *People v. De la Rosa, Jr.*, 341 SCRA 425 (2000).

[18] *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999).

[19] *People v. Kinok, et al.*, G.R. No. 104629, November 13, 2001.

[20] *People v. Quinao, et al.*, 269 SCRA 495 (1997).

[21] Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000 –

Sec. 8. Designation of the offense.- The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation.- The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in the terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[22] *People v. Arrojado*, 350 SCRA 679 (2001); *People v. Gano*, 353 SCRA 126 (2001).

[23] Article 248 of the Revised Penal Code, before its amendment by R.A. No. 7659, provides that:

ART. 248. Murder.- Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

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[24] *People v. Dacibar*, 325 SCRA 725 (2000).

[25] *People v. Valdez, et al.*, 350 SCRA 189 (2001).

[26] *People v. Aquino*, 342 SCRA 141 (2000).

[27] *People v. Dinglasan*, 267 SCRA 26 (1997).

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