

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCOS GIALOLO, FEDERICO GIALOLO AND OSCAR MAKABENTA, ACCUSED-APPELLANTS.

G.R. No. 152135. October 23, 2003

Ponente: PUNO, J.

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PUNO, J.:

Before this Court on automatic review is the Decision[1] of the Regional Trial Court of Carigara, Leyte in Crim. Case No. 2296, dated January 4, 2002, finding appellants Marcos Gialolo, Federico Gialolo and Oscar Makabenta guilty beyond reasonable doubt of the crime of murder, and imposing upon them the penalty of death. The dispositive portion[2] of the decision reads:

WHEREFORE, premises considered, pursuant to Sec. 6, Art. 248 of the Revised Penal Code, as amended, and further amended by R.A. No. 7659 (Death Penalty Law), the Court found MARCOS GIALOLO, FEDERICO GIALOLO, and OSCAR MAKABENTA, GUILTY beyond reasonable doubt of the crime of MURDER charged under the information and sentenced each of them to suffer the maximum penalty of DEATH and indemnify jointly and severally the heirs of Jose Platon the sum of Seventy-Five Thousand (P75,000.00) Pesos and pay moral damages in the amount of Fifty Thousand (P50,000.00) pesos, plus actual damages in the amount of Twenty Thousand (P20,000.00) Pesos and Pay the Cost.

SO ORDERED.

In an Information[3] dated June 13, 1994, accused Marcos Gialolo, Federico Gialolo and Oscar Makabenta, were charged with the crime of Murder, committed as follows:

That on or about the 13[th] day of April, 1994, in the municipality of Barugo, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault, hook and wound one JOSE PLATON with the use of a scythe (matabia) which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wounds, to wit:

- Incised wound over the anterior neck, starting from the right side up to past the medial aspect of the left side 23 cms. x 5.5 cms. cutting the major blood vessels over the right side neck and partially the throat.

which wound caused the death of said Jose Platon.

CONTRARY TO LAW.

Appellants pleaded not guilty to the offense charged and were tried for the crime of murder.

Appellants Federico and Marcos Gialolo are father and son, respectively. Appellant Oscar Makabenta is the cousin of Federico's wife. The victim Jose Platon is a neighbor of the appellants at Brgy. Bulod, Barugo, Leyte.

The facts show that at around half past three in the early morning of April 13, 1994, prosecution witness Desiderio Baculi was awakened by a call of nature.[4] While urinating, he heard a voice coming from the house of appellant Federico Gialolo, saying, "What is this?"[5] He peeped through the wall of his kitchen made of hog wire towards the house of appellant Federico which was more or less, twenty (20) meters from his house.[6] He saw the three appellants, together with the victim Jose Platon. The place was illuminated by an incandescent lamp situated near the door outside Federico's house.[7] The victim was held close by appellants Federico Gialolo and Oscar Makabenta. Federico embraced the victim's left side with both arms, while Oscar embraced the victim's right side below the waist also with both his arms.[8] Appellant Marcos Gialolo was at the back of Jose. He pulled Jose's hair with his left hand and then slashed his neck with a scythe.[9] They then left Jose who zigzagged towards a nearby coconut tree by the side of the road, where he eventually fell. The three appellants proceeded to Federico's house, and switched off the light.[10] Baculi narrated the incident to the police authorities at Barugo, Leyte on April 14, 1994.[11]

Then Barangay Kagawad Luz Decena also testified for the prosecution. She declared that at around 6:00 a.m. of April 13, 1994, Federico Geraldo, father of a former barangay captain, went to her house and informed her about a dead man found near the house of appellant Federico Gialolo.[12] Luz Decena proceeded to the place and saw the body of Jose lying face down, one (1) meter away from the road, and about six (6) meters away from the house of appellant Federico.[13] She knocked at the door of Federico Gialolo's house which was stained with blood.[14] When Delia Gialolo, wife of appellant Federico, opened the door, she saw appellant Oscar Makabenta sitting on top of a sack of rice inside the house.[15]

Samuel Ibañez, a resident of Barugo, Leyte, also testified. He declared he had a drinking spree with appellants Marcos and Federico at the former's house at Sitio Dumogdog, Barugo, Leyte, on December 20, 1996. He was asked by appellant Federico to testify in favor of himself and his son Marcos, in exchange of five thousand pesos (P5,000.00). They wanted him to point to appellant Makabenta as the sole perpetrator of the crime.

Dr. Edita Decena Tiu, Municipal Health Officer of Barugo, Leyte conducted the post-mortem examination on the body of Jose Platon. She testified that the victim died due to a very severe hemorrhage. According to her, the wound inflicted on the victim's neck was a fatal wound that cut the blood vessels. A sharp bladed instrument was used by the perpetrator.[16]

The defense offered a different story. According to appellant Federico, at around midnight of April 12, 1994, he and his wife were awakened by the noise from the residence of Fidel Bagares some one hundred fifty (150) meters away from their house. They did not go out because they had been previously threatened by Fidel Bagares, and they knew that it was Fidel Bagares' birthday.[17] The spouses went back to sleep and woke up at around 4:30 a.m.. They saw policemen and other barangay officials outside their house where the dead body of Jose Platon was found.[18]

Appellant Oscar Makabenta has a similar story. He testified that he was asleep at his residence at barangay Cabarasan, Barugo, Leyte, when the killing happened.[19] He alleged that barangay Cabarasan is far from barangay Bulod, the place of occurrence of the crime. It takes him one hour of walking to reach barangay Bulod.[20] After waking up that fateful morning of April 13, 1994, he left his house at 6:00 a.m. on his way to barangay Bulod to harvest the rice planted by appellant Federico. He arrived at appellant Federico's house at 7:30 a.m.[21] Shortly after, he was requested to ride a patrol car by a policeman named Rudy Astilla, and brought to the police station.[22]

Appellant Marcos' story had the same tune. He testified that he was with his wife and children on the night of April 12, 1994, and that they were still sleeping when the incident took place early the next morning.[23] He and

his family retired for the night at 7:00 p.m. of April 12, 1994, and he woke up at 5:00 a.m. the following morning of April 13, 1994. He then proceeded to his farm, one kilometer away from his house.[24]

As aforesated, the trial court convicted the appellants. In assailing their conviction, the appellants cite the allegedly contradictory and unnatural testimony of eyewitness Baculi. They also contend that the trial court erred in appreciating the qualifying circumstances of treachery, evident premeditation and abuse of superior strength. Lastly, they contest the award of damages to the victim's heirs.[25]

We affirm the judgment of the trial court with modification.

The testimony[26] of eyewitness Baculi on the participation of the appellants in the murder of the victim is worthy of credence. He testified:

Q:

By the way, about the early morning of April 13, 1994, where were you?

A:

At our house.

Q:

It was so early then, why were you already awake?

A:

I woke up because I urinated.

Q:

As you said a while ago that you are just neighbors with these accused, how far is your house to that of the house of Gialolos?

A:

More or less 20 meters.

x x x

Q:

Now, what if anything did you notice while you were urinating on that early morning?

A:

When I was urinating I heard a voice saying "what is this?"

Q:

Where was that voice came (sic) from?

A:

Just by (sic) their house.

Q:

What house are you referring to where that voice came from?

A:

The house of Federico Gialolo.

Q:

Was it a soft voice, a medium voice or a loud voice?

A:

A medium voice saying "what is this?"

Q:

And what was your reaction after hearing that voice?

A:

When I heard that voice I looked at their house.

Q:

You mean to the direction of the voice you heard?

A:

Yes, sir.

x x x

Q:

Now, when you heard this voice were you still urinating or were you already through urinating?

A:

I was still urinating.

x x x

Q:

How were you able to look to their house describe that to the Court?

A:

I peeped thru the wall of my house which is a hog wire.

x x x

Q:

When you tried to peep from your house thru the walling made of hog wire what if anything did you see, tell the court.

A:

When I peeped through (sic) the wall of my house I saw them all hugging Jose Platon.

x x x

Q:

Who were the persons who were trying to hug or grapple Jose Platon?

A:

Federico Gialolo and Oscar Makabenta.

x x x

Q:

How did Federico Gialolo hug the victim Jose Platon?

A:

Witness is demonstrating that Federico Gialolo was using both his arms in embracing Jose Platon while at the back of Jose Platon holding the left side portion of the body of Jose Platon.

Q:

How about this Oscar Makabenta how did he try to hug Jose Platon kindly describe?

A:

Witness is demonstrating that Oscar Makabenta was embracing Jose Platon on the right side of Jose Platon using both hands embracing Jose Platon around the body below the waist line.

x x x

Q:

How about the other accused, what did he do, this Marcos Gialolo?

A:

Marcos Gialolo went at the back of Jose Platon and held the hair of Jose Platon using his left hand and wounded the neck of Jose Platon using the scythe.

Q:

After that incident you saw what if anything happened, tell the court.

A:

After they wounded Jose Platon using the scythe they immediately released their hold to (sic) Jose Platon.

Q:

Then what happened to Jose Platon after he was released from their hold?

A:

After Jose Platon has been released he walked zigzagging to a nearby coconut tree.

Q:

Upon noticing the victim Jose Platon who fell to (sic) a nearby tree what did these three accused do?

A:

They went inside their house and they switched off their light.

Q:

What kind of light do they have?

A:

Electric light.

Q:

Now, what happened to Jose Platon after these three accused went inside their house?

A:

He fell on the side of the road.

x x x

Contrary to the contention of the appellants, it is not unbelievable for Baculi to have heard a man's voice uttering, "What is this?" coming from the scene of the crime. The scene was a mere twenty (20) meters away from him. It was also 3 o'clock in the morning when silence reigned and hence where noises were magnified. Baculi could not have erred in identifying the appellants. The place was lighted by an incandescent lamp. Moreover, he is familiar with them for they have been neighbors for more than two (2) years.[27] He even worked as farm help for several months with appellant Federico, where appellant Oscar also occasionally worked.

Appellants' alibi is not worth a damaged nickel. For the defense of alibi to prosper, the accused must prove 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 through clear and convincing evidence.[28] In the instant case, the crime was committed at barangay Bulod, Barugo, Leyte near appellant Federico's house. All three appellants were within the immediate vicinity of the place of the crime. They testified that they were at their respective residences at the time the crime was committed. Appellant Federico was allegedly sleeping inside his house, and so was appellant Marcos, whose house is located at the same barangay Bulod. Appellant Oscar, resides at the neighboring barangay Cabarasan, Barugo, Leyte, which according to him, is only one hour of walking from the residence of appellant Federico. In fact, appellant Oscar was present at appellant Federico's house on the same morning the lifeless body of Platon was discovered. Thus, appellants failed to prove that it was physically impossible for them to be at the place of the crime. Their alibi must fail.

On the second assignment of error, we rule that the trial court correctly convicted the appellants of murder considering the qualifying circumstance of treachery. The two elements of treachery have been proved in the case at bar, namely: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the assailant(s) consciously and deliberately adopted the particular means or method of attack employed by him.[29] In the case at bar, the victim certainly could not defend himself in any way. They held and immobilized him before appellant Marcos Gialolo slashed his neck with a scythe.

The trial court, however, erred in appreciating the aggravating circumstance of evident premeditation against the appellants. For evident premeditation to be appreciated, the following elements must be present: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he has adhered to such determination; and (c) sufficient lapse of time between the determination and execution to allow the offender to reflect upon the consequence of his act.[30] In the case at bar, no proof was presented to show any of these elements. Nor can the aggravating circumstance of superior strength be appreciated against the appellants. This circumstance was not alleged in the Information and hence cannot be the subject of proof during the trial. Even disregarding this bar, abuse of superior strength is absorbed in treachery.[31]

Thus, since no aggravating circumstance was proved to have attended the commission of the crime, each of the appellants should only be sentenced to suffer the penalty of reclusion perpetua, in accordance with Article 63[32] of the Revised Penal Code. Murder, under Article 248 of the Revised Penal Code, is punishable by reclusion perpetua to death. Following Article 63 of the same code, the lesser penalty of reclusion perpetua shall be applied.

We now come to the award of damages. The trial court awarded the heirs of the victim the following: P75,000.00 as civil indemnity; P50,000.00 as moral damages; and P20,000.00 as actual damages. We reduce the award of civil indemnity to P50,000.00 in line with existing jurisprudence.[33] We disallow the award of actual damages as not a single receipt was presented to support the expenses allegedly incurred by the heirs of the victim. In lieu thereof, we award temperate damages in the amount of P25,000.00.[34] Similarly, we delete the award of moral damages for lack of evidence.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Carigara, Leyte in Crim. Case No. 2296, dated January 4, 2002, is **AFFIRMED** with **MODIFICATION**. Appellants Marcos Gialolo, Federico Gialolo and Oscar Makabenta are found guilty beyond reasonable doubt of the crime of murder under Art. 248 of the Revised Penal Code, and are sentenced to suffer the penalty of reclusion perpetua. Furthermore, the appellants are ordered to pay jointly and severally the heirs of the victim Jose Platon, the amounts of P50,000.00 as civil indemnity ex delicto and P25,000.00 as temperate damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, pp. 17-45.

[2] Id. at 45.

[3] Id. at 3.

[4] TSN, 10 December 1996, pp. 4, 10.

[5] Id. at 5.

[6] Id. at 4-5.

[7] Id. at 10.

[8] Id. at 7-8.

[9] Id. at 8-9.

[10] Id. at 9.

[11] Id. at 13.

[12] TSN, 04 February 1997, p. 7.

[13] Id. at 8-9.

[14] Id. at 10.

[15] Id. at 10-11.

[16] Rollo, p. 28; TSN, 19 March 1997, pp. 9-19.

[17] TSN, 06 October 1998, p. 5.

[18] Id. at 8.

[19] TSN, 21 August 2001, pp. 3-4.

[20] Id. at 4-5.

[21] TSN, 21 August 2001, p. 5; TSN, 13 August 1999, pp. 5-6.

[22] TSN, 13 August 1999, pp. 5-6; TSN, 21 August 2001, pp. 5-6.

[23] TSN, 12 November 1998, pp. 4-5.

[24] Id. at 5.

[25] Rollo, pp. 82-83.

[26] TSN, 10 December 1996, pp. 4-9.

[27] Id. at 4.

[28] People vs. Desalisa, G.R. No. 148327, 12 June 2003; People vs. Ceniza, G.R. No. 144913, 18 September 2003.

[29] People vs. Montemayor, G.R. No. 125305, 18 June 2003.

[30] People vs. Tulop, 289 SCRA 316 (1998), cited in People vs. Montemayor, G.R. No. 125305, 18 June 2003.

[31] People vs. De Leon, 248 SCRA 609, cited in People vs. Desalisa, G.R. No. 148327, 12 June 2003.

[32] Art. 63. Rules for the application of indivisible penalties. - x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[33] People vs. Callet, G.R. No. 135701, 09 May 2002; People vs. Muñoz, G.R. No. 150030, 09 May 2003.

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[34] People vs. Delos Santos, G.R. No. 135919, 09 May 2003.

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