

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELANIO DEL CASTILLO Y VARGAS, HERMOGENES DEL CASTILLO Y VARGAS, ARNOLD AVENGOZA Y DOGOS, FELIX AVENGOZA Y DOGOS, RICO DEL CAS...

G.R. No. 169084. January 18, 2012

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This case illustrates yet again why denial and alibi are not the best defenses when there is positive identification of the accused for their complicity in the commission of a crime.

Antecedents

All the accused are related to one another either by consanguinity or by affinity. Melanio del Castillo and Hermogenes del Castillo are brothers. Rico del Castillo and Joven del Castillo are, respectively, Melanio's son and nephew. Felix Avengoza is the son-in-law of Melanio and the brother of Arnold Avengoza. Both Felix and Arnold lived in the house of Melanio.

On March 28, 2000, the City Prosecutor's Office of Batangas City charged all the accused in the Regional Trial Court (RTC), Branch 4, Batangas City with three counts of murder, alleging as follows:

Criminal Case No. 10839

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Sabino Guinhawa y Delgado @ "Benny," thereby hitting him on the different parts of his body, which directly caused the victim's death.[1]

Criminal Case No. 10840

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Graciano Delgado y Aguda @ "Nonoy," thereby hitting him on the different parts of his body, which directly caused the victim's death.[2]

Criminal Case No. 10841

That on or about March 21, 2000, at around 9:00 o'clock in the evening at Sitio Bulihan, Brgy. Balete,

Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, while armed with bolos, kitchen knife and pointed instrument, all deadly weapons, with intent to kill and with the qualifying circumstances of treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hack and stab with said deadly weapons one Victor Noriega y Blanco, thereby hitting him on the different parts of his body, which directly caused the victim's death.(emphases and italics supplied).[3]

The cases were consolidated for arraignment and trial. On April 7, 2000, the accused pleaded not guilty to the informations.[4]

Version of the Prosecution

The witnesses for the State were Froilan R. Perfinian, PO3 Pablo Aguda Jr., Dr. Luz M. Tiuseco, Rosalia Delgado, Domingo Guinhawa, Abella Perez Noriega, SPO3 Felizardo Panaligan, Sr. Insp. Marcos Barte and SPO3 Danilo Magtibay.

The eyewitness version of Perfinian follows. On March 20, 2000, at about 9:00 pm, he had just left the house of one Lemuel located in Sitio Bulihan, Barangay Balete, Batangas City (Bulihan) to walk to his own home located also in Bulihan when he heard someone pleading: Huwag po, huwag po! He followed the direction of the voice, and saw the assault by all the accused against Sabino D. Guinhawa (Sabino), Graciano A. Delgado (Graciano), and Victor B. Noriega (Victor). He recognized each of the accused because he saw them from only six meters away and the moon was very bright. Besides, he was a godfather of Hermogenes' son, and the other accused usually passed by his house.

Perfinian recalled that the accused surrounded their victims during the assault; that Arnold stabbed Graciano on the stomach with a bolo, causing Graciano to fall to the ground; that Rico hacked Graciano with a bolo; that when Victor tried to escape by running away, Hermogenes and Felix pursued and caught up with him; that Felix hacked Victor; and that when Sabino ran away, Melanio and Joven pursued him.

Perfinian rushed home as soon as all the accused had left. He narrated to his wife everything he had just witnessed. On the following day, he learned that the police authorities found the dead bodies of Sabino, Graciano and Victor. Afraid of being implicated and fearing for his own safety, he left for his father's house in Marinduque. He did not return to Bulihan until after he learned from the TV newscast that all the accused had been arrested. Once returning home, he relayed to the victims' families everything he knew about the killings. Also, he gave a statement to the Batangas City Police.[5]

PO3 Aguda was on duty as the desk officer of the Batangas City Police Station in the morning of March 22, 2000 when he received the report about the dead bodies found in Bulihan. He and other police officers went to Bulihan, and found the dead bodies of Sabino, Graciano, and Victor sprawled on the road about 20 meters from each other. The bodies were all bloodied and full of hack wounds. During his investigation, he came upon one Rene Imbig (Rene) who mentioned seeing the six accused wielding bolos and running on the night of March 21, 2000. From the site of the crime, he and his fellow officers went to the houses of Melanio and Rico, which were about 20 meters from where the bodies were found. The houses were abandoned, but he recovered a blood-stained knife with a curved end in Melanio's house. Returning to the station, he saw Hermogenes there, who informed him that the other suspects had fled to Sitio Tangisan, Barangay Mayamot, Antipolo, Rizal (Sitio Tangisan), where Melanio's mother-in-law resided. Accompanied by Rene and other police officers, he travelled to Sitio Tangisan that afternoon. Upon arriving in Sitio Tangisan, Rene pointed to Melanio who was just stepping out of his mother-in-law's house. Melanio ran upon seeing their approach, but they caught up with him and subdued him. They recovered a bolo from Melanio. They found and arrested the other suspects in the house of Melanio's

mother-in-law, and brought all the arrested suspects back to Batangas City for investigation. There, the suspects admitted disposing some of their clothes by throwing them into the Pasig River, and said that their other clothes were in the house of Melanio. They mentioned that the bolo used by Hermogenes was still in his house.

On the morning of March 23, 2000, PO3 Aguda and his fellow officers recovered two shorts, a shirt, and a knife - all blood-stained from Melanio's house in Bulihan. Going next to the house of Hermogenes, Winifreda del Castillo, the latter's wife, turned over the bolo of Hermogenes. They learned that prior to the killings, Melanio had been fuming at being cheated in a cockfight, and had uttered threats to kill at least three persons in Bulihan.[6]

Sr. Insp. Barte, SPO3 Panaligan and SPO3 Magtibay corroborated PO3 Aguda's recollections.[7]

Dr. Luz M. Tiuseco (Dr. Tiuseco), a Medical Officer of Batangas City Health Office, conducted the post-mortem examinations on the remains of Sabino, Graciano, and Victor on March 22, 2001. She found that Sabino sustained 11 hack wounds and 12 stab wounds; that Graciano suffered four stab wounds and a hack wound; and that Victor had three hack wounds. She certified that the victims had died from hypovolemic shock secondary to multiple stab and hack wounds.[8]

Domingo Guinhawa, the elder brother of Sabino, declared that his family spent P50,000.00 for Sabino's funeral and burial expenses.[9] Rosalia Delgado, a sister of Graciano, attested that the expenses incurred for Graciano's burial amounted to P51,510.00.[10] Abella Perez Noriega, the wife of Victor, claimed that her family spent P53,395.00 for Victor's wake and interment.[11]

Version of the Accused

The Defense offered the testimonies of the accused and Winifreda. The accused admitted being in Bulihan at the time of the incident, but denied liability. Arnold and Joven invoked self-defense and defense of strangers, while Melanio, Hermogenes, Rico and Felix interposed denial. Winifreda corroborated the testimonies of Arnold and Joven.

The evidence of the accused was rehashed in the appellee's brief submitted by the Public Attorney's Office, as follows:

Arnold Avengoza testified that on March 21, 2001, he had a drinking spree with Rico del Castillo in their house. After about an hour, he was requested by Winifreda del Castillo, wife of Hermogenes del Castillo, to accompany them to their house. Together with Joven del Castillo, they brought Winifreda and her son to their house. Before they were able to reach Winifreda's house, three (3) men appeared. One of them held Winifreda and when he tried to help her, the other persons attempted to draw something from their waists prompting him to hacked one of them. He told the man to stop, but the latter refused. When the other man got mad, he hacked him twice. Then, they brought Winnie and her son to the house of Melanio del Castillo. He did not inform Melanio del Castillo about what transpired, but told him to take his family away, because he saw dead persons near his place. He threw his bolo into the Pasig River.

Joven del Castillo, corroborated Rico's testimony and admitted that he was the one who stabbed the other man, who attempted to draw something from his waist while Arnold hacked the other man. He was no longer aware how many times he stabbed the said man. Victor Noriega was one of the three (3) men who blocked their way. They left Sitio Bulihan at about 11:00 o'clock in the evening, together with Felix Avengoza, Arnold Avengoza, Rico del Castillo, Melanio del Castillo and his family. They went to Antipolo, Rizal, where they were arrested by the police authorities.

Hermogenes del Castillo slept the whole night of March 21, 2000 and came to know that the three (3) persons were killed during the night near the house of his brother Melanio only from his wife Winifreda. Fearing

retaliation from the relatives of the persons who were killed, because the bodies were found near his brother's house, he went to the house of Barangay Captain Aloria, who in turn told him to go to the police station. He came to know that he was being implicated in the killing when he was incarcerated.

Rico del Castillo testified that on the night of March 21, 2001 at about 7:00 o'clock in the evening, he fetched Winifreda del Castillo to treat the sprain of his daughter. At about 9:00 o'clock in the evening, since his daughter was still crying, he requested Joven and Arnold to accompany Winifreda and her son in going home. Arnold and Joven returned at around 10:00'clock in the evening. He was told that they saw dead people and was asked to leave the place together with his family.

Felix Avengoza said that on the night of March 21, 2001, he was informed by Joven and Arnold that they saw two (2) dead persons near their house. For fear of becoming a suspect, he was told to leave his house together with his family.

Melanio del Castillo affirmed the testimony of Felix and added that he was at first hesitant to leave his house because of his personal belongings and animals, but due to insistence of Arnold and Joven, he also left with them for Manila.

Winifreda del Castillo confirmed that she was fetched by Rico del Castillo to treat his daughter. When Rico was unable to bring her back home, Joven and Arnold accompanied her. While they were on their way, three (3) persons suddenly blocked them. One of them held her hand and tried to drag her away. When Arnold tried to pacify them, they got angry and attempted to pull something from their waists so Arnold hacked him.[12]

Decision of the RTC

On October 23, 2001, the RTC convicted the accused of murder, but appreciated voluntary surrender as a mitigating circumstance in favor of Hermogenes, viz:

In the light of all the foregoing considerations, accused Arnold Avengoza, Felix Avengoza, alias Alex, Rico del Castillo, Joven del Castillo, Hermogenes del Castillo, alias Menes and Melanio del Castillo are all hereby found Guilty beyond reasonable doubt of the crime of Murder as defined and punished under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 charged in these three cases namely: Criminal Case No. 10839, Criminal Case No. 10840 and Criminal Case No. 10841.

Wherefore, accused Arnold Avengoza, Felix Avengoza, Rico del Castillo, Joven del Castillo and Melanio del Castillo are sentenced in each of the above mentioned criminal cases to suffer the imprisonment of reclusion perpetua together with all the accessory penalties inherent therewith and to pay the costs. With respect to accused Hermogenes del Castillo, considering the presence of mitigating circumstance of voluntary surrender in his favor and further applying the provisions of the Indeterminate Sentence Law, in each of the aforesaid criminal cases, he is hereby sentenced to imprisonment of Fourteen (14) Years, Eight (8) Months and One (1) Day as minimum to Twenty (20) Years of reclusion temporal as maximum together with its inherent accessory penalties.

As to the civil aspects of these cases, in Criminal Case No. 10839, all the herein accused are directed to jointly and severally indemnify the heirs of Sabino Guinhawa the amount of P58,510.00 as actual funeral expenses and the sum of P75,000.00 as moral damages. In Criminal Case No. 10840, all the herein accused are directed to indemnify jointly and severally the heirs of Graciano Delgado with the sum of P51,510.00 as actual funeral expenses and P75,000.00 as moral damages. And in Criminal Case No. 10841, all the above-named accused are further directed to indemnify the heirs of Victor Noriega with the sum of P53,395.00 as actual funeral expenses and the amount of P75,000.00 as moral damages.

Finally, let accused Hermogenes del Castillo be credited with his preventive imprisonment if he is entitled to any.

SO ORDERED.[13]

Decision of the CA

The accused appealed to the Court of Appeals (CA) upon the following assigned errors, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING ALL THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FACT THAT TWO OF THE ACCUSED-APPELLANTS HAVE ALREADY ADMITTED KILLING THE THREE VICTIMS IN DEFENSE OF WINIFREDA DEL CASTILLO.

II.

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCES OF SELF-DEFENSE AND DEFENSE OF STRANGERS IN FAVOR OF ACCUSED-APPELLANTS ARNOLD AVENGOZA AND JOVEN DEL CASTILLO.

III.

THE COURT A QUO GRAVELY ERRED IN AWARDING ACTUAL AND MORAL DAMAGES DESPITE THE LACK OF EVIDENCE TO SUPPORT THE SAME.

On April 28, 2005, the CA affirmed the convictions, correcting only the awards of damages and the penalty imposed on Hermogenes,[14] to wit:

WHEREFORE, the decision of the trial court is AFFIRMED with MODIFICATIONS that appellant Hermogenes Del Castillo is sentenced to suffer the penalty of reclusion perpetua and all the accused are ordered to pay jointly and severally the sum of P50,000.00 as civil indemnity, the sum of P50,000.00 as moral damages to the heirs of each victim; the sum of P15,000.00 and P8,000.00 as actual damages to the heirs of Sabino Guinhawa and Graciano Delgado, respectively, and P10,000.00 as nominal damages to the heirs of Victor Noriega.

SO ORDERED.

Issues

Hence, the accused have come to us in a final appeal, submitting that because Arnold and Joven had already admitted killing the victims, the rest of them should be exculpated; that Arnold and Joven should be absolved of criminal liability because they acted in self-defense and defense of strangers; and that conspiracy among them was not proven.[15]

Ruling

The conviction of appellants is affirmed, but the damages awarded and their corresponding amounts are modified in conformity with prevailing jurisprudence.

I.

Factual findings of the RTC

and CA are accorded respect

Both the RTC and the CA considered Perfinian's eyewitness testimony credible.

We concur with both lower courts.

We reiterate that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of the trial judge's unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not.[16] Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[17]

The accused did not present any fact or circumstance of weight that the RTC or the CA overlooked, misapprehended, or misinterpreted that, if considered, would alter the result herein. Accordingly, we have no reason to disregard their having accorded total credence to Perfinian's eyewitness account of the killings. In contrast, we have the bare denials of Melanio, Hermogenes, Felix, and Rico, but such denials were weak for being self-serving and unnatural. Their own actuations and conduct following the attack even confirmed their guilt, for had Melanio, Felix, and Rico been innocent, it was puzzling that they had to suddenly abandon their homes to go to Antipolo City in Rizal. Their explanation for the hasty departure - that Arnold and Joven warned them to leave because dead bodies had been found near Melanio's house, and they might be implicated - was unnatural and contrary to human nature. The normal reaction of innocent persons was not to run away, or instead to report to the police whatever they knew about the dead bodies. In any case, they did not need to be apprehensive about being implicated if they had no participation in the crimes.

The lower courts correctly evaluated the evidence. To us, Perfinian's identification of all the accused as the perpetrators was positive and reliable for being based on his recognition of each of them during the incident. His being familiar with each of them eliminated any possibility of mistaken identification. He spotted them from a distance of only six meters away under a good condition of visibility (i.e., the moon then being "very bright"). Consequently, their denials and alibi were properly rejected.

Likewise, Perfinian detailed the distinct acts done by each of the accused during their assault. Such recollection of the fatal events was categorical and strong, and there was no better indicator of the reliability and accuracy of his recollection than its congruence with the physical evidence adduced at the trial. For one, the results of the post-mortem examinations showing that the victims had sustained multiple stab and hack wounds (i.e., Sabino sustained 11 hack wounds and 12 stab wounds; Graciano suffered four stab wounds and a hack wound; and Victor had three hack wounds) confirmed his testimonial declarations about the victims having been repeatedly stabbed and hacked.[18] Also, the blood-stained bolos and blood-stained clothing recovered from the possession of the accused confirmed his declarations that the accused had used bolos in inflicting deadly blows on their victims.

It is notable, on the other hand, that the Defense did not challenge the sincerity of Perfinian's eyewitness identification. The accused did not show if Perfinian had harbored any ill-feeling towards any or all of them that he was moved to testify falsely against them. Any such ill-feeling was even improbable in light of the revelation that he and Hermogenes had spiritual bonds as compadres. Without such showing by the Defense, therefore, Perfinian was presumed not to have been improperly actuated, entitling his incriminating testimony to full faith and credence.[19]

II.

Arnold and Joven did not act
in self-defense and in defense of strangers

In order for self-defense to be appreciated, the accused must prove by clear and convincing evidence the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending

himself.[20] On the other hand, the requisites of defense of strangers are, namely: (a) unlawful aggression by the victim; (b) reasonable necessity of the means to prevent or repel it; and (c) the person defending be not induced by revenge, resentment, or other evil motive.[21]

In self-defense and defense of strangers, unlawful aggression is a primordial element, a condition sine qua non. If no unlawful aggression attributed to the victim is established, self-defense and defense of strangers are unavailing, because there would be nothing to repel.[22] The character of the element of unlawful aggression has been aptly described in *People v. Nugas*,[23] as follows:

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

By invoking self-defense and defense of strangers, Arnold and Joven in effect admitted their parts in killing the victims. The rule consistently adhered to in this jurisdiction is that when the accused's defense is self-defense he thereby admits being the author of the death of the victim, that it becomes incumbent upon him to prove the justifying circumstance to the satisfaction of the court.[24] The rationale for the shifting of the burden of evidence is that the accused, by his admission, is to be held criminally liable unless he satisfactorily establishes the fact of self-defense. But the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the onus probandi shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof.[25] He must now discharge the burden by relying on the strength of his own evidence, not on the weakness of that of the Prosecution, considering that the Prosecution's evidence, even if weak, cannot be disbelieved in view of his admission of the killing.[26]

Arnold and Joven did not discharge their burden.

Arnold and Joven did not adequately prove unlawful aggression; hence, neither self-defense nor defense of stranger was a viable defense for them. We note that in addition to the eyewitness account of Perfinian directly incriminating them, their own actuations immediately after the incident confirmed their guilt beyond reasonable doubt. As the CA cogently noted,[27] their flight from the neighborhood where the crimes were committed, their concealing of the weapons used in the commission of the crimes, their non-reporting of the crimes to the police, and their failure to surrender themselves to the police authorities fully warranted the RTC's rejection of their claim of self-defense and defense of stranger.

Winifreda's testimonial claim that the victims were the aggressors deserves no consideration. Her story was that one of the victims had tried to attack her with a balisong.[28] Yet, her story would not stand scrutiny because of

the fact that no such weapon had been recovered from the crime scene; and because of the fact that none of the accused had substantiated her thereon. Neither Arnold nor Joven attested in court seeing any of the victims holding any weapon.[29]

Nonetheless, even if we were to believe Arnold and Joven's version of the incident, the element of unlawful aggression by the victims would still be lacking. The allegation that one of the victims had held Winifreda's hand did not indicate that the act had gravely endangered Winifreda's life. Similarly, the victims' supposed motion to draw something from their waists did not put Arnold and Joven's lives in any actual or imminent danger. What the records inform us is that Arnold and Joven did not actually see if the victims had any weapons to draw from their waists. That no weapons belonging to the victims were recovered from the crime scene confirmed their being unarmed. Lastly, had they been only defending themselves, Arnold and Joven did not tell the trial court why they had repeatedly hacked their victims with their bolos; or why they did not themselves even sustain any physical injury. Thus, the CA and the RTC rightly rejected their plea of self-defense and defense of stranger, for the nature and the number of wounds sustained by the victims were important indicia to disprove self-defense.[30]

III.

The State duly established
conspiracy and abuse of superior strength

The CA upheld the RTC's finding that conspiracy and abuse of superior strength were duly established.

We affirm the CA.

The accused, armed with bolos, surrounded and attacked the victims, and pursued whoever of the latter attempted to escape from their assault. Thereafter, the accused, except Hermogenes, fled their homes and together hastily proceeded to Antipolo, Rizal. Their individual and collective acts prior to, during and following the attack on the victims reflected a common objective of killing the latter. Thereby, all the accused, without exception, were co-conspirators.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[31] Conspiracy is either express or implied. Thus, the State does not always have to prove the actual agreement to commit the crime in order to establish conspiracy, for it is enough to show that the accused acted in concert to achieve a common purpose. Conspiracy may be deduced from the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[32] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[33] Once a conspiracy is established, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[34]

In view of the foregoing, the Court rejects the pleas for exculpation of the other accused grounded on their respective alibis considering that Arnold and Joven's admission of sole responsibility for the killings did not eliminate their liability as co-conspirators.

Abuse of superior strength is an aggravating circumstance that qualifies the killing of a person to murder.[35] It is present if the accused purposely uses excessive force out of proportion to the means of defense available to the person attacked, or if there is notorious inequality of forces between the victim and aggressor, and the latter takes advantage of superior strength. Superiority in strength may refer to the number of aggressors and weapons

used.[36]

A gross disparity of forces existed between the accused and the victims. Not only did the six accused outnumber the three victims but the former were armed with bolos while the latter were unarmed. The accused clearly used their superiority in number and arms to ensure the killing of the victims. Abuse of superior strength is attendant if the accused took advantage of their superiority in number and their being armed with bolos.[37] Accordingly, the crimes committed were three counts of murder.

The CA concluded that the mitigating circumstance of voluntary surrender should not be appreciated in favor of Hermogenes.

In order that voluntary surrender is appreciated as a mitigating circumstance, the following requisites must concur: (a) the accused has not been actually arrested; (b) the accused surrenders himself to a person in authority or the latter's agent; and (c) surrender is voluntary.[38] The third requisite requires the surrender to be spontaneous, indicating the intent of the accused to unconditionally submit himself to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expenses necessary for his search and capture.[39]

Although Hermogenes went to Barangay Chairman Aloria of Bulihan after the killings, he did so to seek protection against the retaliation of the victims' relatives, not to admit his participation in the killing of the victims.[40] Even then, Hermogenes denied any involvement in the killings when the police went to take him from Chairman Aloria's house.[41] As such, Hermogenes did not unconditionally submit himself to the authorities in order to acknowledge his participation in the killings or in order to save the authorities the trouble and expense for his arrest.[42]

Nonetheless, any determination of whether or not Hermogenes was entitled to the mitigating circumstance of voluntary surrender was vain in light of the penalty for murder being reclusion perpetua to death under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. Due to both such penalties being indivisible, the attendance of mitigating or aggravating circumstances would not affect the penalties except to aid the trial court in pegging the penalty to reclusion perpetua if the only modifying circumstance was mitigating, or the mitigating circumstances outnumbered the aggravating circumstances; or to prescribe the death penalty (prior to its prohibition under Republic Act No. 934643) should there be at least one aggravating circumstance and there was no mitigating circumstance, or the aggravating circumstances outnumbered the mitigating circumstances. This effect would conform to Article 63, (2), of the Revised Penal Code, to wit:

Article 63. Rules for the application of indivisible penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

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:

xxx

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

xxx

IV.

Civil liability

The awards of civil indemnity and moral damages are also proper, but their corresponding amounts should be increased to P75,000.00 in line with prevailing jurisprudence.[44] The actual damages of P15,000.00 and P8,000.00 granted to the heirs of Sabino and Graciano, respectively, were also warranted due to their being proven by receipts.[45] However, the Court has held that when actual damages proven by receipts amount to less than P25,000.00, as in the case of Sabino and Graciano, the award of temperate damages amounting to P25,000.00 is justified in lieu of actual damages for a lesser amount.[46] This is based on the sound reasoning that it would be anomalous and unfair that the heirs of the victim who tried and succeeded in proving actual damages of less than P25,000.00 only would be put in a worse situation than others who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages.[47] Hence, instead of only P15,000.00 and P8,000.00, the amount of P25,000.00 as temperate damages should be awarded each to the heirs of Sabino and Graciano.

The heirs of Victor did not present receipts proving the expenses they incurred by virtue of Victor's death. Nonetheless, it was naturally expected that the heirs had spent for the wake and burial of Victor. Article 2224 of the Civil Code provides that temperate damages may be recovered when some pecuniary loss has been suffered but its amount cannot be proved with certainty. Hence, in lieu of nominal damages of P10,000.00 awarded by the CA, temperate damages of P25,000.00 are awarded to the heirs of Victor.

Exemplary damages of P30,000.00 should be further awarded to the heirs of the victims because of the attendant circumstance of abuse of superior strength. Under Article 2230 of the Civil Code, exemplary damages may be granted when the crime was committed with one or more aggravating circumstance. It was immaterial that such aggravating circumstance was necessary to qualify the killing of each victim as murder.[48]

WHEREFORE, the Court AFFIRMS the decision promulgated on April 28, 2005, with the following MODIFICATIONS, to wit: (a) the civil indemnity and moral damages are each increased to P75,000.00; (b) temperate damages of P25,000.00 is granted, respectively, to the heirs of Sabino and Graciano in lieu of actual damages; (c) instead of nominal damages, temperate damages of P25,000.00 is awarded to the heirs of Victor; and (d) P30,000.00 as exemplary damages is given, respectively, to the heirs of Sabino, Graciano and Victor.

The accused shall pay the costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Villarama, Jr., and [*]Perlas-Bernabe, JJ., concur.

[*] Vice Justice Mariano C. Del Castillo, who penned the decision of the Court of Appeals, per raffle of January 16, 2012.

[1] Records, pp. 1-2.

[2] Id., pp. 260-261.

[3] Id., pp. 271-272.

[4] Id, p. 25.

[5] TSN, June 20, 2000, pp. 1-6.

[6] TSN, August 29, 2000, pp. 1-19.

[7] TSN, September 29, 2000, pp. 1-8; October 6, 2000, pp. 23-30; November 14, 2000 pp. 1-14.

- [8] TSN, October 6, 2000, pp. 5, 13 and 16.
- [9] TSN, November 14, 2000, pp. 15-20.
- [10] TSN, September 29, 2000, pp. 13-18.
- [11] TSN, December 12, 2000, pp. 1-8.
- [12] Rollo, pp. 47-49.
- [13] CA rollo, pp. 39-40.
- [14] Rollo, pp. 3-27; penned by Associate Justice Mariano C. Del Castillo (now a Member of the Court), with Associate Justice Regalado E. Maambong (deceased) and Associate Justice Magdangal M. De Leon concurring.
- [15] Id., pp. 49-57.
- [16] *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 392.
- [17] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 293; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.
- [18] Records, pp. 186-187, 190, and 193.
- [19] *Ardonio v. People*, G.R. No. 134596, September 21, 2001, 365 SCRA 579, 583-584.
- [20] Article 11 (1), Revised Penal Code.
- [21] Article 11 (2), Revised Penal Code.
- [22] *Calim v. Court of Appeals*, G.R. No. 140065, February 13, 2001, 351 SCRA 559, 571.
- [23] G.R. No. 172606, November 23, 2011.
- [24] *People v. Capisonda*, 1 Phil. 575 (1902); *People v. Baguio*, 43 Phil. 683 (1922); *People v. Silang Cruz*, 53 Phil. 625 (1929); *People v. Gutierrez*, 53 Phil. 609 (1929); *People v. Embalido*, 58 Phil. 152 (1933); *People v. Dorico*, No. L-31568, November 29, 1973, 54 SCRA 172, 183; *People v. Boholst-Caballero*, G.R. No. L-23249, November 25, 1974, 61 SCRA 180, 186. *People v. Quiño*, G.R. No. 105580, May 17, 1994, 232 SCRA 400, 403; *People v. Camacho*, G.R. No. 138629, June 20, 2001, 359 SCRA 200, 207; *People v. Galvez*, G.R. No. 130397, January 17, 2002, 374 SCRA 10, 16; *People v. Mayingque*, G.R. No. 179709, July 6, 2010, 624 SCRA 123.
- [25] *People v. Gelera*, G. R. No. 121377, August 15, 1997, 277 SCRA 450, 461.
- [26] *People v. Molina*, G.R. No. 59436, August 28, 1992, 213 SCRA 52, 65; *People v. Alapide*, G.R. No. 104276, September 20, 1994, 236 SCRA 555, 560; *People v. Albarico*, G.R. Nos. 108596-97, November 17, 1994, 238 SCRA 203, 211; *People v. Camahalan*, G.R. No. 114032, February 22, 1995, 241 SCRA 558, 569.
- [27] Rollo, p. 21.
- [28] TSN, April 24, 2001 pp. 10-11.
- [29] TSN, March 9, 2001 p. 12.
- [30] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 552.
- [31] Article 8, second paragraph, Revised Penal Code.
- [32] *Angeles, Jr. v. Court of Appeals*, G.R. No. 101442, March 28, 2001, 355 SCRA 509, 518.

- [33] *People v. Estorco*, G.R. No. 111941, April 27, 2000, 331 SCRA 38, 50.
- [34] *People v. De Jesus*, G.R. No. 134815, May 27, 2004, 429 SCRA 384, 404; *People v. Masagnay*, G.R. No. 137264, June 10, 2004, 431 SCRA 572, 580.
- [35] Article 248 (1), Revised Penal Code.
- [36] *People v. Carpio*, G.R. Nos. 82815-16, October 31, 1990, 191 SCRA 108, 119.
- [37] *People v. Ballabare*, G.R. No. 108871, November 19, 1996, 264 SCRA 350, 370.
- [38] *People v. Ignacio*, G.R. No. 134568, February 10, 2000, 325 SCRA 375, 384.
- [39] *Id.*; see also *People v. Lagrana*, No. L-68790, January 23, 1987, 147 SCRA 281, 285.
- [40] TSN, March 9, 2001, p. 20.
- [41] *Id.*, p. 17.
- [42] *Dela Cruz v. Court of Appeals*, G.R. No. 139150, July 20, 2001, 361 SCRA 636, 650.
- [43] An Act Prohibiting The Imposition of Death Penalty in The Philippines, repealing Republic Act 8177 otherwise known as the Act Designating Death By Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees (The law was signed on June 24, 2006).
- [44] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255; *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769.
- [45] *People v. De Castro*, G.R. No. 142467, June 10, 2003, 403 SCRA 543, 557.
- [46] *Mahawan v. People*, G.R. No. 176609, December 6, 2008, 574 SCRA 737, 756.
- [47] *Id.*
- [48] See *People v. Catubig*, G.R. No. 137842, August 23, 2001, 363 SCRA 621, 631.

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