

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUAN DELA TONGA Y PERANTE, APPELLANT.*G.R. NO. 170361. September 25, 2007*

Ponente: CARPIO, J.

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This is an appeal interposed by appellant Juan dela Tonga y Perante (appellant) from the Decision dated 28 July 2005 of the Court of Appeals[1] in CA-G.R. CR HC No. 00702 which affirmed the Decision dated 3 July 2002 of the Regional Trial Court[2] (RTC) of Malabon City, Branch 170, in Criminal Case No. 20004-MN finding him guilty of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua.

At around 3:00 a.m. of 4 October 1998, Reynaldo Galura (Galura) was on his way home in Dagat-Dagatan, Malabon together with his two companions, Ernie Demate (Demate) and Rannie Garcia (Garcia). While walking along Maya-Maya St., they saw a group of six persons, four of whom were later identified as appellant, Rodel Escabal, Randy Manzano, and Paolo Manuel (the other three accused) coming from the opposite direction and walking towards them. As they passed the group, Galura stopped to relieve himself. Suddenly, appellant and the other three accused attacked Galura with a lead pipe and stones. Galura shouted for help. Demate and Garcia were only about five meters away but the other accused prevented Demate and Garcia from helping Galura by throwing stones at them. Galura's companions could only watch appellant and the other three accused who were ganging up on him by repeatedly hitting him with stones and the lead pipe. When Galura fell face down on the ground, appellant and the other accused fled. Demate and Garcia approached Galura and brought him home. Galura's father brought him to the Jose Reyes Memorial Hospital where he was treated. When Demate visited Galura at the hospital, he saw stab wounds on his back.

Appellant and the other three accused were arrested. The following day, they were accompanied by the police inspector to the hospital for identification by Galura who was still alive. Galura pointed to appellant and the other accused as his assailants. They were charged with the crime of Frustrated Murder. Five days after the incident, Galura died. The Information was amended charging appellant and the other accused of the crime of Murder. They pleaded not guilty upon arraignment. After trial, the RTC rendered judgment finding them guilty beyond reasonable doubt of the crime of Murder attended by treachery. Rodel Escabal and appellant were sentenced to suffer the penalty of reclusion perpetua, while Randy Manzano and Paolo Manuel, who were still minors at the time of the commission of the offense, were sentenced to suffer the indeterminate penalty of 10 years of prison mayor as minimum to 17 years of reclusion temporal as maximum. All of them were likewise ordered to pay the heirs of Galura the amount of P50,000 by way of civil indemnity and P20,000 as actual damages for the wake and burial.

Only appellant appealed his conviction. On appeal, the Court of Appeals affirmed in toto the RTC's judgment of conviction.

We agree with the ruling of the Court of Appeals that the collective action of the assailants readily shows that

there was a concurrence in their evil design. Their superiority in number and the fact that they were armed with bladed weapon, lead pipe, and stones show that treachery was attendant in the commission of the crime. The excessive force was not in proportion to the means available to the person attacked.

As likewise correctly ruled by the Court of Appeals, conspiracy may be deduced from the acts of the perpetrators before, during, and after the commission of the crime. All the accused repeatedly hit Galura with stones except for Rodel Escabal who used a lead pipe. They were relentless in beating Galura until the latter became unconscious and it was only then that they fled. Their concerted acts in the commission of the crime clearly demonstrate the presence of conspiracy.

Likewise, bare denials and alibi cannot prevail over the positive identification by a credible witness like Demate, who was at the scene of the crime, and even Galura himself who was still alive when he pointed to appellant and the other three accused as the ones who mauled and stabbed him. Prosecution witness Demate positively identified appellant and the other three accused as the perpetrators of the crime. The well-entrenched rule is that the positive identification, when categorical and consistent and without ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[3]

However, the award of actual damages by the trial court as affirmed by the Court of Appeals should be deleted. Nowhere in the decisions is the reason for the award stated. We find the award to be unsubstantiated. The rule is that to be entitled to an award of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[4]

Nonetheless, following jurisprudence,[5] we grant temperate damages of P25,000, which is in lieu of actual damages. It cannot be denied that Galura's heirs must have spent to give him a decent wake and burial.

WHEREFORE, we AFFIRM the Decision of the Court of Appeals in CA-G.R. CR HC No. 00702 finding appellant Juan dela Tonga y Perante guilty beyond reasonable doubt of the crime of Murder with the MODIFICATION that actual damages should be deleted. However, we award P25,000 as temperate damages to Reynaldo Galura's heirs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Justice Jose L. Sabio, Jr., with Justices Edgardo P. Cruz and Magdangal M. De Leon, concurring.

[2] Presided by Judge Benjamin T. Antonio.

[3] *People v. Demate*, 465 Phil. 127 (2004).

[4] *People v. Larrañaga*, 466 Phil. 324 (2004); *People v. Abrazaldo*, 445 Phil. 109 (2003).

[5] *People v. Latasa*, 456 Phil. 581 (2003); *People v. Villanueva*, 456 Phil. 14 (2003).

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