

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEJO OBLIGADO Y MAGDARAOG, APPELLANT.

G.R. No. 171735. April 16, 2009

Ponente: CORONA, J.

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CORONA, J.:

Appellant Alejo Obligado y Magdaraog was charged with murder in the Regional Trial Court (RTC) of Iriga, Branch 35[1] under the following Information:

That on or about 7:45 [p.m.] of March 12, 2000, in Barangay de la Fe, Buhi, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, [appellant] did then and there, willfully, unlawfully and feloniously, with intent to kill and with treachery, to [e]nsure execution, attack, assault and use personal violence upon one FELIX OLIVEROS y RAÑADA, that is--while armed with a bolo and coming from behind the victim, who was then unaware and defenseless of the impending attack, [appellant] first held tightly the victim's hair and immediately thereafter, suddenly, unexpectedly slashed the victim's neck with his bolo, causing [his] death, to the damage and prejudice of [his] heirs.

CONTRARY TO LAW.[2]

Appellant pleaded not guilty upon arraignment.

During trial, the victim's cousin and prosecution eye-witness Roberto Bagaporo testified that he and the victim along with several others[3] were having a drinking spree in front of his residence in the evening of March 12, 2000. They were later joined by appellant.

As Bagaporo prepared the videoke machine, he heard the victim call out, "Pinsan!" (Cousin!) He then turned around and saw appellant standing behind the victim. Appellant grabbed the victim's hair with his left hand and, with his right, pulled out a bolo from underneath his shirt and slashed the victim's neck. He then pushed the victim (who fell face down on the pavement) and walked away.

Senior Police Officer (SPO)⁴ Jimmy Jose of the Philippine National Police (PNP) Buhi station testified that, around 8:20 p.m. on March 12, 2000, an unidentified barangay kagawad reported a hacking incident in Barangay de la Fe. He, along with several other police officers, immediately went to the area and found the victim lying face-down in front of Bagaporo's house.

Dr. Breandovin Saez, municipal health officer of Buhi, testified that he conducted a post-mortem examination of the victim. The victim suffered two incised wounds, one on his right cheek and another on his neck area (extending from the left anterior neck to the right posterior neck). Dr. Saez said that the second wound was fatal because it was deep enough to cut the carotid artery and cause massive hemorrhage. Furthermore, based on the size and position of the wound, he opined that the assailant intentionally slashed the victim's neck from behind using a small bolo with a length of not more than one foot.

Lastly, the victim's widow, Gloria Oliveros testified that her husband earned at least P5,000 per month as a driver.

She also presented a receipt from the funeral parlor amounting to P15,000 and an itemized list of expenses incurred during the wake amounting to P12,000.

For his defense, appellant asserted that he accidentally killed the victim. While they were drinking, the victim approached and confided to him that he had a problem but did not say what his problem was. Appellant gave the victim a drink. To his surprise, the victim allegedly pulled out his bolo from its scabbard. Afraid of what could happen, appellant tried to wrest the bolo but the victim resisted. It was while grappling for possession of the bolo that the victim was fatally slashed in the neck.

Apolinario Manaog corroborated appellant's testimony. He basically stated that it was the victim who wielded the bolo and that he (the victim) and appellant wrestled for its possession.

The defense also presented SPO4 David Sarto, police community officer of the PNP Buhi station. According to SPO4 Sarto, he and his fellow police officers were ordered to arrest appellant on March 13, 2000. They met appellant while traversing the lone footpath leading to his residence. Appellant surrendered his person and the bolo.

Based on the size and nature of the victim's wounds, the RTC concluded that the killing was intentional. Moreover, because appellant slashed the victim's neck from behind, the latter had no opportunity to defend himself. Hence, the trial court appreciated the qualifying circumstance of treachery. In a decision dated February 28, 2001, the RTC found appellant guilty beyond reasonable doubt of the crime of murder: [4]

WHEREFORE, finding [appellant] ALEJO OBLIGADO y MAGDARAOG guilty of murder beyond reasonable doubt as defined and penalized in Article 248 of the Revised Penal Code, he is sentenced to suffer the penalty of reclusion perpetua and to pay indemnity in the amount of P50,000; actual damages of P27,000; moral and exemplary damages of P50,000 and to pay the cost of suit.

On intermediate appellate review,[5] the Court of Appeals (CA) affirmed the guilt of the appellant but modified the civil liabilities imposed by the RTC. Because SPO4 Sarto testified that appellant intimated a desire to surrender, the appellate court appreciated the mitigating circumstance of voluntary surrender. Thus, it deleted the award of exemplary damages and instead ordered appellant to pay moral damages in the amount of P50,000.[6]

We affirm appellant's guilt.

The evidence of the prosecution established beyond reasonable doubt that the appellant intended to kill (and in fact killed) the victim and that he consciously adopted a design which deprived the victim of any opportunity to defend himself, or to retaliate. However, the mitigating circumstance of voluntary surrender should not have been considered.

For the mitigating circumstance of voluntary surrender to be appreciated, the defense must prove that:

- (a) the offender had not been actually arrested;
- (b) the offender surrendered himself to a person in authority;
- (c) the surrender was spontaneous and voluntary.[7]

In this case, SPO4 Sarto testified that appellant's residence could be accessed only through a footpath where they met appellant. Inasmuch as he was intercepted by the arresting officers there, appellant had no means of evading arrest. His surrender therefore was neither voluntary nor spontaneous. On the contrary, the aforementioned circumstances revealed that he had no option but to yield to the authorities.

With respect to the award of damages, to conform with recent jurisprudence, the appellant is ordered to pay

P75,000 as civil indemnity ex delicto.[8]

Both the RTC and CA did not award indemnity for loss of earning capacity despite the testimony of the victim's widow that he earned P5,000 per month as a driver. Such indemnity is not awarded in the absence of documentary evidence except where the victim was either self-employed or was a daily wage worker earning less than the minimum wage under current labor laws.[9] Since it was neither alleged nor proved that the victim was either self-employed or was a daily wage worker, indemnity for loss of earning cannot be awarded to the heirs of the victim.

Settled is the rule that only receipted expenses can be the basis of actual damages arising from funeral expenditures.[10] All the prosecution presented was a receipt from the funeral parlor amounting to P15,000. Since the receipted expenses of the victim's family was less than P25,000, temperate damages in the said amount can be awarded in lieu of actual damages.[11] Accordingly, the heirs of the victim are not entitled to actual damages but to temperate damages in the amount of P25,000.

Moreover, inasmuch as moral damages are mandatory in cases of murder (without need to allege and prove such damages), appellant is likewise ordered to indemnify the heirs of the victim P50,000.[12]

Lastly, since the killing of the victim was attended by treachery, his heirs are entitled to exemplary damages in the amount of P25,000.[13]

WHEREFORE, the December 20, 2005 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01608 is hereby AFFIRMED with MODIFICATION. Appellant Alejo Obligado y Magdaraog is found guilty of murder as defined in Article 248 of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to indemnify the heirs of the victim Felix Oliveros y Rañada P75,000 as civil indemnity ex delicto, P25,000 as temperate damages, P50,000 as moral damages and P25,000 as exemplary damages.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Docketed as Crim. Case No. IR-5302.

[2] Information dated June 22, 2000. CA rollo, p. 6.

[3] They were Juan Narra, Jr., Henry Narra, Joevelyn Narra, Felix Narte, Nestor Bagaporo and Antonio Zaballa.

[4] Penned by Presiding Judge Alfredo D. Agawa. CA rollo, pp. 16-24.

[5] Docketed as CA-G.R. No. CR-H.C. No. 01608.

[6] Decision penned by Associate Justice Ruben T. Reyes (now a retired member of this Court) and concurred in by Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman of the Fourth Division of the Court of Appeals. Dated December 20, 2005. Rollo, pp. 3-27.

[7] *People v. Oco*, 458 Phil. 815, 851 (2003).

[8] *People v. Malolot*, G.R. No. 174063, 14 March 2008.

[9] *People v. Oco*, *supra* note 7 at 855.

[10] *People v. Tio*, 404 Phil. 936, 949 (2001).

[11] People v. Belonio, G.R. No. 148695, 27 May 2004, 429 SCRA 579, 596. (citations omitted)

[12] People v. Bajar, 460 Phil. 683, 700 (2003).

[13] People v. Garin, G.R. No. 139069, 17 June 2004, 432 SCRA 394, 414.

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