

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO BALLESTEROS Y GRAGASIN, ACCUSED-APPELLANT.

G.R. No. 172696. August 11, 2008

Ponente: BRION, J.

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BRION, J.:

We review in this appeal the decision[1] and resolution[2] of the Court of Appeals (CA) dated July 26, 2005 and September 26, 2005, respectively, in CA-G.R. CR No. 00460. The challenged decision affirmed the decision[3] of the Regional Trial Court (RTC), Branch 27, Bayombong, Nueva Vizcaya convicting the appellant Benito Ballesteros (appellant) of the crime of murder and meting him the penalty of reclusion perpetua. The assailed resolution, on the other hand, denied the appellant's motion for reconsideration.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of murder under an Information that states:

x x x

That on December 19, 1998 in the evening, in Poblacion, Municipality of Diadi, Province of Nueva Vizcaya, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, armed with a knife, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously stab one REYNALDO REYES, thus inflicting upon the latter mortal wound which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[4]

On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Ernesto Valencia; Normita Reyes; and Dr. Telesforo Ragpa. The appellant and Rodolfo Castro took the witness stand for the defense.

Ernesto Valencia (Ernesto) testified that between 11:00 o'clock in the evening and 12:00 o'clock midnight of December 19, 1998, he was playing a local card game known as "tong-its" with Barangay Captain Reynaldo Reyes (Reyes) and Odion Cabezon at the wake of the mother of Norma Miguel, town mayor of Diadi, Nueva Ecija.[5] In the course of the game and while Reyes was looking at his cards, holding them close to his face, the appellant suddenly approached the victim and stabbed him in the stomach.[6] Due to the force of the blow, Reyes was pushed backwards,[7] dropping his playing cards and eyeglasses.[8] Blood spurted as the appellant pulled out the knife from Reyes' body. Although shocked, Ernesto told Reyes, "adda tamam capitan" (You are hit).[9] Reyes covered the injured part of his stomach with his hand, grabbed his "batuta", [10] and chased the appellant towards the back of the house.[11] The appellant was, however, accosted by the people around and brought to the Municipal Hall of Diadi, Nueva Vizcaya where he was detained.[12]

Reyes was rushed to the Habonillos Clinic in Cordon, Isabela where he later died.

Dr. Telesforo A. Ragpa (Dr. Ragpa), the Municipal Health Officer of Diadi, Nueva Vizcaya, narrated that on December 20, 1998, he conducted an autopsy on the body of Reynaldo Reyes at the request of the victim's relatives.[13] According to him, Reyes sustained only one (1) stab wound located below the 10th rib along the right clavicular line.[14] The wound penetrated the diaphragm and the liver.[15] Dr. Ragpa further testified that Reyes' cause of death was hypovolemic shock due to a wound penetrating the liver secondary to a stab wound at the abdomen.[16]

Normita Reyes (Normita), the victim's wife, declared on the witness stand that her husband was 52 years old[17] and a barangay captain when he died.[18] Her husband also drove a jeepney three (3) weeks a month, earning P100.00 to P150.00 a day.[19] According to her, she incurred total expenses of P66,090.50 due to her husband's death.[20]

The appellant gave a different version of the events, summarized in the RTC decision as follows:

He asseverated that on that fateful night of December 19, 1998, he was asked to help in the preparation of food. He helped slice meat.[21] It was while doing this chore when Barangay Captain Reynaldo Reyes arrived. Without any provocation the said official started to hurl invectives at him, such as "tarantado ka, bastos ka" which embarrassed him[22] as there were about 14 persons helping in the cooking chores.[23] Being ashamed [sic], he left the table[24] where he was slicing meat after he handed the knife which he was using to Idong Miguel who was also helping in the food preparation.[25] He went to a table where card game known as "tong-it" was going on. The Barangay Captain followed but went to another table where he sat down to play with other persons. Reyes then called him and he thought that he wanted to play cards with him.[26] At this time, a certain Andy Ortiz called him saying "Come I will tell you something." [27] When he turned his head in the direction of Ortiz, Reyes said, "Bastos ka. Tarantado. You are turning your back at me." [28] He turned his head towards Reyes and that was when Barangay Captain Reyes hit him with a "batuta" on his forehead, injuring it. He grappled with the victim when the latter again tried to hit him. When they were fighting for possession of the "batuta", somebody elbowed him when they tried to separate them.[29] Nothing further happened after that. [Footnotes referring to the pertinent parts of the record supplied]

Rodolfo Castro (Castro) testified that he was at the house of Mayor Norma Miguel on December 19, 1998 to help in the cooking and butchering of pigs.[30] At around 11:00 o'clock in the evening, Reyes arrived and scolded the appellant, uttering the words "gago" and "ukkinam".[31] Thereafter, the appellant proceeded to the garage where people were playing cards. Reyes followed the appellant to the garage. Castro recalled that when the appellant was with him mixing food, he (the appellant) was not holding any knife but only a ladle.[32]

A few minutes later, he heard a scream. He went to the garage and saw Reyes hit the appellant in the forehead with a truncheon.[33] Thereafter, Reyes went towards the direction of the crowd.[34]

The RTC's decision of May 27, 2002 convicted the appellant of the crime of murder; sentenced him to suffer the penalty of reclusion perpetua (20 years and 1 day, to 40 years); and ordered him to pay the victim's heirs the sum of P66,090.50 as actual damages, P50,000.00 as civil indemnity, P25,000.00 as moral damages, P10,000.00 as exemplary damages, and the costs of the suit.[35]

The appellant directly appealed his conviction to this Court in view of the penalty of reclusion perpetua that the RTC imposed. We referred the case to the Court of Appeals for intermediate review pursuant to our ruling in *People v. Efren Mateo y Garcia*. [36]

The CA affirmed the RTC decision in toto in a decision dated July 26, 2005. The appellant moved for a reconsideration of the decision but the CA denied his motion in a resolution dated September 26, 2005.

In his brief,[37] the appellant imputes to the RTC the following errors:

- The RTC erred in finding the appellant guilty beyond reasonable doubt of the crime of murder;
- The RTC erred in giving full faith and credence to the testimony of the prosecution witness and not giving weight to the testimony of the defense witness; and
- Assuming arguendo that the appellant stabbed the victim, the RTC erred in convicting him of murder instead of homicide.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal and to modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA.[38] Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless carefully scrutinized the records of this case as the penalty of reclusion perpetua that the lower courts imposed on the accused demands no less than this kind of scrutiny.

A distinguishing feature of this present case is the presence of a witness - Ernesto Valencia - who provided positive identification of the accused in his October 5, 1999 testimony. To directly quote from the records:

PROSECUTOR CASTILLO:

Q:

This person who stabbed him, were you able to see and recognize him during that time?

ERNESTO VALENCIA:

A:

Yes, sir.

Q:

If you will see him will you recognize him?

A:

Yes, sir.

Q:

Please look around the courtroom and point to him

A:

He is here, sir.

Q:

Where is he? Go down from that chair and approach the person and tap on [sic] the shoulder.

A:

(Witness went down from the witness stand, went near a person and tapped his shoulder and when asked to give his name gave his name as Benito Ballesteros) [39] [Emphasis ours]

At the continuation of the hearing on October 7, 1999, Ernesto further elaborated on what he saw of the incident that left Reynaldo mortally wounded. He said:

PROSECUTOR CASTILLO:

Q:

What about the blade, were you able to see the blade?

ERNESTO VALENCIA:

A:

I saw the blade when the accused already pulled it out, sir.

Q:

From what was that pulled out?

A:

From the body where it was stabbed, sir.

Q:

Whose body?

A:

From the body of Brgy. Captain Reyes, sir.

Q:

And where were you at that time the knife was being drawn from the body of the victim?

A:

I was just sitting, sir.

Q: Who actually drew the knife from the body of the late Brgy. Captain Reyes?

A: Ballesteros, sir. [40] [Emphasis ours]

Ernesto clearly implied in this testimony that he did not see the actual stabbing as the thrust went in, but categorically claimed that he did see the knife when it was already in Reyes' body. The holder of the knife was Ballesteros, the accused. On cross-examination, Ernesto actually confirmed that he did not see the precise moment the appellant drove the knife into Reyes.

The appellant seizes this gap in Ernesto's testimony as opening to argue that his guilt was not proven beyond reasonable doubt; Ernesto did not see him actually stab Reyes.

Significantly, the trial proper was not the only source of evidence available in the case. Stipulations and admissions were made at the pre-trial conference that filled in the gaps of what were not expressly brought up at the trial. These admissions are conclusively established facts that are not for us to evaluate and reject as we see fit; they are the evidence that the parties themselves admit and confirm.

At the pre-trial, the following stipulations were agreed upon:

- The injury which led to the death of the victim was inflicted at the house of Mayor Norma Miguel;
- During the infliction of the injury on the victim, there was a wake relative to the mother of Mayor Norma Miguel;
- The coffin of the dead mother of Mayor Norma Miguel was in the second floor of the house;
- At the time of the infliction of the injury, the accused was in the vicinity of the house of Mayor Norma Miguel;
- Immediately before the infliction of the injury, the accused was in the ground floor of the house of Mayor Norma Miguel;
- During the infliction of the injury, the accused was in possession of a bladed weapon;
- After the infliction of the injury, a knife was recovered from the accused;
- Immediately after the victim was stabbed, the accused was held by the people in the place of the incident;
- Immediately after the accused was held, he was detained in the municipal hall; and
- The victim was rushed to the Habonillos Clinic at Cordon, Isabela.

In his defense, the appellant denies that he stabbed the victim. He claims that Reyes, after hurling invectives at him, hit him on the forehead with a truncheon, causing him to bleed profusely. When Reyes tried to attack him again, he parried the blow and the two of them grappled for the possession of the Reyes' truncheon. After they were separated, he saw blood coming from the breast of Reyes. By clear implication from all these, the appellant says that while he was at the scene and did indeed grapple with Reyes, someone else stabbed the latter.

The appellant's witness, Rodolfo Castro, supports much of what the appellant claims with respect to his activities prior to the actual stabbing, particularly the fact that the victim called the appellant "gago" and "ukkinam". Castro, however, did not say anything categorical about the actual stabbing. To be exact, he stated that a moment after the appellant went to the garage (where the card games were being played), he heard a shout and a hitting sound. When he looked towards the place, he saw the Barangay Captain hit Ballesteros at his forehead with his "batuta". After which, the appellant leaned on the wall facing it, with one hand and the other hand holding his forehead. The people who were there stood up and there were confused movements in the place. He saw the Barangay Captain go to the crowd after hitting the appellant. He did not know what happened next. He only knew that the police arrested the appellant for reasons unknown to him. He overheard that the Barangay Captain was stabbed and was brought to the hospital.[41] That the appellant indeed suffered an injury was confirmed by Dr. Telesporo Ragpa who, testifying for the defense, stated that the accused sustained a superficial wound, ruptured and located at the mid-frontal area of the head.[42]

Based on these adduced and admitted evidence, we see that the only gap or missing link in the chain of events was the actual act of stabbing. For clarity, we recapitulate below the significant aspects of these events.

The appellant admitted during the pre-trial conference that he was in possession of a bladed weapon during the stabbing incident. By his own testimony, the appellant was in the immediate vicinity of where Reyes and his companions were playing a card game. Ernesto testified that Reyes was intent on his game closely holding his cards when he was stabbed but he (Ernesto) did not see the actual act of stabbing. What he saw was the appellant holding the knife imbedded in Reyes' body. In fact, Ernesto witnessed the appellant pull out the knife from the victim's body. Informed by Ernesto that he had been stabbed, Reyes clutched his wound with his hand, drew his batuta and went after the appellant who ran towards the back of the house. People within the vicinity accosted the

appellant and brought him to the Municipal Hall of Diadi while the victim was brought to the hospital.

In our view, this succession of events are consistent even with the testimony of Rodolfo Castro (the lone defense witness except for the appellant himself) who significantly did not testify about the actual act of stabbing because he was not actually there. He only heard a shout and a loud hitting sound, then saw Reyes hitting the appellant with his batuta. Thereafter, there were "confused movements" and he subsequently heard that the barangay captain had been stabbed. Apparently, what Castro saw was the immediate aftermath of the stabbing and the victim's immediate reaction against the appellant, as also testified to by Ernesto.

Under this critical examination and analysis, we can only conclude that no other person could have stabbed Reyes except the appellant who had the motive as he himself narrated; who was at the immediate vicinity of the incident; and who had the weapon as testified to by Ernesto and admitted at pre-trial. Ernesto's testimony clinches the case against the appellant as to his identity as knife wielder and on how he acted after plunging the knife into Reyes and thereafter. We find it very significant that the records bear no evidence showing any ill motive on the part of Ernesto that would drive him to falsely impute the fatal stabbing of Reyes to the appellant.

The Crime Committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

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 perpetua to death if committed with any of the following attendant circumstances:

- With treachery x x x x

In convicting the appellant of murder, the trial court appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make.[43]

To prove this qualifying circumstance, the following must be shown: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, thereby depriving the latter of any real opportunity for self-defense and ensuring the commission of the crime without risk to the aggressor.[44]

The evidence reveals that the attack on the victim came at an unguarded moment when he was most vulnerable. He was holding his cards, close to his face, thereby leaving his stomach area fully unprotected. He was moreover fully absorbed in the card game and was not in the position to defend himself. That the attack came suddenly and unexpectedly can be read from the failure of Ernesto - one of the card players - to see the actual stabbing thrust. While the stab wound was at the stomach area, it was established that the appellant came from behind and stabbed the unsuspecting Reyes at the right side of his stomach that was fully exposed because of the way he was holding his cards.

Based on these considerations, we find that the trial court correctly appreciated treachery as qualifying circumstance for the crime of murder.

The Proper Penalty

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with reclusion perpetua to death.

While evident premeditation was alleged in the Information, the court a quo correctly concluded that this

circumstance was not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[45]

The "time" requirement is critical in evident premeditation as it indicates the "premeditation" aspect - the opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what the accused planned to do.[46] In the stabbing of Reyes, the flow of events showed that this element was not present.

In the absence of mitigating and aggravating circumstances in the commission of the felony, the court a quo correctly sentenced the appellant to reclusion perpetua, conformably with Article 63(2)[47] of the Revised Penal Code.

Civil Liability

The RTC awarded the amount of P66,090.50 to the victim's heirs as actual damages. It appears that out of the said amount, only P16,591.00[48] were supported by receipts. The difference consists of the unreceipted amounts claimed by Reyes' heirs. To be entitled to 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.[49]

However, considering that the proven amount is less than P25,000.00, we opt to award temperate damages in the amount of P25,000.00 in lieu of actual damages pursuant to our ruling in *People v. Villanueva*. [50] There, we held that when actual damages proven by receipts during the trial amount to less than P25,000.00, as in this case, the award of temperate damages for P25,000.00 is justified, in lieu of actual damages of a lesser amount.

Moral damages are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. In accordance with prevailing rules, we increase the amount to P50,000.00.[51]

The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of treachery was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. We increase this amount from P10,000.00 to P25,000.00 to conform with recent jurisprudence.[52]

We cannot award loss of earning capacity to the victim's heirs because no documentary evidence was presented to substantiate this claim. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. While there are exceptions to the rule, these exceptions do not apply as the victim, Reyes, was a barangay captain when he died; he was not a worker earning less than the current minimum wage under current labor laws.

We affirm the award of P50,000.00 as civil indemnity pursuant to current jurisprudence.[53]

WHEREFORE, in light of all the foregoing, We hereby AFFIRM the July 26, 2005 decision and September 26, 2005 resolution of the CA in CA-G.R. CR No. 00460 with the following MODIFICATIONS:

- (1) moral damages is INCREASED to P50,000.00;
- (2) exemplary damages is INCREASED to P25,000.00; and
- (3) the appellant is ORDERED to pay the heirs of the victim P25,000.00 as temperate damages.

SO ORDERED.

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

[*] Designated Additional Member of the Second Division per Special Order No. 512 dated July 16, 2008.

[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justice Salvador J. Valdez, Jr. and Associate Justice Mariano C. del Castillo; rollo, p. 3-11.

[2] CA rollo, pp. 142-143.

[3] Penned by Judge Jose B. Rosales, id., pp. 42-46.

[4] CA rollo, pp. 4-5.

[5] TSN, September 15, 1999, pp. 3-4.

[6] Id., pp. 5-6.

[7] TSN, October 19, 1999, p. 8.

[8] Id., p. 7.

[9] TSN, October 5, 1999, p. 3.

[10] Id., p. 4.

[11] TSN, October 21, 1999, p. 4.

[12] Pre-Trial Order.

[13] TSN, October 26, 1999, p. 3.

[14] Id., p. 9.

[15] Id., p. 10.

[16] Id., p. 11.

[17] TSN, February 1, 2000, p. 15.

[18] Id., pp. 11-12.

[19] TSN, February 8, 2000, pp. 7-8.

[20] TSN, February 2, 2000, pp. 3-5; TSN, February 8, 2000, pp. 2-5.

[21] TSN, February 29, 2000, pp. 4-5.

[22] Id., pp. 6-7.

[23] TSN, March 7, 2000, p. 5.

[24] Id., p. 6.

[25] TSN, March 14, 2000, p. 6.

[26] TSN, February 29, 2000, p. 7.

- [27] TSN, March 7, p. 8.
- [28] TSN, March 8, 2000, p. 8.
- [29] TSN, February 29, 2000, p. 10.
- [30] TSN, February 21, 2002, pp. 3-4.
- [31] Id., pp. 8-9.
- [32] Id., pp. 13-14.
- [33] Id., pp. 16-17.
- [34] TSN, February 27, 2002, p. 3.
- [35] CA rollo, p. 27.
- [36] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [37] Supra note 35, pp. 69-83.
- [38] People v. Garalde, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.
- [39] TSN, October 5, 1999, p. 5.
- [40] TSN, October 7, 1999, pp. 5-6.
- [41] TSN, Feb. 21, 2002, pp. 4-22; Feb. 26, 2002, pp. 7-9; Feb. 27, 2002, pp. 2-10.
- [42] TSN, July 31, 2001, pp. 4-11.
- [43] People v. Batin, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288.
- [44] People v. Felipe, G.R. No. 142505, December 11, 2003, 418 SCRA 146.
- [45] People v. Rodas, G.R. No. 175881, August 28, 2007, 531 SCRA 554.
- [46] People v. dela Cruz, G.R. No. 171272, June 7, 2007, 523 SCRA 433.
- [47] 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.

- [48] See Exhibit "K" and Exhibit "N," Records, pp. 92 and 95.
- [49] People v. Delos Santos, G.R. No. 135919, May 9, 2003, 403 SCRA 153.
- [50] G.R. No. 139177, August 11, 2003, 408 SCRA 571.
- [51] People v. Eling, G.R. No. 178546, April 30, 2008.
- [52] See People v. Tolentino, G.R. No. 176385, February 26, 2008.

[53] People v. Villa, Jr., G.R. No. 179278, March 28, 2008.

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