

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHRISTOPHER AVILES, ACCUSED-APPELLANT.

G.R. No. 172967. December 19, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is an appeal from the Decision[1] of the Court of Appeals affirming with modification the Decision[2] of the Regional Trial Court of Urdaneta City, Branch 46, convicting accused-appellant Christopher Aviles y Molina Alias "Topeng" (Aviles) of the crimes of murder and slight physical injuries.

Aviles was charged with the crimes of murder and frustrated murder in two separate Informations, allegedly committed as follows:

Criminal Case No. U-12011

x x x x

That on or about 7:30 o'clock in the evening of June 19, 2002 at Alexander St., Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a sharp bladed and pointed knife, with intent to kill, and treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab Danilo Arenas, inflicting upon him the following:

- Wound, hook-shaped 26.5 x 4cms., left thigh middle 3[rd] antero-medial aspect.
- Chopping wound 15 x 2.5 cm., left leg upper 3[rd] below knee.
- Wound semilunar 3 x 0.5 cm., right foot dorum.
- Hacking wound 3 cm. x 0.5 cm. left hand dorsum, near wrist.

resulting to "Irreversible shock due to arterial hemorrhage due to severe branch of femoral artery," which caused his death, to the damage and prejudice of his heirs.

CONTRARY To Art. 249, Revised Penal Code as amended by R.A. 7659.

Criminal Case No. U-12385

That on or about 7:30 o'clock in the evening of June 19, 2002 along Alexander Street, Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill and treachery, did then and there, willfully, unlawfully and feloniously stab and hit NOVELITO CONTAPAY y CALICA, inflicting upon him a stab wound in the left knee, the accused having thus commenced by overt act the commission of the crime of Murder but did not perform all the acts of execution which would have produced the felony by reason of some cause or accident other than accused[']s spontaneous desistance, to the damage and prejudice of said Novelito Contapay y Calica.

CONTRARY to Article 248 in relation to Article 6 of the Revised Penal Code.[3]

The evidence for the prosecution shows that on 19 June 2002 at around 7:30 p.m., Novelito Contapay (Contapay) was driving his passenger jeep along Alexander Street, Poblacion, Urdaneta City, at less than ten kilometers per hour due to heavy traffic in front of Magic Mall. His lone passenger, the deceased Danilo Arenas, was seated beside him. Arenas suddenly shouted apaya.[4] Contapay turned his head and saw Christopher Aviles stabbing Arenas. Aviles' upper body was already inside the jeep with one foot on the running board. Contapay halted the jeep and tried to help Arenas by holding the hand of Aviles, but the latter stabbed Contapay on his left knee. Contapay pushed Aviles who ran away. Contapay alighted from the jeepney, but he was not able to chase Aviles because of his bleeding left knee. Contapay noticed that Arenas was already unconscious, and he brought the latter to the Urdaneta Sacred Heart Hospital.

SPO2 Asterio Dismaya, SPO2 Ernesto Contaoi, SPO1 Rodolfo Febreo, PO3 Dennis Torres and a certain SPO2 Cachuela investigated the stabbing incident. SPO2 Dismaya and his companions went to the Urdaneta Sacred Heart Hospital but they were not able to interview Danilo Arenas. A nurse informed SPO2 Dismaya that it was Novelito Contapay who brought Arenas to the hospital. SPO2 Dismaya interviewed Contapay who was still in the premises.

Thereafter, the policemen went to the scene of the incident. SPO2 Dismaya was able to talk to Rufina Calvero, a balut vendor, who told him that she noticed Aviles and the latter's half-brother, George Cresencia (Cresencia), pass by her going southwards. Rufina Calvero also told SPO2 Dismaya that her husband had a drinking spree with Aviles and Cresencia.

SPO2 Dismaya was also able to talk to Patricio Oliveros who informed him that Aviles created trouble at the parking lot for tricycles by chasing other tricycle drivers, but was pacified by Cresencia.

Meanwhile, Contapay, realizing the lack of doctors in Sacred Heart Hospital, proceeded to the Villasis Polymedic Hospital and Trauma Center to have his left knee treated. Contapay stayed in the hospital until the following day, incurring medical and hospital expenses.[5] Arenas, however, died at 2:00 in the morning of 20 June 2002. The Certificate of Death stated that the immediate cause of death was cardio-respiratory arrest and the antecedent cause was hemorrhagic shock due to stab wound on the medial side of the thigh.

Also on 20 June 2002, SPO2 Dismaya and other policemen went to the residence of Aviles in Jungle Town, San Vicente, Urdaneta City, but did not find him there. Aviles' mother accompanied the policemen to the house of Aviles' father-in-law, where they finally saw Christopher Aviles. They invited Aviles to the police station in connection with the stabbing incident. Aviles denied participation in the stabbing incident and claimed that it was his half-brother, Cresencia, who stabbed Arenas.

Upon the request of Police Superintendent Jessie Lorenzo Cardona, Chief of Police of the Urdaneta City Police Station, City Health Physician of Urdaneta City, Dr. Ramon B. Gonzales, Jr. conducted an autopsy on the body of Arenas. The Autopsy Report[6] reads:

SIGNIFICANT EXTERNAL FINDINGS:

- Plaster cast on left lower extremity.

Upon removing cast:

- Sutured wound left thigh middle 3[rd] antero-medial aspect.

Upon opening sutured wound:

Wound hook-shaped 26.5 x 4 cm.

- Sutured wound left leg upper 3[rd] below knee

Upon opening sutured wound:

Chopping wound 15 x 2.5 cm.

- Sutured wound right leg middle 3[rd] anterior aspect.

Upon opening sutured wound:

- Chopping wound 4 x 1 cm.

- Sutured wound right foot, dorsum.

Upon opening sutured wound

- Sutured wound semilunar 3 x 0.5 cm.

- Sutured wound left hand dorsum, near wrist.

Upon opening sutured wound:

- Hacking wound 3 cm. x 0.5 cm.

SIGNIFICANT INTERNAL FINDINGS:

Severed branch of femoral artery.

CAUSE OF DEATH:

Irreversible shock due to arterial hemorrhage due to severed branch of femoral artery.

During the trial, the father of Danilo Arenas, Victorio, testified that he and his wife, Lagremas, spent P52,524.00 for the treatment of Danilo Arenas at the Urdaneta Sacred Heart Hospital, P50,000.00 during the wake, and another P38,000.00 paid to the Enriquez Funeral Home. These amounts were supported by official receipts.

The widow of Danilo Arenas, Sophia, testified that her late husband was a businessman who used to earn around P9,000.00 a month. Besides Sophia, Danilo Arenas is survived by his three children: Mark Joseph (10 years old), Mary Jane (9 years old), and Jeremias (6 years old).

Accused-appellant Christopher Aviles, who testified that he was a shoe repairer and fish vendor, claimed that at around 5:00 p.m. on 19 June 2002, he, George Cresencia, Romeo Aquino, Maria Aquino and several other persons were drinking in front of the Magic Mall in Urdaneta City. He allegedly left the group to accompany someone to the municipal hall, after which, he returned to the place where the group was drinking. He then told Cresencia that he was going home, but the latter asked him to stay and continue drinking with them. After 30 minutes, he finally left in order to go home. While he was walking towards the public market near Rocca Theater,

he saw Cresencia running towards him. Cresencia, who had blood stains on his t-shirt, told him that he (Cresencia) stabbed someone. Aviles revealed that he did not ask Cresencia who the victim was and proceeded on his way home. He did not tell his mother or his wife that Cresencia stabbed someone. The following day, on 20 June 2002, at 6:00 a.m., he was arrested and brought to the municipal hall.

Renton and Criselda Aviles, who are Christopher Aviles' brother and sister-in-law, testified that on 19 June 2002, Cresencia arrived drunk in their house at around 9 p.m., with blood stains on his shirt. Cresencia allegedly told them that he was involved in a fight and that he might have stabbed someone. Cresencia spent the night at their house and left the following morning.

On 21 July 2003, the trial court rendered a Joint Decision convicting Christopher Aviles of the crimes of murder and slight physical injuries, thus:

WHEREFORE, premises considered, the court finds accused CHRISTOPHER AVILES Y MOLINA ALIAS "TOPENG" –

- CRIMINAL CASE NO. U-12011:

GUILTY beyond reasonable doubt of the crime of MURDER and, there being no mitigating or aggravating circumstance, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; and is hereby ordered to indemnify the heirs of the victim of Danilo Arenas in the amount of FIFTY THOUSAND PESOS (P50,000.00), to pay funeral expenses of Thirty Eight Thousand Pesos (P38,000.00), to pay medical expenses of Fifty Two Thousand Five Hundred Twenty Four Pesos (P52,524.00), to pay P50,000.00 by way of moral and exemplary damages, all without subsidiary imprisonment;

- CRIMINAL CASE NO. U-12385:

GUILTY beyond reasonable doubt of the crime of SLIGHT PHYSICAL INJURIES and is hereby sentenced to suffer imprisonment of thirty (30) days of Arresto Menor, and is hereby ordered to pay medical expenses of Six Thousand Eight Hundred Ninety Eight Pesos (P6,898.00);

and to pay the costs.

The accused shall be credited in full with the period of his preventive imprisonment in the service of his sentence.[7]

Aviles appealed to this Court. Conformably with this Court's ruling in *People v. Mateo*,^[8] we resolved^[9] to transfer the appeal to the Court of Appeals.

On 23 December 2005, the Court of Appeals rendered its Decision affirming with modification the trial court's Decision, thus:

WHEREFORE, the Joint Decision dated July 21, 2003 is AFFIRMED, with the MODIFICATION that accused-appellant Christopher Aviles y Molina is ordered to pay the heirs of Danilo Arenas the amounts of P50,000.00 as moral damages and P25,000.00 as exemplary damages.[10]

Aviles now comes before us, assigning the following errors to the Court of Appeals:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN ITS FINDING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY ATTENDED THE COMMISSION OF THE CRIMES CHARGED.[11]

Christopher Aviles argues that the identification made by the lone eyewitness, Contapay, is doubtful. Contapay testified that when he heard the deceased Arenas shout "Apaya," he turned his head and saw Aviles stabbing the deceased several times. He tried to hold Aviles but was, however, stabbed on the knee, prompting him to kick Aviles out of the jeepney. According to Aviles, when confronted with a situation like this, it is more consistent with human nature that a person's attention would be caught up in the on-going struggle and confusion, rather than in trying to recognize the attacker. Aviles points out that he and Contapay did not know each other prior to the stabbing incident and, thus, the only basis of Contapay's memory of Aviles' appearance was the span of time when the incident transpired.

Aviles further calls our attention to the investigation conducted by prosecution witness SPO2 Dismaya, who had interviewed balut vendor Rufina Calvero, tricycle driver Romeo Aquino, and Aviles' half-brother Cresencia. Aviles asserts that these three people were never presented in court to affirm their statements.

We do not find Aviles' assertions to be sufficient to reverse the outcome of the case.

Aviles may be correct that when the prosecution has at its disposal disinterested witnesses to the alleged crime but fails to produce them at the trial, such failure, although not fatal, seriously weakens the case against the accused.[12] However, that is not the case here. The statements of Rufina Calvero, Romeo Aquino and George Cresencia, while instrumental in the identification of Christopher Aviles for the purpose of his arrest, were neither necessary nor beneficial for the identification of Aviles in trial.

SPO2 Dismaya's testimony centered on his investigation of the crime which led to the arrest of Aviles. This investigation started with SPO2 Dismaya's interview of Contapay who knew neither the name nor the residence of Aviles. SPO2 Dismaya and his companions thus proceeded to the scene of the crime, which led to their discovery of witnesses who indicated Aviles' presence therein and possible participation in the stabbing incident. This eventually led to the arrest of Aviles who was identified by Contapay as the person who stabbed him and Arenas.

During the trial, when Aviles was already in custody, testimonies merely pointing to a "possibility" that Aviles participated in the stabbing incident was supplanted by the eyewitness account of Contapay that Aviles himself had performed the stabbing. The trial court found Contapay's testimony to be credible. It is settled that the appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to determine the same, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless certain facts of value have been plainly overlooked, which if considered, might affect the result of the case.

It must also be considered that, as elucidated by the statements of Aviles himself, he and Contapay had never met before the stabbing incident. Contapay cannot therefore, could not have been impelled by ill will or evil intent in testifying against Aviles whom he did not know prior to the incident.

Neither are we persuaded by Aviles' argument that it is more consistent with human nature that a person's attention would be caught up in the ongoing struggle, rather than in trying to recognize the attacker. Different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience. Witnessing a crime is one novel experience which elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. This is especially true if the assailant is physically near the witness.[13] In *People v. Aquino*, [14] we even held that:

There is no standard rule by which witnesses to a crime may react. Often, the face and body movements of the

assailant create an impression which cannot be easily erased from the memory of witnesses x x x.

This finding of credibility on the part of Contapay likewise obliges us to affirm the ruling of the trial court and the Court of Appeals finding Aviles guilty of slight physical injuries. Contapay's testimony was the evidence presented to prove not only the killing of Arenas, but likewise the stabbing of Contapay himself who had tried to help Arenas.

We also agree with the trial court that the crime proven to have been committed by Aviles in stabbing Contapay is only slight physical injuries. While the prosecution sufficiently established that Aviles stabbed Contapay, it failed to prove intent to kill, which is an element of both frustrated and attempted homicide. On the contrary, the evidence appears to show that Aviles stabbed Contapay on the knee only for the purpose of preventing the latter from further helping Arenas. Since there was no proof either as to the extent of the injury or the period of incapacity for labor or of the required medical attendance, Aviles can only be convicted of slight physical injuries.

Anent the second assigned error, Aviles claims that the trial court erred in its finding that the qualifying circumstance of treachery attended the commission of the crime, as Contapay did not testify as to how the attack on Arenas was initiated.

There is treachery when the following requisites are present: (1) the employment of means, methods, or manner of execution to ensure the safety of the malefactor from defensive or retaliatory action on the part of the victim and (2) the deliberate or conscious adoption of such means, method or manner of execution.[15]

The Court of Appeals ruled that the fact that Arenas shouted "Apaya" (perhaps a shortened form of apay aya, which is more accurately translated in Filipino as *bakit ba*) showed that he was probably surprised to see Aviles trying to get inside the jeepney which was moving slowly because of heavy traffic. The testimony of Contapay that after hearing Arenas shout "Apaya," he saw Aviles already stabbing Arenas, showed that the attack was sudden and unexpected.

We agree with Aviles on this score. Although Contapay testified that he turned around immediately when the deceased shouted "Apaya," he did not testify as to how the attack was initiated. Also, considering that he was driving the jeepney when Arenas was attacked, he could not even have known how the attack was initiated.

For treachery to be appreciated, it must be present at the inception of the attack. If the attack is continuous and treachery was present only at a subsequent stage and not at the inception of the attack, it cannot be considered.[16] Rather than being an expression of surprise at the presence of Aviles as held by the Court of Appeals, the shout "Apaya" or "Apay aya," when translated as "*Bakit ba*," connotes confusion as to why the person to whom it is spoken is acting the way he is acting. This implies the lapse of several moments between the commencement of the attack and Arenas' shouting.

Qualifying circumstances must be proven beyond reasonable doubt as the crime itself.[17] It cannot be considered on the strength of evidence which merely tends to show that the victim was probably surprised to see the assailant trying to get inside the jeepney. As discussed above, Arenas' shout can be interpreted in different ways. In fact, prosecution witness Dr. Ramon Gonzales even testified that it was possible that Aviles and Arenas were having a fight:

Atty. Florendo:

You also found a wound on the left wrist of the cadaver, Doctor?

A:

Yes sir.

Q:

Would you consider it as a defensive wound, Doctor?

A:

Yes sir.

Q:

When you said it was a defensive wound, it is possible that the victim and the assailant was having a fight?

A:

Yes sir.[18]

Neither does the fact that Arenas was in between Contapay and Aviles conclusively prove the presence of treachery. While this situation proved fatal to Arenas who had nowhere to run, there was no evidence that this situation was deliberately and consciously adopted to ensure safety of the malefactor from defensive or retaliatory action on the part of the victim. As we have similarly held in *People v. Latag*,[19]

Furthermore, no other circumstance attendant to the shooting supports the allegation that appellant carefully and deliberately planned the killing in a manner that would ensure his safety and success. There were no indications that he had deliberately chosen the place, the time or the method of killing. In addition, there was no showing that the meeting between him and the victim had been planned. The fact that the former was seen by Atienza behind some shrubs after a gunshot had rung out does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof, not merely on an inference drawn more or less logically from a hypothetical fact. Apparent from the assailed Decision of the trial court is that it simply surmised that treachery had attended the killing.

As no qualifying circumstance attended the killing, Christopher Aviles can only be convicted of homicide. Homicide is punishable by reclusion temporal.[20] There being no mitigating or aggravating circumstances proven in the case at bar, the penalty should be applied in its medium period of 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than reclusion temporal, which is prision mayor (six years and one day to 12 years). We find the indeterminate sentence of 10 years and one day of prision mayor, as minimum to 14 years and one day of reclusion temporal, as maximum to be sufficient.

Finally, the absence of qualifying circumstances also warrants the deletion of the exemplary damages.

WHEREFORE, the Decision of the Court of Appeals is MODIFIED. The Court finds accused-appellant Christopher Aviles y Molina guilty beyond reasonable doubt of the crime of HOMICIDE, and is hereby sentenced to suffer an indeterminate penalty ranging from 10 years and one day of prision temporal as minimum to 14 years and one day of reclusion temporal as maximum. The penalty imposed by the courts a quo for the crime of slight physical injuries as well as all civil indemnities imposed by the courts a quo are AFFIRMED, with the exception of the P25,000.00 imposed on accused-appellant Aviles by way of exemplary damages, which is hereby DELETED.

SO ORDERED

Ynares-Santiago, (Chairperson), Austria-Martinez, and Reyes, JJ., concur.
Nachura, J., on leave.

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- [1] Penned by Associate Justice Marina L. Buzon with Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok, concurring. Rollo, pp. 3-16.
- [2] Penned by Presiding Judge Tita Rodriguez-Villarin. CA rollo, pp. 23-44.
- [3] Id. at 23-24.
- [4] According to the Court of Appeals, apaya means why.
- [5] Evidenced by Official receipts; Exhibits K-10 to K-12; records, pp. 130-132.
- [6] Exhibit B, records, p. 7.
- [7] Id. at 43-44.
- [8] G.R. No. 147678-87, 7 July 2004, 433 SCRA 640.
- [9] CA rollo, p. 100.
- [10] Rollo, p. 15.
- [11] CA rollo, p. 59.
- [12] United States v. Tacubanza, 18 Phil. 436, 438 (1911).
- [13] People v. Avedaño, 444 Phil. 338, 356 (2003).
- [14] 385 Phil. 887, 906 (2000).
- [15] People v. Bayotas, 401 Phil. 837, 848 (2000).
- [16] People v. Badon, G.R. No. 126143, 10 June 1999, 308 SCRA 175, 189.
- [17] People v. Valez, 406 Phil. 681, 699 (2001).
- [18] TSN, 1 October 2002, p. 10.
- [19] 465 Phil. 683, 694-695 (2004).
- [20] Article 249, Revised Penal Code.

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