

PEOPLE OF THE PHILIPPINES APPELLEE, VS. RESURRECCION RANIN, JR. Y JAMALI, APPELLANT.*G.R. No. 173023. June 25, 2008*

Ponente: QUISUMBING, J.

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For review are the Decision [1] dated October 26, 2005 and Resolution [2] dated March 1, 2006 of the Court of Appeals in CA-G.R. CR No. 00424. The Court of Appeals had affirmed the Decision [3] dated July 8, 2004 of the Regional Trial Court (RTC), Branch 219, Quezon City which convicted appellant Resurreccion Ranin, Jr. of murder in Criminal Case No. Q-99-86998. The Court of Appeals likewise denied appellant Ranin's motion for reconsideration.

The antecedent facts culled from the records are as follows:

In the morning of February 18, 1999, Lina de Castro, a lady guard detailed at Palma Hall in the University of the Philippines (UP), Diliman Campus, noticed appellant Ranin pacing the pathway. Appellant Ranin intermittently glanced at a photo which he kept in his pocket while his three companions sat on a bench. Sensing that the four were outsiders, de Castro asked them to leave.

Yet again, at around 3:30 p.m. the following day, de Castro saw appellant Ranin walking by the CASAA canteen as his companions rested on a bench. De Castro accosted appellant Ranin and demanded that he leave. Without responding, the latter headed towards the photocopying machine at the Arts and Sciences Building and then back. He did this routine four times while constantly checking a photo hidden in his pocket.

Meanwhile, Niño Calinao was seated on a bench with other UP students. When appellant Ranin neared their bench, he suddenly fired two successive shots at Calinao. The other students ran away as Calinao fell to the ground. While the latter was crawling on the ground holding his stomach, appellant Ranin shot him a third time. Then, appellant Ranin fired a fourth time at the fallen body of Calinao. De Castro tugged on appellant Ranin's shirt and told him, "Dodong, Dodong, tama na yan, patay na yang bata." [4] Appellant Ranin pointed the gun at her but put it down right away. After that, appellant Ranin and his companions fled.

On September 21, 1999, Resurreccion Ranin, Jr. y Jamali, Besmart Al-Baddar Lauppah y Umparah, Rizal Sarri Lamsani y Jamang and Ommar Hadjula y Kainong were charged with murder in an Information [5] which reads as follows:

On or about February 19, 1999, in Quezon City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, while confederating, conniving, conspiring and mutually helping and aiding one another, with evident premeditation and treachery, taking advantage of superior strength and employing means to weaken the defense of the victim, did then and there, with criminal and malicious intent to kill, wilfully, unlawfully, feloniously, shoot Ni[ñ]o Calinao with a .45 caliber pistol which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[6]

On arraignment, all of them pleaded not guilty. Trial thereafter ensued.

Appellant Ranin claimed that he had never been to UP, and that both his hands were injured. His left suffered from atrophy and had a deep diagonal scar. The bone in his right forearm was broken and stainless steel had been placed inside. On demonstration, appellant Ranin could not cock a .45 caliber pistol using his left arm and pull the trigger with his forefinger.

In its Decision dated July 8, 2004, the RTC convicted appellant Ranin thus:

WHEREFORE, judgment is hereby rendered:

- a) Finding the accused BESMART AL-BADDAR LAUPPAH Y UMPARAH and OMMAR HADJULA Y KAINONG culpability not proven beyond reasonable doubt, the Court hereby ACQUITS them of the offense charged;
- b) The Jail Warden of the BJMP-Q.C. is hereby directed to release from his custody the persons of BESMART AL-BADDAR LAUPPAH Y UMPARAH and OMMAR HADJULA Y KAINONG unless they are being held for any other lawful cause/s;
- c) Finding the accused RESURRE[C]CION RANIN, JR. Y JAMALI, guilty of the crime of MURDER beyond reasonable doubt;
- d) Sentencing RESURRE[C]CION RANIN, JR. Y JAMALI to suffer the maximum penalty of DEATH;
- e) Ordering RESURRE[C]CION RANIN, JR. Y JAMALI to indemnify the heirs of NIÑO CALINAO in the sum of P77,000.00 as actual damages and P500,000.00 as moral damages.

SO ORDERED.[7]

The trial court denied the motion for reconsideration filed by appellant Ranin.

On appeal, the Court of Appeals affirmed the RTC's decision. The appellate court ruled that without any definite scientific findings that appellant Ranin is not capable of using his right hand, the possibility that it can be used is presumed.[8] Likewise, it sustained the prosecution witness's positive identification of appellant Ranin as the killer against the latter's alibi. The Court of Appeals found the inconsistency in de Castro's testimony as regards the interval between the 2[nd], 3[rd] and 4[th] shots inconsequential.

Appellant Ranin moved for reconsideration but it was denied by the Court of Appeals in a Resolution dated March 1, 2006.

Now, appellant Ranin seeks a review of his conviction on a lone assignment of error:

THE HONORABLE COURT A QUO ERRED IN AFFIRMING THE DECISION OF THE HONORABLE TRIAL COURT AS HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[9]

Appellant Ranin argues that the Court of Appeals disregarded vital physical evidence which casts reasonable doubt on his guilt. He adds that it also shifted the burden of evidence on appellant Ranin to prove his innocence when it held that absent a conclusive medical finding that he was incapable of using his right hand, its possible use is presumed. Appellant Ranin also states that the appellate court erred in trivializing the contradictions in de Castro's testimony as to the interval between shots, and his distance from Calinao when he allegedly fired them. Appellant Ranin finally insists that the rule on appreciation of evidence by the trial court should not be applied since the judge who tried the case was not the one who penned the decision.

The Office of the Solicitor General (OSG) counters that the factual findings of the trial court were supported by the evidence on record: Lina de Castro positively identified appellant Ranin as the shooter; Rina Sartin confirmed his presence at the crime scene; and the radiologist Dr. Eugene Dy and neurologist Dr. Jose C. Navarro did not completely rule out the use by appellant Ranin of his fingers. Also, the OSG agrees with the trial court that evident premeditation and treachery attended the killing of Calinao.

The Information charged appellant Ranin with Murder under Article 248,[10]paragraphs (1) and (5) of the Revised Penal Code. To be liable for murder, the prosecution must prove that: (a) a person was killed; (b) the accused killed him; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) the killing is neither parricide nor infanticide.[11]

In the case at bar, appellant Ranin makes issue of the discrepancies in de Castro's testimony. At the onset, de Castro stated that a minute separated the second and third shots; and two minutes passed before appellant Ranin fired a fourth time. She later changed her account to add a minute interval between the shots. Appellant Ranin reasons that it would be highly unusual to take five minutes to shoot, and then get lost behind a crowd afterwards. Likewise, de Castro approximated appellant Ranin to have fired the gun 0.8 meters away from Calinao, but the forensic pathologist found no zone of blackening typical of gunshot wounds sustained at close range.

Suffice it to state that the perceived contradictions in the testimony of de Castro merely referred to minor matters that did not touch on the commission of the crime itself as to affect the substance of her declaration, and the veracity or weight of her eyewitness testimony. Witnesses cannot be expected to give a flawless testimony all the time. [12] We have repeatedly held that minor variances in the details of a witness's account, more frequently than not, are badges of truth rather than indicia of falsehood, and bolster the probative value of the testimony. Indeed, even the most candid witness often makes mistakes and falls into confused statements, and at times, far from eroding the effectiveness of the evidence, such lapses could instead constitute signs of veracity. [13]

In no uncertain terms, de Castro elucidated what transpired after appellant Ranin discharged the first two shots:

ATTY. PAGGAO:

x x x x

Q: After the firing of the gun to Niño, do you know what happened to Niño?

A: Yes, Sir.

ATTY. PAGGAO:

Q: What happened?

A: He rolled down on the ground, Sir.

Q: What about his three (3) companions on the bench?

A: They were gone, Sir. They ran away, Sir. [14] (Emphasis supplied.)

x x x x

Contrary to appellant Ranin's claim, Calinao's friends did not linger to watch the shooter let off the third and fourth shots. They scampered for safety, thereby affording appellant Ranin an occasion to carry out his design with impunity.

As a rule, the trial court's assessment of the credibility of witnesses is entitled to great respect and will not be disturbed on appeal, unless: (1) it is found to be clearly arbitrary or unfounded; (2) some substantial fact or

circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted; or (3) the trial judge gravely abused his or her discretion. [15] None of the above circumstances applies to the case at hand.

Moreover, the fact that the judge who penned the decision was not the judge who heard the testimonies of the witnesses was not enough reason to overturn the findings of fact of the trial court on the credibility of the witnesses. Though ideally a judge should hear all the testimonies personally, at times the reality is that a different judge might pen the decision because the predecessor judge has retired or died or has resigned. In this situation, it cannot be assumed that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. The judge who did not hear the testimonies personally can always rely on the transcripts of stenographic notes taken during the trial. Such dependence does not violate substantive and procedural due process. [16]

Neither did the appellate court discount any exculpatory physical evidence. Even as the prosecution proved that appellant Ranin could not grasp a .45 caliber pistol with his left hand, de Castro specified the right hand as the one used by appellant Ranin to fire the gun, thus:

ATTY. PAGGAO:

x x x x

Q: With what hand did Ranin draw out from his waist his gun?

A:

His right hand, Sir.

Q: You mean the hand with the rolled up sleeve?

A: Yes, Sir. [17] (Emphasis supplied.)

x x x x

Thereafter, the dexterity of appellant Ranin's right hand fingers was assessed:

x x x x

ATTY. RIGOROSO:

May I request, Your Honor, the witness to try to bend the pointer of his right arm, [Y]our Honor.

WITNESS:

(Trying to bend the pointer of his right arm).

ATTY. RIGOROSO:

May I manifest, Your Honor, that the witness is incapable of bending the finger at the middle panel . . .

ATTY. MALLABO:

I felt it is very hard, Your Honor.

ATTY. PAGGAO:

I noticed all the other fingers, the index finger are movable, Your Honor, the witness can actually bend all the four fingers.

ATTY. RIGOROSO:

Except for the pointer, Your Honor. The pointer [cannot] be ben[t], Your Honor. May we also manifest, Your Honor, that the forefinger is also deformed and smaller, it tilts towards the middle finger, Your Honor. [18]

x x x x

Even as appellant Ranin had difficulty bending his right forefinger, this did not foreclose the possibility that he used any of his right hand fingers to pull the trigger. In fact, the result of the Nerve Conduction Studies [19] administered on appellant Ranin unqualifiedly indicated normal sensory conduction of his right radial nerve. To merit credibility, denial must be buttressed by strong evidence of non-culpability. Unable to show such evidence, herein appellant Ranin failed to overcome de Castro's testimony, which positively identified him as the shooter. [20] It is well settled that positive identification, where categorical, consistent, and not attended by any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving weight in law. [21] In the same vein, appellant Ranin's alibi that he had never been to UP fails in the face of positive identification by de Castro.

The Court likewise agrees with the trial court that treachery and evident premeditation attended the killing which qualified the offense to murder.

There is treachery when the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person. [22] The essence of evident premeditation, for its part, is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. [23]

Here, de Castro spotted appellant Ranin pacing the pathway of the UP Diliman Campus, occasionally looking at a photograph a day before the shooting incident. Verily, appellant Ranin had ample time to ruminate on the possible consequences of his act. As to the manner of attack, the testimony of Dr. Raquel Del Rosario-Fortun on the autopsy was enlightening:

x x x x

ATTY. PAGGAO:

x x x x

Q: Will you describe to us exactly the direction of the bullet or with what direction did it exit after entering the blood opening?

A: I assessed that the trajectory of the first gunshot would be to the left to right downward and backward. That is based on the anatomic position.

x x x x

Q: Would you say that [it] is possible or probable that the victim was on the sitting position while the gunman was standing on his left side?

A: It's possible, Sir. [24]

x x x x

Evidently, Calinao was unaware of the impending danger as appellant Ranin suddenly fired two successive shots

at him.

Now, as to the impossible penalty on appellant Ranin, we take into account the passage of Republic Act No. 9346, [25] which was signed into law by President Gloria Macapagal-Arroyo on June 24, 2006. The pertinent provisions of said law states that:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

[SEC.] 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

x x x x

[SEC.] 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. [26]

In accordance with the new law, Rep. Act No. 9346, the penalty imposed upon appellant Ranin should be reduced to reclusion perpetua, but he shall not be eligible for parole under the Indeterminate Sentence Law. [27]

With regard to the amount of actual damages, only expenses supported by receipts will be allowed. [28] Hence, the award of P77,000 as actual damages by the trial court should be reduced to P42,000. [29] The parties have also stipulated on the entitlement of the victim's heirs to moral damages. [30] The controlling case law [31] sets the amount of moral damages at P50,000.

The award of civil indemnity, on the other hand, is separate and distinct from the award of moral damages which is based on a different jural foundation and assessed by the Court in the exercise of sound discretion. In murder, the grant of civil indemnity requires no proof other than the fact of death as a result of the crime and proof of appellant's responsibility therefor. [32] Under prevailing jurisprudence, [33] the Court has pegged the amount at P75,000. It should be paid by appellant Ranin to the heirs of Niño Calinao who are entitled to receive it.

Finally, as evident premeditation has been taken to qualify the offense to murder, treachery may be appreciated as an ordinary aggravating circumstance, to support the award of exemplary damages in the amount of P25,000. In *People v. Aguila*, [34] we emphasized that exemplary damages of P25,000 are recoverable if there was present an aggravating circumstance, whether qualifying or ordinary, in the commission of the crime. [35]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 00424 are hereby AFFIRMED with MODIFICATION. In view of Rep. Act No. 9346 prohibiting the imposition of the death penalty, appellant Ranin is hereby sentenced to reclusion perpetua without possibility of parole. The award of actual damages is reduced to P42,000, while that of moral damages is also reduced to P50,000. The appellant is further ORDERED to pay the heirs of Niño Calinao P75,000 as civil indemnity and P25,000 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Reyes, Lronardo-De Castro, and Brion, JJ., concur.

Carpio-Morales, Velasco, Jr., and Nachura, JJ., on official leave.

* On official leave.

[1] Rollo, pp. 33-50. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. De los Santos and Jose C. Reyes, Jr. concurring.

[2] Id. at 51. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Eliezer R. De los Santos and Mariano C. Del Castillo concurring.

[3] CA rollo, pp. 122-162. Penned by Pairing Judge Jose G. Paneda.

[4] TSN, Vol. 1, March 29, 2000, p. 29.

[5] Records, pp. 1-2.

[6] Id. at 1.

[7] CA rollo, pp. 161-162.

[8] Rollo, pp. 13-14.

[9] Id. at 25.

[10] ART. 248. Murder. - 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, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x

- With evident premeditation;

x x x x

[11] Sullon v. People, G.R. No. 139369, June 27, 2005, 461 SCRA 248, 257.

[12] People v. Bustamante, G.R. Nos. 140724-26, February 12, 2003, 397 SCRA 326, 341.

[13] People v. Sades, G.R. No. 171087, July 12, 2006, 494 SCRA 716, 725-726.

[14] TSN, Vol. 1, March 29, 2000, pp. 26-27.

[15] Hugo v. Court of Appeals, G.R. No. 126752, September 6, 2002, 388 SCRA 458, 465-466.

[16] People v. Buayaban, G.R. No. 112459, March 28, 2003, 400 SCRA 48, 57.

[17] TSN, Vol. 1, March 29, 2000, p. 25.

[18] TSN, Vol. 3, August 26, 2002, pp. 35-36.

[19] Records, pp. 461-462.

[20] *People v. Visperas, Jr.*, G.R. No. 147315, January 13, 2003, 395 SCRA 128, 137.

[21] *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 268.

[22] *People v. Sades*, *supra* note 13, at 727-728.

[23] *People v. Guzman*, G.R. No. 169246, January 26, 2007, 513 SCRA 156, 177.

[24] TSN, Vol. 1, March 20, 2000, pp. 23-24.

[25] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[26] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 675.

[27] An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; To Create a Board of Indeterminate Sentence and to Provide Funds therefor; and for Other Purposes (Rep. Act No. 4103, as amended), approved and effective on December 5, 1933.

x x x x

Sec. 2. This act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment;

...

x x x x

[28] *People v. Guzman*, *supra* note 23, at 178.

[29] TSN, Vol. 3, January 16, 2002, pp. 41-44.

[30] *Id.* at 20-25.

[31] *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 54; *People v. Panado*, G.R. No. 133439, December 26, 2000, 348, SCRA 679, 690.

[32] *People v. Malinao*, *id.* at 53.

[33] *People v. Brodett*, G.R. No. 170136, January 18, 2008, pp. 1, 6.

[34] G.R. No. 171017, December 6, 2006, 510 SCRA 642.

[35] *Id.* at 663.

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