

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELMERCITO MANALO Y DULAY, PPELLANT.

G.R. NO. 173054. December 06, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Court of Appeals[1] dated March 6, 2006 in CA-G.R. CR-H.C. No. 01816 affirming with modification the Decision[2] of the Regional Trial Court (RTC) of Cavite City, Branch 88, in Crim. Case No. 308-98 finding appellant Elmercito Manalo y Dulay guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of death and to pay P75,000.00 as civil indemnity, P100,000.00 as moral damages, P44,280.00 as actual damages, and P50,000.00 exemplary damages.

On October 9, 1998, an Information was filed against the appellant and accused Rolando Hebreo y de la Cruz for the crime of murder, viz:

That on or about the 8[th] day of October, 1998 at Barangay Wawa III, Municipality of Rosario, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a jungle bolo and a kitchen knife with intent to kill, conspiring, confederating together and mutually helping and aiding to one another, with treachery and evident premeditation did, then and there, willfully, unlawfully and feloniously attack, assault, hack and stab with the said bladed weapons one RICARDO T. ESTORES thereby inflicting upon the latter multiple mortal stab and hack wounds on the different vital parts of his body which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.[3]

When arraigned on October 27, 1998, appellant and Hebreo pleaded "not guilty".[4]

The facts of the case are as follows:

Before midnight of October 8, 1998, Rosita V. Estores was watching television inside her house at D.P. Jimenez St., Barangay Wawa III, Rosario, Cavite, when she heard the victim Ricardo T. Estores shouting "aray ko, aray ko, aray ko." Immediately, she peeped at the window and saw appellant and Hebreo coming out of the victim's hut respectively carrying a jungle bolo and a knife and heading towards appellant's house, which was about six meters away. After a short while, she rushed to the victim who was lying in a pool of blood. She reported the incident to her sister-in-law Floricita E. Bagtas who commented that nobody could have committed the crime except the appellant[5] who was drunk and mad earlier that night and suspected the victim of having stolen his gun.[6]

Responding to the report of Barangay Chairman Romeo Muyot, PO2 Fernando Garcia and four other police officers proceeded to the crime scene and thereafter surrounded appellant's house. Shortly after firing the warning shots, Hebreo went out of the house followed by appellant who had bloodstains on his chest and who admitted killing the victim. Hebreo directed the police officers to the place where they concealed the weapons.[7]

On October 9, 1998, appellant and Hebreo were brought to the Office of the Provincial Prosecutor for inquest

proceedings. PO2 Gracia told Prosecutor Elpidia J. Itoc of appellant's desire to execute an extrajudicial confession, who in turn informed the latter of his rights to remain silent and to counsel. She also examined his body for any signs of force that would indicate involuntariness of his confession but noticed none except the bloodstains on his chest. As appellant knew no lawyer who could assist him in his confession, Prosecutor Itoc called Atty. Aurelio Ignacio, Jr., who conferred with him before he executed his sworn admission of the killing.[8]

Appellant denied the charges against him. He testified that on the night of the incident, he had a drinking spree with Benjamin Babadilla, Hebreo, Rene Nogra and a certain Meo.[9] While admitting that he asked Enyong Udion, the brother-in-law of the victim, of the whereabouts of the latter and of his missing gun, he alleged that he could not have killed him as he was no longer mad at him when he found out that he did not take his gun.[10] Thereafter, he went home and slept until he was awakened by the gunshots outside his house. He heard Barangay Chairman Muyot saying to him "pare, pare, meron po kasing nangyaring krimen." After opening the door, he was immediately handcuffed and was hit at the back with an armalite rifle.[11] He and Hebreo, who was at the back of his house, were brought to the municipal hall where they were mauled and forced to admit the crime.[12] He also alleged that he was forced to make the confession before Prosecutor Itoc.[13]

After trial, the Regional Trial Court rendered its decision, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing considerations, this court hereby finds the accused Elmercito Manalo y Dulay, and Rolando Hebreo y de la Cruz, GUILTY beyond reasonable doubt of the crime of Murder as charged in the Information, with the aggravating circumstances of evident premeditation and dwelling, accordingly hereby sentences them to suffer the supreme penalty of death; to pay the heirs of the deceased, jointly and severally, P75,000.00 as indemnity; P100,000.00 as moral damages; P44,280.00 as actual expenses; and P50,000.00 as exemplary damages.

SO ORDERED.[14]

Considering the penalty imposed, the case was brought to this Court on automatic review. Hebreo died on November 3, 2003 during the pendency of the appeal.[15] Thus, this appeal concerns only the appellant. The case was subsequently transferred to the Court of Appeals pursuant to the ruling in *People v. Mateo*[16] which modified the pertinent provisions of the Rules of Court insofar as direct appeals from the Regional Trial Court to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment.

On March 6, 2006, the Court of Appeals affirmed with modification the decision of the Regional Trial Court, thus:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. The qualifying circumstance of evident premeditation and the aggravating circumstance of dwelling are DISREGARDED.

SO ORDERED.[17]

Appellant is now before this Court seeking the reversal of his conviction. He argues that the circumstantial evidence upon which his conviction rests does not constitute an unbroken chain of events that would point to him as the author of the crime. The fact that he was seen coming out of the victim's hut immediately after the commission of the crime does not necessarily mean that he committed it. Further, it is possible that Rosita may have seen him at the victim's hut earlier together with Enyong and Yolly which mistakenly led her to conclude that he was the one who killed the victim. Lastly, the murder weapons as well as his alleged extrajudicial confession are inadmissible for they were derived in violation of his constitutional rights under custodial investigation.

We are not persuaded.

While none of the prosecution witnesses saw the commission of the crime, the guilt of the appellant may still be proved by circumstantial evidence. Direct evidence of the commission of the crime charged is not the only matrix wherefrom a court may draw its conclusions and findings of guilt.[18] There may be instances where, although a witness may not have actually witnessed the commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person last seen with the victim immediately before and right after the commission of the crime. This is the type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition where concealment is highly probable. If direct evidence is insisted under all circumstances, the prosecution of vicious felons who committed heinous crimes in secret or secluded places will be hard, if not well-nigh impossible, to prove.[19]

Our task then is to determine whether the circumstances in the instant case, when taken together could form a pattern that would clearly and positively implicate the appellant as the perpetrator of the crime.

Circumstantial evidence to be sufficient for purposes of conviction must have the following elements: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and, (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20] The circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person. From all the circumstances, there should be a combination of evidence which in the ordinary and natural course of things, leaves no room for reasonable doubt as to his guilt.[21]

The circumstantial evidence presented by the prosecution in the instant case clearly establishes the guilt of appellant. Aside from the fact that denial and alibi are inherently weak defenses,[22] appellant's alibi that he was inside his house when the incident occurred does not preclude his physical presence in the house of the victim considering that their respective residences are only a few meters apart. Moreover, the pieces of evidence constituting the tapestry of circumstantial evidence considered by the trial court in arriving at its decision, which the Court of Appeals affirmed, when viewed in their entirety, are as convincing as direct evidence and, as such, negate the innocence of appellant, to wit:

- Appellant was drunk, very mad and carrying a jungle bolo when he went to the victim's sister, Floricita, to ask the whereabouts of his alleged missing gun from the victim. When appellant learned that the victim was already sleeping, he went to the latter's hut.
- Rosita Villanueva, whose house was a few meters from the crime scene, heard the cry of "Aray, aray, aray" from the victim's hut, indicating that the latter was in pain. When she peep through her window, at about a meter and half, she saw appellant with a bolo, and Hebreo with a knife, just coming out of the victim's hut. She also noticed that appellant, with Hebreo, went inside appellant's house. Thus, Rosita had provided sufficient identification of appellant who had been known to her for decades, they being neighbors and appellant being the second cousin of her husband.
- When Floricita and Rosita proceeded to the victim's hut, they were startled upon seeing the victim dead, full of blood. Thereafter, they reported the matter to the barangay.
- The autopsy findings of Dr. Dignos showed that the victim suffered multiple hack and stab wounds, believed to have been inflicted by a bolo and a knife, which weapons were later recovered from appellant and Hebreo by the police authorities.[23]

There is no merit in appellant's insistence that Rosita may have mistakenly linked her gruesome discovery of the lifeless victim to the fact that he went to his hut earlier that night together with Enyong and Yolly to ask him whether or not he took his gun, and concluded that he was the author of the killing. Absence of evidence showing any motive to falsely testify against him, we find no reason to doubt Rosita's testimony that she saw appellant and Hebreo came out of the victim's house shortly after she heard the latter's cry. Her positive identification of appellant carries greater weight than the latter's bare denial and his self-serving claim that he was in his house sleeping at the time of the commission of the crime. Besides, only few minutes elapsed from the time Rosita heard the victim's cry to the time she saw appellant and Hebreo come out of the hut, and to the time she saw the victim's body in a pool of blood. Thus,

Q:

While you were watching t.v., do you remember of any unusual incident that happened?

A:

There was, Ma'am.

Q:

What is that?

A:

I heard the words "aray ko, aray ko, aray ko", Ma'am.

Q:

From where did you hear "aray ko, aray ko"?

A:

From the place where Ricardo Estores was sleeping, Ma'am.

Q:

And where was Ricardo Estores sleeping?

A:

In a hut, Sir.

Q:

And how far is the kubo to the place where you were?

A:

½ meter only, Ma'am.

Q:

Where were you then?

A:

I was inside our house, Ma'am.

x x x x

Q:

How many times did you hear "aray ko, aray ko"?

A:

For 3 times, Ma'am.

Q:

What did you do?

A:

I went by the window and peeped, Ma'am.

Q:

Did you find anything when you peeped thru the window?

A:

Yes, Ma'am.

Q:

What?

A:

2 men, Ma'am.

Q:

Where did you see these 2 men when you peeped thru the window?

A:

They already came from the hut, they were going outside already, Ma'am.

Q:

You are referring to the kubo where Ricardo Estores was sleeping?

A:

Yes, Ma'am.

Q:

Now, did you recognize these 2 persons coming out from the kubo?

A:

Yes, Ma'am.

Q:

Will you please name them?

A:

Elmercito Manalo and Rolando Hebreo, Ma'am.

Q:

And these are the persons whom you are pointing to a while ago?

A:

Yes, Ma'am.

Q:

When you said they were getting out from the door of the kubo, did you notice anything from their persons?

A:

Yes, Ma'am.

Q:

What is that?

A:

A jungle bolo, Ma'am.

Q:

What is all about this jungle bolo?

A:

A jungle bolo with a wooden handle, Ma'am.

Q:

Where did you see this jungle bolo?

A:

At the right hand of Elmercito Manalo, Ma'am.

Q:

And other than this bolo, did you find anything else?

A:

Yes, Ma'am, a small ice pick, (witness demonstrating a length of about 10 inches) it's a knife, Ma'am.

Q:

When you saw this kitchen knife, who was in possession?

A:

Rolando Hebreo, Ma'am. (witness pointing to the accused).

Q:

What else did you do?

A:

I was shocked when I saw them coming out of the door of the hut when I was peeping thru the window, Ma'am.

Q:

When you first saw Rolando Hebreo and Elmercito Manalo getting out from the door of the kubo, how far were you while peeping thru the window?

A:

1 arm's length away, Ma'am.

Q:

What happened after that?

A:

I saw them go out of that particular place running towards their respective houses, Ma'am.

Q:

To whose house were you saw them running?

A:

To the house of Elmercito Manalo, Ma'am.

Q:

And how far is the house of Elmercito Manalo to the kubo where the incident happened?

A:

6 meters away, Ma'am.

x x x x

Q:

After you saw them running towards the house of Elmercito Manalo, what did you do?

A:

It took me 10 minutes before [I] was able to go out of the house, Ma'am.

Q:

After 10 minutes you went out of your house?

A:

Yes, Ma'am.

Q:

Where did you go?

A:

I took a look at the hut, Ma'am.

Q:

And what did you find?

A:

After turning on the light we saw the dead Ricardo Estores, Ma'am.[24]

Even if we disregard appellant's extrajudicial confession and the weapons used in the killing which he claims to have been derived in violation of his constitutional rights under custodial investigation, still, his guilt may be based upon the following circumstances, to wit: 1) appellant went to Floricita's store before the incident happened carrying a jungle bolo; 2) he was drunk and mad at the victim whom he suspected of stealing his gun; 3) Rosita heard the victim cry "aray ko, aray ko, aray ko" from his hut and shortly thereafter she saw appellant carrying a jungle bolo and Hebreo carrying a knife coming therefrom; 4) Rosita saw the victim in a pool of blood inside his hut; and 5) the autopsy findings of Dr. Dignos showed that the victim suffered multiple hack and stab wounds, believed to have been inflicted by a bolo and a knife. These pieces of circumstantial evidence leave no room to doubt that appellant indeed committed the crime.

We cannot, however, agree with the trial court's finding that the appellant is guilty of murder. Treachery cannot be appreciated in this case for no prosecution witness saw how the assault started.[25] Treachery cannot be presumed but must be proved by clear and convincing evidence or as conclusively as the killing itself.[26] As Rosita testified, she only saw appellant and Hebreo come out of the victim's hut shortly after she heard the latter cried "aray ko, aray ko, aray ko." Where no particulars are shown as to the manner by which the aggression was commenced or how the act which resulted in the death of the victim began and developed, treachery can in no way be established from mere suppositions, drawn solely from circumstances prior to the killing.[27]

We agree with the Court of Appeals that the aggravating circumstances of evident premeditation and dwelling cannot be considered in the case at bar for the former was not proved, and the latter, although proven, was not alleged in the Information.

Since there was no qualifying circumstance proved, the crime committed by appellant is not murder but only homicide. Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is only reclusion temporal. As there is neither aggravating nor mitigating circumstance found by the trial court or shown after a review of the records, the penalty in this case shall be fixed at reclusion temporal in its medium period pursuant to Article 64(1) of the Revised Penal Code, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Applying the Indeterminate Sentence Law, the impossible penalty shall be within the range of prision mayor in any of its period as a minimum to reclusion temporal in its medium period as the maximum. The range of prision mayor is from 6 years and 1 day to 12 years, while reclusion temporal in its medium period, ranges from 14 years, 8 months and 1 day to 17 years and 4 months.[28]

Finally, the trial court's award of damages must be modified. The P75,000.00 civil indemnity awarded by the trial court must be reduced in accordance with prevailing jurisprudence fixing civil indemnity in cases of homicide at P50,000.00.[29] This award of civil indemnity requires no proof other than the fact of death as a result of the crime and the appellant's responsibility therefor. Anent the award of actual damages, the prosecution was able to prove actual damages in the sum of P44,280.00 which was supported by receipts and appeared to have been actually incurred in connection with the death, wake and burial of the victim. We sustain the award of moral damages but it must be reduced from P100,000.00 to P50,000.00 in accordance with current jurisprudence. Moral damages may be awarded in favor of the heirs of the victims upon sufficient proof of physical suffering, mental

anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[30] In the instant case, Florencia Estores, the mother of the victim, testified on the pain and anguish brought about by her son's untimely death. Lastly, the award of P50,000.00 as exemplary damages should be deleted considering that no aggravating circumstance was duly proven. Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages as a part of the civil liability may be imposed only when the crime was committed with one or more aggravating circumstances.

WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATION. As modified, appellant Elmercito Manalo y Dulay is convicted of the crime of homicide and sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum, and further ORDERED to pay the heirs of the victim the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P44,280.00 as actual damages. The award of P50,000.00 as exemplary damages is DELETED for lack of factual and legal basis.

Costs against the appellant.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. Del Castillo.

[2] Records, pp. 155-170. Penned by then Judge, now Court Administrator Christopher O. Lock.

[3] Id. at 1.

[4] Id. at 25.

[5] TSN, May 10, 1999, pp. 21-29.

[6] TSN, January 4, 1999, pp. 10-15.

[7] TSN, May 24, 1999, pp. 7-16.

[8] TSN, June 8, 1999, pp. 10-22.

[9] TSN, January 4, 2000, pp. 9-10.

[10] Id. at 13-18.

[11] Id. at 19-22.

[12] Id. at 23-24.

[13] Id. at 30-31.

[14] Records, p. 170.

[15] Rollo, p. 195.

[16] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[17] Rollo, p. 221.

- [18] *People v. Ayuman*, G.R. No. 133436, April 14, 2004, 427 SCRA 248, 257.
- [19] *Baleros, Jr. v. People*, G.R. No. 138033, February 22, 2006, 483 SCRA 10, 24-25.
- [20] RULES OF COURT, Rule 133, Sec. 4.
- [21] *Ungsod v. People*, G.R. No. 158904, December 16, 2005, 478 SCRA 282, 293.
- [22] *People v. Mangitngit*, G.R. No. 171270, September 20, 2006, SC E-Library.
- [23] *Rollo*, pp. 215-216.
- [24] *TSN*, May 10, 1999, pp. 21-28.
- [25] *People v. Abatayo*, G.R. No. 139456, July 7, 2004, 433 SCRA 562, 577.
- [26] *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 350.
- [27] *Id.*
- [28] *People v. Cabacan*, 436 Phil. 397, 406 (2002).
- [29] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, SC E-Library.
- [30] *People v. Abatayo*, *supra* note 25 at 582.

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