PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINADOR D. SURONGON, ACCUSED-APPELLANT.

G.R. NO. 173478. July 12, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Under consideration is this appeal by Dominador D. Surongon from the decision[1] dated January 19, 2006 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00372, affirming, with modification, an earlier decision[2] of the Regional Trial Court (RTC) of Antipolo City, Branch 73, which found appellant guilty beyond reasonable doubt of the crime of Murder for the death of one Allan Viduya y Cabidog and sentenced him to reclusion perpetua.

The case

On June 24, 1998, in the RTC of Antipolo City, an Information[3] for Murder was filed against herein appellant Dominador D. Surongon. Docketed in the same court as Criminal Case No. 98-15057 and raffled to Branch 73 thereof, the Information alleges:

> That on or about March 22, 1998 at about 4:00 o'clock in the afternoon, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a double bladed weapon, with intent to kill, acting with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one Allan Viduya y Cabidog with said bladed weapon on his back, thereby inflicting upon the latter mortal stab wounds which directly caused his death.
>
> Contrary to law.

Arraigned on July 26, 2000, appellant, assisted by counsel, entered a plea of "Not Guilty."[4] After a brief pre-trial, trial on the merits ensued, in the course of which the prosecution presented in evidence the testimonies of Sonny Campita and Ernie Manatlao, alleged eyewitnesses to the stabbing incident; that of Dr. Ma. Cristina Freyra, medico legal officer of the Crime Laboratory Section, Eastern Police District, who autopsied the victim's cadaver; and of Guadalupe Viduya, mother of the victim who testified on the civil aspect of the case.

For its part, the defense rested its case with the lone testimony of appellant himself.

The evidence

It is disputed that at the time of his violent death on March 22, 1998, Allan Viduya was only 15 years old and a second-year high school student.

The prosecution's evidence tend to establish that at about 4:00 p.m. of March 22, 1998, Allan was watching a basketball game at Upper Gumamela, Barangay Sta. Cruz, Antipolo City. With him at the time were his friends Sonny Campita and Ernie Manatlao. While the three (3) were watching the game, appellant arrived, walked in front of and around them, and later positioned himself behind them. From that position, appellant stabbed Allan twice at the latter's back using a knife of about a foot long. After stabbing Allan, appellant fled running but was

chased by Ernie and the other friends of Allan namely, Manny and Smart, who failed to catch up with him. Fallen, Allan managed to stand up, tried to pull the knife at his back and told Sonny Campita, "Pare, tulungan mo ako, sinaksak ako." Thereupon, Sonny hailed a tricycle and brought Allan to the Padilla Hospital in Cogeo, Antipolo City, where the wounded Allan was pronounced dead on arrival. Meanwhile, upon the request of the Antipolo Police Station, Dr. Ma. Cristina Freyra, medico-legal officer of the Eastern Police District, performed an autopsy on Allan's body. The doctor testified that Allan died of hemorrhage as a result of a stab wound at his back. She found two (2) stab wounds on Allan's back, one of which was fatal as it penetrated the lungs, pulmonary artery and the thoracic aorta. She opined that the instrument used in inflicting the wounds on Allan was a single bladed weapon and that, based on the location of the wounds, the assailant was at the back by the extreme left side of the victim during the attack. She added that it was possible that the victim was not aware of the impending attack because of the absence of any defense wound in his body.

Allan's mother, Guadalupe Viduya, declared that for Allan's wake and burial, the family spent about P69,000.00 but could not present the receipts therefor because she threw them away. In tears, she stated that for the death of her 15-year old son who was her youngest, she suffered extreme mental anguish and sleepless nights.

Denial and alibi are appellant's main pleas in exculpation. Thus, testifying in his own behalf, appellant vehemently denied the accusation against him and claimed that on March 22, 1998, he was at the house of his cousin Oscar at Sitio Tabing Ilog, Bagong Nayon, Cogeo, Antipolo City having a drinking spree with Oscar and a certain Kuya Nonoy from 2:00 p.m. up to 5:00 p.m. of said date. After the three of them consumed two and a half bottles of gin, he fell asleep at the house of his cousin Oscar and woke up at about 5:00 a.m. of the following day. Upon waking up the next morning, he prepared for his trip to Baguio where he worked as a construction worker. Accompanied by his brother, he took the 8:00 a.m. bus for Baguio. He returned back to Cogeo, Antipolo City after a week. Upon his return, he learned that he was being accused of killing Allan and because of fear that he may be wrongfully arrested, he went to the province where he was arrested on May 11, 2000, or more than two (2) years from the time the stabbing incident happened.

He admitted having a common-law wife in Sitio Gumamela, Barangay Sta. Cruz, Antipolo City but added that he visited her only every Saturday evening. When asked how long a time it would take him to reach Sitio Gumamela from Sitio Tabing Ilog, appellant answered more than half an hour by passenger jeepney.

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The trial court's decision

In a decision[5] dated July 1, 2004, the trial court found Surongon guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, and accordingly sentenced him to suffer the penalty of reclusion perpetua, thus:

> WHEREFORE, accused DOMINADOR SURONGAN is hereby found guilty beyond reasonable doubt, and is hereby sentenced to suffer the penalty of Reclusion Perpetua.
>
> SO ORDERED.

Therefrom, Surongon went on appeal to the CA on the lone assigned error that the trial court gravely erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

In the herein assailed decision dated January 19, 2006, the appellate court affirmed the trial court's judgment of conviction but modified it by awarding civil indemnity and moral and exemplary damages to the heirs of the victim. We quote the fallo of the CA decision:

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> WHEREFORE, premises considered, appeal is hereby DISMISSED and the assailed July 1, 2004 Decision of the RTC of Antipolo City, Branch 73, is hereby AFFIRMED with MODIFICATION that accused-appellant Dominador Surongon y Del Valio is ordered to pay the heirs of the victim, Allan Viduya, P50,000.00 as civil indemnity, P50,0000.00 as moral damages, and P25,000.00 as exemplary damages.
>
> Pursuant to Section 13(c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.
>
> SO ORDERED.

In view of the Notice of Appeal[6] interposed by appellant from the aforementioned decision of the appellate court, the entire record of the case was forwarded to this Court. In its Resolution[7] of September 20, 2006, the Court required the parties to simultaneously file their respective supplemental briefs, if they so desire. In their separate manifestations, the parties waived the filing of supplemental briefs and instead stand by their respective Briefs before the CA.

We thus take it that appellant's present recourse is anchored on his same submission a quo that his guilt for the crime of murder for the death of Allan Viduya on that fateful afternoon of March 22, 1998 has not been established by proof beyond reasonable doubt.

We AFFIRM with modification.

After a meticulous review of the evidence on record, the Court cannot see its way clear on how it could differ from the findings of both the trial and the appellate courts as to appellant's guilt for the offense charged against him.

As it were, appellant was positively identified as the perpetrator of the crime by two (2) prosecution witnesses who were with the victim at the time of the stabbing and who both witnessed how it happened. Sonny Campita and Ernie Manatlao, both of whom are even friends of appellant, testified that they recognized appellant as the latter walked in front of them and even sat beside the victim for awhile before going behind them and stabbing Allan twice at the latter's back. We quote Campita's testimony in this respect:

> Q
>
> While viewing the basketball game at that time, do you recall any unusual incident that happened?
>
> A Yes, sir.
>
> Q Will you please inform this Court what was that unusual incident?
>
> A Allan Viduya was suddenly stabbed by this Dominador Surongon.
>
> xxx xxx xxx
>
> Q How many times was Allan Viduya stabbed?
>
> A Two.
>
> Q What kind of weapon was used to stab Allan Viduya?
>
> A Knife.
>
> Q What kind of knife?

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A Thin knife but the length is about one ruler, including the handle.

Q Which hand of the accused was used to stab Allan Viduya?

A Right hand. [8]

Confronted with an intense cross-examination, this witness did not waiver in his narration that it was appellant who stabbed Allan,

Q

In fact, you did not see Dominador Surongon approach Allan Viduya, is that correct?

A

I saw him, he passed in front of us.

xxx xxx xxx

DEFENSE COUNSEL:

After Dominador Surongon passed in front of you, where did he go?

A

He proceeded at our back.

Q

And he was just walking, is that correct?

A

After he passed by in front of us, he sat beside us and rested for awhile and after that he stabbed Allan.[9]

Ernie Manatlao, whose presence at the scene of the incident was not at all disputed, corroborated Campita's account on all its material points. He testified, thus:

Q Will you please inform the Honorable Court what was that unusual incident.

A While I was seated beside Allan Viduya, I saw a person, who went around and when I turned my head, I saw that there was a knife protruding at the back of Allan Viduya.

Q Were you able to know the name of that person whom you saw went around?

A Yes.

Q What is the name?

A Dominador Surongon alias Bopi.

Q When you said he went around, what happened next?

A He stabbed the victim Allan Viduya.

Q How many times if you can recall this Dominador Surongon stabbed Allan Viduya?

A Twice.

xxx xxx xxx

Q

You said Allan Viduya was stabbed twice. Which part of the body was hit?

A His back. [10]

Given appellant's positive identification by eyewitnesses Campita and Manatlao, both of whom had no motive to falsely testify against the former, appellant's defense of bare denial and alibi must simply collapse. His claim that during the time material he was at his cousin's house in Sitio Tabing Ilog and was having a drinking spree with his cousin Oscar and a certain Nonoy fails to impress. For alibi to prosper, appellant must show that he was at such place for such period of time that it was physically impossible for him to be at the place where the crime was committed at the time of its commission.[11] As admitted by appellant himself, Sitio Gumamela, where the incident happened, is only a 30-minute drive away from Sitio Tabing Ilog. Hence, it is not at all physically impossible for him to be at the scene of the crime at the time of its commission. We may add that neither his cousin Oscar nor Nonoy with whom he allegedly had a drinking spree was ever called upon by appellant to corroborate his tale. Already a weak defense, alibi becomes even weaker by reason of the failure of the defense to present any corroboration.[12]

Worse still is appellant's flee to the province after learning that he was being accused of having killed Allan. If appellant was truly innocent, as he professed himself to be, he could have surrendered to the police to clear his name. He did not. To our mind, his flight to the province where he was arrested two (2) years after that fateful afternoon of March 22, 1998 removed any remaining shred of doubt as to his guilt. As the Holy Scripture teaches, "the guilty fleeth but the innocent is as bold as the lion."

After resolving the issue of appellant's culpability, we now determine whether or not the commission of the crime was attended by the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving him of the chance to defend himself or repel the aggression, thus ensuring its commission without risk to the aggressor and without any provocation on the part of the victim.[13] Here, at the time of the fatal attack, Allan was watching a basketball game, evidently fully unaware that someone from behind him would thrust a knife at his back. By all indications, Allan was without opportunity to evade the thrust, much less defend himself, or, worse still, retaliate. For sure, the testimony of the medico-legal officer to the effect that she found no defense wound on the body of Allan could only mean that the latter was completely defenseless when attacked.

In fine, we are in full accord with the findings of the two courts below that the killing of Allan was attended by the qualifying circumstance of treachery, which calls for the imposition upon appellant of the penalty of reclusion perpetua, as provided for in Art. 248 of the Revised Penal Code.

This brings us to appellant's civil liability about which the trial court completely ignored. In addition to the CA's award of moral and exemplary damages and civil indemnity, we find it proper that temperate damages must also be awarded to the heirs of Allan. The victim's mother testified that the family incurred P69,000.00 for funeral and burial expenses, but she was not able to present receipts. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered some pecuniary loss although the exact amount was not proved with certainty.[14] In People v. Abrazaldo,[15] we held that where, as in this case, the amount of actual damages cannot be determined because no receipts were presented to prove the same but it is shown that the heirs are entitled thereto, temperate damages may be awarded, fixed at P25,000.00. Considering that funeral expenses were obviously incurred by the victim's heirs, an award of P25,000.00 as temperate damages is proper.

WHEREFORE, the assailed decision dated January 19, 2006 of the CA in CA-G.R. CR-HC No. 00372 is

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AFFIRMED, with the MODIFICATION that appellant is ordered to pay the heirs of the victim, in addition to the P50,000.00 moral damages, P25,000.00 exemplary damages and P50,000.00 civil indemnity, the amount of P25,000.00 as temperate damages.

Cost de officio.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, and Azcuna, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Penned by Associate Justice Vicente Q. Roxas, and concurred in by Associate Justices Godardo A. Jacinto (now ret.) and Juan Q. Enriquez, Jr.; rollo, pp. 2-15.

[2] CA Record, pp. 8-10.

[3] RTC Record, pp. 1-2.

[4] Id. at 27.

[5] CA Records, pp. 30-34.

[6] Id. at 83.

[7] Rollo, p. 16.

[8] TSN dated February 8, 2001, pp. 5-6.

[9] Id. at 16-17.

[10] TSN dated June 28, 2001, pp. 5-7.

[11] People v. Enriquez, Jr., G.R. No. 158797, July 29, 2005, 465 SCRA 407.

[12] People v. Fuertes, G.R. No. 126285, September 29, 1998, 296 SCRA 602.

[13] People v. Gutierrez, G.R. Nos. 137610-11, February 6, 2002, 376 SCRA 360.

[14] People v. Ronas, G.R. Nos. 128088 & 146639, January 31, 2001, 350 SCRA 663.

[15] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

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