

PLAINTIFF-APPELLEE, VS. CONRADO M. GLINO, ACCUSED-APPELLANT.

G.R. NO. 173793. December 04, 2007

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

BEWARE of drunk passengers. They pose danger to life and limb. Merely talking to them or telling them to sit properly can be fatal, as what happened to one of two victims in the case at bar.

The present law prohibits and punishes only drunk driving.[1] There is no law banning a drunk person from riding a public vehicle, or the latter's driver from allowing a person who appears to be drunk to board a public conveyance. [2]

A drunk passenger or one under the influence of liquor or drug poses a veritable peril to the other passengers. He is prone to react irrationally and violently, due to lack or diminution of self-control. Senseless loss of lives and physical harm can be avoided, and the riding public duly protected, if the potential danger posed by drunk passengers can be addressed properly.

It is the duty of the court, whenever it has knowledge of any act which it may deem proper to repress and which is not punishable by law, to report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.[3] We leave it to the authorities concerned to do the needful as they see fit.

MAG-INGAT sa mga lasing na pasahero. Sila'y mapanganib. Ang kausapin o sabihan lamang sila na umupo nang maayos ay maaari mong ikasawi. Ganito ang sinapit ng isa sa dalawang biktima sa kasong ito.

Ang kasalukuyang batas ay nagbabawal at nagpaparusa lamang sa pagmamaneho ng lasing. Walang batas na nagbabawal sa taong lasing na sumakay sa pampublikong sasakyan, o sa drayber na payagan ang taong sa kilos ay lasing na sumakay sa pampublikong sasakyan.

Ang pasaherong lasing o sino man na nasa impluwensya ng alak o droga ay may dalang panganib sa ibang pasahero. Malamang na sila ay kumilos nang walang katwiran o manakit dahil sa kabawasan ng pagwawari o pagpipigil sa sarili. Maiwasan ang walang kabuluhang pagkitil ng buhay at pagkapinsala, at ang mga namamasaheng ay mapangangalagaan laban sa panganib, kung ito'y mabibigyan ng karampatang lunas.

Tungkulin ng hukuman, kung alam nito na ang isang gawa ay marapat supilin at hindi pa ipinagbabawal ng batas, na ipagbigay-alam sa Pangulo, sa pamamagitan ng Kagawaran ng Katarungan, ang mga dahilan na pinaniniwalaan ng hukuman kung bakit ang nasabing gawa ay dapat maging layon ng pagsasabatas. Ipinapaubaya namin sa kinauukulang maykapangyarihan kung ano ang dapat gawin.

Before the Court is an appeal under Rule 124, Section 13(c)[4] of the 2000 Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC, from the Judgment[5] of the Court of Appeals (CA) affirming in toto the

Decision[6] of the Regional Trial Court (RTC) in Las Piñas City, Metro Manila, convicting accused-appellant Conrado Gline of murder and attempted murder for the senseless killing of Domingo Boji and the stabbing of his wife, Virginia Boji.

The Facts

On November 15, 1998, at around 7:20 p.m., in Moonwalk, Las Piñas City, husband and wife Domingo and Virginia Boji hailed a passenger jeepney bound for Alabang-Zapote Road. The couple sat on the two remaining vacant seats on opposing rows of the jeepney. Virginia seated herself on the vehicle's left side while Domingo occupied the vacant seat at the right row.[7]

Moments later, the woman seated next to Virginia alighted. Accused-appellant Conrado Gline took her place. He was reeking of liquor. As the jeepney ran its normal route, Virginia noticed accused-appellant inching closer to her. His head eventually found its way on Virginia's shoulder. Irrked, Virginia sought accused-appellant's attention and asked him to sit properly, citing adequate space. Accused-appellant angrily replied, "Oh, kung ayaw mong may katabi, bumaba ka, at magtaxi ka!" Virginia decided to ignore his snide remarks. She then turned her back on him.[8]

Accused-appellant, however, persisted in violating Virginia's personal space, leaning on the latter's shoulders. It was at this point that Domingo decided to tell Gline to sit properly. Accused-appellant arrogantly retorted, "Anong pakialam mo?" Domingo reasoned out that he is Virginia's husband. Domingo further said, "Kasi lalasing-lasing ka, hindi mo naman kaya!" [9]

Marvin Baloes, who, it turned out, was Gline's equally drunk companion, cursed Domingo. Baloes then provokingly asked the latter, "Anong gusto mo?" Domingo replied, "Wala akong sinabing masama." [10] After the heated verbal tussle, accused-appellant and Baloes appeared to have calmed down, confining themselves to whispering to one another.[11]

When the jeepney approached Casimiro Village, Baloes turned to the driver and told him that he and Gline were about to alight. As the jeepney ground to a halt, Baloes unexpectedly drew an improvised knife and stabbed Domingo in the chest.[12] Accused-appellant then unfolded a 29-inch Batangas knife (balisong) and joined Baloes in stabbing Domingo. Surprised and shocked at the sudden attack, Domingo failed to offer any form of resistance to the duo's vicious assault. In all, Domingo sustained nine stab wounds throughout his body.[13]

Virginia tried vainly to shield Domingo from his assailants. She tightly embraced Domingo. Virginia's efforts, however, all went for naught as accused-appellant Gline and Baloes were unrelenting. When the senseless assault ceased, Virginia found herself bloodied from incised wounds in her fingers.[14]

The other passengers of the jeepney scampered for the nearest exit immediately after the first blow was struck. Some of them had to resort to jumping from the vehicle's window to avoid harm's way.[15]

Accused-appellant Gline and Baloes attempted to flee the scene of the crime and ran towards Camella Center. Baloes, however, fell down to the ground due to intoxication. Gline, unmindful of his companion, was able to run a distance of 45 meters before he was apprehended by traffic enforcers Alvin Cristobal and Ruben Ramirez. The two traffic aides, who were the first to respond to the crime scene, caught sight of the slow-moving jeepney and of the passengers jumping off it. With the help of a concerned motorist, they were able to pin Baloes and Gline to the ground. They later turned the two suspects over to the police, who arrived shortly thereafter.[16]

Subsequently, Virginia and Domingo were brought to the University of Perpetual Help, Rizal Medical Center in Las Piñas City. Domingo was, however, pronounced dead after a few minutes. Domingo's chest wound proved

mortal.[17]

On November 18, 1998, accused-appellant Glino and Baloes were indicted for murder[18] for the death of Domingo Boji and attempted murder[19] for the stabbing of Virginia Boji. The accusatory part of the Information for murder reads:

Criminal Case No. 98-1310:

That on or about the 15th day of November 1998, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, with intent to kill by means of treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab with bladed weapons one Domingo Boji y Daza, suddenly and without warning hitting him on the different parts of his body, thereby inflicting upon him serious and mortal stab wounds which directly caused his death.

CONTRARY TO LAW.[20]

The indictment for attempted murder bears the following accusation:

Criminal Case No. 98-1311:

That on or about the 15th day of November 1998, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping and aiding each other, with intent to kill, with treachery and evident premeditation, and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault, and stab with bladed weapons one Virginia Boji y Revillas, suddenly and without warning, thereby commencing the commission of murder directly by overt acts but did not perform all the acts of execution which would produce the crime of murder as a consequence by reason of some cause or accident other than their own spontaneous desistance, that is, because the injury inflicted to Virginia Boji y Revillas was not sufficient to cause her death.

CONTRARY TO LAW.[21]

On June 15, 1999, accused Marvin Baloes succumbed to cardio-pulmonary arrest while on detention.[22] Consequently, his name was dropped from the information. Pre-trial commenced with respect only to accused-appellant Glino. Thereafter, trial ensued.

The People's evidence, which essayed the foregoing facts, was principally supplied by Enrique Villaruel, Virginia Boji, SPO2 Wilfredo Dalawangbayan and Alvin Cristobal.

Villaruel testified that he was a co-passenger of the spouses Boji in the jeepney where the gruesome stabbing incident took place. Villaruel was then on his way home to Anabu I, Cavite. He witnessed the crime as it unfolded. According to him, accused-appellant Glino and Baloes both stabbed Domingo; that accused-appellant was armed with a Batangas knife while Baloes used an improvised knife; that the improvised knife was left on the floor of the jeepney as accused-appellant and Baloes fled the scene of the crime.[23]

Virginia narrated that she distinctly saw Baloes stab Domingo in the chest area. Glino was blocking her path, preventing her from giving aid to her husband. When Domingo was about to fall down from where he was seated, she embraced him. As she was holding Domingo, a knife was thrust into her, wounding her in the hands.[24]

On cross-examination, she disclosed she did not see who between accused-appellant and Baloes caused her wounds; that she saw accused-appellant Glino stab her husband; that they met accused-appellant and Baloes only

in the jeepney.[25]

SPO2 Dalawangbayan testified that he was the investigator assigned to handle the case involving accused-appellant and Baloes. The two suspects were turned over to him by traffic aides Cristobal and Ramirez. Likewise turned over to him was a bladed weapon, a 12-inch improvised knife, confiscated from the person of Baloes.[26]

At the hospital, he found Domingo in critical condition. He later learned that the victim expired shortly after his visit. Virginia suffered from incised wounds in her right hand.[27] After concluding his investigation, he prepared a report.[28]

Cristobal narrated that he is a traffic aide assigned at the Casimiro and BF Resort intersection in Las Piñas City. On the night in question, he noticed a slow-moving passenger jeepney creeping onto the sidewalk. Moments later, the jeepney's passengers were jumping out of its windows.[29]

Suspecting a robbery, he and his partner Ramirez immediately gave chase. A man with bloodied clothes, later identified as Baloes, ran away from the vehicle but fell to the ground shortly after. Another man, accused-appellant Glino, was able to run for more than five minutes before they caught up with him.[30] He and Ramirez later executed a Pinagsamang Sinumpaang Salaysay.[31]

Upon the other hand, the trial court summed up accused-appellant's defense, anchored on plain denial, in the following tenor:

The evidence for the defense consists mainly of the lone testimony of accused Conrado Glino, who testified that he is the same accused in this case for murder. He did not know the other accused Marvin Baloes prior to November 15, 1998 whom he knew only at the UI for the first time. On November 15, 1998, at around 7:20 in the evening, he was inside the passenger jeepney which he boarded at Equitable, Las Piñas City near Moonwalk to go home at Imus, Cavite. He did not have any companion. He rode on a passenger jeep bound to Zapote. He could not recall the number of people inside the jeepney because the seats were all occupied. He occupied the right side seat of the driver at the middle of the seat on the right side. Then he saw the victim was stabbed by accused Baloes. He knew the name of Baloes while they were detained at the UI. He did not know who was stabbed. The stabbing took place between the areas of Casimiro and Uniwide. The person stabbed died. He was there watching while the person was being stabbed by Baloes who was seated also at the right side inside the jeep but seated at the rear most portion of the jeep. The person stabbed seated at the left seat inside the jeep and seating also at the rear portion of the jeep. Baloes stabbed the person in his body, started at the chest, stomach and other parts of the body. He did not know how many times Baloes stabbed the victim. There was an argument between Baloes and the wife of the victim prior to the stabbing incident. They had an argument for a short period of time which he did not know what it was about. They were at the vicinity near Uniwide when the argument started. He would not know how long the argument lasted and would not recall the statements of the lady. He said they were having an argument because the lady seating beside Baloes and after that lady was only a passenger away from him. Victim said to Baloes while pointing his finger "Tumigil ka dyan, susuntukin kita." Then Baloes suddenly drew a bladed weapon and stabbed him. Together with other passengers, they alighted from the vehicle because he was afraid. He waited for another passenger jeep so he could go home. He was not able to go home because he was arrested by the police. He could not estimate how many minutes lapsed after he was able to go down that jeep when he was arrested as he had no wrist watch, but that was for a short period of time. Ramirez, the not so tall police officer, arrested them and they were brought to the UI after he and Baloes were immediately handcuffed using only 1 handcuff. Baloes hurriedly went down and ran away after the incident, going back towards Moonwalk. He was not arrested at the same place where Baloes was arrested. He denied the testimony of Mrs. Boji that he and Baloes had an argument inside the jeepney they were riding regarding some space and requested that he move a bit which caused the commotion resulting to this incident. While they were having an argument, he was seated inside the jeep and he just looked

at them. He denied having argued with Mrs. Boji and said that none argued with him. He knows that Baloes died already (TSN, 1 September 2004).

On cross-examination, he declared that his complete name is Conrado Montes Glino. Her mother's name is Juliana Montes Glino. He denied knowing the middle name of co-accused Marvin, Montes Baloes. Shown a copy of the Information where it appeared that the middle name of Marvin Baloes is also Montes, he agreed that the middle name is Montes. His place of residence is Malagasan 1st, Imus, Cavite. Baloes did not tell him while they were under the custody of the police that he is also a resident of Malagasan 1st, Imus, Cavite. He did not ask Baloes where he was from while they were together at the UI. But he admitted that on November 15, 1998, at around 7:20 in the evening, he and Baloes were on board one and the same jeepney bound for Zapote; that while the jeep was near Uniwide Metro Mall, there was an untoward incident that took place inside the jeep; that in that incident, a certain Domingo Boji was stabbed to death. He did not know that Virginia Boji was also stabbed and wounded. He would not know how many the passengers were in that jeepney as he failed to count, but there were many passengers. Both seats at the back were occupied by passengers, but he did not notice if the seat in front of the jeepney was also occupied. There was a commotion when Domingo was stabbed. He immediately alighted the vehicle because he was afraid and waited for another jeepney to transfer to another bound to Zapote.

He admitted that among the passengers, only he and Baloes were arrested by the police officers because he was pointed to by the witness as the assailant of Domingo Boji. Until the time of hearing, no one among the jeepney passengers were arrested for the death of Domingo and injury inflicted to Virginia Boji. His co-accused, in this case, Marvin Baloes is already dead. He has no other co-accused except Baloes. He came to know her before she took the witness stand and positively identified him as the assailant. When he was arrested by the police officers, he shouted why they arrested him and the police said that he had to go with them and just explain at the police precinct. He did not resist when the police officers arrested him. He was forced to go with them because they handcuffed him. He was waiting for a ride as he would transfer to another jeepney in going home. It was PO Ramirez who arrested him. He did not file a case against Ramirez for arresting him without a valid reason because he was at the detention cell nor seek for help in filing a case against Ramirez because he did not know how as that was the first time he had a case. He had plan to file the case against Ramirez who brought him at the UI before PO1 Dalawangbayan. They were not investigated nor interrogated. He stayed at the UI for one week, then he was transferred at the Las Piñas City jail. He told the police investigator, PO1 Dalawangbayan, that it was Baloes who stabbed and killed Domingo Boji but that was not included in the incident. PO1 Dalawangbayan did not do anything when he told him that he was not included in the stabbing incident because the one who was talking only was Virginia Boji. He did not ask PO1 Dalawangbayan to enter his statement in the blotter. Before he was transferred to the city jail of Las Piñas City, he was brought to the City Prosecutor's Office for inquest (TSN, 22 September 2004).[32]

RTC and CA Dispositions

On November 22, 2004, the RTC handed down a judgment of conviction, disposing as follows:

WHEREFORE, judgment is rendered finding accused Conrado M. Glino GUILTY beyond reasonable doubt of Murder and Attempted Murder and hereby sentenced as follows:

- In Criminal Case No. 98-1310, to suffer the penalty of Reclusion Perpetua and its accessory penalty and indemnify the heirs of Domingo Boji y Daza the sum of P50,000.00;
- Criminal Case No. 98-1311, to suffer an indeterminate prison term of 4 years and 2 months of prison correccional medium as minimum, to 8 years and 1 day of prison mayor medium as maximum and to suffer the accessory penalty provided for by law and pay Virginia Boji y Revillas the sum of P101,549.00 actual damages and the sum of P100,000.00 moral damages;
- And to pay the costs in both cases.

SO ORDERED.[33]

Accused-appellant elevated his conviction to the CA by way of an intermediate review, conformably with the ruling in *People v. Mateo*.^[34] On May 26, 2006, the CA affirmed the RTC judgment in full. The fallo of the CA decision reads:

WHEREFORE, premises considered, the assailed decision dated November 22, 2004 of the Regional Trial Court, Branch 275, Las Piñas City in Criminal Cases Nos. 98-1310 and 98-1311 is hereby AFFIRMED.

SO ORDERED.[35]

Issues

Undaunted, accused-appellant interposed the present recourse.

On September 13, 2006, We resolved to require the parties to submit their respective supplemental briefs, if they so desired, within thirty (30) days from notice.

In a Manifestation dated November 13, 2006, the Office of the Solicitor General, for plaintiff- appellee, opted to dispense with the filing of a supplemental brief. Accused-appellant, through the Public Attorney's Office, hoists the same lone error he raised before the appellate court, viz.:

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE PRIVATE COMPLAINANT'S ADMISSION THAT THE ACCUSED-APPELLANT DID NOT STAB HER HUSBAND AND THAT SHE DID NOT SEE THE ACCUSED- APPELLANT STABBED HER.[36]

In his supplemental brief, accused-appellant contends that the identity of the assailant was not firmly established. The evidence, he argues, points to Baloes, who died even before the trial began, as the perpetrator of Domingo's killing and Virginia's stabbing. In the alternative, accused-appellant submits that he is guilty of homicide and attempted homicide only, not murder and attempted murder, due to the absence of the qualifying circumstance of treachery.[37]Our Ruling

We first tackle the conviction for murder.

Positive Identification

Accused-appellant makes capital of Virginia's identification of Baloes as the person who stabbed her husband, Domingo. According to him, the trial court gravely erred in rejecting his defense that he was an innocent bystander. He insists he was not acquainted with Baloes. They met each other only when they were both tagged by the police as the persons responsible for the melee.

We are unconvinced. The witnesses for the People were consistent in the identification of accused-appellant as one of two assailants who mortally stabbed Domingo. Villaruel, a key eyewitness for the prosecution, testified thus:

Q:

Mr. Witness, at about seven-twenty in the evening of November 15, 1998, do you remember where you were then?

A:

Yes, Sir.

Q:

Where were you at that time?

A:

I was at the corner of Angela Village in Alabang, Zapote Road waiting for a ride.

Q:

While you are waiting there, waiting for a ride at the said place, do you remember what happened next, if any?

A:

So when I was able to take a ride a jeepney in the road going to Baclaran, that is the time that I witness the incident.

Q:

And then, by the way, where were you going at that time, Mr. Witness?

A:

I was on my way going on at Anabu I, Cavite.

Q:

Mr. Witness, after you took a ride in a passenger jeepney going to on your way home, do you remember what happened next, if any?

A:

When I boarded the jeepney, the jeepney has no vacancy, so I just hang-on at the back of the jeepney.

Q:

And then, what else happened after that, if you remember?

A:

When we are already traveled a short distance, one of the passenger alighted, sitted (sic) on the left side.

Q:

And, what happened next, after you are able to take a sit inside the passenger jeepney. After one of the passenger alighted?

A:

After a while, another passenger alighted on the right seat of the jeepney.

Q:

What else happened after another passenger alighted from the said jeepney?

A:

And then, that is the time that I noticed that the two male persons moved closely to the woman, who is sitted in front of me.

Q:

And then, what happened next, after you noticed two men moved closely to a woman, in front of yours?

A:

One of the male passengers, who moved closely to the woman, little bit lay down his head on the shoulder of the woman.

Q:

And, what the woman do after this male passenger lay down his head on the shoulder of the woman?

A:

I saw that the woman is avoiding the male passenger, and one of my seatmates on my right side spoke and asked the male passenger to sit properly.

Q:

And what did this male passenger do after the man sitted before you told him to sit properly?

A:

He answered and said "ANONG PAKIALAM MO!"

Q:

And what was the reaction of the man sitted beside you, when the male passenger said "ANONG PAKIALAM MO!"?

A:

And that, and he answered that because that woman were you lying is my wife.

Q:

And what did the male passenger do after the said man introduced himself as the husband of the female passenger?

A:

"NAGMURA PO."

Q:

What else happened after the male passenger coursed him?

A:

And then the other male passenger who moved closely to the woman told that "KASI, LALASING-LASING KA HINDI MO NAMAN KAYA."

Q:

And what else happened after that?

A:

The man sitted beside me thought that it was already okay, but it is not, because the two male persons, who moved closely to the woman, were companions, were together and one of them asked to alight from the vehicle.

Q:

And what happened next after one of the two male persons, who moved closely to the woman, told to alight?

A:

Now, we thought that they are going to alight from the vehicle but when they stood up, they talked to one another and suddenly stabbed the male passenger, sittted beside me.

Q:

Who among these two male passengers stabbed the man sittted beside you?

A:

The one who stabbed is the one who pacified the incident that happened before and the second stabbed was made by the other male passenger.

Q:

How many times did these two male passengers stabbed the man, who was sittted beside you?

A:

I cannot count but I know it is many times.[38]

Villaruel's account of the incident dovetails significantly with that of Virginia:

Q:

Madam Witness, at about seven-twenty in the evening of November 15, 1998, do you remember where you were then?

A:

Yes, Sir.

Q:

Where were you at that time?

A:

We were at Moonwalk.

Q:

You said we, who are your companions at that time?

A:

My husband, Sir.

Q:

Who is your husband?

A:

Domingo Boji, Sir.

Q:

Why were you there at the said place during that particular date and time with your husband?

A:

We bought fish.

Q:

And, after you bought fish, do you remember what happened next, if any?

A:

And then after that my husband stopped a jeepney bound to Alabang Zapote.

Q:

What happened next, after your husband stopped a passenger jeepney bound for Zapote?

A:

Then we boarded a jeepney, with one vacant seat on the right and one on the left.

Q:

And where did you seat when you boarded a passenger jeepney?

A:

On the left side, Sir.

Q:

And how about your husband, where did he seat?

A:

On the right side, Sir.

Q:

And then, while you were then on board of the said passenger jeepney, at that time, do you remember what happened next, if any?

A:

While we are on board of the jeepney and the jeepney is on motion, seated on my right side is a lady.

Q:

And how about on your left side, do you know who was sitting?

A:

A lady also, Sir.

Q:

And what else happened after that?

A:

And then, after a while, the lady on my right side alighted.

Q:

And then, what happened next, after the lady sitting on your right side alighted from the jeepney?

A:

Suddenly, who is drunk get near to me.

Q:

And how did you come to know that this man, who went near beside you, was drunk?

A:

Because he smells liquor.

Q:

And then what happened next after this man, you claimed drunk, seated beside you?

A:

And then he leaned on my shoulder.

Q:

And what did you do after this man on your shoulder?

A:

I asked him to move away, considering that there is still a space.

Q:

And what was the reaction of this man?

A:

He got mad at me and he said "OH, KUNG AYAW MONG MAY KATABI, BUMABA KA, AT MAG-TAXI KA."

Q:

And what did you do after this man got mad at you and ordered you to alight from the said jeepney?

A:

So I turned my back to him.

Q:

And what happened next after you turned your back to him?

A:

And again he leaned on my shoulder.

Q:

What happened next after this man leaned again on your shoulder?

A:

And he was accosted by my husband.

Q:

How did your husband accosted this man?

A:

My husband asked him to sit properly, and he said that I am his wife.

Q:

And what was the reaction of this man?

A:

His companion got mad.

Q:

Where was the companion of the drunk man seated, who got angry?

A:

Beside the man, who is drunk.

Q:

And then what else happened?

Court:

This man, who was leaning on your shoulder, and the man, who got mad, was seated side by side?

A:

Yes, Your Honor.

Q:

What did this companion of the man, seated beside you, tell you, if any?

A:

He answered my husband and asked "what do you want."

Q:

And what was the reply of your husband?

A:

My husband answered "I did not say anything wrong."

Q:

What was the reply of this companion of the man seated beside you?

A:

None, Sir.

Q:

What else happened, while you were there on board of the said passenger jeepney?

A:

While we are still on board on the jeepney approaching the place of Casimiro Village, and the jeepney moves slowly, the companion of this drunk man asked the driver to stop because they will alight.

Q:

And then what happened after that, after the companion of this drunk man ordered the driver to stop?

A:

When this man asked his companion, the drunk man, to alight from the vehicle, and I am seated, while I am looking down and I noticed, I looked to them they are going to alight the vehicle I noticed that they suddenly stabbed my husband. And the two persons announced "HOLDAP ITO." And when I look to them, I saw that they stabbed my husband.

Court Interpreter:

As the witness demonstrating while it seems that she was stabbed on the downward thrust and the husband was stabbed on the chest.

Q:

Who are these man, you are referring to, who stabbed your husband?

A:

The one who died already, Marvin.

Q:

Who was this Marvin, the one seated beside you or the companion of the drunk man?

A:

The other man, Sir.

Q:

Did you notice how many times Marvin stabbed your husband?

A:

When I look again, I noticed that only once because the knife is still on the chest of my husband.

Court:

Where was your husband seated in relation to your seat?

A:

In front of me, Your Honor, on the other side.

Q:

And what did you do when you saw Marvin stabbed your husband?

A:

None, Sir, I am just looking to nothing.

Q:

And after Marvin stabbed your husband, do you remember what happened next, if any?

A:

Because Conrado is blocking me, he is in front of me, it seems that they are gambling to a knife to one another.

Q:

And then, what else happened after that?

A:

And then, when I looked at them again, I saw that my husband seems to fall from where he was seated, so I embraced, then another stab came in hit my hands.[39]

As this Court has reiterated often enough, the matter of assigning values to the testimonies of witnesses is best left to the discretion of the trial judge.[40] In *People v. Quijada*,[41] the Court aptly held:

Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect. For, the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.

The doctrine was reiterated with greater firmness in the ponencia of now Chief Justice Reynato Puno in *People v. Ave*:^[42]

x x x It is an established rule that when it comes to credibility of witnesses, appellate courts generally do not overturn the findings of trial courts. The latter are in a best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor, and behavior in court. x x x

Verily, compared to appellate magistrates who merely deal and contend with the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them, the trial judge confronts the victim or his heirs, the accused and their respective witnesses. He personally observes their conduct, demeanor and deportment while responding to the questions propounded by both the prosecutor and defense counsel. Moreover, it is also the trial judge who has the opportunity to pose clarificatory questions to the parties. Elsewise stated, when a trial judge makes his findings as to the issue of credibility, such findings, especially if affirmed by the CA, bear great weight, at times even finality, on the Court.[43] We see no cogent reason to depart from these settled doctrines.

Conspiracy

Even assuming, for the nonce, that it was Marvin Baloes who inflicted the fatal stab, accused-appellant cannot escape culpability. Their obvious conspiracy is borne by the records. There is conspiracy when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence. It may be inferred from the conduct of accused indicating a common

understanding among them with respect to the commission of the offense.[44]

It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. Proof that accused acted in concert, each of them doing his part to fulfill the common design to kill the victim will suffice to support a conviction.[45] In conspiracy, it matters not who among the accused actually killed the victim. The act of one is the act of all; hence, it is not necessary that all the participants deliver the fatal blow. Tersely put, each of the accused will be deemed equally guilty of the crime committed.[46]

The acts of accused-appellant Glino and Baloes before, during and after the killing of Domingo are indicative of a joint purpose, concerted action and concurrence of sentiment. In her testimony before the trial court, Virginia categorically narrated that while Baloes was stabbing Domingo, accused-appellant Glino was blocking her path, effectively preventing her from rendering aid to her husband.[47] Accused-appellant later joined Baloes in stabbing Domingo with a Batangas knife.[48]

Lame Denial

Too, we sustain the RTC and the CA's rejection of accused-appellant's defense founded on denial. Time and again, this Court has ruled that denial is the weakest of all defenses. It easily crumbles in the face of positive identification by accused as the perpetrator of the crime.[49] Here, no less than two eyewitnesses in Villaruel and victim Virginia positively and categorically named Glino as one of the Boji couple's assailants. Their identification of accused-appellant was unwavering, made in a simple and straightforward manner. Corollarily, they had no ill motive to testify falsely against Glino.[50] Upon the other hand, other than his bare denial, no corroborating evidence was put forth to substantiate accused-appellant's disparate account of the incident.

Treachery

Accused-appellant next argues that he should be made liable for homicide only. He claims treachery did not attend the killing of Domingo.

That treachery or alevosia was present is incontrovertible. The essence of this qualifying circumstance is the sudden and unexpected attack by the assailant on an unsuspecting victim, depriving the latter of any real chance to defend himself.[51] It is employed to ensure the commission of the crime without the concomitant risk to the aggressor. The rule is well-settled in this jurisdiction that treachery may still be appreciated even though the victim was forewarned of danger to his person.[52] What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[53]

Concededly, victim Domingo was caught unaware that an attack was forthcoming. Although he had a verbal exchange with accused-appellant and Baloes, the assault was sudden, swift and unexpected. All of the passengers inside the jeepney, including Domingo, thought all along that the tension had ceased and that Glino and Baloes were about to alight. Domingo was overpowered by accused-appellant Glino and Baloes, who took turns in stabbing the hapless victim. By all indications, Domingo was without opportunity to evade the knife thrusts, defend himself, or retaliate. In sum, the finding of treachery stands on solid legal footing.

No Attempted Murder But Less Serious Physical Injuries

We now proceed to calibrate accused-appellant's liability for the incised wounds sustained by Virginia. Both the trial court and the appellate court found Glino liable for attempted murder. The RTC and the CA are in agreement that there was intent to kill Virginia as well.

An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by *dolo*.^[54]

In *People v. Delim*,^[55] the Court had occasion to explain the rudiments of proving intent to kill in crimes against persons. It may consist in: (1) the means used by the malefactors; (2) the nature, location and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; (4) the circumstances under which the crime was committed; and (5) the motives of accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.^[56]

In the case under review, intent to kill Virginia is betrayed by the conduct of accused-appellant and his co-assailant Baloes before, at the time of, and immediately after the commission of the crime. In her testimony before the trial court, Virginia disclosed that she was shocked and was initially unable to come to Domingo's succor as the first blow was struck; that as Domingo was about to fall down from where he was seated, she embraced him; that she tried to shield him from further attacks; that when the assault ceased, her finger was gushing with blood.^[57]

If the assailants also intended to kill her, they could have easily stabbed her in any vital part of her body. They did not. The nature and location of her wound militates against the finding of their intent to kill. According to the physician who examined her immediately after the incident, Virginia suffered from an incised wound measuring 2.5 centimeters by 0.2 centimeter in her fifth digit, right hand.^[58]

Gleaned from the foregoing, it is crystal-clear that the wound on Virginia was inflicted during her attempt to shield Domingo from accused-appellant's and Baloes' knife thrusts. It bears stressing that Virginia embraced Domingo while the assault upon him was at its peak. Evidently, the wound was inflicted while she was in that position.

The wound required medical attendance, and rendered Virginia incapable of labor, for a period of ten (10) to thirty (30) days.^[59] Clearly, accused-appellant Glino should be held liable for less serious physical injuries only, and not attempted murder.

Although the indictment was for attempted murder, a finding of guilt for the lesser offense of less serious physical injuries is tenable, considering that the latter offense is necessarily included in the former.^[60]

The essential ingredients of physical injuries constitute and form part of those constituting the felony of murder.^[61] Simply put, an accused may be convicted of slight, less serious or serious physical injuries in a prosecution for homicide or murder, inasmuch as the infliction of physical injuries could lead to any of the latter offenses when carried out to its utmost degree despite the fact that an essential requisite of the crime of homicide or murder – intent to kill – is not required in a prosecution for physical injuries.^[62]

Penalties

Article 248 of the Revised Penal Code (RPC), as amended, penalizes murder in this wise:

Article 248. Murder. – Any person who, not falling within the provision 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;

There being no averment of mitigating nor aggravating circumstance[63] that attended the killing of Domingo, the proper impossible penalty is reclusion perpetua, pursuant to Article 63(2) of the RPC.

On the other hand, Article 265 of the Revised Penal Code defines and penalizes less serious physical injuries in the following manner:

Article 265. Less serious physical injuries. – Any person who shall inflict upon another physical injuries not described in the preceding articles but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of arresto mayor.

Again, absent any appreciable mitigating or aggravating circumstance, the penalty of arresto mayor (1 month and 1 day to 6 months) should be imposed in its medium period (between 2 months and 1 day to 4 months).[64]

The Indeterminate Sentence Law finds no application in both cases. The rule is well- entrenched in this jurisdiction that the law is not applicable when the penalty imposed is death, reclusion perpetua or life imprisonment. Likewise, the law does not apply to those whose maximum term of imprisonment is less than one year.[65]

Damages

We have arrived at the award of damages. When death results due to a crime, the heirs of the victim are entitled to the following damages: (1) civil indemnity; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[66]

Civil indemnity is mandatory and granted to the heirs of the murder victim without need of further proof.[67] Under current jurisprudence, the award of P50,000.00 as civil indemnity ex delicto is in order.

We sustain the award of actual damages in the amount of P101,549.00. The heirs of the victim Domingo were able to prove during the trial, with proper receipts, that they incurred the said expense.

The trial court and the CA, however, blundered a bit in awarding P100,000.00 as moral damages. Prevailing jurisprudence dictates that in murder, an award of moral damages in the amount of P50,000.00 is sufficient. [68] For the less serious physical injuries inflicted on Virginia Boji, moral damages in the sum of P10,000.00 is warranted.[69]

The heirs of the victim Domingo Boji are likewise entitled to an additional award of P25,000.00 by way of exemplary damages since the People clearly established treachery in the prosecution for murder.[70] Exemplary damages in the amount of P10,000.00 should also be awarded to Virginia Boji in the separate conviction for less serious physical injuries.[71] When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code.[72]

WHEREFORE, the appealed judgment is MODIFIED in that, in Criminal Case No. 98-1310, accused-appellant Conrado Gline is found GUILTY beyond reasonable doubt of Murder for the killing of Domingo Boji and is hereby sentenced to reclusion perpetua with its accessory penalties. He is ordered to indemnify the heirs of the victim in the amounts of P50,000.00 as civil indemnity, P101,549.00 as actual damages, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

In Criminal Case No. 98-1311, accused-appellant is likewise found GUILTY beyond reasonable doubt of Less Serious Physical Injuries for wounding Virginia Boji and he is sentenced to suffer the straight penalty of four (4) months of arresto mayor, and to pay the victim the sums of P10,000.00 as moral damages and another P10,000.00 by way of exemplary damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Carpio-Morales,[*[]]and Chico-Nazario, JJ., concur.

[*]Vice Associate Justice Antonio Eduardo B. Nachura, per Raffle dated November 19, 2007. Justice Nachura was the Solicitor General who represented the People of the Philippines in this case.

[1] Republic Act No. 4136, Chapter IV, Art. V, Sec. 53, known as Land Transportation and Traffic Code, provides that no person shall drive a motor vehicle while under the influence of liquor or narcotic drug. Sec. 56 imposes a fine of not less than P1,000 or imprisonment of not less than 3 nor more than 6 months or both, at the discretion of the Court (as amended by B.P. Blg. 398, Sec. 12).

[2]What is extant is Memorandum Circular No. 94-002 issued by then LTFRB Chairman Dante Lantin imposing fines and penalties on taxi operators whose drivers refuse to convey passengers.

[3]Revised Penal Code, Art. 5.

[4]Rule 124, Sec. 13(c) provides:

Sec. 13. Certification or appeal of case to the Supreme Court. –

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[5]Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Sesinando E. Villon, concurring; rollo, pp. 2-17.

[6]Penned by Judge Bonifacio Sanz Maceda; CA rollo, pp. 54-62.

[7]TSN, September 20, 1999, pp. 5-6.

[8]Id. at 6-8; TSN, August 9, 1999, p. 8.

[9] Id. at 8-9; id. at 9-10.

[10] Id.

[11] TSN, August 9, 1999, p. 10.

[12]Id. at 10-11.

[13]Id.

[14]Id. at 12; TSN, September 20, 1999, pp. 8-9.

[15]TSN, July 10, 2002, pp. 7-8.

[16]Id. at 8-10.

[17]Records, pp. 12-13.

[18]Criminal Case No. 98-1310.

[19]Criminal Case No. 98-1311.

[20] Records, p. 3.

[21]Id. at 5.

[22] Id. at 38.

[23] TSN, August 9, 1999, pp. 5-18.

[24] TSN, September 20, 1999, pp. 4-12.

[25] Id. at 20-22.

[26]TSN, February 20, 2002, pp. 5-10.

[27]Id.

[28]Exhibit "I."

[29] TSN, July 10, 2002, pp. 6-11.

[30] Id.

[31] Exhibit "B."

[32] CA rollo, pp. 59-61.

[33]Id. at 62.

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

[35]CA rollo, p. 106.

[36] Id. at 102.

[37] Rollo, pp. 22-30.

[38] TSN, August 9, 1999, pp. 5-11.

[39] TSN, September 20, 1999, pp. 4-12.

[40]People v. Barcenal, G.R. No. 175925, August 17, 2007; People v. Matito, G.R. No. 144405, February 24, 2004, 423 SCRA 617, 625; People v. Mendoza, G.R. No. 128890, May 31, 2000, 332 SCRA 485, 494; People v. Durado, G.R. No. 121669, December 23, 1999, 321 SCRA 498, 512; People v. Naguita, G.R. No. 130091, August 30, 1999, 313 SCRA 292, 304-305.

[41] G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191, 212-213.

[42] G.R. Nos. 137274-75, October 18, 2002, 391 SCRA 225, 235-236.

[43] People v. Barcenal, *supra* note 40; People v. Rayles, G.R. No. 169874, July 27, 2007; People v. Piedad, 441 Phil. 818, 839 (2002); People v. Lua, G.R. Nos. 114224-25, April 26, 1996, 256 SCRA 539, 546.

[44]People v. Barcenal, *supra* note 40; People v. Pagalasan, 452 Phil. 341, 363 (2003); People v. Hajili, G.R. Nos. 149872-73, March 14, 2003, 399 SCRA 188; People v. Suela, G.R. Nos. 133570-71, January 15, 2002, 373 SCRA 163; People v. Gundran, G.R. No. 105666, December 17, 1993, 228 SCRA 583, 594.

[45] People v. Deuna, G.R. No. 87555, November 16, 1993, 227 SCRA 788, 801.

[46] People v. Gundran, *supra*.

[47] TSN, September 20, 1999, pp. 4-12.

[48] TSN, August 9, 1999, pp. 5-11.

[49] *People v. Surongon*, G.R. No. 173478, July 12, 2007; *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51; *People v. Sequiño*, G.R. No. 117397, November 13, 1996, 264 SCRA 79.

[50] *People v. Rodas*, G.R. No. 175881, August 28, 2007; *People v. De Guzman*, G.R. No. 169082, August 17, 2007; *People v. Surongon*, supra; *People v. Brecinio*, G.R. No. 138534, March 17, 2004, 425 SCRA 616; *People v. Molina*, G.R. No. 125397, August 10, 1999, 312 SCRA 130.

[51] *People v. Barcenal*, supra note 40; *People v. Surongon*, supra note 49; *People v. Santos*, 464 Phil. 941, 956 (2004); *People v. Botona*, G.R. No. 161291, September 27, 2004, 439 SCRA 294.

[52] *People v. Villonez*, 359 Phil. 95, 112 (1998).

[53] *People v. Rodas*, supra note 50.

[54] *Rivera v. People*, G.R. No. 166326, January 25, 2006, 480 SCRA 188.

[55] 444 Phil. 430, 450 (2003).

[56] Id.

[57] TSN, September 20, 1999, pp. 4-12.

[58] Records, p. 13.

[59] Id.

[60] 2000 Rules on Criminal Procedure, Rule 120, Sec. 4 provides: "When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved."

[61] *Aradillos v. Court of Appeals*, G.R. No. 135619, January 15, 2004, 419 SCRA 514, 535, citing *People v. Vicente*, G.R. No. 142447, December 21, 2001, 372 SCRA 765, 776-777.

[62] Id.

[63] Although drunkenness or intoxication is an alternative circumstance, i.e., aggravating if it is intentional or habitual, and mitigating if it is not intentional or habitual under Art. 15, RPC, the new rule requires both allegation and proof to warrant appreciation of the aggravating circumstance. (2000 Rules of Criminal Procedure, Rule 110, Sec. 9; *People v. Rodas*, supra note 50)

On the other hand, the person pleading intoxication must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his vision. Mere claim of intoxication does not entitle him to the mitigating circumstance. (*People v. Bernal*, G.R. Nos. 132791 & 140465-66, September 2, 2002, 388 SCRA 211)

[64] Revised Penal Code, Art. 64(1).

[65] Reyes, Luis B., Revised Penal Code, 1993 rev. ed., pp. 789-790.

[66] *People v. Rodas*, supra note 50, citing *People v. Beltran, Jr.*, G.R. No. 168051, September 27, 2006, 503 SCRA 715.

[67] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

[68]People v. Rodas, supra note 50, citing People v. Bajar, 460 Phil. 683 (2003).

[69] Aradillos v. Court of Appeals, supra note 61; People v. Tan, G.R. Nos. 116200-02, June 21, 2001, 359 SCRA 283.

[70]People v. Beltran, Jr., supra note 66.

[71] People v. Tan, supra note 69.

[72] People v. Barcenal, supra note 40, citing People v. Aguila, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 663.

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