

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON REGALARIO, MARCIANO REGALARIO, SOTERO REGALARIO, BIENVENIDO REGALARIO AND NOEL REGALARIO, ACCUSED-APPELLANTS.

G.R. No. 174483. March 31, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

For automatic review is the decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 01556 which affirmed with modification, an earlier decision[2] of the Regional Trial Court of Ligao, Albay, Branch 13 in Criminal Case No. 3613, finding accused-appellants Ramon, Marciano, Sotero, Bienvenido and Noel, all surnamed Regalario guilty of murder and sentencing them to suffer the penalty of reclusion perpetua and to indemnify jointly and severally the heirs of the victim in the amount of P50,000.00, and another sum of P50,000.00 as moral damages and to pay the costs of the proceedings.

In the court of origin, accused-appellants Ramon, Marciano, Sotero, Bienvenido and Noel were originally charged with Homicide. However, after reinvestigation of the case, the Panel of Prosecutors of the Department of Justice, Legaspi City, consisting of State Prosecutors Romulo SJ Tolentino, Mary May B. De Leoz and Elmer M. Lanuzo filed an amended information[3] charging the accused-appellants with murder, committed as follows:

That on February 22, 1997 at about 11:00 in the evening, at Brgy. Natasan, Municipality of Libon, province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously with cruelty, treachery, abuse of superior strength, nighttime attack, assault, strike and hit ROLANDO SEVILLA with wooden clubs (bahi) used as their night sticks, hitting the latter at the different parts of his body and tying down his hands and feet with a rope, thereby inflicting upon the latter serious and mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.

ACTS CONTRARY TO LAW.

On October 9, 1998, accused-appellants, duly assisted by their counsel, entered a plea of "not guilty" to the offense charged.[4] Thereafter, trial ensued.

The prosecution presented the following as its witnesses: Zaldy Siglos, Nancy Sara, Ryan Sara, Armando Cabais Poblete, Ronnie Siglos, Cynthia Sevilla, Norma Torres, Policeman Jose Gregorio, Cenen Talagtag, Cesar Sazon and Dr. Mario Cerillo, while Antonio Relato and Nicanor Regonia testified on rebuttal. Nancy Sara, Cynthia Sevilla and Ryan Sara were presented for a second time also as rebuttal witnesses.

On their part, accused-appellants took the witness stand. All raised the defense of denial except for Ramon who admitted the act charged but claimed self-defense. To corroborate their defense, Jose Poblete and Adonis Velasco were presented. The defense also presented Senior Police Officer 2 (SPO2) Jimmy Colisao, Harold Reolo, Ma.

Julieta Razonable, and Dr. Leopoldo Barrosa II.

On August 24, 2000, the trial court rendered its decision[5] giving full faith and credit to the prosecution's evidence. It ruled out accused-appellant Ramon Regalario's claim of self defense, and held that there was conspiracy among the accused-appellants in the commission of the crime as shown in the manner in which all of them inflicted the wounds on the victim's body. It further ruled that the killing was qualified to murder by abuse of superior strength and by their scoffing at the body of the victim. It also appreciated the presence of the mitigating circumstance of voluntary surrender. The pertinent dispositive portion of the said decision reads:

WHEREFORE, judgment is hereby rendered finding Ramon, Sotero, Bienvenido, Marciano and Noel, all surnamed Regalario, guilty beyond reasonable doubt of the crime of Murder under Par. 1, of Art. 248 of the Revised Penal Code, as amended, with the aggravating circumstance of scoffing at the corpse of the victim. However, accused are entitled to the benefit of the mitigating circumstance of voluntary surrender which offset the aggravating circumstance of scoffing at his corpse, hence, are hereby sentenced to suffer the Penalty of Reclusion Perpetua together with the accessory penalties provided for by law.

The accused are hereby ordered to indemnify jointly and severally the heirs of the late Rolando Sevilla the amount of P50,000.00 and another sum of P50,000.00 as moral damages and to pay the costs.

Pursuant to Supreme Court Administrative Circular No. 2-92 the P200,000.00 bail bond put up by accused Marciano Regalario is hereby cancelled and is ordered recommitted to jail.

SO ORDERED.

The record of this case was forwarded to this Court for automatic review, in view of the penalty imposed.

In our Resolution[6] of August 13, 2001, We accepted the appeal and directed the Chief of the Judicial Records Office, to send notices to the parties to file their respective briefs. The Court also required the Jail Warden, Municipal Jail, Polangui, Albay to transfer accused-appellants to the Bureau of Corrections, Muntinlupa City, and make a report of such transfer within ten (10) days from notice. Likewise, the Director of the Bureau of Corrections was required to confirm the detention of accused-appellants. Accused-appellants filed their Appellants' Brief[7] on December 4, 2001, while the People, thru the Office of the Solicitor General, filed its Appellee's Brief[8] on July 30, 2002.

Pursuant to our pronouncement in *People v. Mateo*[9] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, reclusion perpetua or life imprisonment, this case was referred for appropriate action and disposition to the CA where it was docketed as CA-G.R. No. 01556.

The evidence for the prosecution is summarized by the Office of the Solicitor General, as follows:

Accused-appellants, all surnamed Regalario, are barangay officials of Natasan, Libon, Albay and related to one another by consanguinity. Marciano, barangay chairman, Sotero, barangay kagawad and Ramon, barangay tanod, are brothers while Bienvenido Regalario, also barangay tanod, is their cousin and Noel is the son of Marciano. (TSN, November 16, 1998, p. 9; RTC Order dated October 9, 1998, pp. 115-117)

On the night of February 22, 1997, a dance and singing contest was being held in the barangay pavilion of Natasan, Libon, Albay. At around ten o'clock that evening, Rolando Sevilla and Armando Poblete were enjoying the festivities when appellant Sotero Regalario approached them (TSN, December 7, 1998, p.4). To avoid trouble, the two distanced themselves from Sotero. Nevertheless, a commotion ensued. (ibid., p. 5). Appellants Sotero and Bienvenido Regalario were seen striking Rolando Sevilla several times with their respective nightsticks, locally known as bahi. (TSN, November 16, 1998, pp. 13-17, 32, 34, 36-37). The blows caused Sevilla to fall down in a sitting position but after a short while he was able to get up (ibid., pp. 16-17).

He ran away in the direction of the house of appellant Mariano Regalario, the barangay captain (ibid., pp. 18-38). Bienvenido and Sotero Regalario chased Sevilla (ibid., p. 38, TSN, December 7, 1998. p. 6). When Sevilla was already near Marciano's house, he was waylaid by appellant Ramon Regalario and at this point, Marciano Regalario and his son Noel Regalario came out of their house (TSN, December 7, 1998, pp. 7-9 and 35). Noel was carrying a seven-inch knife. The five appellants caught the victim in front of Marciano's house. Armed with their nightsticks, they took turns in hitting the victim until he slumped to the ground face down (ibid., pp. 8, 35 and 38). In that position, Sevilla was boxed by Marciano in the jaw. After a while, when Sevilla was no longer moving, Marciano first ordered the others to kill the victim and to tie him up (ibid., pp. 36-37). Upon hearing the order, Bienvenido, with the help of Sotero, tied the neck, hands and feet of the victim with a nylon rope used by farmers for tying carabao. The rest of the group just stood by watching. (ibid., pp. 37-38).

In the early morning of February 23, 1997, Cynthia Sevilla, the victim's widow, after she was informed of her husband's death, went to the poblacion of Libon to report the incident at the town's police station (TSN, December 8, 1998, pp. 7-8). However, her statements were not entered in the police blotter because appellant Marciano Regalario had earlier reported to them, at two o'clock in the morning, a different version of the incident, i.e., it was the victim Sevilla who shot Marciano's brother Ramon and that Sevilla, allegedly still alive, was placed under the custody of the barangay tanods. (ibid., p. 7; TSN, November 20, 1998 [A.M. Session], pp. 9-10). At around eight o'clock of the same morning, SPO4 Jose Gregorio, with some other police officers and Cynthia Sevilla, left the police station on board a truck and proceeded to the crime scene in Natasan. SPO4 Gregorio conducted an investigation of the incident. (TSN, November 20, 1998 [A.M. Session], pp. 10-12). Thereafter, the policemen took the victim's cadaver to the police station in the poblacion (ibid., p. 26) where pictures were taken showing the victim's hands and legs tied behind him [Exhibits 'C' and 'D'] (ibid., pp. 14-15; TSN, December 8, 1998, p. 10; TSN, November 20, 1998 [P.M. Session], pp 5-7). On that same day, SPO4 Gregorio requested the Libon's Rural Health Unit to conduct an autopsy on the victim's body but since the municipal health officer was not around, it was only performed the next day, February 24 (TSN, November 20, 1998 [A.M. Session], p. 26; TSN, December 8, 1998, pp. 10-11; TSN, November 20, 1998 [P.M. Session], p. 11). After Dr. Mario Cerillo, Municipal Health Officer of Libon conducted the autopsy, he forthwith issued a Medico-Legal Report dated February 24, 1997 (Exhibit 'B'), the pertinent portions of which read:

Head

:

Lacerated wound 4 cm
frontal area, Right.

:

Lacerated wound 8 cm.
occipital area, Right.

:

Lacerated wound 4 cm.
with fractured skull
(post auricular area),

Right.

: Abrasion 4 x 2 cm.

eyebrow, Right.

:

Abrasion 2 cm. x 1 cm.

with lacerated wound

1 cm. eyebrow, Left.

:

Periorbital Hematoma

Left and Right eye.

:

Lacerated wound 1 cm.

lower lip, Left.

Neck

:

Stab wound 2 cm.

penetrating lateral base

of the neck just above

the clavicle, Right.

:

Stab wound 2 cm., 6 cm.

depth lateral base of the

neck just above the

clavicle, Right.

Trunk

:

Hematoma 10 x 8 cm.

clavicular area, Right.

:

Multiple abrasion chest

:

Contusion 7 x 2 cm.,

7th Intercostal space and

clavicular line, left.

Extremities

:

Multiple abrasion and
contusion on both Right
and Left arm and forearm.

:

Abrasion (Ropemark)
around Right and Left wrist.

:

Abrasion (Ropemark) around
distal 3rd of both Right and Left leg.

xxx xxx xxx xxx

Cause of Death:

Sever blood loss secondary to stab wound and multiple lacerated wound, probably secondary to intracranial hemorrhage.

On the witness stand, Dr. Cerillo opined that the victim's lacerated wounds could have been caused by a blunt instrument like a hard stick, a stone or iron bar, his stab wounds by a sharp-edged instrument or knife, his contusions and hematoma by a fist blow or through contact with a blunt instrument. Also according to the physician, the sharp object which caused the victim's stab wounds could have been a knife 2 cm. wide and 6 cm. long because they were clean cut wounds. (TSN, November 20, 1998 [P.M. Session], pp. 14-15).[10]

On the other hand, the accused-appellants' Brief presents a different story:

At the time of the incident in question, accused Marciano Regalario was the incumbent barangay captain of Natasan, Libon, Albay. Accused Sotero was a kagawad, while Ramon and Bienvenido were barangay tanods of the same place. Noel Regalario had no public position. He is the son of one of the other accused.

On the night of February 22, 1997, a public dance and singing contest was held in their barangay. Naturally, being barangay officials, the accused, (except Noel who is not an official and whose wife has just given birth) were at the place of the celebration, discharging their peace-keeping duties. They were posted at different places in that vicinity.

At first, a fire broke out in the toilet of the Day Care Center. It was attended to by the persons assigned in that area. A while later, there was another commotion in the area assigned to accused Ramon Regalario. When he approached the group where the disturbance was taking place and tried to investigate, Rolando Sevilla suddenly emerged from the group and without any ado, fired a shot at him. He was hit at the left shoulder. Instinctively, and in order to disable Sevilla from firing more shots, which might prove fatal, he struck his assailant with his nightstick and hit him at the back of his head. This is the blow which Nancy Sara and Zaldy Siglos said were delivered by Sotero and Bienvenido. This blow caused Sevilla to reel backward and lean on the bamboo fence. To prevent Sevilla from regaining his balance, Ramon pressed his counter-attack by continuing to harass him with blows of his nightstick. As Ramon pressed on forward, Sevilla retreated backward. Ramon kept him busy parrying the blows which hit his arms and front part of the body, as they were

face to face with each other. But even in the course of such harassment, Sevilla was able to fire a second shot which missed Ramon.

When they reached the end of the road pavement, Sevilla lost his footing on edge of the pavement and fell down. At that juncture, Sotero arrived and shouted to Ramon to stop beating Rolando. But Ramon told him that Rolando still had the gun. So, Sotero plunged at Rolando and they wrestled on the ground for the possession of the gun. As they struggled, the gun went off but no one was hurt. When Rolando raised his arms to move the gun away from Sotero, Ramon knocked the gun off his hand and it fell near the place where Jose Poblete was standing. Poblete just arrived at the scene along with Marciano Regalario who was already told that his brother Ramon was shot by Sevilla. Poblete picked up the gun. He was instructed by Marciano to keep it until it is turned over to the authorities.

The wounded Ramon Regalario was brought to town for treatment and later to the provincial hospital. Marciano and Sotero proceeded to the police station to report the shooting of Ramon.

Bienvenido Regalario, the barangay tanod, arrived at the scene after the fact. He was instructed by Marciano, the barangay captain to effect the arrest of Rolando Sevilla for the crime of shooting Ramon. According to Bienvenido, they were taught in their training seminar to just use a rope in lieu of handcuffs because they could not be supplied with it. So, he tied the hands and feet of Rolando Sevilla for fear that he might be able to escape.

On the early morning of February 23, a team of policemen went to Natasan and found the dead body of Rolando Sevilla. Jose Poblete also turned over to the police, Rolando Sevilla's gun. Meanwhile, Noel Regalario, after learning of the incident, scoured the place where the third shot was fired during the struggle between Sotero and Rolando. He found a .38 caliber slug which was also turned over to the police.[11]

On May 31, 2006, the CA promulgated the herein challenged decision affirming for the most part the decision of the trial court with modification as to the penalty imposed. Unlike the trial court, the CA did not appreciate the mitigating circumstance of voluntary surrender in favor of the accused-appellants. Thus, the penalty was changed from reclusion perpetua to death, and an additional award of P25,000.00 as exemplary damages was likewise imposed. Pertinently, the CA decision reads in part:

WHEREFORE, the assailed decision is AFFIRMED with MODIFICATION. The accused-appellants are hereby sentenced to suffer the penalty of DEATH and to pay, jointly and severally, the heirs of Rolando Sevilla the amount of P25,000.00 as exemplary damages.

Let the entire records of this case be elevated to the Supreme Court for its review, pursuant to AM No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases) which took effect on October 15, 2004.

SO ORDERED.[12]

As can be gleaned from the above quote, the CA elevated the instant case to this Court in view of the penalty imposed. In our Resolution[13] dated November 14, 2006, we required the parties to simultaneously submit their respective supplemental briefs. On December 12, 2006, the people filed a manifestation[14] stating that it is waiving the filing of a supplemental brief. Accused-appellants filed their supplemental brief[15] on February 15, 2007.

In their Brief, accused-appellants raise the following assignment of errors:

- THE TRIAL COURT ERRED IN HOLDING THAT ALL OF THE ACCUSED PARTICIPATED IN THE KILLING OF ROLANDO SEVILLA AND BASING ITS DECISION, NOT ON DIRECT EVIDENCE BUT ON ITS OWN SUPPOSITIONS, CONJECTURES AND INFERENCES;

- THE TRIAL COURT GRIEVOUSLY MISAPPRECIATED THE EVIDENCE AND DISPLAYED BIAS WHEN IT LEANED IN FAVOR OF THE PROSECUTION EVIDENCE DESPITE THEIR VITAL CONTRADICTIONS AND OBVIOUS FALSEHOODS;
- THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY AMONG THE ACCUSED AND THAT THE COMMISSION OF THE OFFENSE WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCES OF ABUSE OF SUPERIOR STRENGTH AND SCOFFING AT THE BODY OF THE VICTIM;
- THE LOWER COURT ERRED IN NOT FINDING THAT THE DECEASED WAS KILLED IN SELF-DEFENSE AND/OR DEFENSE OF RELATIVE
- THE TRIAL COURT ERRED IN AWARDING DAMAGES TO THE HEIRS OF THE DECEASED.[16]

We begin our evaluation with accused-appellant Ramon Regalario's claim of self-defense. Both the CA and the trial court gave no credence to this theory of self-defense.

When self-defense is invoked by an accused charged with murder or homicide he necessarily owns up to the killing but may escape criminal liability by proving that it was justified and that he incurred no criminal liability therefor. Hence, the three (3) elements of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence. However, without unlawful aggression, there can be no self-defense, either complete or incomplete.[17]

Accused-appellant Ramon contends that the victim Rolando Sevilla committed an act of unlawful aggression with no provocation on his [Ramon's] part. Ramon testified that he was trying to investigate a commotion when, without warning, Rolando emerged from the group, thrust and fired his gun at him, hitting him in the left shoulder. To disable Rolando from firing more shots, Ramon struck the victim's head at the back with his nightstick, causing the victim to reel backward and lean on the bamboo fence. He continued hitting Rolando to prevent the latter from regaining his balance and, as he pressed on farther, the victim retreated backward.

By Ramon's own account, after he was shot, he hit the victim at the back of the latter's head and he continued hitting the victim who retreated backward. From that moment, the inceptive unlawful aggression on the part of the victim ceased to exist and the continuation of the offensive stance of Ramon put him in the place of an aggressor. There was clearly no longer any danger, but still Ramon went beyond the call of self-preservation. In *People v. Cajurao*,[18] we held:

...The settled rule in jurisprudence is that when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor. Retaliation is not a justifying circumstance. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases. If he persists in attacking his adversary, he can no longer invoke the justifying circumstance of self-defense. Self-defense does not justify the unnecessary killing of an aggressor who is retreating from the fray. (Emphasis supplied)

Ramon's claim of self-defense is further belied by the presence of two (2) stab wounds on the neck, four (4) lacerated wounds on the head, as well as multiple abrasions and contusions on different parts of the victim's body, as shown in the Medico-Legal Report. Dr. Mario Cerillo who conducted the post-mortem examination on the victim revealed that the victim's lacerated wounds could have been caused by a blunt instrument like a hard stick, a stone or an iron bar; his stab wounds by a sharp-edged instrument or knife; his contusions and hematoma by a fist blow or through contact with a blunt instrument. He also declared that the sharp object which caused the victim's stab wounds could have been a knife 2 centimeters (cms.) wide and 6 cms. long because they were

clean-cut wounds. Indeed, even if it were true that the victim fired a gun at Ramon, the number, nature and severity of the injuries suffered by the victim indicated that the force used against him by Ramon and his co-accused was not only to disarm the victim or prevent him from doing harm to others.

The four (4) other accused-appellants, namely, Sotero, Marciano, Bienvenido and Noel, to exonerate themselves, denied their involvement in inflicting wounds on Rolando.

Sotero claimed that he arrived at the scene of the crime at the time when Rolando lost his footing on the edge of the pavement and fell down. He even shouted at Ramon to stop beating Rolando. However, when Ramon told him that Rolando still had the gun, he jumped on Rolando and they wrestled on the ground for the possession of the gun.

Marciano maintained that he, together with Jose Poblete, arrived at the crime scene when Ramon had already knocked the gun out of Rolando's hand and the gun fell near the place where Jose Poblete was standing. When he went to that place, he already knew that his brother (Ramon) had been shot, so, he told the latter to go to the hospital. Thereafter, he and Sotero proceeded to the police station to report the shooting incident.

Bienvenido asserted that he arrived at the crime scene after the shooting incident. He was asked by Marciano to arrest Rolando.

Lastly, Noel insisted that he was not present when the shooting incident took place. He was inside their house sleeping, as his wife had just given birth.

We are not convinced.

Accused-appellants' denials cannot overcome the positive identification by the prosecution's witnesses. Elementary is the rule that positive identification, where categorical and consistent, prevails over unsubstantiated denials because the latter are negative and self-serving, and thus, cannot be given any weight on the scales of justice.[19] The participation of each of the accused-appellants can be fully ascertained from the clear, categorical and spontaneous testimony given by prosecution witness, Ronnie Siglos, who was at the scene of the crime, thus:

PROSECUTOR RESARI:

Q

While you were walking on your way home, was there an unusual incident and can you recall?

A

Yes, ma'am

Q

What was that incident about?

A

While I was on my way towards the house of my parents, I just suddenly saw a person being beaten on the road.

Q

When you first noticed that there was a man being beaten along the road, how far were you?

A

I was about more or less 9 to 10 meters.

xxx xxx xxx

Q

When you saw a man being beaten what did you do?

A

I continue walking, but upon reaching that place near the person being beaten, I stopped.

Q

Why did you stop?

A

To verify and know as to who that person being beaten.

xxx xxx xxx

Q

And who was that person being beaten?

A

Rolando Sevilla.

Q

Who were the persons beating Rolando Sevilla?

A

Marciano Regalario, Sotero Regalario, Ramon Regalario, Bienvenido Regalario, Noel Regalario, Ernani Regalario, Reynante Regalario, Jose Poblete, Jose Quinno and Virgilio Rebanal.

Q

Who else?

A

Cecilio Lunas.

Q

If some of the persons you saw beating Rolando Sevilla are present in this court room, will you be able to point and identify them?

A

Yes, ma'am.

xxx xxx xxx

PROSECUTOR:

Q

You stated that you saw the persons you have just named as beating Rolando Sevilla. Were there weapons used in beating Rolando Sevilla?

A

Yes.

Q

What kind of weapons (was) used?

A

Sotero was armed with bahi wood, and also Ramon. Bienvenido was also armed with bahi, as well as Cecilio Lunas, Jose Quinno were also armed with `malo-palo.'

xxx xxx xxx

Q

What kind of weapon was being held by Noel Regalario?

A

A knife.

xxx xxx xxx

Q

Now, when you saw Rolando Sevilla being beaten by the persons you mentioned before, what did you notice on the condition of Rolando Sevilla?

A

He was lying on his stomach.

Q

Did you see the face of Rolando Sevilla?

A

Yes.

Q

How were you able to see the face of Rolando Sevilla?

A

Because Sotero was holding him by his hair.

Q

What was your observation on the condition of Rolando Sevilla?

xxx xxx xxx

WITNESS:

He was already motionless. He is not moving anymore.

PROSECUTOR:

Of the persons you named as holding weapons, you did not mention Marciano Regalario as holding any weapon. What was Marciano Regalario doing then?

A

He boxed Rolando Sevilla and Rolando was hit on his jaw.

Q

What else did Marciano Regalario do if any?

A

After he boxed Rolando Sevilla, he went inside his house but after about one (1) minute he again return(ed) back.

Q

After Marciano Regalario returned back, what did he do if any?

A

He shouted to kill that.

Q

After you heard Marciano Regalario (say) to kill "that," what did you do?

A

I proceeded towards home.

Q

While you were walking, was there any unusual incident which again happened?

A Yes.

Q

And, what was that incident?

A

While I was walking towards home, again I heard Marciano Regalario shouted to tie him, that is why I again stopped.

Q

When you heard Marciano Regalario to tie him how far were you from him?

A

More or less 7 meters.

Q

You said that upon hearing Marciano Regalario, you stopped. What else happened?

A

Bienvenido Regalario passed by me and went to that sleigh (pababa) which is on the lower portion and got a rope.

Q

What did Bienvenido Regalario do with the rope?

A

He tied Rolando Sevilla by placing the rope around his neck and tied his hands.

Q

Was there somebody who assisted Bienvenido Regalario in tying Rolando Sevilla?

A

Yes.

Q

Who were the persons, if any?

A

Sotero Regalario.

Q

Aside from Sotero, was there anybody else who helped Bienvenido Regalario in tying Rolando Sevilla?

A

No more.

Q

While Rolando Sevilla was being hog tied, where were the persons of Marciano Regalario, Noel Regalario, Ramon Regalario and the rest of the persons whom you just mentioned awhile ago?

A

They were there standing beside Rolando Sevilla and they were watching.

Q

Did you notice whether Rolando Sevilla was still moving when he was still being tied up by Bienvenido and Sotero?

A

He was not moving anymore.[20]

The aforementioned testimony of Ronnie Siglos is corroborated by the following testimony of Armando Poblete:

Q

While you were standing by the road, what did you notice?

A

Then I saw Rolando Sevilla being chased by Bienvenido and Sotero both surnamed Regalario

Q

To what direction was Rolando Sevilla being chased by Sotero and Bienvenido Regalario?

A

Towards the place of Kapitan.

xxx xxx xxx

PROSECUTOR RESARI:

Q

Considering that was already nighttime, how were you able to know that the person being chased was Rolando Sevilla and the persons chasing him were the two (2) Regalarios which you have identified?

A

Because, I was with Sevilla during that time and it was moonlit night.

Q

When the two (2) were chasing Rolando Sevilla, what happened next?

A

Ramon waylaid Rolando Sevilla.

xxx xxx xxx

Q

After you saw Ramon Regalario waylaid Rolando Sevilla, what else did you see?

A

After that I saw the group of Sotero, Regalario, Marciano, Noel, caught up with Rolando.

xxx xxx xxx

PROSECUTOR RESARI:

Q

Since Bienvenido Regalario and Sotero Regalario were the ones chasing Rolando Sevilla, from what direction did Ramon Regalario come from when he waylaid Rolando Sevilla?

A

That side, left side going towards the house of Kapitan.

Q

And where did Marciano and Noel xxx come from?

A

From their house.

Q

After the five (5) caught up with Rolando Sevilla, what happened to Rolando Sevilla?

A

They took turns in beating him.

Q

Did they use any weapon in beating Rolando Sevilla?

A

Yes, their night sticks.

Q

When Bienvenido and Sotero caught up with Rolando Sevilla; and the three (3) other accused also joined the two (2), how far was your distance to them?

A

More or less 14 to 15 meters.[21]

We agree with the findings of the two courts below as to the presence of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of conspiracy is rarely found, for criminals do not write down their lawless plans and plots. The agreement to commit a crime, however, may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of intent. It does not matter who inflicted the mortal wound, as the act of one is the act of all, and each incurs the same criminal liability.[22] We quote with approval the findings and observations of the CA, thus:

The eyewitnesses' account surrounding Rolando Sevilla's death shows that the accused-appellants performed concerted acts in pursuit of a common objective. Sotero, Bienvenido, and Ramon, armed with nightsticks, and Noel armed with a knife, seven inches in length, beat Rolando Sevilla. All five accused-appellants caught up with the victim, blocked all means through which the victim could escape and ensured the achievement of their plan to kill Rolando Sevilla even as the latter already fell to the ground. Accused-appellant Marciano hit the victim on his jaw and later, ordered his co-accused to kill and tie the victim. Upon hearing Marciano's instruction, Bienvenido Regalario tied Rolando's neck, hands and feet with a rope. The collective act of the accused-appellants is sufficient to make them co-principals to the killing.[23]

Considering the foregoing, as well as the manner in which the attack against Rolando was carried out, and the testimonies of the prosecution witnesses positively identifying the accused-appellants as the assailants, we concur in the rulings of the CA, affirming those of the trial court, in (a) disregarding Ramon Regalario's declaration that he attacked the victim in self-defense and (b) holding that all the accused-appellants acted in concert and killed Rolando.

We likewise rule that both the CA and the trial court were correct in appreciating the qualifying circumstance of abuse of superior strength in killing Rolando Sevilla. To take advantage of superior strength is to use force out of proportion to the means available to the person attacked to defend himself. In order to be appreciated, it must be

clearly shown that there was deliberate intent on the part of the malefactors to take advantage thereof.[24] In this case, as testified to by the prosecution eyewitnesses, accused-appellants Ramon, Sotero and Bienvenido, with the exception of Marciano, were armed with nightsticks (bahi) while Noel was holding a knife. Clearly they took advantage of their superiority in number and arms in killing the victim, as shown by numerous wounds the latter suffered in different parts of his body.

Also affirmed is the ruling of both courts appreciating the presence of the generic aggravating circumstance of scoffing at the body of the victim. Accused-appellants did not just kill the victim. They tied him hog-style after rendering him immobilized. This action constituted outraging or scoffing at the corpse of the victim. In this connection, we agree with the trial court's observation:

...The concerted acts committed by all the accused mostly armed with wooden clubs and one with a 7-inch long knife after the victim fell pummeling him with mortal blows on the forehead and back of his head and stab wounds on his neck and one of them telling his co-accused to kill the victim clearly proved that the Regalarios conspired and took advantage of their strength and number. Not satisfied with delivering mortal blows even when their hapless victim was already immobile, Bienvenido and Sotero, upon order of their co-accused Marciano, tied their victim hog style. The manner by which Rolando was tied as vividly captured in the picture (Exhs. 'C' & 'D') clearly speaks for itself that it was nothing but to scoff at their victim.[25]

The CA was likewise correct in not appreciating the mitigating circumstance of voluntary surrender in favor of accused-appellants. For said circumstance to be appreciated, it must be spontaneous, in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense of finding and capturing him.[26] In the case at bar, accused-appellants remained at large even after Judge Jose S. Sañez issued the warrant for their arrest on February 6, 1998. Accused-appellants surrendered only on September 9, 1998 after several alias warrants of arrest were issued against them. Hence, voluntary surrender cannot be appreciated in their favor as mitigating circumstance.

The accused-appellants' acts plainly amount to murder, qualified by abuse of superior strength. As the generic aggravating circumstance of scoffing at the body of the victim was alleged and proven, and as there was no mitigating circumstance, the CA correctly sentenced accused-appellants to death in accordance with Art. 248, as amended by Republic Act No. 7659, in relation to Art. 63(1) of the revised Penal Code.

In view, however, of the passage of Republic Act No. 9346,[27] the imposition of the death penalty has been prohibited. Thus, the penalty imposed upon accused-appellants should be reduced to reclusion perpetua, without eligibility for parole.

While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous.[28] Consequently, the civil indemnity for the victim is still P75,000.00. In *People v. Quiachon*,[29] we explained that even if the penalty of death is not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 is still proper because, following the ratiocination in *People v. Victor* (292 SCRA 186), the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

As to the award of moral and exemplary damages, the CA correctly held accused-appellants jointly and severally liable to pay the heirs of Rolando Sevilla for the same. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[30] If

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. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct.[31] However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to reclusion perpetua pursuant to Republic Act No. 9346, the award of moral damages should be increased from P50,000.00 to P75,000.00[32] while the award of exemplary damages should be increased from P25,000.00 to P30,000.00.[33]

WHEREFORE, the decision of the Court of Appeals dated May 31, 2006 in CA-G.R. CR No. 01556 is hereby AFFIRMED with the following modifications: (1) the penalty of death imposed on accused-appellants is lowered to reclusion perpetua without eligibility for parole; (2) the monetary awards to be paid jointly and severally by accused-appellants are as follows: P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages; and (3) interest on all the damages awarded at the legal rate of 6% from this date until fully paid is imposed.[34]

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Velasco, Jr., and Peralta, JJ., concur.

Chico-Nazario, and Brion, JJ., on leave.

Nachura, J., no part.

[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Amelita G. Tolentino, concurring; rollo, pp. 3-29.

[2] Penned by Judge Jose S. Sañez; CA record, pp. 51-84.

[3] RTC record, p. 55.

[4] Id. at 115-116.

[5] CA rollo at 51-84.

[6] Id. at 97.

[7] Id. at 113-127.

[8] Id. at 189-227.

[9] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

[10] CA rollo, pp. 197-204.

[11] Id. at 119-121.

[12] Rollo, p. 25.

[13] Id. at 38.

[14] Id. at 42.

[15] Id. at 50-61.

[16] CA rollo, pp. 121-122.

- [17] *People v. More, et al.*, G.R. No. 128820, December 23, 1999, 321 SCRA 538, 543-544.
- [18] G.R. No. 122767, January 20, 2004, 420 SCRA 207, 214-215.
- [19] *People v. Carullo*, G. R. Nos. 129289-90, July 29, 1999, 311 SCRA 680, 691-692.
- [20] TSN, December 7, 1998, pp. 32-38.
- [21] TSN, December 7, 1998, pp. 6-9.
- [22] *People v. Cawaling*, G.R. No. 117970, July 28, 1998, 293 SCRA 267, 306-307.
- [23] Rollo, pp. 14-15.
- [24] *People v. Tumanon, et al.*, G.R. No. 135066, February 15, 2001, 351 SCRA 676, 689.
- [25] CA rollo, p. 83.
- [26] *People v. Maalat*, G.R. No. 109814, July 8, 1997, 275 SCRA 206, 213-214.
- [27] An Act Prohibiting the Imposition of Death Penalty in the Philippines.
- [28] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676. See also *People v. Ranin*, G.R. 173023, June 25, 2008 and *People v. Entrialgo*, G.R. 177353, November 11, 2008.
- [29] G.R. No. 170235, August 31, 2006, 500 SCRA 704, 719.
- [30] *Ibid.*
- [31] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 663.
- [32] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547, *People v. Orbita*, G.R. No. 172091, March 31, 2008; *People v. Balobalo*, G.R. No. 177563, October 18, 2008.
- [33] *People v. Sia*, G.R. 174059, February 27, 2009.
- [34] *People v. Guevarra*, G. R. No. 182191, October 29, 2008.

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