

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ELIZER BEDUYA AND RIC BEDUYA, APPELLANTS.

G.R. No. 175315. August 09, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In this appeal, we are tasked to determine whether the appellants killed the victim with abuse of superior strength for which they were convicted of murder.

Factual Antecedents

For our review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00161 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC), Branch 12, Oroquieta City, Misamis Occidental, finding appellants Elizer Beduya (Elizer) and Ric Beduya (Ric) guilty beyond reasonable doubt for the crime of murder. The Information against the appellants contained the following accusatory allegations:

That on or about the 6[th] day of May 2002, at about 12:15 o'clock midnight, more or less, in barangay Baga, Municipality of Pana-on, province of Misamis Occidental and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping one another, with intent to kill, with abuse and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, box and then stab one DOMINADOR S. ACOPE[,] SR. with the use of a knife hitting him on the left hypochondriac area which caused his death.

CONTRARY TO LAW, with the qualifying circumstance of taking advantage of superior strength[.][3]

Both appellants were arrested. They entered separate pleas of "not guilty" during their arraignment.[4] After the termination of the mandatory pre-trial conference,[5] trial ensued.

The Prosecution's Evidence

Culled from the evidence presented by the prosecution, the following case against the appellants emerged:

On May 6, 2002, at around 11:45 p.m., Roy Bughao (Bughao) was carrying a torch on his way home from the birthday celebration of his cousin when Elizer and Ric suddenly appeared. Ric went around him while his brother Elizer pointed a knife. He drew back and swung the torch at them and shouted, "Why do you hurt me, what is my fault?"[6] The Beduya brothers did not reply and continued their assault. Bughao then scrambled for safety and ran towards the yard of victim Dominador S. Acope, Sr. (Acope, Sr.) and hid in a dark area.

At around 12:30 a.m. of May 7, 2002, the victim and his son, Dominador Acope, Jr. (Acope, Jr.), were roused from their sleep by a voice coming from the road in front of their house. The victim went outside while his son peeped through the window. The victim saw Bughao who readily identified himself and said that Elizer pointed a knife at him. As the Beduya brothers entered the yard of the victim's house, Bughao hid himself. While in hiding, he saw the Beduya brothers approach the victim after they were advised to go home since it was already late. The

Beduya brothers did not heed the advice and instead Ric slapped the victim while Elizer stabbed him. The victim retaliated by striking them with a piece of wood he got hold of. Elizer and Ric ran away but one of them stumbled on the pile of firewood and the clothesline in the yard before they succeeded in departing from the premises.

Acope, Jr. immediately proceeded to his uncle's house which was 40 meters away and sought his help. The incident was also reported to their Barangay Captain, who responded by going to the residence of the victim. Upon arrival, he saw the victim lying on the ground and bleeding from a stab wound. The victim told him that, "I will die because of this. x x x I was boxed by Ric and I was stabbed by Elizer." [7] He also told the Barangay Captain that he had no previous quarrel with the Beduya brothers.

The Barangay Captain took the victim to the Jimenez Medicare Hospital but was later advised to proceed to the MHARS General Hospital in Ozamis City, where the police officer took the statement of the victim and Acope, Jr. On the next day, May 8, 2002, the victim died due to "septic and hypovolemic shock secondary to stabbed wound." [8]

The Appellants' Version

Elizer maintained that he did not commit any crime. On May 6, 2002, he went to Baybay, Punta, Panaon, to buy fish. He usually carried a knife to slice and eat the fish while it is still raw. While on his way home at 10:30 p.m., he was suddenly attacked and struck by the victim and Bughao. He got hit several times with a piece of wood and Bughao smashed his right foot. To defend himself, he pulled out his knife and struck randomly. He had no knowledge if he hit someone but his assailants fled. Eduardo Eltagon (Eduardo) testified that he witnessed the event but he did not interfere since he did not want to get involved.

Elizer continued to walk, and arrived home at 12:15 a.m. At 1:30 a.m., policemen came to his house and took him to a hospital. They passed by the house of his brother Ric before proceeding to their destination.

For his part, Ric testified that he was asleep at the time of the incident. He stated that he went to sleep at eight o'clock in the evening on May 5, 2002 and woke up at four o'clock in the morning of the following day, May 6, 2002, when the Barangay Captain and policemen came to his house with his brother and asked him to come with them to the hospital.

The Trial Court's Decision

The trial court rendered judgment in favor of the prosecution, whose witnesses testified candidly on the events that resulted in the death of the victim. On the other hand, the trial court found as unreliable the witnesses presented by the defense. It held that Eduardo, at 86 years of age, could not have seen the victim and Bughao attacking Elizer 30 meters away with a flashlight as his only source of illumination in the dead of night since a test on his vision showed that he could not "see at a distance little more than beyond his nose." [9] Moreover, it ruled that the injuries suffered by Elizer were more consistent with the defensive blows from a piece of wood the victim used to defend himself, rather than the alleged assault on him by the victim and Bughao. [10]

The trial court also held that the circumstance of abuse of superior strength that qualifies the killing of the victim to murder is present in this case. According to the trial court, the appellants' combined assault gave them the advantage over the victim who must have been taken by surprise. The retaliation of the victim with a piece of wood was done only after he had already been stabbed. [11]

In disposing of the case, the trial court ruled as follows:

WHEREFORE, finding accused Elizer Beduya and Ric Beduya guilty beyond reasonable doubt of murder qualified by abuse of superior strength without other modifying circumstances, the court sentences them to

reclusion perpetua and orders them to pay in solidum the heirs of Dominador Acope P50,000.00 as death indemnity, P6,000.00 as funeral expenses, P9,411.85 as medical expenses, and P264,000.00 as lost earnings. With costs.

Accused are credited with the full time spent under preventive detention since May 7, 2002.

SO ORDERED.[12]

The Decision of the Court of Appeals

The case was forwarded to this Court on automatic review and docketed as G.R. No. 158473. However, we referred it to the CA in accordance with our ruling in *People v. Mateo*.^[13] The appellate court affirmed with modification the trial court's decision and disposed as follows:

WHEREFORE, the appeal is hereby DENIED. The assailed decision is hereby AFFIRMED with the MODIFICATION of increasing the award of the victim's heirs for the loss of earning capacity of the victim [to] P408,000.00.

SO ORDERED.[14]

The Assignment of Errors

Still aggrieved, the appellants sought a final review of their case raising the following as errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE FAILURE [OF] THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.[15]

During the pendency of the appeal, appellant Ric died of cardio pulmonary arrest secondary to bleeding peptic ulcer as shown by his certificate of death.^[16] Accordingly, we dismissed^[17] the appeal insofar as said appellant is concerned. However, judgment shall be rendered as to Elizer.

Our Ruling

There is partial merit in the appeal.

Abuse of Superior Strength as a Qualifying Circumstance in the Crime of Murder

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Article 248^[18] of the Revised Penal Code is present. Abuse of superior strength is one of the qualifying circumstances mentioned therein that qualifies the killing of the victim to murder.

In this case, the trial and appellate courts commonly concluded that there was intent to kill on the part of the

appellants and that they employed abuse of superior strength to ensure the execution and success of the crime. The appellate court even adopted the trial court's finding and conclusion that as Ric punched the victim in the shoulder and appellant Elizer delivered the fatal stab wound, this combined assault "gave them the advantage over the victim who must have been taken by surprise. Although the victim struck at accused with a piece of wood, he did so only after he had been stabbed, causing the two accused to run away." [19]

This reasoning is erroneous.

"Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime." [20] "The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim." [21] The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. [22] "To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked." [23] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties. [24]

The prosecution in this case failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that two assailants, one of them (Elizer) armed with a knife, assaulted the victim. The presence of two assailants, one of them armed with a knife, does not ipso facto indicate an abuse of superior strength. [25] Mere superiority in numbers is not indicative of the presence of this circumstance. [26] Neither did the prosecution present proof to show that the victim suffered from an inferior physical condition from which the circumstance can be inferred. In fact, there is evidence that the victim was able to get hold of a piece of wood and deliver retaliatory blows against the knife-wielder, Elizer. [27]

The events leading to the stabbing further disprove any finding of deliberate intent on the part of the assailants to abuse their superior strength over that of the victim. The testimonies of the prosecution's witnesses, on the whole, show that the incident between the victim and his assailants was unplanned and unpremeditated. The assailants were in pursuit of Bughao when the victim advised them to go home since it was already late at night. There was indeed no conscious attempt on the part of the assailants to use or take advantage of any superior strength that they then enjoyed. Particularly, it has not been clearly established that the appellants, with an advantage in number, purposely resorted to punching the victim and delivering a fatal stab wound. Neither has it been shown that the victim was simply overwhelmed by the fist blows delivered by Ric and Elizer's act of stabbing him. The evidence on this matter is too insufficient for a definitive conclusion. What has been shown with certainty and clarity is the appellants' intent to kill, as shown by the stab wound in the left side of the victim's body which resulted in his death two days later. As the knife wielder, Elizer is guilty of assaulting and killing the victim.

In view of the foregoing, we are compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. Hence, appellants' guilt must be limited to the crime of homicide.

The Trial Court's Finding on the Credibility of the Prosecution Witnesses

Elizer maintains that his guilt was not established beyond reasonable doubt since the testimonies of the witnesses of the prosecution were incredible and materially inconsistent. He argues that Acope, Jr. testified that the victim immediately went out of his house and approached Bughao, but Bughao declared in the witness stand that the victim came out of his abode 20 minutes after hearing his shout. He also finds it incredible that Bughao did not bother to take the victim to the hospital and report the incident to the police after the assailants fled the scene of the crime.

We are not persuaded. It has been "consistently held that appellate courts, as a rule, will not disturb the findings of the trial court on the credibility of witnesses. We have sustained trial courts in this respect, considering their vantage point in their evaluation of testimonial evidence, absent x x x any showing of serious error or irregularity that otherwise would alter the result of the case." [28] Here, we find no serious irregularity.

Besides, the inconsistencies ascribed to the prosecution witnesses involve minor details, too trivial to adversely affect their credibility. Said inconsistencies do not depart from the fact that these witnesses saw the fatal stabbing of the victim by Elizer. To the extent that inconsistencies were in fact shown, they appear to us "to relate to details of peripheral significance which do not negate or dissolve the positive identification [by said eyewitnesses of Elizer] as the perpetrator of the crime." [29]

Further, the failure of Bughao to immediately report the incident to the police authorities and to extend help to the victim cannot destroy his credibility as a witness. There is no standard of behavior when a person becomes a witness to a shocking or gruesome event. [30] "The workings of a human mind placed under severe emotional stress are unpredictable and people react differently x x x." [31] The determining factor to consider is that Bughao testified in candid and straightforward manner and implicated Elizer and Ric as the perpetrators of the crime.

Aside from the eyewitness testimonies of the prosecution witnesses, the dying declaration of the victim also established the guilt of the appellants beyond reasonable doubt. He was well aware of his imminent death and his declaration that Elizer was responsible for his stab wound was made in the belief that he would not survive his injury. The declarations by the victim certainly relate to circumstances pertaining to his impending death and he would have been competent to testify had he survived in view of the general presumption that a witness is competent to testify.

The victim also executed a Sworn Statement [32] on May 7, 2002, while in serious condition in the hospital, declaring that the appellants assaulted him and it was Elizer who delivered his fatal stab wound. His dying declaration and sworn statement, taken together with the findings and conclusions of the trial court, establish the guilt of the appellants beyond reasonable doubt.

The Penalty

Having established Elizer's guilt beyond reasonable doubt for the crime of homicide, he must suffer the penalty imposed by law. The crime of homicide is punishable by reclusion temporal. [33] Since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period. [34] Applying the Indeterminate Sentence Law, [35] he should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, i.e., prision mayor, and the maximum of which is that properly imposable under the Revised Penal Code, i.e., reclusion temporal in its medium period.

Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of six (6) years and one (1) day to twelve (12) years of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal as maximum.

The Award of Damages

The trial court awarded, and the appellate court affirmed, actual damages to the heirs of the victim in the amounts of P6,000.00 as funeral expenses and P9,411.85 as medical expenses incurred as a result of the incident. However, our review of the records revealed that the award was not substantiated by any evidence. There was no competent proof on the specific amounts of actual damages allegedly incurred and this omission cannot be supplied by a broad and general stipulation during trial that the victim's wife would testify on the damages brought about by the commission of the crime. In the absence of proof on the exact sum of actual damages, there was no basis for

granting the same. "Credence can be given only to claims which are duly supported by receipts." [36] The award of actual damages should consequently be deleted as there were no receipts presented evidencing the expenses allegedly incurred.

However, as the heirs of the victim clearly incurred medical and funeral expenses, P25,000.00 by way of temperate damages should be awarded. [37] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification." [38]

When death results as a consequence of the crime, the heirs of the deceased are entitled to the amount of P50,000.00 as indemnity for the death of the victim without need of any evidence or proof of damages. [39] Accordingly, we award said sum to the heirs of the victim, Acope, Sr.

"Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of P50,000.00 as moral damages in accordance with prevailing jurisprudence." [40]

The trial court was correct in awarding indemnity for the loss of earning capacity of the victim. However, the computation for this award should be more accurate.

Acope, Sr., was 46 years old on the day he died. [41] He earned an average of P3,000.00 a month as a farmer and barangay tanod. [42] This is equivalent to the sum of P36,000.00 per annum. Pursuant to the American Expectancy Table of Mortality, which has been adopted in this jurisdiction, the formula for the computation of loss of earning capacity is provided as follows:

Net Earning Capacity (X) = Life Expectancy x (Gross Annual Income - Living Expenses, e.g., 50% of Gross Annual Income)

Life expectancy is determined in accordance with the following formula:

Life Expectancy = $\frac{2}{3} \times (80 - \text{age of deceased})$ [43]

Accordingly, the unearned income of Acope, Sr., is:

$$\begin{aligned} X &= \frac{2(80-46)}{3} \times (P36,000.00 - P18,000.00) \\ &= 22.667 \times P18,000.00 \\ &= P408,006.00 \end{aligned}$$

In applying the formula and computation for net income stated above, the amount of loss of earning capacity is the exact sum of P408,006.00.

WHEREFORE, the appealed Decision is MODIFIED as follows:

1. Elizer Beduya is held guilty beyond reasonable doubt of the crime of homicide and shall accordingly suffer an indeterminate prison term of eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum;
2. Elizer Beduya is ordered to pay the victim's heirs the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as temperate damages in lieu of actual damages, and P408,006.00 as indemnity for loss of earning capacity.

SO ORDERED.

Corona, C. J., Chairperson, Leonardo-De Castro, Bersamin,* Del Castillo, And Perez, Jj.

[*] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 876 dated August 2, 2010.

[1] CA rollo, pp. 101-117, penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Teresita Dy-Llacco Flores and Mario V. Lopez.

[2] Records, pp. 106-110; penned by Acting Presiding Judge Ma. Nimfa Penaco-Sitaca.

[3] Id. at 2.

[4] Id. at 35.

[5] Id. at 43.

[6] TSN, September 20, 2002, p. 6.

[7] TSN, March 12, 2003, p. 6.

[8] Records, p. 12.

[9] Id. at 109.

[10] Id.

[11] Id.

[12] Id. at 110.

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

[14] CA rollo, pp. 116-117.

[15] Id. at 46.

[16] Rollo, p. 40.

[17] Id. at 45.

[18] Art. 248. Murder. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. 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;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;

5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.
- [19] Records, p. 110.
- [20] *People v. Daquipil*, 310 Phil. 327, 348 (1995).
- [21] *People v. Casingal*, 312 Phil. 945, 956 (1995).
- [22] *People v. Escoto*, 313 Phil. 785, 800-801 (1995).
- [23] *People v. Ventura*, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 410.
- [24] *People v. Moka*, G.R. No. 88838, April 26, 1991, 196 SCRA 378, 386.
- [25] *People v. Asis*, 349 Phil. 736, 747 (1998).
- [26] *People v. Escoto*, *supra* at 800.
- [27] TSN, September 25, 2002, pp. 7-8.
- [28] *People v. Tadulan*, 337 Phil. 685, 694 (1997).
- [29] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).
- [30] *People v. Morial*, 415 Phil. 310, 339 (2001).
- [31] *People v. Liwanag*, 415 Phil. 271, 297 (2001).
- [32] Records, p. 8.
- [33] REVISED PENAL CODE, Article 249.
- [34] See REVISED PENAL CODE, Article 64(1).
- [35] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.
- [36] *B.F. Metal [Corporation] v. Spouses Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 627.
- [37] *People v. Bascugin*, G.R. No. 184704, June 30, 2009, 591 SCRA 453, 465.
- [38] *People v. Carillo*, 388 Phil. 1010, 1025 (2000).
- [39] *People v. Algarme*, G.R. No. 175978, February 12, 2009, 578 SCRA 601, 628.
- [40] *Id.* at 628-629.
- [41] TSN, October 3, 2002, p. 3.
- [42] *Id.*

[43] People v. Matignas, 428 Phil. 834, 875 (2002).

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