

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CERILLO TAMBIS, APPELLANT.

G.R. No. 175589. July 28, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Cerilo Tambis (appellant) was charged before the Regional Trial Court (RTC) of Quezon City with Murder in an Information reading:

x x x x

That on or about the 12[th] day of June 1998 in Quezon City[,] Philippines, the above-named accused, with intent to kill, with treachery and evident premeditation did then and there willfully, unlawfully, and feloniously attack, assault, and employ personal violence upon the person of one GAUDIOSO MORAL JR. by then and there stabbing him on the left portion of his body thereby causing upon him [a] serious and grave wound which was the direct and immediate cause of his death to the damage and prejudice of the heirs of GAUDIOSO MORAL JR.[1]

x x x x

Through the testimony of Luzviminda Moral (Luzviminda), the widow of Gaudioso Moral, Jr. (the victim), the prosecution established the following:[2]

At around 10:00 o'clock in the evening of June 12, 1998, as Luzviminda was at her neighbor's house to fetch her husband-the victim who was drinking with a group, appellant arrived. Appellant suddenly stabbed the victim on the left abdomen and attempted to stab him a second time but Luzviminda pushed appellant away as the victim repaired to hide inside the neighbor's house. The victim died of the stab wound at a hospital the following day.[3]

Upon the other hand, appellant, admitting that he stabbed the victim, claimed self-defense, averring that when the victim saw him, the latter got mad and attacked him with a knife to thus draw him to grab the knife with which he stabbed the victim.[4]

Branch 219 of the Quezon City RTC credited the claim of the prosecution.[5] It rejected appellant's claim of self-defense. And it held that while the killing was not attended by evident premeditation, it was attended by treachery, thus:

x x x In this case, the victim was drinking with his buddies, unarmed, and in no position to defend himself when the accused suddenly appeared and stabbed him. Although, as testified to by the victim's wife, the accused had warned the group "Walang kikilos!" x x x which should have alerted the victim or put him on guard, the suddenness [of] his attack against Gaudioso Moral, who was unarmed, demonstrated that the accused deliberately employed a method of attack which ensured the execution of his felonious design without risk to himself arising from any defense which his victim might make.[6] (Underscoring supplied)

The trial court thus convicted appellant of Murder, by Decision of June 17, 1999, disposing as follows:

WHEREFORE, finding the accused Cerilo Tambis y Ollana guilty beyond reasonable doubt of the crime of Murder, the Court hereby sentences him to suffer the penalty of [r]eclusion [p]erpetua; to pay the heirs of Gaudioso Moral the amount of P26,034.93 as actual damages; the amount of P30,000.00 as moral damages; the amount of P1,640,034.50 as compensatory damages for the loss of the victim's earning capacity, and P75,000.00 as indemnity for his death, and to pay the costs.

SO ORDERED.[7]

Appellant lodged before this Court an appeal which it forwarded to the Court of Appeals following *People v. Mateo*[8] which directs the intermediate review of decisions imposing the penalty of death, reclusion perpetua, or life imprisonment.[9]

In his Brief, appellant assigned as lone error the trial court's "finding that the qualifying circumstance of treachery attended the commission of the crime,"[10] he contending that by saying "Walang kikilos!," he actually warned appellant of the impending attack;[11] and that even if the attack was sudden and the victim was in a vulnerable position, they were not deliberately sought.[12]

The Solicitor General countered:

[T]here is no discernible relation between appellant's utterance ("walang kikilos") and his supposed lack of a conscious design to adopt a treacherous mode of attack that would negate treachery.

For *alevosia* to be considered as a qualifying circumstance, two conditions need to be satisfied: (a) the employment of means, manner or method of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given to the latter to defend himself or retaliate; and (b) the means, method, or manner of execution were deliberately or consciously adopted by the offender. . . . The essence of treachery is that the attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. . . . Such treacherous manner is patent in appellant's chosen mode of attack on the victim.

That appellant consciously adopted his treacherous mode of attack is indicated by the fact that he proceeded to the place where the victim was drinking carrying a knife. There is no showing that appellant went to the said place or was carrying the knife for some other purpose. Neither is there any showing that he merely chanced upon the victim who was caught off-guard nor there was provocation on the part of the victim.

x x x

Appellant's utterance prior to the attack cannot be considered a warning that would negate treachery. For a warning to negate treachery, such must give the intended victim the opportunity to defend himself. Since appellant's utterance [was] made immediately prior to the attack, such cannot constitute adequate warning that would have given the victim the chance to escape or parry the blow. Effectively, the utterance was inconsequential to the progress of the attack for even with such utterance, the victim still was not able to defend himself.[13] (Emphasis in the original, underscoring supplied (citations omitted))

By Decision of July 27, 2006, the Court of Appeals affirmed[14] the trial court's decision. Appellant thereupon brought the case to this Court.[15]

In separate manifestations, appellant and the Solicitor General informed that they would no longer file supplemental briefs, their respective positions having been adequately discussed in the Briefs they had earlier filed which had been passed upon by the Court of Appeals.[16]

From a review of the records of the case, this Court finds that, contrary to appellant's argument, the Court of Appeals committed no reversible error in appreciating the qualifying circumstance of treachery.

x x x Treachery may still be appreciated even though the victim was forewarned of the danger to his person. In other words, even when the victim is warned of the danger, if the execution of the attack made it impossible for him to defend himself or to retaliate, alevosia can still be appreciated. (Underscoring supplied)[17]

Appellant's sudden attack deprived the victim of an opportunity to defend himself. His utterance - "walang kikilos" - cannot be construed as warning to the victim to defend himself. It indicates a caveat to restrain anyone from coming to the victim's defense.

Appellant's appeal thus fails.

As it is well-established that an appeal in criminal proceedings throws the whole case open for review of all aspects, including those not raised by the parties,[18] the Court, after combing through the documentary evidence for the prosecution, finds that a modification of the decision respecting the civil aspect of the case is in order.

The trial court awarded P26,034.93 as actual damages representing expenses for the hospitalization, wake, and funeral of the victim.[19] A recomputation of the amounts reflected in the documentary evidence (Exhibits "G," "G-1" to "G-18," "H," "H-1," "I," and "I-1"[20]) - basis of the award yields, however, a total of P26,300.45.

As for the award of P1,640,034.50 representing compensatory damages, the trial court arrived at it in this wise:

x x x The [amount] was computed taking into account the following: a) his age at the time of his demise - 41 years old; b) his life expectancy - 65 years; c) his monthly salary of P7,624.70 [as driver of Egon Trade, Inc.][21] plus 13[th] month pay of P6,214.70; and d) his gross earnings for 24 years - P2,342,906.4.

Deducting thirty percent 30% therefrom as his living expenses (702,817.92), the actual damages to be paid by the accused should, therefore, be P1,640,034.50. In considering the thirty percent rate, the Court took into account the fact that he was the sole bread winner of the family and he had three minor children.[22]

Jurisprudence, however, has established the following formula for computing compensation for loss of earning capacity:

net earning capacity = $[2/3 \times (80 - \text{age at time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses})]$,[23]

and pegged reasonable and necessary reasonable expenses at 50% of earnings in the absence of contrary evidence.[24] Applying this formula, this Court arrives at P1,269,047.30 as compensatory damages.

WHEREFORE, the July 27, 2006 Decision of the Court of Appeals affirming that of Branch 219 of the Quezon City Regional Trial Court is MODIFIED in that the award of actual damages for the hospitalization, wake, and funeral expenses is INCREASED to P26,300.45, and the award of compensatory damages for loss of earning capacity is REDUCED to P1,269,047.30. In all other respects, the challenged Decision is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, p. 1.

[2] TSN, September 17, 1998, pp. 2-12; TSN, September 24, 1998, pp. 2-18; TSN, April 13, 1999, pp. 3-4.

[3] Exhibits "M"- "O," records, pp. 58-60. Vide records, pp. 64-68.

[4] TSN, February 1, 1999, pp. 2-5.

[5] Records, pp. 82-87.

[6]Id. at 86-87.

[7]Id. at 87.

[8]G.R. No. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

[9] CA rollo, p. 79.

[10] Id. at 40.

[11]Id. at 41.

[12] Id. at 42-43.

[13] Id. at 68-70.

[14] Penned by Court of Appeals Associate Justice Jose C. Reyes, Jr., with the concurrences of Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas, id. at 81-91.

[15] Id. at 94-95.

[16]Rollo, pp. 15-21. Vide CA rollo, pp. 32-44, 62-72.

[17] People v. Gutierrez, 429 Phil. 124, 137 (2002).

[18] People v. Artellero, 395 Phil. 876, 889 (2000).

[19] Records, p. 87. Vide Exhibits "G" - "I" and submarkings, records, pp. 30-37; TSN, September 24, 1998, pp. 2-6.

[20]Ibid. Vide Exhibits "G" - "I" and submarkings, records, pp. 30-37; TSN, September 24, 1998, pp. 2-6.

[21] Exh. "J" (Certificate of Employment and Compensation), records, p. 38.

[22] Records, p. 87. Citations omitted. Vide Exhibits "J" and "O," records pp. 38 and 60.

[23] People v. Catbagan, 467 Phil. 1044, 1087 (2004).

[24] Ibid.

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