

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD GARCHITORENA Y CAMBA A.K.A. JUNIOR; JOEY PAMPLONA A.K.A. NATO AND JESSIE GARCIA Y ADORINO, ACCUSED-APPELLANTS.

G.R. No. 175605. August 28, 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.-HC No. 00765 which affirmed an earlier Decision[2] of the Regional Trial Court (RTC) of Binan City, Branch 25 in Criminal Case No.9440-B, finding accused-appellants Arnold Garchitorea y Gamba, a.k.a. "Junior," Joey Pamplona, a.k.a. "Nato," and Jessie Garcia y Adorino guilty beyond reasonable doubt of murder and sentencing them to suffer the penalty of death and to indemnify jointly and severally the heirs of the victim in the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P50,000.00 as exemplary damages, P16,700.00 as actual damages, P408,000.00 for loss of earning capacity and to pay the costs of the suit.

The conviction of accused-appellants stemmed from an Information[3] dated January 22, 1996, filed with the RTC for the crime of Murder, the accusatory portion of which reads:

That on or about September 22, 1995, in the Municipality of Binan, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Arnold Garchitorea y Gamba, alias "Junior", Joey Pamplona alias "Nato" and Jessie Garcia y Adorino, conspiring, confederating together and mutually helping each other, with intent to kill, while conveniently armed with a deadly bladed weapon, with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Mauro Biay y Almarinez with the said weapon, thereby inflicting upon him stab wounds on the different parts of his body which directly caused his death, to the damage and prejudice of his surviving heirs.

That the crime was committed with the qualifying aggravating circumstance of abuse of superior strength.

CONTRARY TO LAW.

When arraigned, accused-appellants, duly assisted by their counsel, pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution presented three (3) witnesses; namely, Dulce Borero, elder sister of the victim Mauro Biay and eyewitness to the killing of her brother; Dr. Rolando Poblete, who conducted an autopsy on the body of the victim and prepared the post-mortem report; and Amelia Biay, the victim's widow. The evidence for the prosecution, as culled from the CA Decision under review, is as follows:

In the proceedings before the trial court, witness for the prosecution Dulce Borero testified that on September 22, 1995, at around 9:00 o'clock in the evening, she was selling "balut" at Sta. Inez, Almeda Subdivision, Brgy. Dela Paz, Binan, Laguna. Her brother, Mauro Biay, also a "balut" vendor", was also at the area, about seven (7) arms length away from her when she was called by accused Jessie Garcia. Borero testified that when her brother Mauro approached Jessie, the latter twisted the hand of her brother behind his back and Jessie's

companions- accused Arnold Garchitorena and Joey Pamplona - began stabbing her brother Mauro repeatedly with a shiny bladed instrument. Joey was at the right side of the victim and was strangling Mauro from behind. Witness saw her brother Mauro struggling to free himself while being stabbed by the three (3) accused., until her brother slumped facedown on the ground. Arnold then instructed his two co-accused to run away. During cross-examination, Borero claims that she wanted to shout for help but nothing came out from her mouth. When the accused had left after the stabbing incident, witness claimed that she went home to call her elder brother Teodoro Biay, but when they returned to the scene, the victim was no longer there as he had already been brought to the Perpetual Help Hospital. They learned from the tricycle driver who brought Mauro to the hospital that their brother was pronounced dead on arrival.

Dr. Rolando Poblete, the physician who conducted an autopsy on victim Mauro Biay and prepared the post-mortem report, testified that the victim's death was caused by "hypovolemic shock secondary to multiple stab wounds." Witness specified the eight (8) stab wounds suffered by the victim - one in the neck, two in the chest, one below the armpit, two on the upper abdomen, one at the back and one at the left thigh - and also a laceration at the left forearm of Mauro. According to the expert witness, the nature of stab wounds indicate that it may have been caused by more than one bladed instrument.

The victim's widow, Amelia Biay, testified that she incurred burial expenses amounting to P16,700.00 due to the death of her husband. Also, her husband allegedly earned a minimum of P300.00 a day as a "balut" vendor and P100.00 occasionally as a part-time carpenter.

The accused-appellants denied the charge against them. Specifically, accused-appellant Joey Pamplona denied that he participated in the stabbing of Mauro Biay, accused-appellant Jessie Garcia interposed the defense of alibi, while accused-appellant Arnold Garchitorena interposed the defense of insanity. Succinctly, the CA Decision summed up their respective defenses:

On the other hand, accused Joey Pamplona denied that he participated in the stabbing of Mauro Biay. Joey Pamplona claims that he was seated on a bench when co-accused Arnold came along. Then the "balut" vendor arrived and Joey saw Arnold stand up, pull something from the right side of his pocket and stab the "balut" vendor once before running away. Joey Pamplona testified that after the stabbing incident, due to fear that Arnold might also stab him, he also ran away to the store of a certain Mang Tony, a barangay official and related the incident to Aling Bel, the wife of Mang Tony. Joey Pamplona said that he stayed at Mang Tony's store until his father arrived and told him to go home.

Danilo Garados testified that on September 22, 1995, he was at the store of Mang Tony to buy cigarettes and saw Arnold and Joey seated on the bench near the artesian well. Arnold and Joey allegedly called Mauro Biay and he saw Arnold stabbing Mauro. Jessie Garcia was not there and Joey allegedly ran away when Arnold stabbed Mauro.

Clavel Estropegan testified that on September 22, 1995, around 9:00 p.m. Joey Pamplona entered her store and told her that Junior or Arnold Garchitorena was stabbing somebody. She did not hear any commotion outside her house which is just four houses away from the artesian well. However, she closed her store for fear that Arnold will enter her house.

Barangay Captain Alfredo Arcega testified that he investigated the stabbing incident and, although he had no personal knowledge, he found out that it was Arnold Garchitorena who stabbed Mauro Biay. Upon questioning Arnold, the latter admitted that he did stab Mauro.

Defense witness Miguelito Gonzalgo testified that on September 22, 1995, he was in his shoe factory at his house located at 186 Sta. Teresita Street, Almeda Subdivision, Binan when he heard Mauro Biay shouting, and so he went out of his house. He allegedly saw two persons "embracing" each other near the artesian well. He recognized these two persons as Mauro and Arnold. He saw Arnold pulling out a knife from the body of Mauro and the latter slowly fell down on his side. After Arnold washed his hands at the artesian well and walked

away towards the house of his aunt, this witness approached Mauro and seeing that the victim was still breathing, went to get a tricycle to bring Mauro to the hospital. When he got back to the area, there were many people who helped board Mauro in the tricycle and they brought him to the Perpetual Help Hospital in Binan.

The other co-accused Jessie Garcia took the stand and claimed that on September 22, 1995, between 8:00 and 9:00 in the evening, he was still riding a bus from his work in Blumentritt. He arrived at his home in Binan only at 11:00 p.m. On September 24, 1995, he was fetched by two (2) policemen and two (2) Barangay Tanods from his house and brought to the Binan Police Station for questioning. Thereafter, he was put in jail and incarcerated for six (6) months without knowing the charges against him. He was only informed that he was one of the suspects in the killing of Mauro Biay by his mother.

With respect to Arnold Garchitorena, Dr. Evelyn Belen, Medical Officer III and resident physician of the National Center for Mental Health, testified that she examined the accused Arnold and based on the history of the patient, it was found that he had been using prohibited drugs like shabu and marijuana for two (2) years prior to the stabbing incident in 1995. The patient is allegedly suffering from schizophrenia, wherein he was hearing auditory voices, seeing strange things and is delusional. However, Dr. Belen also testified that the accused Garchitorena had remissions or exaservation and understands what he was doing and was aware of his murder case in court.[4]

On May 9, 2001, the trial court rendered a Decision,[5] as follows:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds accused Arnold Garchitorena y Gamboa alias Junior, Joey Pamplona alias Nato and Jessie Garcia y Adorino GUILTY beyond reasonable of the crime of "MURDER" as defined and penalized under Article 248 of the Revised Penal Code, as amended, by Republic Act 7659, (Heinous Crimes). Accordingly, all of them are hereby sentenced to suffer the penalty of DEATH.

Furthermore, all of the accused are hereby ordered to pay jointly and severally Amelia Biay, widow of the victim Mauro Biay, the following sums:

- a) 50,000.00 - as and for civil indemnity
- b) 50,000.00 - as and for moral damages
- c) 50,000.00 - as and for exemplary damages
- d) 16,700.00 - as and for actual damages
- e) 408,000.00 - as and for loss of the earning capacity of Mauro Biay; and
- f) To pay the costs of suit.

Likewise, the Provincial Warden of the Provincial Jail, Sta. Cruz, Laguna, is hereby ordered to transfer/commit the three (3) accused to the New Bilibid Prisons, Muntinlupa City, immediately upon receipt hereof.

Considering that death penalty was meted against all of the accused, let the entire records of the above-entitled case be forwarded to the Supreme Court for automatic review and judgment pursuant to Rule 122, Sec.10 of the Revised Rules of Criminal Procedure.

SO ORDERED.[6]

Accused-appellants appealed to the CA. Pamplona and Garcia reiterated their denial of the charge against them. Garchitorena who never denied his participation in the killing, insisted, however, insisted that he is exempt from criminal liability because he was suffering from a mental disorder before, during and after the commission of the crime.

On May 31, 2006, the CA rendered the Decision[7] now under review, affirming RTC's Decision in toto, thus:

WHEREFORE, based on the foregoing premises, the instant appeal is DISMISSED. Accordingly, the appealed

March 9, 2001 Decision of the Regional Trial Court of Binan, Laguna, Branch 25, in Criminal Case No. 9440-B finding herein accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED in its entirety.

SO ORDERED.

In arriving at the assailed Decision, the CA ratiocinated as follows:

After studying the records of this case, we do not find any reason to overturn the ruling of the trial court.

Despite the testimony of defense witnesses that it was only accused-appellant Arnold Garchitorena who stabbed the victim Mauro Biay, we find reason to uphold the trial court's giving credence to prosecution witness Dulce Borero who testified as an eyewitness on the circumstances surrounding the incident and the manner by which the crime committed.

Defense witness Garados testified that he was at the store and saw both Arnold and Joey at the vicinity where the stabbing incident happened, seated on a bench near the artesian well, when they called the victim Mauro. Defense witness Gonzalgo was in his house when he heard the commotion and went outside to see Arnold and Mauro "embracing" near the artesian well and the former pulling a knife from the body of the latter. On the other hand, prosecution witness Borero was merely seven arms length away from the incident and could easily see the victim Mauro overpowered and attacked by his assailants, Arnold Garchitorena, Joey Pamplona and Jessie Garcia. She witnessed the stabbing incident in its entirety and positively identified the accused and their criminal acts. It is a well-settled rule that the evaluation of testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not. (People vs. Cardel, 336 SCRA 144)

Evidence presented by the prosecution shows that the accused conspired to assault the victim Mauro Biay. Accused Jessie Garcia was the one who called the victim and prompted the latter to approach their group near the artesian well. When the victim was near enough, accused Jessie Garcia and co-accused Joey Pamplona restrained Mauro Biay and overpowered him. Witness Borero then saw the two accused, Jessie Garcia and Joey Pamplona, together with their co-accused Arnold Garchitorena instructed his two co-accused to run. Conspiracy is apparent in the concerted action of the three accused. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (People vs. Pendatun, 434 SCRA 148). Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused which show a joint or common purpose and design, a concerted action and community of interest among the accused (People vs. Sicad, et al., 391 SCRA 19).

Likewise, we affirm the trial court's appreciation of the aggravating circumstance of abuse of superior strength to qualify the crime into murder. "While it is true that superiority in number does not per se mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense." (People of the Phils. vs. Parreno, 433 SCRA 591). In the case at bar, the victim was rendered helpless when he was assaulted by the three accused. He was restrained and overpowered by the combined strength and the weapons used by his assailants.

We do not find improbable Borero's failure to act or shout for help upon witnessing the stabbing of her brother Mauro Biay. It is an accepted maxim that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling experience. xxx There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. (People of the Philippines vs. Aspuria, 391 SCRA 404)

Accused-appellant Jessie Garcia's denial of any involvement cannot prevail over Borero's positive identification. As ruled by the trial court, allegations that accused Jessie Garcia was somewhere else when the crime was committed is not enough. He must likewise demonstrate that he could not have been present at the crime scene, or in its vicinity. He also could have sought the help of his co-worker, employer or anyone in the area to support his defense of alibi. Indeed, we affirm that accused Jessie Garcia's allegation that he was elsewhere when the crime was committed is not substantiated by evidence. Alibi can easily be fabricated. Well-settled is the rule that alibi is an inherently weak defense which cannot prevail over the positive identification of the accused by the victim. (People of the Phils. vs. Cadampog, 428 SCRA 336)

Finally, the defense of insanity cannot be given merit when the expert witness herself, Dr. Belen, attested that accused Arnold Garchitorena was experiencing remission and was even aware of his murder case in court. The trial court had basis to conclude that during the commission of the crime, Arnold was not totally deprived of reason and freedom of will. In fact, after the stabbing incident, accused Arnold Garchitorena instructed his co-accused to run away from the scene. We agree that such action demonstrates that Arnold possessed the intelligence to be aware of his and his co-accused's criminal acts. A defendant in a criminal case who interpose the defense of mental incapacity has the burden of establishing the fact that he was insane at the very moment when the crime was committed. There must be complete deprivation of reason in the commission of the act, or that the accused acted without discernment, which must be proven by clear and positive evidence. The mere abnormality of his mental faculties does not preclude imputability. Indeed, a man may act crazy but it does not necessarily and conclusively prove that he is legally so. (People of the Philippines vs. Galigao, 395 SCRA 195)

Having found the court a quo's decision to be supported by the evidence on record, and for being in accord with prevailing jurisprudence, we find no reason to set it aside.

WHEREFORE, based on the foregoing premises, the instant appeal is DISMISSED. Accordingly, the appealed March 9, 2001 Decision of the Regional Trial Court of Biñan, Laguna, Branch 25, in Criminal Case No. 9440-B finding herein accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED in its entirety.

SO ORDERED.

The case was elevated to this Court for automatic review. The People and the accused-appellants opted not to file any supplemental brief. The respective assignments of errors contained in the briefs that they filed with the CA are set forth hereunder.

For accused-appellant Pamplona:

I

THE TRIAL COURT ERRED IN GIVING FULL AND TOTAL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESS DULCE BORERO

II

THE TRIAL COURT ERRED IN FAILING TO APPRECIATE THE EVIDENCE IN FAVOR OF THE APPELLANT

III

THE TRIAL COURT ERRED IN CONVICTING APPELLANT WHEN HIS GUILT HAS NOT BEEN DULY PROVEN BEYOND REASONABLE DOUBT

For accused-appellant Garcia:

I

THE TRIAL COURT ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE ALLEGED EYEWITNESS ACCOUNT GIVEN BY DULCE BORERO, ELDER SISTER OF THE VICTIM AND PROSECUTION WITNESS, IN RESPECT OF THE PARTICIPATION OF THE HEREIN ACCUSED DESPITE GLARING INCONSISTENCIES, INHERENT IMPROBABILITIES AND UNRELIABLE DECLARATION ATTENDING THE SAME; AND, ON THE OTHERHAND, IN DISREGARDING THE COHERENT, CONSISTENT AND CREDIBLE EYEWITNESS ACCOUNT OF DEFENSE WITNESSES - ALL IN CONTRAVENTION OF THE RULES GOVERNING QUANTUM OF PROOF IN CRIMINAL CASES AND THE PRESUMPTION OF INNOCENCE EXISTING IN FAVOR OF ACCUSED GARCIA;

II

THE TRIAL COURT ERRED IN COMPLETELY DISREGARDING THE DEFENSE OF ALIBI INTERPOSED BY ACCUSED-APPELLANT JESSIE GARCIA WHO WAS SOMEWHERE ELSE AT THE TIME AS TO RENDER IT PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AND EVEN IF THE SAME IS SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, THAT IS, THE TESTIMONIES OF OITHER DEFENSE WITNESSES WHO WERE ONE IN SAYING THAT HE WAS NOT PRESENT THEREAT;

III

THE LOWER COURT ERRED IN ENTERING A VERDICT OF CONVICTION FOR JESSIE GARCIA INSTEAD OF ACQUITTAL WHEN NONE OF THE OTHER ACCUSED, AFTER HAVING ADMITTED THEIR PARTICIPATION IN THE CRIME, IMPLICATED HIM;

IV

THE LOWER COURT ERRED, IN AWARDING MORAL AND EXEMPLARY DAMAGES IN THE ABSENCE OF EVIDENCE THEREFOR.

For accused-appellant Garchitorena:

I

THE COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE OVER THE TESTIMONY OF AN EXPERT WITNESS.

II

THE COURT ERRED IN FINDING ACCUSED ARNOLD GARCHITORENA TO HAVE WILLFULLY EXECUTED THE ACTS COMPLAINED OF.

Accused-appellant Pamplona capitalized on Dulce Borero's inaction at the time when she had supposedly witnessed the slaying of her younger brother. He argued that if she really witnessed the crime, she would have had readily helped her brother Mauro instead of fleeing. Accused-appellant Garcia anchored his acquittal on his defense of alibi, while accused-appellant Garchitorena used his alleged mental disorder, specifically, schizophrenia, as a ground to free himself from criminal liability.

The core issues raised by the both accused-appellants Pamplona and Garcia are factual in nature and delve on the credibility of the witnesses.

Since the accused-appellants raise factual issues, they must use cogent and convincing arguments to show that the trial court erred in appreciating the evidence. They, however, have failed to do so.

Accused-appellant Pamplona contends that the trial court's decision was rendered by a judge other than the one who conducted trial. Hence, the judge who decided the case failed to observe the demeanor of the witnesses on

the stand so as to gauge their credibility. This argument does not convince the Court for the reason it has consistently maintained, to wit:

We have ruled in *People v. Sadiangabay* (G.R. No. 87214, March 30, 1993, 220 SCRA 551), that the circumstance alone that the judge who wrote the decision had not heard the testimonies of the prosecution witnesses would not taint his decision. After all, he had the full record before him, including the transcript of stenographic notes which he could study. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is a clear showing of a grave abuse of discretion in the factual findings reached by him.[8]

A perusal of the trial court's decision readily shows that it was duly based on the evidence presented during the trial. It is evident that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses. This Court finds no plausible ground to set aside the factual findings of the trial court, which were sustained by the CA.

The eyewitness Dulce Borero's testimony clearly established Pamplona and Garcia's participation and, consequently, their culpability in the appalling murder of Mauro Biay:[9]

"Fiscal Nofuente (To the witness)

Q:

Madam witness, do you know Mauro Biay?

A:

Yes sir.

xxx

Q:

Do you know likewise the cause of his death?

A:

Yes sir.

Q:

What was the cause of his death?

A:

He was repeatedly stabbed sir.

Q:

You said that Mauro Biay was repeatedly stabbed, who stabbed Mauro Biay repeatedly?

A:

Arnold Gatchitorenna, was stabbing repeatedly the victim sir.

Q:

Was Arnold Gatchitorenna alone when he stabbed Mauro Biay?

A:

They were three (3) who were stabbing Mauro Biay, sir.

Q:

You said that they were three who were stabbing Mauro Biay, who are the other two?

A:

Jessie Garcia and Joey Pamplona sir.

Q:

So that when you said three, you are referring to Arnold Gatchitoren, Joey Pamplona and Jessie Garcia?

A:

Yes sir.

Q:

Now, when [did] this stabbing incident [happen]?

A:

On September 22, 1995 sir.

Q:

Do you know what was [the] time when this incident happened on September 22, 1995?

A:

9:00 o'clock in the evening sir.

Q:

Where [did] this stabbing [happen]?

A:

At Sta. Inez, Almeda Subdivision, dela Paz, Biñan, Laguna sir.

Q:

Could you tell Madam Witness, where in particular place in Sta. Inez, Almeda Subdivision this stabbing incident happened?

A:

In the street near the artesian well sir.

Q:

Do you know where is that street?

A:

Sta Inez St., Almeda Subdivision, dela Paz, Biñan, Laguna sir.

Q:

You said a while ago that accused Arnold Gatchitoren, Jessie Garcia, Joey Pamplona repeatedly [stabbed]

Mauro Biay, do you know these three accused?

A:

Yes sir.

xxx

Q:

Will you kindly step down from your seat and tap the three accused that you have pointed to us to be the persons who stabbed and killed your brother Mauro Biay?

Court: Police Officer Dionisio will you kindly accompany the witness.

P02 Dionisio: Yes sir.

Fiscal: I would like to manifest Your Honor, that the witness was crying when she was pointing to the three accused, uttering that "Sila ang pumatay sa aking kapatid!".

xxx

Q:

What is the name of that person wearing that blue t-shirts?

A:

Arnold Gatchitorena sir.

Q:

We would like to confirm if he is really Arnold Gatchitorena pointed to by the witness?

Interpreter: The person pointed to by the witness wearing blue t-shirts identified himself as Arnold Gatchitorena.

Fiscal:

Do you know the name of second person whom you tapped on his side wearing white t-shirts?

A:

Yes sir.

Q:

What is his name?

A:

Jessie Garcia sir.

Interpreter: The person pointed to by the witness identified himself as certain Jessie Garcia.

Fiscal: Likewise Madam Witness, do you know the name of a person in longsleeves polo shirts-checkered?

A:

Yes sir, Joey Pamplona sir.

Interpreter: The person pointed by the witness identified himself as certain Joey Pamplona.

xxx

Q:

How far were you from Mauro Biay when he was being stabbed by the three accused Joey Pamplona, Jessie Garcia, and Arnold Gatchitorenena?

A:

Seven (7) arms length sir.

Q:

You said that your brother was stabbed successively by the three accused, how did it [happen] Madam Witness?

A:

They called him sir.

Q:

Who was called?

A:

Mauro Biay sir.

Q:

Who called Mauro Biay?

A:

It was Jessie who called sir.

Q:

When you said Jessie, are you referring to Jessie Garcia, one of the accused in this case?

A:

Yes sir.

Q:

When Mauro Biay was called by Jessie Garcia, what was [M]auro Biay doing there?

A:

Mauro Biay approached sir.

Q:

By the way Madam Witness, do you know why Mauro Biay was in that place where the incident happened?

A:

Yes sir.

Atty. Pajares:

Witness would be incompetent Your Honor.

Court:

Witness may answer.

Fiscal:

Why was he there?

A:

He was selling "balot" sir.

xxx

Fiscal:

When Mauro Biay approached Jessie Garcia, what [did] Mauro Biay do, if any?

A:

Jessie Garcia twisted the hand of my brother and placed the hand at his back sir.

Q:

Who were the companions of Jessie Garcia when he called [M]auro Biay?

A:

Joey Pamplona and Jr. Gatchitorenna sir.

Q:

When you said Jr. Gatchitorenna are you referring to Arnold Gatchitorenna?

A:

Yes sir.

Q:

So that when Jessie Garcia called Mauro Biay, he was together with Arnold Gatchitorenna and Joey Pamplona?

A:

Yes sir.

Q:

If you know Madam Witness, what did Joey Pamplona and Arnold Gatchitorenna do after Jessie Garcia twisted the arm of Mauro Biay on his back?

A:

Arnold Gatchitorenna repeatedly stabbed [M]auro Biay at his back and also Jessie Garcia also stabbed my brother sir.

xxx

Q:

Were you able to know the weapon used to stab Mauro Biay?

A:

It was like a shiny bladed instrument sir.

Q:

Now, what was the position of Mauro Biay when being stabbed by the three accused?

A:

He was struggling to free himself sir.

Q:

You said that he was struggling to free himself, why did you say that he was struggling to free himself?

A:

Because I could see sir.

Q:

You see what?

A:

Because that three were repeatedly stabbing Mauro Biay sir.

Q:

Aside from stabbing Mauro Biay, what was Joey Pamplona doing to Mauro Biay, if you can still remember?

A:

He was also repeatedly stabbing my brother sir.

Q:

Aside from that stabbing, what else if any Joey Pamplona was doing to Mauro Biay?

A:

Aside from stabbing Mauro Biay Joey Pamplona was also struggling [strangling] the neck of Mauro Biay sir.

Q:

You said that Mauro Biay was stabbed by the three accused successively, was Mauro Biay hit by these stabbing?

A:

Yes sir.

Q:

Why do you know that he was hit by stabbing of the three?

A:

Because I saw the blood oozing from the part of his body sir.

Q:

Now, what happened to Mauro Biay, when he was stabbed and hit by the successive stabbing of the three accused?

A:

The victim Mauro Biay was suddenly slumped face down on the ground sir.

xxx

Q:

What did you learn if any when you went to the hospital to see your brother [M]auro Biay?

A:

He was already dead sir.

Even under cross-examination, Dulce Borero was unwavering, straightforward, categorical and spontaneous in her narration of how the killing of her brother Mauro took place.[10] Notably, her testimony as to the identification of Garchitorena as the one who stabbed Mauro Biay was even corroborated by defense witness Miguelito Gonzalgo,[11] thus:

Q:

From the time you saw these two persons near the artesian well, what happened after that, mr. witness?

A:

Mauro Biay slumped on the floor and I saw Junior stabbed once more the victim but I am not sure if the victim was hit at the back, ma'am.

Q:

How far were you from the two when you saw the incident, mr. witness?

A:

More or less 7 to 8 meters, ma'am.

Q:

Were there anything blocking your sight from the place where you were standing to the place of incident, mr. witness?

A:

None, ma'am.

Absent any showing of ill motive on the part of Borero, we sustain the lower court in giving her testimony full faith and credence. Moreover, the prosecution's version is supported by the physical evidence.[12] Borero's testimony that the victim was successively stabbed several times conforms with the autopsy report that the latter suffered multiple stab wounds.[13]

Accused-appellant Pamplona's argument that there were inconsistencies in the testimony of prosecution witnesses

Borero is not convincing. He specifically points out that in the direct examination of Borero, she stated that it was Jessie Garcia who twisted the hand of Mauro Biay backwards when the latter approached the former.[14] In the cross-examination, she stated that it was Joey Pamplona who strangled the victim when the latter approached Jessie Garcia.

The seeming inconsistencies between her direct testimony and her cross-examination testimonies are not sufficient ground to disregard them. In *People v. Alberto Restoles y Tuyo, Roldan Noel y Molet and Jimmy Alayon y De la Cruz*,[15] we ruled that:

...minor inconsistencies do not affect the credibility of witnesses, as they may even tend to strengthen rather than weaken their credibility. Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony. Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.

Moreover, such inconsistencies did not contradict the credibility of Borero or her narration of the incident. On the contrary, they showed that her account was the entire truth. In fact, her narration was in harmony with the account of defense witness Gonzalzo. We note further that both the Sworn Statement[16] of Borero and her testimony before the lower court[17] were in complete congruence.

Undoubtedly, accused-appellants' identities as the perpetrators were established by the prosecution. The prosecution witness was able to observe the entire incident, because she was there. Thus, we find no reason to differ with the trial court's appreciation of her testimony. Positive identification, where categorical and consistent, and not attended by any showing of ill motive on the part of the eyewitnesses on the matter, prevails over alibi and denial.[18]

Accused-appellant Garcia's alibi has no leg to stand on. In *People v. Desalisa*,[19] this Court ruled that:

...for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.

Here, the crime was committed at Binan, Laguna. Although Garcia testified that he was still riding a bus from his work in Blumentritt and arrived in Binan only at 11:00 P.M. or two hours after the killing incident, still, he failed to prove that it was physically impossible for him to be at the place of the crime or its immediate vicinity. His alibi must fail.

Accused-appellant Garchitorena's defense of insanity has also no merit. Unlike other jurisdictions, Philippine courts have established a more stringent criterion for the acceptance of insanity as an exempting circumstance.[20] As aptly argued by the Solicitor General, insanity is a defense in the nature of confession and avoidance. As such, it must be adequately proved, and accused-appellant Garchitorena utterly failed to do so. We agree with both the CA and the trial court that he was not totally deprived of reason and freedom of will during and after the stabbing incident, as he even instructed his co-accused-appellants to run away from the scene of the crime.

Accused-appellant Garcia also argues that there was no conspiracy, as "there was no evidence whatsoever that he aided the other two accused-appellants or that he participated in their criminal designs." [21] We are not persuaded. In *People v. Maldo*, [22] we stated:

"Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof is not essential, for conspiracy may be inferred from the acts of the

accused prior to, during or subsequent to the incident. Such acts must point to a joint purpose, concert of action or community of interest. Hence, the victim need not be actually hit by each of the conspirators for the act of one of them is deemed the act of all." (citations omitted, emphasis ours)

In this case, conspiracy was shown because accused-appellants were together in performing the concerted acts in pursuit of their common objective. Garcia grabbed the victim's hands and twisted his arms; in turn, Pamplona, together with Garchitorena, strangled him and straddled him on the ground, then stabbed him. The victim was trying to free himself from them, but they were too strong. All means through which the victim could escape were blocked by them until he fell to the ground and expired. The three accused-appellants' prior act of waiting for the victim outside affirms the existence of conspiracy, for it speaks of a common design and purpose.

Where there is conspiracy, as here, evidence as to who among the accused rendered the fatal blow is not necessary. All conspirators are liable as co-principals regardless of the intent and the character of their participation, because the act of one is the act of all.[23]

The aggravating circumstance of superior strength should be appreciated against the accused-appellants. Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, considering that a situation of superiority of strength is notoriously advantageous for the aggressor and is selected or taken advantage of by him in the commission of the crime.[24] This circumstance was alleged in the Information and was proved during the trial. In the case at bar, the victim certainly could not defend himself in any way. The accused-appellants, armed with a deadly weapon, immobilized the victim and stabbed him successively using the same deadly weapon.

All told, the trial court correctly convicted the accused-appellants of murder, considering the qualifying circumstance of abuse of superior strength. Since an aggravating circumstance of abuse of superior strength attended the commission of the crime, each of the accused-appellants should be sentenced to suffer the penalty of death in accordance with Article 63[25] of the Revised Penal Code. Murder, under Article 248[26] of the Revised Penal Code, is punishable by reclusion perpetua to death. Following Article 63 of the same code, the higher penalty of death shall be applied.

In view, however, of the passage of R.A. No. 9346,[27] otherwise known as the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, reclusion perpetua without eligibility for parole should instead be imposed. Accordingly, accused-appellants shall be sentenced to reclusion perpetua without eligibility for parole in lieu of the penalty of death.

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 was not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 was still proper. Following the ratiocination in *People v. Victor*,[30] 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 crime.

Hence, we modify the award of civil indemnity by the trial court from P50,000.00 to P75,000.00. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Likewise the award of P50,000.00 for moral damages is modified and increased to P75,000.00, consistent with recent jurisprudence[31] on heinous crimes where the imposable penalty is death, it is reduced to reclusion perpetua pursuant to R.A. 9346. The award of moral damages does not require allegation and proof of the emotional suffering of the heirs, since the emotional wounds from the vicious killing of the victim cannot be

denied.[32] The trial court's award of exemplary damages in the amount of P50,000.00 shall, however, be reduced to P30,000.00, also pursuant to the latest jurisprudence on the matter.[33]

As to the award of actual damages amounting to P16,700.00, we modify the same. In *People v. Villanueva*,^[34] this Court declared that "...when actual damages proven by receipts during the trial amount to less than P25,000.00, as in this case, the award of temperate damages for P25,000.00 is justified in lieu of actual damages of a lesser amount." In the light of such ruling, the victim's heirs in the present case should, therefore, be awarded temperate damages in the amount of P25,000.00.

The award of P408,000.00 for loss of earning capacity is justified. As a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.^[35] It cannot be disputed that the victim, at the time of his death, was self-employed and earning less than the minimum wage under current labor laws. The computation arrived at by the trial court was in accordance with the formula for computing the award for loss of earning capacity.^[36] Thus,

$$\begin{aligned} &\text{Award for} \\ &\text{lost earnings} \\ &= \frac{2}{3} [80 - \text{age at time of death}] \times [\text{gross annual income} - 50\% (\text{GAI})] \\ &= \frac{2}{3} [80 - 29] \times \text{P}24,000.00 - \text{P}12,000.00 \\ &= (34) \times (\text{P}12,000.00) \\ &= \text{P}408,000.00 \end{aligned}$$

WHEREFORE, the appealed decision of the CA in CA-G.R. CR HC No. 00765, finding the three-accused appellants guilty beyond reasonable doubt of murder is hereby **AFFIRMED WITH** the following **MODIFICATIONS**: (1) the penalty of death imposed on accused-appellants is **REDUCED** to **RECLUSION PERPETUA** without eligibility for parole pursuant to RA 9346; (2) the monetary awards to be paid jointly and severally by the accused-appellants to the heirs of the victim are as follows: P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P25,000.00 as temperate damages in lieu of actual damages; (3) P408,000.00 for loss of earning capacity; and (4) interest is imposed on all the damages awarded at the legal rate of 6% from this date until fully paid.^[37]

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.

Ynares-Santiago, J., on official leave.

Nachura, J., no part. filed pleading as Solicitor General.

[1] Penned by then Associate Justice Elvi John S. Asuncion (ret.) with Associate Justices Noel G. Tijam and Mariflor P. Punzalan-Castillo concurring; rollo Vol. II, pp. 3-10.

- [2] Penned by Judge Hilario F. Corcuera, Records, Vol. II, pp. 427-444.
- [3] Rollo, pp. 9-10.
- [4] Rollo, Vol. II, pp. 4-7.
- [5] Rollo, pp. 25-42.
- [6] Id. at 41-42.
- [7] Supra note 1.
- [8] People v. Fulinara, G.R. No. 88326, August 3, 1995, 247 SCRA 38.
- [9] TSN, April 23, 1996, Dulce Borero, pp. 4-14
- [10] TSN, May 8, 1996, Dulce Borero, pp. 13-20.
- [11] TSN, February 24, 1997, pp. 9-10.
- [12] Exhibit "B," Records, Vol. I, p. 127.
- [13] Id.
- [14] Pamplona's Appellant's Brief.
- [15] G.R. No. 112692, August 25, 2000, 339 SCRA 40, citing People v. Flora, G.R. No. 125909, June 23, 2000, 334 SCRA 626.
- [16] Exhibit "A," Records, Vol. I, p. 8.
- [17] TSN, Dulce Borero, May 8, 1996, pp. 13-20; TSN, Dulce Borero, April 23, 1996, pp. 5-14
- [18] People v. Abolidor, G.R. No. 147231, February 18, 2004, 423 SCRA 260.
- [19] People v. Desalisa, G.R. No. 148327, June 12, 2003, 403 SCRA 723.
- [20] People v. Belonio, G.R. No. 148695, May 27, 2004, 429 SCRA 579.
- [21] Garcia's Appellant's Brief, rollo, Vol. I, p. 119.
- [22] G.R. No. 131347, May 19, 1999, 307 SCRA 436.
- [23] People v. Salison, Jr., G.R. No. 115690, February 20, 1996, 253 SCRA 758.
- [24] People v. Cortez, G.R. No. 131924, December 26, 2000, 348 SCRA 663, 674.
- [25] Art. 63. x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1) When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

[26] Art. 248. Murder - Any person who, not falling within the provisions of Art. 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 of means or persons to insure or afford impunity.

2. x x x

[27] Approved on June 24, 2006.

[28] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676. See also *People v. Ranin*, G.R. No. 173023, June 25, 2008; and *People v. Entrialgo*, G.R. No. 177353, November 11, 2008.

[29] G.R. No. 170235, August 31, 2006, 500 SCRA 704, 719.

[30] G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[31] *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.

[32] *People v. Caraig*, G.R. Nos. 116224-27, March 28, 2003, 448 Phil. 78, 98 (2003).

[33] *People v. Sia*, G.R. No. 174059, February 27, 2009.

[34] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

[35] *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003, 412 SCRA 190, 222.

[36] *People v. Ibañez et al*, G.R. No. 148627, April 28, 2004, 428 SCRA 146, 163.

[37] *People v. Regalario*, G.R. No. 174483, March 31, 2009; *People v. Guevarra*, G.R. No. 182199, October 29, 2008.

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