

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. EDILBERTO TORRES and JOSE TORRES, Accused-Appellants.

G.R. No. 176262. September 11, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 27 September 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00994 which affirmed the Decision[2] dated 3 January 2005 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, finding appellants Edilberto Torres and Jose Torres guilty of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua.

On 10 May 2002, appellants, together with their brother Rodolfo Torres, were charged before the RTC of Malolos, Bulacan, with the crime of murder under Article 248 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

That on or about the 17[th] day of February, 2002, in the municipality of San Miguel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a pointed instrument and firearm, with intent to kill Noel Yumang y Macasu, conspiring, confederating together and mutually helping one another, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab and shoot the said Noel Yumang y Macasu hitting him on the different parts of his body, thereby inflicting upon him serious physical injuries which directly caused the death of the said Noel Yumang y Macasu.[3]

During their arraignment on 31 May 2002, appellants Edilberto Torres and Jose Torres, with the assistance of counsel de oficio, entered their respective pleas of not guilty, while accused Rodolfo Torres remains at large. [4] Thereafter, trial ensued.

At the trial, the prosecution proved the following:

On 17 February 2002, at around one o'clock in the morning, witness Emilio Tamundez (Emilio) was walking home after spending hours guarding the fruits of the mango trees owned by his parents-in-law and a certain Feliciano Calbay. As he was passing through Feliciano Calbay's rice field, he noticed Noel Yumang (Noel), who was 40 to 50 meters away, also walking on his way home. Suddenly, three men emerged from the middle of the rice field and attacked Noel, the victim. Emilio recognized the assailants as appellants and accused Rodolfo Torres. While Rodolfo held both arms of Noel behind his back, Edilberto seized the head of Noel by his left hand and stabbed the victim on the nape and on the left side of his body. Rodolfo then pushed the victim to the ground. When the victim hit the ground, Jose poked a gun on the victim's head and shot the latter. Thereafter, the Torres brothers left the scene.

At past 1:00 in the morning of the same day, a barangay official of Tibagan, San Miguel, Bulacan, called up the PNP San Miguel Station to report the killing incident. In response, PO2 Ferdinand Pagala went to the crime scene where he found the corpse of the victim. Thereafter, PO2 Pagala brought the body to a funeral parlor for autopsy.

In the afternoon of the following day, Emilio met the barangay captain of Tibagan and informed the barangay official of what he had witnessed. He was told that two of the assailants were already arrested and were detained at the municipal jail, and that the victim's wake was being held at Feliciano Calbay's house.

Dr. Agnes Carpio conducted an autopsy of the body. She confirmed that the victim died of cardiac respiratory arrest secondary to gunshot wounds and stabbing. In her medico-legal report the following were the findings:

Head: 1 inch clean edge wound in 3 inch depth at the postoccipital region
1 cm post auricular left stab wound

Trunk: 0.5 cm 2 inch depth at the post axillary side left
1 inch clean edge wound 3 inch depth left

bullet wound at the right shoulder as point of entry 9 holes.[5]

For their defense, appellants denied authorship of the killing of the victim. They interposed the defense of denial and alibi.

Appellant Jose testified that he is a native of San Miguel, Bulacan. He left his native place when he was more or less 22 years old. Presently, he is a resident of Barangay Bongbongan II, Sibalom, Antique. According to him, 10 days before the incident, he arrived at his daughter's residence in Meycauayan, Bulacan, as he was invited by his daughter to attend the baptism of his grandchild. His son-in-law, Florante Zamora, asked him to go to Tibagan, San Miguel, Bulacan, to invite their relatives there. At around 5:00 to 6:00 a.m. of 17 February 2002, he left for Tibagan, San Miguel, to personally invite his siblings to the baptism. He reached the house of his brother, appellant Edilberto, at around 10:00 a.m. where he came upon Edilberto's wife. After a while, a policeman and the barangay captain arrived looking for Edilberto, who was then attending the wake of a certain barangay councilman. The barangay captain asked Edilberto's wife to call her husband. When Edilberto arrived, the barangay captain invited the former, who, in turn, requested appellant Jose to accompany him to the barangay hall. Instead of being brought to the barangay hall, appellants were brought to the municipal building of San Miguel, Bulacan. Moments later, appellants were escorted to the police station, then the policeman and the barangay captain left. When the policeman and the barangay captain returned, another person was with them and pointed to them as the killers of Noel.

Appellant Edilberto denied having any participation in the death of Noel. He pointed to Feliciano Calbay as the person responsible for implicating him and his brothers for the death of Noel. Feliciano Calbay, whose wife is the aunt of the victim, wanted to get the farm lot that the Torres brothers were leasing. Calbay even filed a case against the Torres brothers, but he lost the case. This loss made him angry with the Torreses.

Florante Zamora, son-in-law of appellant Jose Torres, confirmed the latter's testimony regarding his arrival in Meycauayan and his trip to Tibagan at around 5:00 a.m. of 17 February 2002.

The trial court, however, was convinced that the prosecution had discharged the required quantum of evidence to prove the guilt of the appellants of the crime charged. It convicted the appellants of murder, qualified by treachery and imposed upon each of them the penalty of reclusion perpetua. Appellants were also ordered to indemnify, jointly and severally, the heirs of the victim in the amounts of P60,000.00 as civil indemnity, P50,000.00 as moral damages and P20,000.00 as exemplary damages, and to pay the costs. The dispositive portion of the RTC decision reads:

WHEREFORE, this Court finds the herein accused JOSE TORRES and EDILBERTO TORRES, GUILTY beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, as amended, and hereby sentences both to suffer the penalty of Reclusion Perpetua and to pay jointly and severally the heirs of the late

Noel Yumang the following sums of money:

1. P60,000.00 as civil indemnity;
2. P50,000.00 as moral damages; and
3. P20,000.00 as exemplary damages.

The case against Rodolfo Torres is hereby ARCHIVED.[6]

On 11 February 2005, appellants filed a notice of appeal.[7] The trial court ordered the transmittal of the entire records of the case to the Court of Appeals.

The Court of Appeals, on 27 September 2006, promulgated its Decision affirming in toto the decision of the trial court. The Court of Appeals decreed:

WHEREFORE, the appealed Decision dated January 3, 2005 of the Regional Trial Court, Branch 11, Malolos, Bulacan in Criminal Case No. 1225-M-2002, finding appellants Jose Torres and Edilberto Torres guilty beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code is hereby AFFIRMED.[8]

Hence, the instant case.

In their brief, the appellants assign the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONCLUDING, SANS FACTUAL BASIS AND CONCRETE EVIDENCE, THAT THE ACCUSED-APPELLANTS WERE THE ONES RESPONSIBLE FOR KILLING NOEL YUMANG.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME CHARGED ALTHOUGH THEIR IDENTITIES AND PARTICIPATION IN THE ALLEGED ACT WERE NOT PROVEN WITH CERTAINTY.

Appellants impugned the trial court's verdict convicting them, which judgment was affirmed by the Court of Appeals, since the same allegedly was not supported by evidence on record. They assert that the prosecution failed to establish the identity of the perpetrators, as the eyewitness did not see "at close range" the faces of the killers. Furthermore, the incident happened at 1:00 o'clock in the morning when only the new moon was illuminating the vast rice field. The moonlight provided blurred and pale brightness only and could not have provided sufficient illumination. Thus, the identification of the appellants is unreliable.

Appellants' submission lacks merit.

Emilio Tamundez, the eyewitness to the incident, described with clarity the circumstances prior to, during and after the killing of the victim. He saw the incident and was able to identify the assailants as he was about 40 to 50 meters away from the scene. Not only was the situs criminis lit up by moonlight, it was also brightened by the flashlight held by the victim, which remained on even when it fell from the victim's hand. Thus, contrary to appellants' postulation, the prosecution witness sufficiently demonstrated that the scene received ample illumination when the killing took place. Emilio Tamundez testified, thus:

Public Pros.:

Q: While you were walking in the ricefield of one Feliciano Calbay, do you

remember any unusual incident that happened?

A: Yes, sir.

Q: And, what was that unusual incident?

A: While Noel Yumang was walking, he was just suddenly grabbed by three (3) men, sir.

Q: How far were you from Noel Yumang when he was grabbed by three (3) men.

A: 40 to 50 meters away from him, sir.

Q: Did you recognize these three (3) persons who suddenly grabbed Noel Yumang?

A: Yes, sir, I was able to recognize them.

Q: Who were they?

A: Rodolfo Torres grabbed and held him and after that he was stabbed by Edilberto Torres, sir.

Q: What about Jose Torres, what did he do?

x x x x

A: After Rodolfo Torres pushed him on the ground, he was shot by Jose Torres, sir.

Public Prosecutor

Q: What was Noel Yumang do when he was grabbed by the three (3) accused?

A: He was walking towards home, sir.

x x x x

Q: How did you recognize Rodolfo Torres, Edilberto Torres and Jose Torres at that time of the day considering that you were 40 to 50 meters away?

A: Because of the moonlight, sir.

x x x x

Q: Will you kindly demonstrate before this court how Rodolfo Torres grabbed Noel Yumang by the hand?

Court:

Assuming that Noel Yumang is the Fiscal.

Court:

The witness demonstrating that Rodolfo Torres held both arms of Noel Yumang at his back. His left and right arms criss-crossing each other.

Public Pros:

Q: Will you also kindly demonstrate how Edilberto Torres stabbed Noel Yumang

while he was being held by the hand by Rodolfo Torres?

Interpreter:

Edilberto Torres was on the left side of Noel Yumang. He grabbed the head of Noel Yumang by his left hand and stabbing him on the nape and on the left side of the body.

Public Pros:

Q: After Edilberto Torres stabbed Noel Yumang twice, what happened after that?

A: He was pushed to the ground by Rodolfo Torres, sir.

Q: And, after Rodolfo Torres pushed Noel Yumang to the ground, what happened next?

A: Jose Torres poked his gun and shot Noel Yumang, sir.

Q: Now, after Jose Torres shot Noel Yumang while on the ground, what happened next if any?

A: They scampered away, sir.[9]

During cross-examination, Emilio Tamundez further revealed:

Q: And of course, Noel Yumang isn't holding anything at that time because he was immediately grabbed?

A: He was holding a flashlight, sir.

Q: Of course, when Rodolfo Torres suddenly grabbed him, the flashlight would fell down?

A: Yes, it fell down, sir.

Q: Do you know thereafter where this flashlight was after the incident?

A: The flashlight was left there lighted, sir.[10]

The autopsy report confirms the testimony of Tamundez that the victim died of cardiac respiratory arrest due to the gunshot and stab wounds sustained by him. Moreover, the eyewitness could not have been mistaken about the identity of appellants since he knew them.[11]

In contrast to the trustworthy, positive and detailed evidence arrayed against appellants, all they could muster for their defense was denial and alibi. Appellant Jose Torres claimed that he was in Saluysoy, Meycauayan, Bulacan, at the time the crime was committed. He only left that place for Tibagan, San Miguel, Bulacan, only at around 4:30 to 5:00 a.m. of the same day. He presented his son-in-law to corroborate his alibi.

Alibi is an inherently weak defense and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused.[12] The prosecution witness had categorically identified appellants as participants in the crime. With the positive identification of the appellants, they must demonstrate by positive, clear and satisfactory proof that it was physically impossible for them to be at the scene of the crime during its commission.[13] Hence, it is not sufficient that the accused was somewhere else when the crime was committed. Physical impossibility refers to the distance between the place where the accused was when the crime

happened and the place where it was committed, as well as the facility of the access between the two places.[14] In the instant case, appellant Jose admitted that there are available means of going to Tibagan from Saluysoy, and that it would take only about 2 hours to travel. His admission proves fatal to his defense. He surreptitiously acknowledged that it was physically possible for him to be at the scene when the crime happened.

This Court also finds unreliable the testimony of appellant Jose's son-in-law confirming his alibi. As previously held by this Court:

One can easily fabricate an alibi and ask friends and relatives to corroborate it. When a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism.[15]

Appellant Edilberto Torres also failed to offer any evidence to prove that it was physically impossible for him to be at the scene at the time and date in question. He claims that he was in Tibagan attending the wake of a certain councilman when the killing happened. Since the wake was held in the same barangay where the killing took place, there was a great possibility that Edilberto was at the locus criminis when the crime occurred. Hence, Edilberto cannot avail himself of the defense of alibi because it was physically possible for him to be at the crime scene when it was committed.

Desperate to exculpate themselves from the charges, appellants make an issue on the credibility of witness Emilio Tamundez. They claim that his actuation in not immediately revealing what he witnessed is not in accord with ordinary human experience.

There is no merit in appellants' assertion. This Court has held time and again that there is no standard behavior for a person who is confronted with a shocking incident.[16] One may immediately report the incident to the proper authorities while others, in fear and/or avoiding involvement in a criminal investigation, may keep to themselves what they witnessed.[17] In this case, fear of reprisal or avoiding participation in the investigation could be a credible excuse for the one-day silence of a prosecution witness before divulging to authorities what he had just witnessed.

Appellants argue that the trial court erred in appreciating the qualifying circumstance of treachery. They assert that in the absence of any proof of the manner in which the aggression was commenced, as in the instant case, treachery cannot be appreciated.

The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[18] It is an aggravating circumstance that qualifies the killing of the person to murder. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution. Moreover, it must be alleged in the information and proved during the trial.

In the wee hours of the morning, the unsuspecting victim, Noel Yumang, was walking home, unarmed and unaware of the danger that lurked behind those thick grasses in the rice fields. He had brought with him a flashlight to illumine his path. All of a sudden, appellants, who came from the middle of the field, launched their attack. Rodolfo grabbed the victim's arms and held them behind his back. With the victim in that helpless position, Edilberto stabbed him on the nape and on the side of his body. Then, Rodolfo pushed the victim to the ground. As the victim was lying on the field, face down, Jose shot the former on the head. Indubitably, it was impossible for the victim to defend himself against the onslaught of appellants and their brother. They deliberately adopted means and methods in ensuring his barbaric demise.

Other than the aggravating circumstance of treachery, the information alleged evident premeditation as well.

The three requisites needed to prove evident premeditation are the following: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[19] On this score, the prosecution failed to prove any essential element of these circumstances.

In sum, this Court yields to the factual findings of the trial court which are affirmed by the Court of Appeals, there being no compelling reason to veer away from the same. This is in line with the precept stating that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[20]

Also affirmed is the ruling of the trial court and the Court of Appeals imposing upon the appellants the penalty of reclusion perpetua. Also in order is the award of moral damages in the amount of P50,000.00.[21] However, the award of civil indemnity in the amount of P60,000.00 needs to be reduced to P50,000.00 in accordance with the prevailing jurisprudence.[22] The award of exemplary damages is likewise in order, since the qualifying circumstance of treachery was proven.[23] When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[24] This kind of damage is intended to serve as deterrent to serious wrongdoings, and as a vindication for undue sufferings and wanton invasion of the rights of an injured or as punishment for those guilty of outrageous conduct.[25]

The award of temperate damages in the amount of P25,000.00 to the heirs of the victim is justified. Temperate damages are awarded where no documentary evidence of actual damages was presented in the trial because it is reasonable to presume that, when death occurs, the family of the victim incurred expenses for the wake and funeral.[26]

WHEREFORE, the Decision of the Court of Appeals dated 27 September 2006 affirming in toto the 3 January 2005 Decision of the trial court is hereby **AFFIRMED** with **MODIFICATIONS** with respect to the award of damages. Appellants are ordered to indemnify the heirs of Noel Yumang the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and another P25,000.00 as temperate damages. Costs against appellants.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Tinga, and Reyes, JJ., concur.

[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia, concurring; rollo, pp. 2-11.

[2] Penned by Judge Basilio R. Gabo, Jr., records, pp. 158-161.

[3] Records, p. 1.

[4] Id. at 12-13.

[5] Exhibit "C," id. at 24.

[6] Records, p. 161.

- [7] CA rollo, p. 50.
- [8] Rollo, pp. 10-11.
- [9] TSN, 4 September 2002, pp. 4-8.
- [10] TSN, 9 October 2002, p. 7.
- [11] TSN, 4 September 2002, p. 7.
- [12] *People v. Morales*, G.R. No. 104994, 13 February 1995, 241 SCRA 267, 275.
- [13] *People v. Appegu*, 429 Phil. 467, 481 (2002).
- [14] *Id.*
- [15] *People v. Sumalinog, Jr.*, 466 Phil. 637, 651 (2004).
- [16] *People v. Belaong*, 438 Phil. 53, 64 (2002).
- [17] *People v. Galido*, 383 Phil. 61, 67-68 (2000).
- [18] *People v. Santos*, 464 Phil. 941, 956 (2004).
- [19] *People v. PO3 Tan*, 411 Phil. 813, 836-837 (2001).
- [20] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.
- [21] *People v. Masagnay*, G.R. No. 137364, 10 June 2004, 431 SCRA 572, 582.
- [22] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 539.
- [23] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 663.
- [24] *Id.*
- [25] *Id.*
- [26] *Id.*

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