

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. EMELIO TOLENTINO y ESTRELLA and JESUS TRINIDAD y MARAVILLA, Accused-Appellants.

G.R. No. 176385. February 26, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00880 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Labo, Camarines Norte, Branch 64, finding appellants Emelio E. Tolentino and Jesus M. Trinidad, guilty of the crime of Murder and two counts of Frustrated Murder.

On 13 February 1998, three separate informations of Murder and two counts of Frustrated Murder were filed before the RTC against appellants, together with accused Jimmy Trinidad and Arnel Trinidad. The murder case was docketed as Criminal Case No. 98-0258 while the two frustrated murder cases were docketed as Criminal Cases No. 98-0260 and No. 98-0270. The accusatory portions of the Informations read:

Criminal Case No. 98-0258

For: Murder

That on or about 11:10 o'clock in the evening, more or less, on the 29[th] day of August, 1997, at Purok 7, Barangay San Vicente, Santa Elena, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously, with intent to kill, conspiring, confederating, and helping each other to attain a common purpose, with treachery, evident premeditation and abuse of superior strength, while armed with firearms, assault, attack, and use personal violence upon one JOSITA FERNANDEZ-NOVELO, by then and there shooting the said victim on her face causing upon the latter serious and mortal wounds which were the direct and proximate cause of the death of the victim to the damage and prejudice of the heirs of said victim.

That the commission of the offense is attended by aggravating circumstance of nighttime purposely sought to facilitate the same and dwelling.

Criminal Case No. 98-0260

For: Frustrated Murder

That on or about 11:10 in the evening of the 29[th] day of August, 1997, at Purok 7, Barangay San Vicente, Santa Elena, Camarines Norte, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other to attain a common purpose, did then and there, willfully, unlawfully, and feloniously, with intent to kill, while armed with firearms and knife, and with treachery, evident premeditation and abuse of superior strength, attack, assault, and use personal violence upon one ANTONIO BEA, by then and there, poking a firearm at said private offended party, tying his hands with a rope and thereafter, stabbing said victim on different parts of his body, thus causing upon the latter serious and mortal wounds capable of causing death, hence, performing all the acts of execution which could have produced the crime of murder as a consequence, but nonetheless, did not produce

it by reason of causes independent of their (accused) will, that is, by the timely and able medical assistance rendered to said victim which prevented his death, to the damage and prejudice of herein private complainant.

Criminal Case No. 98-0270

For: Frustrated Murder

That on or about 11:10 o'clock in the evening of August 29, 1997 at the fishpond at Purok 7, Barangay San Vicente, municipality of Santa Elena, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with intent to kill with treachery and evident premeditation and while armed with long firearms and 12 gauge shot gun, did, then and there willfully, unlawfully and feloniously attack, assault, kick and strike one ANTONIO NOVELO with a shotgun, hitting him on the different parts of his body and then shot one said Antonio Novelo but missed, which ordinarily would cause the death of Antonio Novelo thus performing all the acts of execution which should have produced the crime of Murder as a consequence, but nonetheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said Antonio Novelo, which prevented his death, to his damage and prejudice.[3]

During the arraignment on 13 July 1998, appellants, with the assistance of counsel de parte, entered their respective pleas of not guilty.[4] Accused Jimmy and Arnel Trinidad remained at large. Thereafter, a joint trial on the merits of the three criminal cases ensued.

The prosecution presented the following witnesses and their respective testimonies: (1) Antonio Bea testified as an eyewitness on the killing of Josita Novelo and narrated his own near death experience; (2) Ricardo Basila testified that he saw the accused escorting Antonio Bea whose hands were tied and disclosed that he was also subjected to violent acts of the accused. He claimed that he later heard a gunshot coming from Josita Novelo's house; (3) Wilfredo Llaraena, a Barangay Captain, testified that several persons went to his house carrying an injured Antonio Bea and they proceeded to the hospital. He later reported the incident to the police officers; (4) Antonio Novelo testified that the accused went to the house of Josita Novelo and attempted to kill him; (5) Dr. Noli Bayani, the rural health physician of Sta. Elena, Camarines Norte, conducted a post-mortem examination of the body of Josita Novelo; (6) Belen Avellera testified on the existence of the medical records of Antonio Bea; (7) SPO2 Nelson Ricierra testified that Wilfredo Llaraena reported to him the stabbing and the killing incidents and that he was a member of the team who made a follow-up investigation of the report; (8) Rogelio Novelo testified that Jesus Trinidad used to be his partner in operating a fishpond and that their partnership turned sour as Jesus Trinidad harvested the yields of the fishpond without his consent; (9) Dr. Rolando C. Victoria, a Medico-Legal Officer of the NBI, Manila, conducted an autopsy of the body of Josita Novelo.

As documentary evidence, the prosecution offered the following: Exhibit "A" - a photograph of the bloody body of Josita Novelo; Exhibit "A-1" - the "x" mark on the face of Josita Novelo; Exhibit "B" - a photograph showing the victim prostrate on the ground; Exhibits "C" and "D" - photographs of the house where the incident of killing took place; Exhibit "E" - the medical certificate of Antonio Bea; Exhibit "F" - the affidavit of Antonio Bea; Exhibit "G" - the affidavit of Ricardo Basila; Exhibit "H" - the affidavit of Antonio Novelo; Exhibit "I" - the medical certificate of Antonio Novelo; Exhibit "J" - the death certificate of Josita Novelo showing the result of the post-mortem examination; and Exhibit "K" - the NBI autopsy report.

The collective evidence adduced by the prosecution shows that sometime in January 1997, Rogelio Novelo, the surviving spouse of the deceased-victim Josita Novelo, and appellant Jesus Trinidad agreed to manage and operate a rented fishpond located at Baranggay San Vicente, Santa Elena, Camarines Norte. Sometime in April of the same year, when the fishpond was yielding its first harvest, Rogelio Novelo and his wife Josita brought the produce to Manila to be sold, while appellant Jesus Trinidad was left to manage the fishpond. Upon the couple's

return, they discovered that all the fish and crabs in the fishpond had already been harvested and disposed of. Believing that appellant Trinidad was responsible for the pilferage, Josita demanded from him either the return of the couple's investment or be allowed to buy appellant Trinidad's share in the partnership. Appellant chose the latter and was paid by the couple the amount of P9,700.00 as his share in the partnership. After their partnership with appellant Trinidad was terminated, the couple proceeded to replenish the fishpond with crab seedlings. When the crabs were ready for harvest, appellant Jesus Trinidad with appellant Emelio Tolentino, Jimmy and Arnel Trinidad, without the permission from the couple, harvested the crabs for their own benefit. The couple confronted appellants and their cohorts, but the former's protestation was merely ignored by the latter. The couple filed a complaint before the barangay which was then set for hearing on 30 August 1997. A few days before the scheduled hearing, Rogelio Novelo took a trip to Manila, leaving his wife Josita to manage the fishpond.

On 29 August 1997, at around 10:30 p.m., Antonio Bea, one of the complainants and the caretaker of the couple's fishpond, was inside his house located at Purok 7, Tinagong Dagat, Barangay San Vicente, Santa Elena, Camarines Norte.[5] He heard someone calling his name from outside his house. Carrying a flashlight, Bea went outside and focused his flashlight towards the direction of the fishpond watergate ("prensa").[6] Suddenly, someone whom he recognized to be appellant Emelio Tolentino grabbed his hand and pulled him out of the house.[7] There he saw appellant Jesus Trinidad, Jimmy Trinidad and Arnel Trinidad. Jesus Trinidad kicked Bea on the right side of his hip, and tied a rope around his hands behind his back. Then appellant Emelio Tolentino pulled him by the rope towards the house of a certain Ricardo Basila.[8] Upon reaching the house of Ricardo Basila, Arnel Trinidad called out the former. Ricardo Basila, with a flashlight in his hand, went out of his house and focused the flashlight at the faces of the four perpetrators. Irritated by what Ricardo Basila did, Emelio Tolentino, Jesus and Arnel Trinidad took turns in kicking Ricardo Basila and ordered the latter to get inside his house.[9] While inside his house, Ricardo Basila noticed that Emelio Tolentino was carrying a weapon.[10]

The assailants, together with Antonio Bea, proceeded to the house of the spouses Novelo situated alongside the fishpond which was more or less 100 meters from Basila's house.[11] When they arrived at the Novelo house, Jesus Trinidad called Josita Novelo to get out of the house.[12] Josita Novelo went out of the house holding a light.[13] Jesus Trinidad quickly grabbed Josita Novelo by her mouth and the two of them went inside the house together with Emelio Tolentino, Jesus Trinidad and Antonio Bea. From inside the house, Emelio Tolentino and Jesus Trinidad took Antonio Bea to another door leading outside and chanced upon Antonio Novelo, Rogelio Novelo's brother.[14] Immediately, Jesus Trinidad and Emelio Tolentino kicked Antonio Novelo causing the latter to fall right into the fishpond and disappear from sight.[15] Antonio Bea was then tied to the door from the waist down with Emelio Tolentino guarding him.[16] In that position, Antonio Bea saw Josita Novelo being mauled by Jesus Trinidad and Arnel Trinidad. All of a sudden, Jesus Trinidad shot Josita Novelo on the left cheek with a gun.[17] Immediately after, Emelio Tolentino entered the house and slashed the face of Josita with a jungle bolo.[18] The three assailants untied the binding on Antonio Bea's feet while leaving the ropes tied behind his back.[19] They left Novelo's house proceeding towards the fishpond watergate which was about three meters from the house. Emelio Tolentino led the way, followed by Bea, with Jesus and Arnel Trinidad taking the rear. Without warning, Emelio Tolentino stabbed Antonio Bea four times in the stomach with the former's jungle bolo. Antonio Bea fell into the fishpond.

The assailants left the victim and boarded a boat which was operated by Jimmy Trinidad. Injured and bleeding, Antonio Bea managed to untie his hands and swim across the river to ask for help. He received help from the people of Purok 7 and was brought to the house of the Barangay Captain Wilfredo Llarena in a hammock.[20] The barangay captain then brought the victim to a hospital. From the hospital, Barangay Captain Wilfredo Llarena, along with some members of the police, went to the house of spouses Novelo and came upon the dead body of Josita Novelo.[21]

Dr. Noli Bayani, the Rural Health Physician of Sta. Elena, Camarines Norte, conducted an autopsy of the body and found that the cause of Josita Novelo's death was "[h]ypovolemic shock secondary to gunshot wounds and lacerated wound." [22] Dr. Rolando C. Victoria, a Medico-Legal Officer of the National Bureau of Investigation, who also conducted an autopsy on the body of the deceased, testified that the shotgun wound at the left side of the face of the victim caused her death. [23]

The medical certificate of Antonio Bea shows that the four stab wounds inflicted on him caused damage to his intestines. [24]

On 19 October 1999, the prosecution rested its case and made a formal offer of evidence. [25]

On 13 April 2000, appellants through counsel filed a Demurrer to Evidence, without leave of court. [26] In an order [27] dated 17 May 2000, the RTC denied the demurrer and submitted the case for decision pursuant to Section 15, Rule 119 of the 1985 Rules on Criminal Procedure. [28] On 31 May 2000, appellants filed a motion for reconsideration, praying that the order denying their Demurrer to Evidence be recalled and that they be allowed to present evidence. The RTC denied the said motion. Unfazed, appellants filed a petition for certiorari before this Court. This Court denied the petition in a Resolution dated 2 December 2002, which became final and executory on 5 February 2003. As a result, the case was submitted for decision without any evidence proffered by the defense.

On 30 November 2004, the RTC rendered a decision finding appellants guilty of the crimes charged in Criminal Case No. 98-0258 and Criminal Case No. 98-0260 for murder and frustrated murder, respectively. The decretal portion of the RTC decision reads:

CRIM. CASE NO. 98-0258

For: MURDER

WHEREFORE, finding accused EMELIO TOLENTINO y ESTRELLA and JESUS TRINIDAD y MARAVILLA guilty beyond reasonable doubt of the crime of Murder, they are hereby sentenced to suffer the supreme penalty of DEATH. They are also ordered to pay the heirs of the victim, Josita Novelo, the amount of P75,000.00 by way of civil indemnity, P50,000.00 as moral damages and another P50,000.00 as exemplary damages.

CRIM. CASE NO. 98-0260

For : FRUSTRATED MURDER

WHEREFORE, finding accused EMELIO TOLENTINO y ESTRELLA and JESUS TRINIDAD y MARAVILLA guilty beyond reasonable doubt of the crime of Frustrated Murder, they are hereby sentenced to suffer the penalty of RECLUSION PERPETUA. They are also ordered to pay their victim, Antonio Bea the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages. [29]

The trial court, however, acquitted appellants of the crime of frustrated murder allegedly committed against Antonio Novelo in Criminal Case No. 98-0270.

On 10 December 2004, appellants filed a Motion For New Trial on the ground that "errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial." [30] Appellants argued that in the interest of justice and equity, they should be given the opportunity to testify in their favor considering that they are meted out by the RTC the supreme penalty of death.

In an Order [31] dated 15 December 2004, the RTC denied appellants' motion for new trial ratiocinating that the error of appellants' counsel during the trial does not amount to error of law or irregularity which constitutes a

valid ground for the granting of a motion for new trial. It appears that appellants no longer questioned the denial of their motion for new trial.

The trial court ordered the transmittal of the entire records of the case to this Court. Thereafter, this Court ordered the referral of the case to the Court of Appeals conformably with the ruling in the case of *People v. Mateo*.^[32]

The Court of Appeals, on 8 November 2006, promulgated its Decision affirming the judgment of the trial court convicting the appellants, with modifications on the award of civil liabilities, thus:

WHEREFORE, the decision dated November 23, 2004 of the Regional Trial Court, Branch 64, of Labo, Camarines Norte finding accused-appellants Emelio Tolentino y Estrella and Jesus Trinidad y Maravilla GUILTY beyond reasonable doubt of the crime of murder in Criminal Case No. 98-0258, and frustrated murder in Criminal Case No. 98-0260 is hereby AFFIRMED with the following modifications, to wit:

(1)

In Criminal Case No. 98-0258, accused –appellants are hereby sentenced each to suffer the penalty of reclusion perpetua and in addition, to pay the heirs of the victim Josita Fernandez Novelo the amount of P50,000 as civil indemnity for her death; P50,000 as moral damages and P25,000 representing exemplary damages.

(2)

In Criminal Case No. 98-0260, accused-appellants are hereby sentenced each to suffer the penalty of imprisonment ranging from 8 years of prision mayor (minimum), as minimum, to 14 years and 8 months of reclusion temporal (minimum) as maximum. Moreover, they are ordered to pay the victim Antonio Bea the amount of P25,000 as temperate damages; P30,000 as moral damages, P30,000 as civil indemnity and P25,000 as exemplary damages.^[33]

Hence, the instant case.

In their brief, the appellants assign the following errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN NOT ALLOWING THE ACCUSED-APPELLANTS TO PRESENT DEFENSE EVIDENCE AFTER THE DENIAL OF THE DEMURRER TO EVIDENCE CONSIDERING THE POSSIBILITY OF THE IMPOSITION OF THE DEATH PENALTY.

III

GRANTING ARGUENDO THAT THE ACCUSED-APPELLANTS WERE GUILTY OF INFLECTING INJURY ON ANTONIO BEA, THE COURT A QUO ERRED IN FINDING THEM GUILTY OF THE CRIME OF FRUSTRATED MURDER ALTHOUGH THE PROSECUTION FAILED TO PROVE THAT BEA'S WOUNDS WERE MORTAL.^[34]

Before proceeding to the first and third assignment of errors, the Court deems it proper to first deal with the second assignment.

Appellants, as earlier mentioned, urge this Court to revisit the issue as to the propriety of the trial court's Order dated 17 May 2000 denying the Demurrer to Evidence and preventing them from presenting evidence due to their

failure to seek leave of court prior to the filing of the demurrer to evidence.

It must be pointed out that the issue on the validity of the trial court's order dated 17 May 2000 was elevated by appellants to this Court via petition for certiorari. This Court in a Resolution dated 2 December 2000, dismissed the said petition, and upheld the trial court's ruling that appellants are barred from presenting their evidence for failure to seek leave of court prior to the filing of the demurrer to evidence which was denied by the lower court. Since the issue of whether or not appellants may be allowed to adduce evidence despite their failure to file a prior leave of court had already been finally put to rest, the same has attained finality and constitutes the law of the case. Any attempt to pass upon anew this final ruling constitutes a crass contravention of elementary rules of procedure.

Law of the case has been defined as the opinion delivered on a former appeal.[35] More specifically, it means that whatever is already irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[36] Indeed, courts must adhere thereto because public policy, judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction.[37]

Besides, under Section 15, Rule 119 of the 1985 Rules of Criminal Procedure, it is stated that when an accused files a demurrer to evidence without leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution, thus:

SEC. 15. Demurrer to evidence. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the Court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The filing of a demurrer to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused.[38] The rationale for this rule is that when the accused moves for dismissal on the ground of insufficiency of evidence of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated.[39] An accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience.[40] The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence and, after denial thereof, the defense would then claim the right to present its evidence.[41] Thus, when the trial court disallowed the appellants to present evidence on their behalf, it properly applied Section 15, Rule 119 of the 1985 Rules of Criminal Procedure. Not even the gravity of the penalty for a particular offense can change this rule. As stressed by this Court:

The filing of the demurrer to evidence without leave of court and its subsequent denial results in the submission of the case for judgment on the basis of the evidence on record. Considering that the governing rules on demurrer to evidence is a fundamental component of criminal procedure, respondent judge had the obligation to observe the same, regardless of the gravity of the offense charged. It is not for him to grant concessions to the accused who failed to obtain prior leave of court. The rule is clear that upon the denial of the demurrer to evidence in this case, the accused, who failed to ask for leave of court, shall waive the right to present evidence in his behalf.[42]

Going back to the first issue, appellants take exception with the trial court's assessment of the evidence before it

and in giving weight and credence to the testimony of the prosecution witnesses. Appellants maintain that considering the lateness of the hour when the incident took place, and the fact that it was dark, witness Antonio Bea could not have seen clearly the faces of his attackers and that of the deceased Josita Novelo. Antonio Bea, according to appellants, is incompetent to testify on matters relating to what was done to the late Josita Novelo because he was tied from the waist down to the door outside the house, thus, he could not have seen what had happened inside the house where the deceased was brutally attacked.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[43] Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[44]

In the instant case, prosecution witness Antonio Bea steadfastly pointed to appellants and their companions as the malefactors. Such identification was detailed as follows:

Q:

Mr. Witness, do you know a certain Jesus Trinidad y Maravilla?

A:

Yes, sir.

x x x x

Q:

A certain Emelio Tolentino y Estrella, do you know a person with such name?

A:

Yes, sir.

x x x x

Q:

These persons that I made mention to you since when have you known them?

A:

For almost ten (10) years.

Q:

And because of that length of time you could not possibly [be] mistaken as to their identity?

A:

Yes, sir.

x x x x

Q:

On August 29, 1997 at about 10:30 or 11:00 in the evening thereof, do you recall of any unusual incident that happened?

A:

Yes, sir.

Q:

Will you please tell us what is that incident that you recalled?

A:

There was somebody that called me, sir.

x x x x

Q:

When you heard somebody called you on that occasion, what did you do?

A:

I flash[ed] a light to the Prensa, sir.

x x x x

Q:

x x x [W]hat happened next?

A:

Somebody hold (sic) my hand sir.

Q:

Did you recognize who held your hand?

A:

Yes, sir.

Q:

Who?

A:

Emelio Tolentino.

x x x x

Q:

Mr. Witness, what happened next after Emelio Tolentino held your hand?

A:

He pulled me outside, sir.

Q:

And what happened next after you were pulled outside your house?

A:

I am (sic) telling him I have no fault.

X X X X

Q:

Nang oras na iyon sino pa ang nakita mo kung mayroon man?

A:

Jesus Trinidad, sir.

Q:

Who else if any?

A:

Arnel Trinidad, sir.

Q:

What happened after you told them you have (sic) no fault?

A:

He kicked me, sir.

Q:

Who kicked you in particular?

A:

Jesus Trinidad, sir.[45]

Cross-examination:

Q:

Who was the person who held you?

A:

Emelio Tolentino, sir.

Q:

How did you recognize him to be Emelio Tolentino?

A:

When I focused the light, I saw them because of the light, wearing bonnet and their faces were exposed to the light.

Q:

You said “them”, how many were they?

A:

Jesus Trinidad, Emelio Tolentino and Arnel Trinidad, sir.[46]

The identification of witness Antonio Bea of the perpetrators of the crimes evinces factual truth of what really occurred on that fateful night. He could not have been mistaken as to the identity of the appellants since, at that time, he has known them personally for ten (10) years already. Their faces were illuminated by the flashlight when witness Antonio Bea focused the same in their direction. Also, Bea’s identification of the assailants was corroborated by Ricardo Basila and Antonio Novelo who testified that they likewise suffered violent acts from the malefactors during the incident.

Although Antonio Bea was tied at the door outside the house of Josita Novelo, he declared with clarity the circumstances leading to the killing of Josita and his near-death experience, viz:

Q:

x x x Mr. Witness, where were you when you said you went out of the house let’s go back to the situation wherein you entered the house of Josita Novelo in one door and then you exited on the other and there you said the other two, Jesus Trinidad and Emelio Tolentino saw Antonio Novelo, where you at that time?

A:

I was with them sir, because they are holding the other end of the rope.

Q:

And what did they do to you afterwards?

A:

They tied me at the door, sir.

Q:

That door where you exited?

A:

Yes, sir.

x x x x

Q:

From the place you were tied did you see Josita Novelo?

A:

Yes, sir.

Q:

And while you were tied on that occasion what happened to Josita Novelo?

A:

They are asking Josita Novelo where was it placed?

Q:

Do you know what were they asking?

x x x x

Q:

Did you hear the reply of Josita Novelo, if any?

A:

I cannot hear the reply of Josita Novelo because they are mauling her or “binubugbog nila.”

Q:

Who in particular was mauling Josita Novelo?

A:

Jesus Trinidad and Arnel Trinidad, sir.

Q:

What about Emelio Tolentino, what was he doing?

A:

He is outside guarding me, sir.

Q:

What happened after Josita Novelo was mauled by these two you mentioned?

A:

Suddenly, Jesus Trinidad shot Josita Novelo.

Q:

Did you see where Josita Novelo was hit?

A:

Yes, sir.

Q:

Where was she hit, if you have seen?

A:

On the left cheek which exited at the back of her head.

Q:

After they have shot Josita Novelo, what did they do next?

A:

They get (sic) out, sir.

x x x x

Q:

What about Emelio Tolentino, what did he do if any?

A:

Emelio Tolentino entered the house and then slashed the face of Josita Novelo.

Court:

Anong ginamit? Nakita mo?

A:

Jungle bolo.

Q:

Saan? Sa kanan o kaliwa?

A:

Sa kaliwa, po.

x x x x

Q:

Now, Mr. Witness, you said that after Josita Novelo was shot by Jesus Trinidad, and Emelio Tolentino went inside the house and put an X mark on the face of that dead woman, what happened next?

A:

They untied me, sir.

Q:

And what did they do after untying you?

A:

They passed through the prensa and stabbed me, sir.

Q:

Mr. witness, you said you were untied is it (sic) not?

A:

Yes, sir, sa paa lang.

x x x x

Q:

So in other words from the time you were untied you walked towards that 'prensa' for about three (3) meters?

A:

Yes, sir.

Q:

When you walked, who was ahead of you, if any?

A:

Emelio Tolentino, sir.

Q:

Were your hands still tied?

A:

Yes, sir.

Q:

What about Tolentino who was ahead of you what was he doing?

A:

He has a jungle bolo sir, and stabbed me.

x x x x

Q:

How many times were you stabbed on that occasion?

A:

Four times, sir.[47]

The foregoing testimony can only be told by a person who had really witnessed the incident and had been subjected to personal violence from the perpetrators, hence, such testimony is entitled to full faith and credit. Furthermore, Bea's testimony jibed with the physical evidence. The nature of the wound of the deceased was affirmed by the medical experts to be a result of a gunshot wound. The location of the wounds found on Josita Novelo's face as described by witness Bea was consistent with the documentary evidence, i.e., photographs, autopsy result and the physical examination of the corpse of the victim. All these tend to dispel any doubt that witness Bea would have concocted the whole story. The prosecution successfully established beyond reasonable doubt that the appellants and their cohorts killed Josita Novelo.

Anent the third issue, appellants argue that in the stabbing of Antonio Bea, they should have been liable only for attempted murder and not frustrated murder since the prosecution failed to prove, due to its failure to present the attending physician, that the injury suffered by the victim was fatal.

A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime.[48] The offender has passed the subjective phase in the commission of the crime.[49] Subjectively, the crime is complete.[50] Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime was not consummated by reason of the intervention of causes independent of the will of the offender.[51] In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim without medical intervention or attendance.[52]

In the instant case, the prosecution established that Antonio Bea sustained four stab wounds inflicted by Emelio Tolentino which caused damage to the victim's abdomen resulting in massive blood loss. The victim was hospitalized for two months because of these injuries.[53] In fact, at the trial, the victim showed the scars in his abdomen. All these tend to show the seriousness of the wounds suffered by the victim and which would have caused his death had it not been for the timely medical intervention.

The trial court, in assessing the testimonial evidence of the prosecution, made this appropriate observation:

In the instant cases, the corroborative testimonies of prosecution witnesses, Antonio Bea, Ricardo Basila and Antonio Novelo, positively identifying the accused as the perpetrators of the crime satisfactorily persuade the Court. x x x.

x x x x

Witness Antonio Bea testified that accused Jesus Trinidad and Emelio Tolentino are known to him for almost ten (10) years x x x.

Likewise, witness Antonio Novelo, on cross-examination, testified that he recognized the accused because

their voices are very familiar to him being neighbors and he had known the accused for a long time.

x x x x

The identification of an accused through his voice is acceptable, particularly if the witness knows the accused personally.

The sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[54]

Worth stressing is that the Court of Appeals affirmed the findings of the RTC. The settled rule is that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[55] We find no cogent reason to veer away from their findings.

In an effort to exculpate themselves from the charges, appellants identified inconsistent statements of witness Bea such as the latter's declaration that he was a friend of Jesus Trinidad which is contradictory to his earlier testimony that he got mad at Jesus Trinidad four months prior to the incident. They also make an issue of the statement of Bea during the cross-examination wherein he made mention that a gun was poked at him, which declaration is missing in the direct examination.

These inconsistencies are very trivial and insignificant. Minor inconsistencies do not warrant rejection of the entire testimony nor the reversal of judgment.[56] Accuracy in accounts had never been applied as a standard to which the credibility of witnesses are tested since it is undeniable that human memory is fickle and prone to the stresses of emotions and the passage of time.[57] Witness Bea's inconsistencies rather enhance truthfulness for it erases suspicion of a rehearsed testimony.

The RTC convicted the appellants of murder in Criminal Case No. 98-0258 for the killing of Josita Novelo and frustrated murder for the assault of Antonio Bea in Criminal Case No. 98-0260 by appreciating the qualifying circumstance of treachery and generic aggravating circumstances of nighttime and dwelling.

The RTC is correct in appreciating the qualifying circumstance of treachery in the killing of Josita Novelo and in the stabbing of Antonio Bea.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[58] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[59] What is decisive is that the execution of the attack made it impossible for the victim to defend himself/herself or to retaliate.[60]

In the killing of Josita Novelo, the victim was at her home when someone called her. When the victim went outside, suddenly Jesus Trinidad held her. Thereafter, Jesus Trinidad and Arnel Trinidad mauled Josita Novelo. Without warning, Jesus Trinidad shot the helpless victim on the cheek. Said attack was so sudden and unexpected that the victim had not been given the opportunity to defend herself or repel the aggression. She was unarmed when she was attacked. Indeed, all these circumstances indicate that the assault on the victim was treacherous.

The stabbing of Antonio Bea was also attended with treachery. While Bea, whose hands were tied behind his back, and the assailants were walking along the dike, Emelio Tolentino unexpectedly stabbed the victim four times. The victim could not put up a defense as the attack was swift and he was not in the position to repel the same since his hands were tied.

Also affirmed is the ruling of the RTC appreciating the presence of the generic aggravating circumstance of dwelling in Criminal Case No. 98-0258. Evidence shows that Josita Novelo was killed in her own house. When the crime is committed in the dwelling of the offended party and the latter has not given provocation, dwelling

may be appreciated as an aggravating circumstance.[61] Here, the crime was committed inside the house of the deceased victim. Dwelling is considered aggravating primarily because of the sanctity of privacy the law accords to human abode.[62] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[63]

Dwelling, however, cannot be appreciated in Criminal Case No. 98-0260 considering that the same was not alleged in the information. Under Section 9, Rule 10 of the Revised Rules of Court, aggravating circumstances must be alleged in the information and proved otherwise; even if proved but not alleged in the information, the same shall not be considered by the Court in the imposition of the proper penalty on the accused.[64]

The aggravating circumstance of nighttime in both cases was improperly appreciated by the RTC. Nighttime is considered an aggravating circumstance only when it is sought to prevent the accused from being recognized or to ensure their escape. There must be proof that this was intentionally sought to ensure the commission of the crime and that the perpetrators took advantage of it. Although the crime was committed at nighttime, there is no evidence that the appellants and their companions took advantage of nighttime or that nighttime facilitated the commission of the crime.

Proceeding now to the appropriate penalty, in Criminal Case No. 98-0258, it must be borne in mind that the prosecution successfully established the presence of the qualifying circumstance of treachery in the killing of Josita Novelo. With this, the crime committed by the appellants is murder in accordance with Article 248. With the aggravating circumstance of dwelling and no mitigating circumstance, the penalty imposed should be in its maximum, which is death.[65]

In view, however, of the passage of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on 24 June 2006, the imposition of the death penalty has been prohibited.[66] Thus, the penalty imposed upon appellants in Criminal case No. 98-0258 should be reduced to reclusion perpetua, without eligibility of parole under the Indeterminate Sentence Law.[67]

As to damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[68]

The RTC awarded P75,000.00 in favor of the heirs of Josita Novelo as civil indemnity. The Court of Appeals reduced the award of civil indemnity to P50,000.00. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Based on current jurisprudence, the RTC award of civil indemnity ex delicto of P75,000.00 in favor of the heirs of Josita Novelo is in order.[69]

The RTC also correctly awarded moral damages in the amount of P50,000.00 in view of the violent death of the victim. This does not require allegation and proof of the emotional suffering of the heirs.[70] Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in this case.[71] To deter future similar transgressions, the Court finds that an award of P25,000.00 for exemplary damages is proper.

In Criminal Case No. 98-060, the RTC imposed upon the appellants the penalty of reclusion perpetua for the crime of frustrated murder. The Court of Appeals modified the penalty to 8 years of prision mayor as minimum to 14 years and 8 months of reclusion temporal as maximum.

Under Article 61, paragraph 2 of the Revised Penal Code, the penalty of frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion temporal.[72] Reclusion temporal has a range of 12 years and 1 day to 20 years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should

be taken from reclusion temporal, the penalty for the crime taking into account any modifying circumstances in the commission of the crime.[73] The minimum of the indeterminate penalty shall be taken from the full range of prision mayor which is one degree lower than reclusion temporal. Since there is no modifying circumstance in the commission of the frustrated murder, an indeterminate prison term of eight (8) years and 1 day of prision mayor as minimum, to fourteen (14) years, 8 months and 1 day of reclusion temporal as maximum[74] may be considered reasonable for the frustrated murder under the facts of this case.

As to the award of actual damages, the prosecution failed to present any receipt to substantiate Antonio Bea's hospitalization expenses. Nonetheless, in light of the fact that Antonio was actually hospitalized and operated upon, this Court deems it prudent to award P20,000.00 as temperate damages since it cannot be denied that he suffered pecuniary loss. The award of civil indemnity in the amount of P30,000.00 is in order.[75] Moreover, Antonio is also entitled to moral damages which this Court hereby awards in the amount of P40,000.00. Although there was no testimony on the moral damages that he sustained, the medical certificate issued by the hospital indicated that Antonio Bea sustained serious stab injuries inflicted by appellants. It is sufficient basis to award moral damages as ordinary human experience and common sense dictate that such wounds inflicted on Antonio Bea would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injury.[76] Finally, the award in the amount of P25,000.00 as exemplary damages is also in order considering that the crime was attended by the qualifying circumstance of treachery. 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.[77] This kind of damage is intended to serve as deterrent to serious wrong-doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[78]

WHEREFORE, the Decision of the Court of Appeals dated 08 November 2006 in CA-G.R. CR-HC No. 00880 finding appellants guilty of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua in Criminal Case. No. 98-0258, is hereby **AFFIRMED** with the modifications:

(1) In Criminal Case No. 98-0258, appellants are ordered to pay jointly and severally the heirs of the victim Josita Novelo the amount of P75,000.00 as civil indemnity, the amount of P50,000.00 as moral damages and P25,000.00 representing exemplary damages.

(2) In Criminal Case No. 98-0260, for the crime of Frustrated Murder, appellants are sentenced to suffer an indeterminate penalty from 6 years and 1 day of prision mayor as minimum, to 14 years, 8 months and 1 day of reclusion temporal as maximum. In addition, appellants are ordered to pay jointly and severally the victim Antonio Bea the amount of P40,000.00 as moral damages, P30,000.00 as civil indemnity, P20,000.00 as temperate damages and P25,000.00 as exemplary damages.

SO ORDERED.

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

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring. Rollo, pp. 2-18.

[2] Penned by Judge Franco T. Falcon. CA rollo, pp. 15-29.

[3] Rollo, pp. 2-3.

[4] Records, p. 56.

[5] TSN , 10 August 1998, pp. 527-528.

[6] Id.

[7] Id. at 532.

[8] Id. at 536-537.

[9] Id. at 546.

[10] TSN, 8 September 1998, p. 325.

[11] TSN, 10 August 1998, p. 547.

[12] Id.

[13] Id. at 549.

[14] Id. at 550.

[15] Id. at 551.

[16] Id. at 54.

[17] Id. at 56.

[18] Id. at 57.

[19] Id. at 73.

[20] TSN, 22 September 1998, p. 378.

[21] Id. at 13.

[22] TSN, 10 November 1998, p. 20.

[23] TSN, 24 August 1999, p. 28.

[24] Rollo, p. 16.

[25] Id. at 6.

[26] Records, pp. 199-202.

[27] Id. at 204-205.

[28] SEC. 15. Demurrer to evidence. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the Court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

[29] Id. at 806-807.

[30] Id. at 819-823.

[31] Id. at 825.

- [32] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [33] Rollo, p. 17.
- [34] CA rollo, pp. 47-48.
- [35] Private Enterprise Corp. v. Magada, G.R. No. 149489, 30 June 2006, 494 SCRA 167, 180.
- [36] Id.
- [37] Id.
- [38] People v. Sayaboc, 464 Phil. 824, 844 (2004).
- [39] Id.
- [40] Id.
- [41] Id.
- [42] Osumo v. Serrano, 429 Phil. 626, 632 (2002).
- [43] People v. Matito, 468 Phil. 14, 24 (2004).
- [44] People v. Piedad, 441 Phil. 818, 838-839 (2002).
- [45] TSN, 10 August 1998, pp. 22-31.
- [46] TSN, 8 September 1998, p. 14.
- [47] TSN, 10 August 1998, pp. 51-76.
- [48] Martinez v. Court of Appeals, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 195.
- [49] Id.
- [50] Id.
- [51] Id.
- [52] Id.
- [53] Rollo, p. 16.
- [54] Records, pp. 803-804.
- [55] People v. Castillo, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.
- [56] People v. Molina, 370 Phil. 546, 554-555 (1999).
- [57] Id.
- [58] People v. Belaro, 367 Phil. 90, 107 (1999).
- [59] Id.
- [60] People v. Pidoy, 453 Phil. 221, 230 (2003).
- [61] People v. Prades, 355 Phil. 150, 168 (1998).
- [62] People v. Paraiso, 377 Phil. 445, 464 (1999).

[63] Id.

[64] *People v. Casitas, Jr.*, 445 Phil. 407, 427 (2003).

[65] *People v. Paraiso*, supra note 62 at 465.

[66] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676.

[67] Id.

[68] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[69] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[70] *People v. Caraig*, G.R. No. 116224-27, 28 March 2003, 400 SCRA 67, 83.

[71] *People v. Buban*, supra note 69 at 134.

[72] *Martinez v. Court of Appeals*, supra note 48.

[73] Id.

[74] Id.

[75] *People v. Castillo*, 426 Phil. 752, 768-769 (2002).

[76] *People v. Ibañez*, 455 Phil. 133, 167-168 (2003).

[77] Id.

[78] Id.

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