

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN OCAMPO, APPELLANT.

G.R. No. 177753. September 25, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Benjamin Ocampo (appellant) was indicted for Murder before the Regional Trial Court (RTC) of Baguio City, alleged to have been committed as follows:

That on or about the 9[th] day of October, 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously stab RUBEN NGO Y TYCHINGCO with a stainless knife, thereby inflicting upon the latter: stab wound on the neck, and as a result thereof the said Ruben Ngo y Tychingco died.

That the killing was attended by the qualifying circumstance of treachery considering that the accused suddenly attacked/stabbed the victim who did not have any means to defend himself.[1]

From the evidence for the prosecution consisting of, among other things, the testimony of eyewitnesses Mary Ann Lombay (Mary Ann) and Rosemarie Ngo, wife of Ruben Ngo (the victim), the following version of events is culled:[2]

At around 4:30 p.m. of October 9, 2003, while the victim and his wife were buying garlic chips from Mary Ann's store at 439 Old Market Building, Baguio City, appellant suddenly surfaced, pushed himself between the spouses, stabbed the victim at the right side of his neck with a kitchen knife, and walked away.

The post-mortem examination of the victim who died two hours after the stabbing yielded the following findings:

GENERAL:

Fairly developed, fairly nourished, previously embalmed male cadaver. Needle puncture noted at the left arm, left cubital region and left wrist.

HEAD AND NECK:

- Incised wound, neck, measuring 10 x 4 cm, 6 cm right of the anterior midline with stitches applied.
- Incised wound, neck, measuring 2 x .02 cm, just along the anterior midline with 4 stitches applied.
- Incised wound, neck, measuring 13.5 x 3 cm, 6 cm left of the anterior midline.
- The right sterno-cleido-mastoid muscle are noted to be hemorrhagic.
- Incised wound noted at the trachea and esophagus.
- Hemorrhages noted on areas of external and internal jugular veins, bilateral.
- Incised wound noted at the bifurcation of the left carotid artery.

x x x x[3]

The cause of death of the victim was determined to be "hemorrhagic shock secondary to stab wound of the neck." [4]

Explaining the number and nature of the wounds on the victim's neck, Dr. Elizardo Daileg (Dr. Daileg) who conducted the post-mortem examination declared that the wounds along the anterior midline and at the left of the anterior midline were surgical wounds, while the wound at the right of the anterior midline was most likely a stab wound which was extended surgically for the exploration and ligation of the injured blood vessels; [5] and that the stab wound was 10 to 12 centimeters deep, and the carotid artery and jugular veins were injured. [6]

Dr. Daniel Recolizado, who attended to the victim when he was brought to the hospital, corroborated Dr. Daileg's testimony. [7]

Upon the other hand, appellant, denying the accusation and interposing alibi, [8] claimed as follows:

He was drinking with friends from 8:00 a.m. to 3:00 p.m. of October 9, 2003, after which he repaired to the Everlasting Memorial Park where his parents are buried and where he continued drinking as he was depressed over the death on October 5, 2003 of his brother. He stayed in the park until 6:30 p.m.

From the park, he went to the house of his friend Manny Guanzon (Guanzon) at Brawer Road where he slept and washed his face. He then went to a beerhouse along Magsaysay Avenue where he continued drinking until 9:00 p.m. when he checked in at the Leisure Lodge where he spent the night.

Denying having gone to the public market in the afternoon of October 9, 2003, appellant claimed that he was a victim of a frame-up, of which the Chinese are the masterminds, he having been exposing a Chinese syndicate. [9]

By Decision of June 15, 2004, Branch 6 of the Baguio City RTC convicted appellant of Murder, disposing as follows:

WHEREFORE, the Court finds the accused Benjamin Ocampo guilty beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as charged in the Information and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Ruben Ngo the sum of P50,000.00 as civil indemnity for his death; P235,682.78 as actual damages incurred in connection with his death, P671,760.00 as unearned income; and P300,000.00 as moral damages for the mental anguish and pain suffered by his heirs as a result of his death; all indemnifications being without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Benjamin Ocampo, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED. [10] (Underscoring supplied)

Before the Court of Appeals to which appellant challenged the trial court's decision, he faulted the trial court as follows:

I

x x x IN FINDING [THAT] THE ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES AS THE ASSAILANT.

II

GRANTING ARGUENDO THAT THE ACCUSED-APPELLANT STABBED RUBEN NGO, THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER. [11]

By Decision[12] of February 13, 2007, the Court of Appeals affirmed the conviction of appellant but modified his civil liability in light of the following observations:

We reduce the award of actual damages from P235,682.78 to P69,681.70. x x x [O]nly substantiated and proven expenses or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized. Based on the record, We cannot consider some of the receipts submitted by the prosecution for it was not shown that they were expended in relation to the death or funeral of the victim. The list submitted by Rosemarie Ngo with respect to the expenses incurred in the transfer of the body of the victim and the food served during the wake and burial is self-serving and cannot be considered competent proof. The court can only award actual damages if supported by receipts. However, current jurisprudence grants the award of P25,000.00 as temperate damages when it appears that the heirs of the victim had suffered pecuniary losses but the amount thereof cannot be proved with certainty.

Likewise, the award of moral damages should be reduced from P300,000.00 to P50,000.00 in line with the prevailing jurisprudence. Moral damages are not intended to enrich the victim's heirs but rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings.

With respect to the award of P671,760.00 by way of loss of earning capacity, We hereby increase it to P671,999.97. As testified to by Rosemarie Ngo, the victim was receiving a net monthly income of P6,000.00 as a dried fish dealer. His annual income, computed at the rate of P6,000.00 per month multiplied by twelve (12) months is P72,000.00. From this amount will be deducted his necessary and incidental expenses estimated at fifty percent (50%) thereof, leaving a balance of P36,000.00. As the victim was fifty-two (52) years old at the time of his death, his life expectancy of eighteen point sixty seven (18.67) years is derived using this formula: $\frac{2}{3} \times [80 - (\text{age of victim at the time of death})]$. Multiplying the balance of P36,000.00 by his life expectancy of 18.67 years, We arrive at P671.999.97 as his loss of earning capacity.

In addition to the civil indemnity and damages awarded by the trial court, exemplary damages in the amount of P25,000.00 must be awarded given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages may be imposed only when the crime was committed with one ore more aggravating circumstances. The term aggravating circumstances as used therein should be construed in its generic sense since it did not specify otherwise.[13] (Underscoring supplied)

Thus the Court of Appeals disposed:

WHEREFORE, premises considered, the Decision dated June 15, 2004 rendered by the Regional Trial Court of Baguio City, Branch 6 in Criminal Case No. 22124-R, finding him guilty of the crime of murder is hereby AFFIRMED WITH MODIFICATON. The award of loss of earning capacity is increased to P671,999.97. The award of actual and moral damages is reduced to P69,681.70 and P50,000.00, respectively. The accused-appellant is further ordered to pay the heirs of the victim Ruben Ngo P25,000.00 as exemplary damages and P25,000.00 as temperate damages. (Emphasis and underscoring supplied)

SO ORDERED.[14]

Before this Court at which appellant filed a Notice of Appeal,[15] he and the Solicitor General adopted and repleaded the arguments they raised in the briefs they respectively filed before the Court of Appeals.[16]

Appellant questions his identification by Mary Ann as the perpetrator of the crime, arguing that Mary Ann failed to point to him when the policeman showed her photographs of many possible suspects, but that when shown his photograph the following day, she identified him as the culprit. He thus posits that the power of suggestion might have influenced her to point to him as the culprit.[17]

When an accused challenges his identification by witnesses, he in effect attacks their credibility.[18] Appellate courts will not generally disturb the assessment by the trial court of the credibility of witnesses whose testimonies it has heard and their deportment and manner of testifying it has observed.[19]

In crediting the testimony of eyewitness Mary Ann, the appellate court observed:

x x x Mary Ann Lomboy was unable to identify accused appellant from several pictures shown to her by the policemen precisely because accused-appellant was not in any of those photographs. When shown a lone photograph of the accused-appellant, Mary Ann Lomboy positively identified him as Ruben Ngo's assailant because she knew and remembered him to be the assailant. Her identification was based solely on her recollection as an eyewitness and it cannot be said that she was influenced by the policemen to wrongly accuse the accused-appellant. There is no showing that the prosecution witnesses were ill-motivated to testify against him.[20] (Emphasis and underscoring supplied)

Appellant has not, however, refuted the foregoing observation of the appellate court.

Mary Ann's answer to the question of the trial court when it was eliciting from her the basis of her identification of appellant as the culprit should put the issue to rest.

x x x x

Court: Just one question from the court because the counsel keeps on repeating that the picture was the basis for your identifying the accused. What is actually your basis for identifying the accused as the assailant? Was it the fact that you saw the stabbing or was it the picture shown to you?

[MARY ANN]

A: He is the one I saw when he stabbed the victim.

Q: So your basis is what you actually saw in the stabbing, not the picture itself?

A: Yes, Your Honor.[21]

x x x x (Emphasis and underscoring supplied)

Notably, the victim's wife corroborated Mary Ann's identification of appellant as the assailant.[22]

Clutching at straws, appellant claims that he was suffering from delusions or psychosis, hence, he could not have consciously adopted a mode of attack without endangering himself, citing the assessment by the Department of Psychiatry of the Baguio General Hospital and Medical Center in its Psychiatric Evaluation Report which states that:

Mr. Ocampo was psychotic before, during, and after the alleged crime. He was psychotic before the alleged crime, as he firmly believed without rational basis that the "Chinese mafia" had influenced the jeepney driver of the vehicle that caused his brother's death. During the commission of the alleged crime, he was psychotic as he vowed to avenge his brother's death and reportedly stabbed to death a Chinese-looking passerby whom he firmly believed to be a member of the "Chinese mafia". He was also psychotic after the alleged crime, as he still harbored delusional beliefs that the "Chinese mafia" had infiltrated and influenced the government and that they were after him.[23] (Underscoring supplied)

Appellant thus appeals to the Court to take notice of his psychosis which, to him, was manifested by his behavior and irrational statements during the trial of the case.[24]

The assessment of appellant's mental condition by the Department of Psychiatry of the Baguio General Hospital and Medical Center may not be appreciated to rule out treachery in the commission of the crime. As the Court of

Appeals noted:

x x x [T]he accused appellant only presented the Psychiatric Evaluation Report conducted on him stating that he was psychotic during, before and after the incident but admitted that the doctors who examined him were not presented in court. In failing to present Gwendolyn C. Cayad, the medical officer who prepared the questioned report as a witness, the report is considered hearsay evidence. And even if We admit this report as an exception to the hearsay rule, this report cannot be given evidentiary weight for it involves an opinion of one who must first be established as an expert witness. Without presenting the doctor who prepared the psychiatric report to show her qualifications as an expert witness, the report could not be given weight or credit. The report has very little probative value due to the absence of the examining physician.

We agree with the Office of the Solicitor General that the trial court could not take judicial notice of the accused-appellant's psychosis. This requires presentation of competent proof. The defense cannot expect the trial court to take judicial notice of the accused-appellant's psychosis based on his behavior and irrational statements during the trial for the presumption always is for sanity. To establish his insanity, this issue must be properly heard and ruled upon by the court. x x x[25] (Emphasis and underscoring supplied)

At all events, the Report does not establish that appellant's alleged psychosis rendered him incapable of consciously adopting his chosen mode of attack at the time of the commission of the offense. It bears noting that when appellant was examined on November 12, 2003 and on December 4, 2003 or after the commission of the crime on October 9, 2003, the Report notes that he was conscious, oriented as to time, person, and place, and had intact remote, recent, and immediate memories.[26]

With respect to the appellate court's affirmance with modification (increase) of the trial court's award of compensation for the victim's loss of earning capacity, the Court takes exception thereto. As will be shown shortly, the testimony of the victim's wife that he had a P6,000 monthly net income as a dealer of dried fish does not suffice to grant such award.[27]

The general rule is that documentary evidence is necessary to prove the victim's annual income. Excepted from the rule[28] for testimonial evidence to suffice as proof is if the victim was either: (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[29]

During the lifetime of the victim, he was a self-employed dried fish dealer from Camarines Norte. For an award of indemnity for loss of earning capacity to be proper based solely on his wife's testimony, it has to be shown that during his lifetime, he earned less than minimum wage under current labor laws and no documentary evidence is available.

The victim's wife testified that as a dried fish dealer, he earned P15,000 gross income per month and a net monthly income of P6,000.[30]

If the victim's daily wage is computed based on 22 working days a month, assuming that the victim did not work on Saturdays and Sundays, the result would be as follows:

$$P\ 6,000\ \text{net monthly income} / 22\ \text{days per month} = P273\ \text{per day}$$

The amount of P273 is above the minimum wage range for non-agricultural workers in Region V, which is P196-P239 per day.[31]

If the victim's daily wage is computed based on 30 working days per month, assuming that the victim worked

every day of the month (although it is of common knowledge that the usual practice is to rest on week-ends), the result would be as follows:

$P6,000 \text{ net monthly income} / 30 \text{ days per month} = P200 \text{ per day}$

Again, the amount of P200 per day is within the minimum wage range for non-agricultural workers in Region V, which is P196-P239 per day.

If the Court bases the computation on 26 working days per month, assuming that the victim rested only on Sundays, the result would be as follows:

$P6,000 \text{ net monthly income} / 26 \text{ days per month} = P231 \text{ per day}$

The amount is still within the minimum wage range for non-agricultural workers in Region V.

If the Court bases the computation on 16 working days per month, based on the testimony that the victim stayed in Baguio three to four days to deliver goods[32] and assuming that the stay was every week, the result would be as follows:

$P6,000 \text{ net monthly income} / 16 \text{ days per month} = P375 \text{ per day.}$

The amount this time is above the minimum wage range for non-agricultural workers in Region V, which is P196-P239 per day.

If the Court bases the computation on 12 working days per month, assuming that the victim stayed in Baguio three days per week to deliver his goods, the result would be

$P6,000 \text{ net income per month} / 12 \text{ days per month} = P500 \text{ per day}$

Again, the amount is above the minimum wage range for non-agricultural workers in Region V, which is P196-P239 per day.

Based on the above computations, as the victim's daily wage was either within or above but never below the minimum wage range, no indemnity for loss of earning capacity can be awarded based on his wife's testimony alone.

But even if the victim were earning below minimum wage, a third requirement has to be satisfied for testimonial evidence to suffice as basis for an award of indemnity for loss of earning capacity: that in the victim's line of work no documentary evidence is available.

It is of common knowledge that a fish dealer keeps records of his transactions. In fact, the victim's wife was able to testify as to his gross and net earnings -- gross earnings being understood by her to be sold as the total amount of fish sold from which expenses are deducted[33] -- which would only be possible if records were being kept.[34] The wife did not, however, present documentary proof showing how she arrived at her estimate of gross and net earnings.

In fine, no indemnity for loss of earning capacity may be awarded based on the victim's wife's testimony alone.

The Court takes exception, too, to the award by the appellate court of temperate damages in the amount of P25,000, such kind of damage being recoverable only when some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[35] In the case at bar, actual damages had been proven and awarded.

Finally, the Court, following current jurisprudence,[36] increases the civil indemnity to P75,000.

WHEREFORE, the February 13, 2007 Decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the award of civil indemnity is increased to P75,000 and the awards of P671,999.97 for loss of earning capacity and of P25,000 as temperate damages are DELETED.

The Court thus finds the accused-appellant, Benjamin Ocampo, GUILTY beyond reasonable doubt of Murder and is sentenced to suffer the penalty of reclusion perpetua; to pay the heirs of Ruben Ngo P75,000 as civil indemnity, P235,682.78 as actual damages, and P25,000 exemplary damages; and to pay the costs.

SO ORDERED.

Ynares-Santiago,[*](Acting C.J.), Brion, Del Castillo, and Abad, JJ., concur.
Carpio Morales,**] J., Acting Chairperson.

[*] Per Special Order No. 706 and additional member per Special Order No. 691.

[**] Per Special Order No. 690 in lieu of the sabbatical leave of Senior Associate Justice Leonardo A. Quisumbing.

[1] Records, p. 1.

[2] Vide TSN, February 10, 2004, pp. 2-30; TSN, February 12, 2004, pp. 2-40; TSN, February 17, 2004, pp. 2-38; records, pp. 62-76; Exhibit "A," records, p. 9; Exhibits "B"- "J," Exhibits, pp. 1-22.

[3] Exhibit "G," Exhibits, p. 16.

[4] Ibid.

[5] Vide TSN, February 17, 2004, pp. 12-13.

[6] Id. at 21.

[7] Id. at 30-36.

[8] Vide TSN, March 16, 2004, pp. 2-14.

[9] Id. at 7. Appellant, who was unemployed, gave no details on how he was "exposing a Chinese syndicate."

[10] Records, p. 117.

[11] CA rollo, pp. 44-45.

[12] Penned by Court of Appeals Associate Justice Mariflor P. Punzalan Castillo, with the concurrence of Associate Justices Martin S. Villarama, Jr. and Rosmari D. Carandang. CA rollo, pp. 106-125.

[13] CA rollo, pp. 122-124.

[14] Id. at 124-125.

[15] Id. at 128.

[16] Rollo, pp. 28-35.

[17] CA rollo, pp. 46-47.

[18] People v. Punsalan, 421 Phil. 1058, 1068 (2001).

- [19] Ibid.
- [20] CA rollo, pp. 117-118.
- [21] TSN, February 10, 2004, pp. 28-29.
- [22] Vide TSN, February 12, 2004, pp. 8-9.
- [23] Records, p. 85.
- [24] Vide CA rollo, pp. 51-52.
- [25] CA rollo, pp. 120-121.
- [26] Vide records, pp. 83, 84.
- [27] Vide TSN, February 12, 2004, p. 16.
- [28] Licyayo v. People, G.R. No. 169425, March 4, 2008, 547 SCRA 598.
- [29] Id., at 615.
- [30] TSN, February 12, 2004, p. 16.
- [31] www.nwpc.dole.gov.ph/pages/statistics/stat_current_regional.html, downloaded September 14, 2009.
- [32] TSN, February 12, 2004, p. 32.
- [33] TSN, February 12, 2004, p. 16.
- [34] Vide TSN, February 12, 2004, p. 16.
- [35] Art. 2224, Civil Code; People v. Dizon, G.R. No. 177775, Oct. 10, 2008, 568 SCRA 395, 400-401.
- [36] People v. de Guzman, G.R. No. 173477, February 4, 2009.

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