

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ISAIAS V. DIZON, APPELLANT.

G.R. No. 177775. October 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Decision of October 31, 2006[1], the Court of Appeals affirmed in toto the January 10, 2005 decision of Branch 38 of the Regional Trial Court (RTC) of Maddela, Quirino, convicting Isaias Dizon (appellant) of Murder, the dispositive portion of which RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding ISAIAS DIZON GUILTY beyond reasonable doubt of Murder for which he should suffer the penalty of reclusion perpetua and to pay the heirs of JETO SANTOS P75,000.00 as civil indemnity; P50,000.00 as moral damages; P14,000.00 as actual expenses; and P5,000.00 as temperate damages.

However, his preventive imprisonment shall be fully credited to him in the service of his sentence pursuant to Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

On December 25, 2001, the lifeless body of Jeto Santos (the victim) was found floating in a creek in Sangbay, Nagtipunan, Quirino. As eyewitness accounts pointed to Rodel Dizon (Rodel), herein appellant Isaias Dizon, and Virgilio Pascua (Pascua) as the last persons seen with the victim, the three were immediately arrested and charged before the Office of the Provincial Prosecutor.

By Resolution of January 29, 2002, the Provincial Prosecutor found probable cause to hale only appellant into court. Thus appellant was charged for Murder in an Information the accusatory portion of which reads:

That on or about 10:00 o'clock to 11:00 o'clock in the evening of December 24, 2001 in Sangbay, Nagtipunan, Quirino, Philippines and within the jurisdiction of this Honorable Court, the said accused with intent to kill and with treachery did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of JETO SANTOS by hitting thrice the latter in the head with the use of stones, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.

From the account of prosecution witness, Rodel, whose grandfather is a cousin of herein appellant, the following transpired:

In the evening of December 24, 2001, while he, Pascua and appellant were drinking at a videoke bar, the victim entered and started dancing along to the music. At around 10:00 o'clock he went outside to urinate at an elevated area, with no enclosure, illuminated by the lights from the bar and adjacent to the downward path towards a creek.

While urinating, he saw appellant and the victim exit from the bar and proceed towards the creek which was about

15-20 meters away from the bar. Upon reaching the stone-littered edge of the creek, appellant picked up a fist-sized stone with which he smashed the face of the victim who, as a result fell down. He thus rushed to the two and tried to pacify appellant. Unrestrained, appellant attempted to again hit the victim by picking up another stone, oblong in shape whose length was approximately that of a long coupon bond, but he (Rodel) was able to arrest the attempt and the stone fell on the ground. Appellant thereupon shoved him, picked up the same stone and succeeded in "dropping" it at the already sprawled victim. Realizing that he could no longer pacify appellant, he ran away and proceeded to his grandmother's house.

Appellant denied the charge. Admitting that he was at the bar with Rodel and Pascua before the incident, he claimed that he went home at around 8:45 in the evening at the behest of his wife Mary Jane.

Mary Jane corroborated appellant's testimony, adding that at around 11:00 in the evening, she noticed Rodel knocking on the door of her neighbor Romy Dizon, saying "Uncle, uncle, please open up because I have killed"; that when nobody responded, Rodel went to their (appellant's and Mary Jane's) house and pleaded "Lola, lola, please open up because I have killed"; and that when she opened the door, Rodel asked for money from her to which she obliged, but she did not ask who the victim was.

The trial court, as stated early on, convicted appellant by Decision of January 10, 2005.

In convicting appellant, the trial court credited, among other things, Rodel's positive identification of appellant absent a showing that he was actuated by an ill-motive to testify against his grandfather, herein appellant. And the trial court noted the testimony of Dr. Perla Olay as corroborative of Rodel's testimony that the victim was hit in the head.

In his Brief filed before the Court of Appeals, appellant faulted the trial court:

I

. . . in finding [him] guilty beyond reasonable doubt of the offense charged[; and]

II

. . . in appreciating the qualifying circumstance of treachery.

The appellate court in upholding the trial court's finding that treachery attended the killing held:

The act of Accused-Appellant in hitting the victim again with a stone knowing fully well that the latter is already sprawled on the ground, with his hands spread [out], insured that the victim had no opportunity to defend or retaliate against him. Moreover, the deliberate throwing of stones, thereafter by the Accused-Appellant, with the sizes of a fist and a long coupon bond, for a number of times simply tend[s] to show that the Accused-Appellant had chosen such manner of execution. Additionally, treachery can exist even if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to defend himself against such attack. Thus, the requisites to qualify the crime to murder through treachery are met in the instant case. (Underscoring supplied)

In determining the existence of treachery, the Court considers the manner of execution of the criminal act which renders it impossible for the victim to defend himself.[2] Treachery can thus exist even if the attack is frontal if it is sudden and unexpected. While in Rodel's Sworn Statement[3] before the police given soon after his arrest, he declared that there was an altercation before appellant picked up a stone and hit the victim with it, murder is not ruled out. The appellant's picking up of a stone and crashing it upon the victim was so sudden. It bears noting that appellant's attack was directed to the head of the victim, indicating that he intended to render him unconscious, if not to kill him instantly, to thus render him defenseless. The gravity of the head wounds suffered by the victim -

seven lacerated wounds two of which exposed the brain tissues, hence fatal[4] according to Dr. Olay, should confirm such intent.

The identification of appellant as the malefactor by his grandson Rodel should a fortiori be accorded much weight, for judicial notice is taken of the natural hesitancy of most people to get involved in a criminal case,[5] which is naturally heightened in Rodel because appellant is a relative.

As for appellant's alibi, for it to prosper, it is not enough to prove that he was somewhere else when the offense was committed. It must likewise be proven that he was somewhere else that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[6] As testified by his wife, Mary Jane, however, the bar was only 50 meters away from their house, hence, it was not impossible for him to be at the locus criminis at the time of the commission of the crime.

In fine, appellant's appeal fails.

A word on the civil aspect of the case. In line with prevailing jurisprudence, the award of civil indemnity is reduced from P75,000 to P50,000.[7] The award of temperate damages[8] is deleted, actual damages having already been awarded. The Court awards, however, exemplary damages in the amount of P25,000,[9] an aggravating circumstance - treachery - being present.

WHEREFORE, the Court of Appeals Decision of October 31, 2006 is AFFIRMED with the following MODIFICATION on the civil aspect of the case (1) the award of civil indemnity is reduced from P75,000 to P50,000; (2) the award of temperate damages is deleted and; (3) exemplary damages is awarded to the heirs of the victim in the amount of P25,000.

Costs against accused-appellant.

SO ORDERED.

Quisumbing, (Chairman), Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Penned by Associate Justice Normandie B. Pizzaro, with the concurrence of Associate Justices Rosalinda Asuncion-Vicente and Aurora Santiago-Lagman. Rollo, pp.2-11.

[2] People v. Sades, G.R. 171087, July 12, 2006, 494 SCRA 716, 718.

[3] Exhibit "B," records, p. 43.

[4] TSN, September 16, 2002, pp. 10-11.

[5] People v. Tulop, G.R. No. 124829, April 21, 1998, 289 SCRA 316, 317.

[6] People v. Peleras, 417 Phil. 537 (2001).

[7] People v. De Guzman, G.R. No. 169082, August 17, 2007, 530 SCRA 631; People v. Sades, G.R. 171087, July 12, 2006, 494 SCRA 716; Nueva España v. People, G.R. No. 163351, June 21, 2005, 460 SCRA 547.

[8] Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that same pecuniary loss has been suffered but its amount can not from the nature of the case, be proved with certainty. (Civil Code)

[9] People v. Nicolas, 448 Phil. 253 (2003).

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