

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EVELYN BOHOL Y TALAOGAN A.K.A. EVELYN BOHOL, A.K.A. EVELYN BOHOL DAVIS, A.K.A. DIANITA BOHOL DAVIS, APPELLANT.

G.R. No. 178198. December 10, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is an appeal interposed by appellant Evelyn Bohol seeking the reversal of the Court of Appeals (CA) Decision[1] dated December 28, 2006 which in turn affirmed with modification the Regional Trial Court[2] (RTC) Decision[3] dated November 25, 2004.

The facts of the case follow:

The victim, Steven Alston Davis (Steven), a 31-year old British national, was the Chief Technology Officer of JC Software, a local subsidiary of Hong Kong based corporation JADECOOL Entertainment. Together with his business associate and long-time friend Michael Thomas Dunn (Michael), a Canadian citizen, Steven resided at a two-storey apartment unit at No. 5958 Firmina Street, Barangay Poblacion, Makati City.[4]

Steven married appellant Evelyn Bohol in Hong Kong sometime in March 1997, when the latter was only 17 years old. Together with their two minor children, Steven and the appellant shared a house at No. 1823 Fifth Street, Villasol Subdivision in Angeles City, Pampanga. Steven spent his weekdays in the Makati apartment, and stayed with his family in Angeles City during weekends.[5]

On July 17, 2002, Steven and Michael worked until around ten o'clock in the evening at the principal office of JC Software in Makati. At about 10:45 p.m., they headed to their rented apartment. Steven proceeded to his room, did some computer work, then went to sleep. At about 11:30 p.m., Michael went to the airport to fetch his girlfriend Jennifer Castillo (Jennifer), who was then arriving from Hong Kong. Michael and Jennifer returned to the apartment at one o'clock in the morning of July 18, 2002. They went to bed a short moment thereafter.[6]

At around two o'clock in the morning, Jennifer told Michael that a person seemed to be moving and flashing a light outside their room. Suspecting that the person outside the room was Steven, and that the latter was just trying to play a practical joke on them, Michael inquired "What are you doing tonight?" Instead of Steven answering back, three men with drawn handguns suddenly entered their room. These three individuals were later positively identified during the trial to be Arnold Adoray (Arnold), Alexander Dagami (Alexander), and accused-turned-state-witness Robin Butas (Robin). Arnold, whose gun was aimed at Michael, asked, "Ito ba? Ito ba?" Alexander thereafter grabbed Jennifer by the hand and locked her inside Michael's bathroom. After taking Michael's keys, wallet, and cellular phone, the three men proceeded to Steven's room.[7] Upon seeing the then sleeping Steven, Arnold fired four consecutive shots upon the former, hitting the latter at the back. The three men then hurriedly left the house.[8] After he was sure that Arnold, Alexander and Robin were no longer inside the apartment, Michael immediately went to Steven's room. There, Michael saw the lifeless body of Steven. After checking Steven's pulse, Michael administered cardiopulmonary resuscitation (CPR) on the former's chest but he

no longer made any response.[9] Thereafter, Philippine National Police (PNP) personnel arrived at the scene of the crime; then an ambulance took Steven's body to the Makati Medical Center where he was pronounced dead on arrival.[10]

Michael made numerous attempts to reach the appellant by phone immediately after the incident, but his efforts were all in vain. Finally, he was able to contact her through her mobile phone at around six o'clock in the morning; the former immediately informed the latter of the killing of her husband. When Michael met Evelyn at ten o'clock in the morning, he readily observed that appellant showed no signs of sadness or mourning despite the violent death of her husband.[11]

After the autopsy of the cadaver in the afternoon of July 18, 2002, the National Bureau of Investigation (NBI) Medico-Legal officer found that Steven sustained four gunshot wounds at the upper left portion of his back, including four bullet holes at the back of his upper left arm, just below the shoulder.[12]

Arnold and Alexander were thus charged with murder on August 16, 2002.[13] Trial thereafter ensued. The information was later amended[14] charging the appellant, together with Robin, with the crime of murder, in conspiracy with Arnold and Alexander. The accusatory portion of the information reads:

That on or about the 18[th] day of July, 2002, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an automatic pistol and revolver, conspiring and confederating together, and all of them mutually helping and aiding one another, with intent to kill, and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shot one STEVEN ALSTON DAVIS, on the different parts of his body, thereby inflicting upon the latter serious and mortal gunshot wound which directly caused his death.

CONTRARY TO LAW.[15]

Considering that at the time the appellant was arrested, the trial of the case, in which Arnold and Alexander were eventually convicted,[16] was almost complete, a separate trial for the appellant was held. Upon arraignment, the appellant pleaded "Not guilty." [17] To ensure impartiality, the presiding judge inhibited himself, and the case of the appellant was re-raffled to Branch 141.

It appears that Robin was discharged as a state witness.[18] Robin contended that the appellant was responsible for inducing/persuading him, Arnold, and Alexander to perpetrate the killing of Steven. He further stated that the appellant and Arnold (as in fact admitted to him by the appellant) were having a love affair, as he would oftentimes see them caress and kiss each other in the living room of their house in Angeles City. Robin also testified that, at about eleven o'clock in the evening of July 17, 2002, appellant roused him from sleep and required him to join them.[19] Robin then rode a white car together with Arnold, Alexander and the appellant, who acted as the guide in proceeding towards Steven's apartment. Upon reaching Steven's place, appellant gave Arnold the keys of the house, and forthwith ordered the group to alight from the car. Upon gaining entry, the three performed all the acts of execution. Riding the same car, Arnold, Alexander, Robin and Evelyn returned to Angeles City. Even as they were traveling, Evelyn warned them never to tell anybody about the incident. Robin, however, divulged the violent incident to his wife Gina Bohol Butas (Gina), Evelyn's sister. In essence, the material points of Robin's testimony were wholly corroborated by Gina. According to Gina, the appellant admitted that she was in love with Arnold. She added that the appellant confided to her the plan to kill Steven in order for the appellant and Arnold to freely stay together.[20]

By way of defense, appellant theorized that it was physically impossible for her to have a direct and material participation in the killing of Steven as she was absent from the scene of the crime, and she lacked the ill motive to orchestrate the murder of her husband. She also contended that she was at home with her children at the time of

the commission of the felony.[21]

On November 25, 2004, the RTC rendered a Decision[22] finding the appellant guilty beyond reasonable doubt of murder, qualified by treachery, and sentenced her to suffer the penalty of reclusion perpetua. The court also made her liable to pay civil indemnity in the amount of P50,000.00.

The court found sufficient evidence to establish conspiracy to kill Steven. It likewise held that treachery was adequately proven, thus, establishing the crime of murder. It, however, refused to recognize the aggravating circumstance of evident premeditation because of insufficiency of evidence. It is undisputed that the appellant was married to Steven; however, the trial court concluded that she could not be held liable for parricide in view of the nullity of their marriage, for having been contracted at the time when appellant was only 17 years old.[23]

This decision was affirmed by the CA in its Decision dated December 28, 2006, with an added award of P50,000.00 representing moral damages due the heirs of Steven.[24]

In her final attempt to seek the reversal of her conviction, appellant comes before this Court, raising the following as lone error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HER GUILT FOR THE CRIME OF MURDER WAS NOT PROVEN BEYOND REASONABLE DOUBT.[25]

Appellant bewails the fact that the trial and the appellate courts accorded great weight to the testimony of Robin. She posits that having turned state witness, Robin was motivated to testify solely by his desire to be exculpated from liability.[26] Appellant adds that her motive to kill Steven was not established at all.[27] She further avers that her conviction should not have been based on Robin's testimony, or on the weakness of the evidence for the defense.[28] Lastly, appellant insists that in no way could she be convicted of murder for lack of sufficient evidence to prove the qualifying circumstance of treachery.[29]

After a careful review of the records and evidence presented, we find no cogent reason to reverse the decision of the RTC, as affirmed by the CA. Nevertheless, we deem it proper to discuss the issues raised by the appellant.

First, whether Robin's testimony is credible. As this Court has consistently said, where the culpability or innocence of an accused would hinge on the issue of the credibility of witnesses, the findings of fact of the CA affirming those of the trial court, duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court, and are not to be disturbed on appeal.[30] The only exception is when certain facts of substance and value have been overlooked which, if considered, might affect the result of the case.[31]

Moreover, as enunciated in *People v. Bocalan*,[32] the simple fact that Robin was originally charged with the appellant as a co-conspirator but was later discharged as a state witness and was no longer prosecuted for the crime charged does not render his testimony incredible or lessen its probative weight. Otherwise stated, the barefaced fact that Robin was charged as a co-conspirator in the commission of the crime before he was discharged as a state witness does not disqualify him as a witness or discredit his testimony.[33] While his testimony should be taken with caution, there is no reason why it cannot be given credence, it appearing that the same was corroborated by the testimony of his wife who happens to be appellant's sister. Besides, appellant offered no evidence to show that Robin was actuated by an ill or devious motive to testify against her.

Appellant's claim that Robin testified against her only because he was motivated by his desire to be exculpated from his liability as a co-conspirator is likewise bereft of merit. Considering his close relationship with the appellant, the latter being his sister-in-law, there was no other reason for Robin to have testified against the

appellant except his desire to tell the truth. This was bolstered by the fact that appellant's own sister corroborated Robin's testimony. More importantly, Robin's testimony was corroborated by physical evidence, namely, the autopsy report that Steven sustained four gunshot wounds at the upper left portion of his back, including four bullet holes at the back of his upper left arm, just below the shoulder,[34] which was thus consistent with his testimony that upon seeing Steven who was then asleep, Arnold fired four consecutive shots upon the former, hitting him at the back.[35]

Second, whether appellant was correctly convicted of murder. Murder is committed by any person who, not falling within the provisions of Article 246[36] of the Revised Penal Code (RPC), kills another, if the killing is committed with treachery.[37] There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[38] Hence, for treachery to be appreciated, two conditions must be met, to wit: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of means, method or manner of execution.[39]

The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission without risk to himself.[40]

The circumstances obtaining in the instant case show that treachery attended the killing of the victim. It is undisputed that the killing occurred at around two o'clock in the morning, an hour when generally people are asleep. The witnesses are also one in saying that upon entering Steven's room, the assailants immediately shot the former and caused the latter's death. Both the testimonial and the physical sets of evidence also show that Steven was shot from behind. Evidently, the victim was caught unaware, totally defenseless against the armed invaders.[41]

While it is true that appellant did not directly participate in shooting Steven, nevertheless, evidence clearly shows that she was part of the conspiracy to commit the crime. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[42] It must be proved with the same quantum of evidence as the crime itself. However, direct proof is not required, as conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during and after the commission of a felony that all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[43]

In the present case, the CA correctly outlined the circumstances showing the appellant's participation, viz.:

First, Evelyn [appellant herein] provided for the effective and compelling inducement for Arnold to carry into effect the killing of Steven. Second, Evelyn personally summoned and "recruited" Robin to come along with them for possible backup or perhaps as "additional ammunition" in case of resistance or retaliation on the part of their target. Third, it is apparent that the three men were not aware of Steven's location, and thus Evelyn acted as the guide who directed the group towards the residence of Steven at Makati. And fourth, Evelyn provided the group with the keys in order for them to enter the apartment with ease and unnoticed.[44]

Indubitably, conspiracy was established.

Appellant seeks refuge in the defense of alibi which we have consistently regarded as the much abused sanctuary of felons and which is considered as an argument with a bad reputation. It is, to say the least, the weakest defense

which must be taken with caution being easily fabricated.[45] Such defense cannot prevail over the positive identification of appellant as one of the conspirators in killing Steven. Though she did not participate in the actual shooting of Steven, it was sufficiently established that she traveled from Angeles City to Makati City, together with the assailants; she waited for the assailants inside the car; and she traveled back to Angeles City, again with her co-conspirators, after the commission of the felony. Furthermore, appellant failed to establish that it was physically impossible for her to have been at the scene of the crime at the time of its commission. Angeles City is only a few kilometers away from Makati and only a few hours of travel by land. This is coupled by the fact that when Michael was trying to reach her through her mobile and residence phones, she was not available until six o'clock in the morning, which was only about four hours after the incident. Clearly, it was possible for her to be at the place where the felony was committed. Besides, as earlier discussed, considering the appellant's participation as a co-conspirator, her absence from the place of commission does not negate her culpability.

We would like to clarify at this point that although admittedly, appellant was the wife of the victim, she could not be convicted of parricide as provided in Article 246 of the RPC. Records show that appellant's relationship with the victim was not alleged in the information.[46] Hence, she can be convicted only of murder.

Under Article 248 of the RPC, the penalty imposed for the crime of murder is reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is reclusion perpetua. The prison term imposed by the trial court and as affirmed by the CA is, therefore, correct.

Lastly, whether the damages awarded to the heirs of Steven are proper. We affirm the award of civil indemnity and moral damages but we deem it proper to order the payment of an additional amount of P25,000.00 as exemplary damages.

Civil indemnity is mandatory and granted to the heirs of the victim even without need of proof other than the commission of the crime. The amount of P50,000.00 awarded by the trial and appellate courts is in line with prevailing jurisprudence.[47]

As to moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[48] The amount of P50,000.00 was, therefore, correctly awarded.

In addition, exemplary damages should be awarded to the heirs of the victim, since the qualifying circumstance of treachery was proven by the prosecution.[49] 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. This kind of damage is intended to serve as a deterrent to serious wrongdoings, 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.[50]

WHEREFORE, we AFFIRM the December 28, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00551 finding appellant Evelyn Bohol y Talaogan guilty beyond reasonable doubt of murder, with the MODIFICATION that the victim's heirs are also entitled to the award of exemplary damages of P25,000.00.

SO ORDERED .

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe, concurring; rollo, pp. 2-24.

[2] Branch 141, Makati City.

- [3] Penned by Judge Manuel D. Victorio; CA rollo, pp. 30-47.
- [4] Rollo, p. 6.
- [5] Id.
- [6] Id. at 6-7.
- [7] Id. at 7-8.
- [8] Id. at 11.
- [9] Id. at 8.
- [10] Id. at 9.
- [11] Id.
- [12] Records, Vol. III, pp. 39-40.
- [13] Records, Vol. I, pp. 1-2.
- [14] Id. at 117-118.
- [15] Id. at 117.
- [16] Embodied in a Decision dated April 27, 2004; id. at 343-347.
- [17] Rollo, p. 5.
- [18] Id. at 3.
- [19] By "them" the appellant meant she, Alexander and Arnold.
- [20] Rollo, pp. 9-12.
- [21] Id. at 12-13.
- [22] CA rollo, pp. 30-47.
- [23] Id. at 42-47.
- [24] Rollo, p. 23.
- [25] Id. at 55.
- [26] Id. at 55-56.
- [27] Id. at 56-57.
- [28] Id. at 56-58.
- [29] CA rollo, pp. 72-73.
- [30] Siccuan v. People, G.R. No. 133709, April 28, 2005, 457 SCRA 458, 463-464.
- [31] People v. Bensig, 437 Phil. 748, 756 (2002); People v. Chavez, 343 Phil. 758, 768 (1997).
- [32] 457 Phil. 472, 482 (2003).
- [33] People v. Bocalan, supra; see People v. Ferrer, 325 Phil. 269, 286 (1996).

[34] Records, Vol. III, pp. 39-40.

[35] Rollo, p. 11.

[36] Art. 246. Parricide. - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

[37] Article 248 of the Revised Penal Code provides:

Art. 248. Murder. - Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

1. With treachery x x x.

[38] People v. Garin, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 409; People v. Agudez, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692, 707.

[39] People v. Garin, supra; People v. Agudez, supra; see People v. Barcenal, G.R. No. 175925, August 17, 2007, 530 SCRA 706, 725.

[40] Supra note 38.

[41] The Court has held in the following cases that treachery attended the commission of the crime when the victim was attacked while he was asleep:

(1) People v. Cajumocan, G.R. No. 155023, May 28, 2004, 430 SCRA 311;

(2) People v. Demate, 465 Phil. 127 (2004).

(3) People v. Bernal, 437 Phil. 11 (2002).

[42] People v. Barcenal, supra note 39, at 726; People v. Agudez, supra note 38, at 706.

[43] People v. Agudez, supra note 38, at 706, citing People v. Caballero, 448 Phil. 514 (2003).

[44] Rollo, pp. 18-19.

[45] People v. Flores, 466 Phil. 683, 692 (2004).

[46] See People v. Jumawan, 202 Phil. 294, 309 (1982).

[47] People v. Ducabo, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 476; People v. Rodas, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 572; People v. Garin, supra note 38, at 413.

[48] People v. Ducabo, supra, at 477; People v. Rodas, supra, at 573.

[49] People v. Ducabo, supra note 47, at 477; People v. Rodas, supra note 47, at 573; People v. Barcenal, supra note 39, at 727.

[50] People v. Barcenal, supra note 39, at 727-728.

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