

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO DOLLENDO AND NESTOR MEDICE, ACCUSED, NESTOR MEDICE, APPELLANT.

G.R. No. 181701. January 18, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

Before this Court is an appeal from the Decision[1] dated 28 November 2006 of the Court of Appeals, finding appellant Nestor Medice guilty beyond reasonable doubt of the crime of Murder.

The Facts

On 18 May 2001, appellant and Eduardo Dollendo (Dollendo) were accused of the crime of MURDER in Criminal Case No. C-2971 before the Regional Trial Court, Branch 19, Catarman, Northern Samar.[2]

On arraignment, only appellant entered a plea of not guilty.[3] His co-accused Dollendo, although earlier arrested, escaped from the Provincial Jail at Dancalan, Bobon, Northern Samar.[4] As Dollendo remained at-large prior to his arraignment, trial proceeded only with respect to appellant.

The prosecution presented the testimonies of the following: Mylene Ruiz,[5] wife of victim Garry Ruiz (Ruiz); two (2) eyewitnesses to the crime, namely, Deolito Romines (Romines)[6] and Joseph del Valle (del Valle);[7] and Dr. Norma E. Dato,[8] who examined the body of Ruiz.

Mylene Ruiz testified that on 10 February 2001, appellant and Dollendo went to her house looking for her husband Ruiz. She asked the accused why so since the latter was out peddling fish. The accused told her that they had a problem with him, which she would later find out when they meet.[9]

Soon after, on 13 February 2001 at around 2:30 in the afternoon, Ruiz was killed at the house of Romines at Barangay West, San Jose, Northern Samar. Eyewitnesses Romines and del Valle rendered a straightforward account of the incident in the following manner:

On that fateful afternoon, Del Valle, together with one Erles Anquillo and victim Ruiz were playing cards in the sala of Romines' house. Meanwhile, Romines was getting their pulutan ready.[10] He was in the kitchen, which was about less than two (2) meters away from the sala,[11] with an unobstructed view of the sala.[12] The drinking session had not yet begun when appellant arrived. He did nothing and left immediately upon seeing them.[13]

After two (2) minutes, appellant returned with his brother-in-law Dollendo.[14] Ruiz did not notice them enter the house because his back was turned against the door.[15] Appellant pulled out a bolo (dipang), handed it over to Dollendo saying, "Uh! [Y]ou take care of it," after which, he stepped back.[16] Dollendo, in turn, immediately stabbed Ruiz on the left chest.[17]

Del Valle ran to seek police assistance[18] while Romines was left behind. Romines recounted that after the first

blow, three (3) successive stab blows were further delivered hitting Ruiz in his chest near the heart and in his arm.[19] Thereafter, appellant and Dollendo fled towards the direction of P. Tingzon.[20] Ruiz died on his way to the hospital.[21]

Dr. Norma E. Dato, Municipal Health Officer, San Jose, Northern Samar, identified in court her Autopsy Report,[22] showing that the death of the victim was caused by “shock secondary internal hemorrhage caused by st[a]b wounds,” which injured the heart, left lung, and blood vessels. The four stab wounds were described as follows:

St[a]b wound No. 1

- Length - Width

- 1.2 cm - .8 cm

located 2.9 cm above the left nipple

St[a]b wound No. 2

- Length - Width

- 1.2 cm - .8 cm

located about 4 cm. st[a]b wound No. 1 along the anterior axillary line

St[a]b wound No. 3

- Length - Width

- 2.5 cm - .6 cm

located on the left arm, midportions. This is a through and through wound.

St[a]b wound No. 4

- Length - Width

- 1 cm - .6 cm

located 4 cm. below st[a]b wound No. 3. This is a through & through wound

She further testified that stab wound nos. 1 and 2 caused the death of Ruiz.[23]

As the lone witness for the defense, appellant denied the charge against him and claimed that he never saw Dollendo on the date of the incident. He further alleged that he was then in the house of spouses Dafia Pusio and Dondon Morino, also in Barangay West, from 12:00 noon to 3:00 o'clock in the afternoon.[24] He learned of the death of Ruiz only on 2 March 2001 when he was apprehended by the policemen.[25]

On cross-examination, the following facts were elicited from the appellant: that Dollendo is his brother-in-law; that he had known victim Ruiz, and prosecution witnesses Romines and del Valle for a long time;[26] that Dafia's house, where he allegedly stayed to watch betamax from 12:00 noon to 3:00 o'clock in the afternoon of 13 February 2001 and Romines' house, where Ruiz was killed, are only forty (40) meters apart ? one is, in fact, just across the other.[27]

On 30 April 2003, the trial court convicted the appellant.[28] The dispositive portion of the decision reads:

From the foregoing, the Court finds NESTOR MEDIC[E] guilty beyond reasonable doubt as principal by

induction of the crime of Murder and hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim P50,000.00 and another P50,000.00 as moral damages and to pay the costs.[29]

Appellant filed a Notice of Appeal[30] dated 16 May 2003 with the trial court. After the submission of their respective briefs, this Court ordered the transfer of the records of the case to the Court of Appeals, for appropriate action and disposition, in order to allow an intermediate review of the case.[31]

On 28 November 2006, the Court of Appeals promulgated its decision[32] in CA-G.R. CR HC No. 00243 denying the appeal. Thus:

WHEREFORE, the appeal is DENIED and the Decision dated 30 April 2003 of the Regional Trial Court, Branch 19, Catarman, Northern Samar, finding NESTOR MEDICE guilty beyond reasonable doubt of the crime of Murder, and imposing on him the penalty of reclusion perpetua and to indemnify the heirs of the victim Fifty Thousand Pesos (P50,000.00), and another Fifty Thousand Pesos (P50,000.00) as moral damages and to pay the costs, is AFFIRMED subject to the modification that he shall indemnify the victim in the amount of Thirty Thousand Pesos (P30,000.00) as exemplary damages.[33]

Appealed to this Court, we required the parties to simultaneously file their respective supplemental briefs.[34] Both manifested that they will no longer file supplemental pleadings.[35]

Our Ruling

We affirm the appellant's conviction.

To be convicted of murder, the following must concur: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code; and (4) the killing does not constitute parricide or infanticide.[36]

Treachery qualified the killing to murder

The law provides that an offender acts with treachery when he "commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [37] There is, thus, treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about to do.[38]

It is clear in the records that the circumstance of treachery is attendant in this case. The aggressors ensured that the victim had no opportunity to resist or defend himself through the sudden and unexpected attack. As testified to by Romines:

Q

Did the victim notice the two accused when they entered your house for the second time?

A

No, sir, because they came from his left side.

Q

How long thereafter after both accused entered your house when the first stabbing blow was delivered by Edgardo Dollendo to the victim?

A

It did not take long before the stabbing.

[Q]

Do you mean to say that it was sudden when Edgardo Dollendo stabbed the victim?

A

Yes, sir.[39]

Del Valle was likewise positive that Ruiz was not aware that he was about to be attacked.

Q

When the accused Eduardo Dollendo delivered the first blow to the victim did the victim notice that he was to be attacked by the accused Eduardo?

A

No, sir, he was beside [Ruiz].[40]

As to whether the circumstance of treachery can qualify the killing to murder, the fact being that it was not expressly stated as such in the information, this Court has long clarified that “qualifying circumstances need not be preceded by descriptive words such as ‘qualifying’ or ‘qualified by’ to properly qualify an offense.”[41]

Evident premeditation was not established

as an aggravating circumstance

The aggravating circumstance of evident premeditation may only be considered if the following are established:

(1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.[42]

None of the requisites, however, is present in this case. First, the testimony of Mylene Ruiz that appellant and Dollendo looked for her husband Ruiz on 10 February 2011 and that they told her that they have a problem to settle, is insufficient to conclude that the assailants have then decided to commit the crime. Second, evidence is wanting to show when the offenders actually resolved to kill the victim. Even assuming that they clung to their determination to commit the crime after it was ascertained that Ruiz was in the house of Romines, the lapse of two (2) minutes or so from the time appellant checked on the whereabouts of Ruiz to the time Ruiz was attacked is not sufficient to afford them time to reflect on the consequences of their actions,[43] the essence of premeditation being “that the execution of the act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.”[44]

There was conspiracy to commit murder;

Appellant is, therefore, liable notwithstanding

the evidence showing that it was only Dollendo

who stabbed the victim

The prosecution clearly established that it was only Dollendo who stabbed Ruiz. That appellant did not actually stab the victim does not, however, release him from criminal liability.

Article 8 of the Revised Penal Code provides that “[a] conspiracy exists when two or more persons come to an

agreement concerning the commission of a felony and decide to commit it.” The “evidence of a chain of circumstances,”[45] to wit: that appellant went inside the house of Romines to ascertain that the victim was there; that he fetched Dollendo to bring him to Ruiz; that he gave the dipang to Dollendo to commit the crime; and that they both fled after the stabbing, taken collectively, shows a community of criminal design to kill the victim. Evidently, there was conspiracy in the commission of the crime. Thus:

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act xxx. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[46]

Defense of alibi cannot prosper;

There was failure to establish physical impossibility

to be at the locus criminis;

Witnesses positively identified the assailants

It has been held time and again that alibi may prosper only when the accused establishes that not only was he somewhere else when the crime was committed but that it was physically impossible for him to have been at the locus criminis at that time.[47]

In the instant case, appellant admitted that the house of his friend where he said he was at the time of the commission of the crime is only forty (40) meters away from the locus criminis.[48] Hence, it was not physically impossible for him to be at Romines’ place during the killing incident.

Furthermore, positive identification destroys the defense of alibi, more so when such is credible and categorical,[49] as it is in this case. Positive identification by witnesses, absent any ill motive on their part, likewise prevails over the defense of denial.[50]

All considered, we are convinced that the guilt of appellant has been sufficiently established with moral certainty.

Reclusion perpetua is the imposable penalty

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. The proper imposable penalty on the appellant is reclusion perpetua inasmuch as neither aggravating nor mitigating circumstances attended the commission of the crime.[51]

Appellant is liable for civil indemnity, moral damages,
temperate damages exemplary damages and 6% interest
per annum on all damages until fully paid

The damages awarded by the Court of Appeals in the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages[52] are in order.

We note, however, that both the Regional Trial Court and the Court of Appeals did not award damages to cover the unreceipted funeral expenses incurred by the surviving spouse. While actual damages are not recoverable absent any receipt or supporting document pertaining to the expenses, temperate damages may be awarded in its stead.[53] This is in accordance with Article 2224 of the Civil Code, which provides that temperate damages may be recovered “when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.”[54] Undeniably, the heirs of Ruiz suffered pecuniary loss

representing funeral and burial expenses, although the exact amount is not proved.[55] Accordingly, the heirs of Ruiz shall be entitled to temperate damages in the amount of P25,000.00.[56]

Finally, consistent with recent jurisprudence on damages,[57] interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid is likewise hereby imposed.

WHEREFORE, the Decision dated 28 November 2006 of the Court of Appeals in CA-G.R. CR HC No. 00243 DENYING the appeal of appellant Nestor Medice is AFFIRMED with MODIFICATION.

Appellant is hereby found GUILTY beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the heirs of Gary G. Ruiz the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, Twenty-Five Thousand Pesos (P25,000.00) as temperate damages, Thirty Thousand Pesos (P30,000.00) as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.

Carpio, (Chairperson), Sereno, Reyes, and Perlas-Bernabe, JJ.[*] concur.

[*]Designated as additional member per Special Order No. 1174 dated 9 January 2012.

[1] Rollo, pp. 5-14. Penned by Associate Justice Romeo F. Barza, with Associate Justices Isaias P. Dicedican and Priscilla Baltazar-Padilla concurring.

[2] The accusatory portion of the Information dated 2 May 2001 reads:

That on or about the 13th day of February, 2001 at about 2:30 o'clock in the afternoon, in Barangay West, Municipality of San Jose, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a small bolo locally called "dipang[.]" conspiring with, confederating together and mutually helping each other, with deliberate intent to kill thru treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and stab GARRY RUIZ y GARCIA alias Boboy, with the use of said weapon which the accused had provided himself for the purpose, thereby inflicting upon said Garry Ruiz y Garcia serious and mortal wounds on his left chest which caused the death of said victim.

Records, p. 19.

[3] Id. at 38. Certificate of Arraignment dated 15 January 2002.

[4] Id. at 34. Spot Report dated 16 July 2001 of the Officer-in-Charge, Provincial Jail, Dancalan, Bobon, Northern Samar.

[5] TSN, 13 June 2002, pp. 1-7.

[6] TSN, 11 April 2002, pp. 1-16.

[7] TSN, 6 May 2002, pp. 1-10.

[8] TSN, 6 August 2002, pp. 1-6.

[9] TSN, 13 June 2002, p. 4.

- [10] TSN, 11 April 2002, pp. 4-5.
- [11] Id. at 11.
- [12] Id. at 14.
- [13] Id. at 5
- [14] Id. at 5-6, 9.
- [15] Id. at 14.
- [16] Id. at 6.
- [17] TSN, 6 May 2002, p. 5.
- [18] Id.
- [19] TSN, 11 April 2002, p. 8.
- [20] Id. at 9.
- [21] Id. at 10.
- [22] Records, p. 8.
- [23] TSN, 6 August 2002, p. 3.
- [24] TSN, 11 October 2002, pp. 4-5.
- [25] Id. at 6.
- [26] Id. at 5, 7 and 8.
- [27] Id. at 9.
- [28] Records, pp. 83-86. Decision dated 30 April 2003 penned by Judge Ernesto G. Corocoto.
- [29] Id. at 86.
- [30] Id. at 87.
- [31] CA Rollo, p. 87. Resolution dated 8 June 2005, First Division, Supreme Court.
- [32] Id. at 92. Notice of Judgment dated 28 November 2006 of the Clerk of Court of the Nineteenth Division, Court of Appeals.
- [33] Id. at 101-102. Decision dated 28 November 2006 of the Court of Appeals.
- [34] Rollo, p. 19. Resolution dated 14 April 2008, Second Division, Supreme Court.
- [35] Id. at 21-23. Manifestation and Motion dated 30 June 2008 of the Office of the Solicitor General; Id. at 28-35. Manifestation (with Motion to Admit) dated 20 October 2008 and Manifestation dated 28 November 2008, both of the Public Attorney's Office.
- [36] People v. Maningding, G.R. No. 195665, 14 September 2011 citing People v. de la Cruz, G.R. No. 188353, 16 February 2010, 612 SCRA 738, 746; cited in People v. Gabrino, G.R. No. 189981, 9 March 2011.
- [37] Article 14, par.16, Revised Penal Code.

[38] *People v. Lobino*, G.R. No. 123071, 28 October 1999, 317 SCRA 606, 615.

[39] TSN, 11 April 2002, p.7.

[40] TSN, 6 May 2002, p. 5.

[41] *People v. Garin*, G.R. No. 139069, 17 June 2004, 432 SCRA 394, 411 citing *People v. Paulino*, G.R. No. 148810, 18 November 2003, 416 SCRA 122 further citing *People v. Aquino*, 386 SCRA 391 (2002).

[42] *People v. Patelan*, G.R. No. 182918, 6 June 2011 citing *People v. de Guzman*, G.R. No. 173477, 4 February 2009, 578 SCRA 54, 66; and *People v. Escarlos*, G.R. No. 148912, 10 September 2003, 410 SCRA 463, 482.

[43] See *People v. Patelan*, *id.*, where this Court found that the span of less than thirty minutes is insufficient for the purpose.

[44] *People v. Anticamara*, G.R. No. 178771, 8 June 2011 citing *People v. PO3 Tan*, 411 Phil. 813, 837 (2001).

[45] *Id.* citing *Go v. Fifth Division, Sandiganbayan*, G.R. No. 172602, 13 April 2007, 521 SCRA 270, 290.

[46] *Id.* citing *People v. de Jesus*, 473 Phil. 405, 429 (2004).

[47] *People v. Gabrino*, *supra* note 35.

[48] See *People v. Anticamara*, *supra* note 44.

[49] *Id.* citing *People v. Casitas, Jr.*, 445 Phil. 407, 425 (2003).

[50] *People v. Combate*, G.R. No. 189301, 15 December 2010, 638 SCRA 797, 810 citing *People v. Padilla*, G.R. No. 167955, 30 September 2009, 601 SCRA 385.

[51] Article 63 of the Revised Penal Code provides, in part:

ART. 63. Rules for the application of indivisible penalties. ? xxx

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. xxx

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

xxx

[52] *People v. Anches*, G.R. No. 189281, 23 February 2011, 644 SCRA 372, 376-377; *People v. Maningding*, *supra* note 36 citing *People v. Combate*, *supra* note 50.

[53] *People v. Comillo, Jr.*, G.R. No. 186538, 25 November 2009, 605 SCRA 756, 781-782; *People v. Lucero*, G.R. No. 179044, 6 December 2010, 636 SCRA 533, 543 citing *People v. Gidoc*, G.R. No. 185162, 24 April 2009, 586 SCRA 825, 837.

[54] *Id.*

[55] *Id.* at 782.

[56] *Id.* citing *People v. Oco*, 458 Phil. 815, 855; 412 SCRA 190, 222 (2003); *People v. Solamillo*, 452 Phil. 261, 281; 404 SCRA 211, 227 (2003). See also *People v. Esquibel*, G.R. No. 192465, 8 June 2011.

[57] *People v. Maningding*, *supra* note 35 citing *People v. Combate*, *supra* note 49; *People v. Gabrino*, *supra* note

36 citing *People v. Combate*, supra note 50; *People v. de Jesus*, G. R. No. 186528, 26 January 2011, 640 SCRA 660, 678 cited in *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742-743; *People v. Dolorido*, G. R. No. 191721, 12 January 2011, 639 SCRA 496, 508 cited in *People v. Tabongbanua*, id.

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