

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERDINAND T. BALUNTONG, APPELLANT.

G.R. No. 182061. March 15, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Ferdinand T. Baluntong (appellant) appeals from the August 13, 2007 Decision[1] of the Court of Appeals to which the Court had earlier referred the present case for intermediate review following *People v. Mateo*. [2]

In its challenged Decision, the appellate court affirmed appellant's conviction by the Regional Trial Court of Roxas, Oriental Mindoro, Branch 43, of Double Murder with Frustrated Murder, following his indictment for such offense in an Information reading:

That on or about the 31[st] day of July 1998, at about 10:30 in the evening at Barangay Danggay, Municipality of Roxas, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, with malice aforethought and with deliberate intent to kill, set on fire, the house of Celerina Solangon, causing the complete destruction of the said house and the death of Celerina Solangon and Alvin Savarez, and inflicting serious physical injuries on Josua (sic) Savarez, thereby performing all the acts of execution which would produce the crime of murder as a consequence (sic) but which, nevertheless do not produce it by reason of causes independent of the will of the perpetrator. [3] x x x x (underscoring supplied)

Gathered from the records of the case is the following version of the prosecution:

At around 10:30 p.m. of July 31, 1998, while then 12-year old Jovelyn Santos (Jovelyn) was sleeping in the house of her grandmother Celerina Solangon (Celerina) at Barangay Danggay, Roxas, Oriental Mindoro, she was awakened by heat emanating from the walls of the house. She thus roused her cousin Dorecyll and together they went out of the house.

Jovelyn saw appellant putting dry hay (dayami) around the house near the terrace where the fire started, but appellant ran away when he saw her and Dorecyll.

Appellant's neighbor, Felicitas Sarzona (Felicitas), also saw appellant near Celerina's house after it caught fire, following which, appellant fled on seeing Jovelyn and Dorecyll stepping out of the house, as other neighbors repaired to the scene to help contain the flames. Felicitas also saw Celerina, who was at a neighbor's house before the fire started, enter the burning house and resurface with her grandsons Alvin and Joshua.

Celerina and Alvin sustained third degree burns which led to their death. Joshua sustained second degree burns.

Upon the other hand, appellant, denying the charge, invoked alibi, claiming that he, on his mother Rosalinda's request, went to Caloocan City on July 15, 1998 (16 days before the incident) and stayed there until February 1999. Rosalinda corroborated appellant's alibi.

By Decision of February 28, 2003, the trial court found appellant guilty as charged, disposing as follows:

WHEREFORE, judgment is hereby rendered as follows:

(a) The court finds accused Ferdinand Baluntong GUILTY beyond reasonable doubt of the complex crime of Double Murder with Frustrated Murder punishable under Article 248 of the Revised Penal Code as amended by Republic Act 7659 in relation to Article 48 of the Revised Penal Code and is hereby sentenced to suffer the supreme penalty of DEATH to be executed in accordance with the existing law;

x x x x

(c) Accused Ferdinand Baluntong is also ordered to pay the heirs of Celerina Suba Solangon the sum of P50,000.00 as compensatory damages and the heirs of Elvin [sic] Savariz the following: (I) the sum of P50,000.00 as compensatory damages (II) the sum of P16,500.00 as actual damages; and (III) the sum of P50,000.00 as moral damages.

SO ORDERED.[4] (emphasis in the original; italics and underscoring supplied)

In affirming the trial court's conviction of appellant, the appellate court brushed aside appellant's claim that the prosecution failed to prove his guilt beyond reasonable doubt. The appellate court, however, modified the trial court's decision by reducing the penalty to reclusion perpetua in light of the passage of Republic Act No. 9346,[5] and by additionally awarding exemplary damages to the heirs of the victims (Celerina and Alvin), and temperate damages to Joshua representing his "hospitalization and recuperation." Thus the appellate court disposed:

WHEREFORE, premises considered, the February 28, 2003 Decision of the Regional Trial Court of Roxas, Oriental Mindoro, Branch 43, is MODIFIED as follows:

- Accused-appellant FERDINAND BALUNTONG y TALAGA is found GUILTY beyond reasonable doubt of the complex crime of Double Murder with Frustrated Murder and is hereby sentenced to suffer the penalty of reclusion perpetua.

- Accused-appellant is further required to pay the heirs of the victims the amount of P25,000.00 as exemplary damages and the amount of P25,000.00 as temperate damages for the hospitalization and recuperation of Joshua Savariz.

- In all other respects, the February 28, 2003 Decision of the regional trial court is hereby AFFIRMED.[6] (italics and emphasis in the original; underscoring supplied)

In his Brief, appellant raises doubt on prosecution witness Felicitas' claim that she saw appellant fleeing away from the burning house, it being then 10:30 p.m. and, therefore, dark. He raises doubt too on Jovelyn's claim that she saw appellant, given her failure to ask him to stop putting dried hay around the house if indeed her claim were true.

After combing through the records of the case, the Court finds that the trial court, as well as the appellate court, did not err in finding that appellant was the malefactor.

There should be no doubt on prosecution witnesses Felicitas' and Jovelyn's positive identification of their neighbor-herein appellant as the person they saw during the burning of the house, given, among other things, the illumination generated by the fire. Consider the following testimonies of Felicitas and Jovelyn:

FELICITAS:

Q: Which portion of the house was on fire when you saw Balentong (sic) for the first time?

A: The fire was at the rear portion going up, sir.

Q: How far was Balentong (sic) from that burning portion of the house?

A: He was just in front (sic) of the house, sir.

Q: How far from the burning portion of the house?

A: About two (2) meters away, sir.

Q: The two (2) meters from the front portion or two (2) meters from the burning portion?

A: About two (2) meters, sir.

Q: From the burning portion?

A: Yes, sir.[7] (underscoring supplied)

JOVELYN:

Q: How big was the fire when according to you, you saw the back of this Ferdinand Balontong (sic)?

A: It is already considerable size, Your Honor.

Q: What effect has this fire in the illumination in that vicinity, regarding visibility of that vicinity?

A: The surrounding was illuminated by that fire, Your Honor.[8] (underscoring supplied)

Appellant's alibi must thus fail.

In determining the offense committed by appellant, *People v. Malngan*[9] teaches:

[I]n cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated - whether arson, murder or arson and homicide/murder, it is de rigueur to ascertain the main objective of the malefactor: (a) if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed; (b) if, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is murder only; lastly, (c) if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed - homicide/murder and arson. (emphasis and underscoring partly in the original; emphasis partly supplied)

Presidential Decree (P.D.) No. 1613, "Amending the Law on Arson," reads:

Section 3. Other Cases of Arson. â”€ The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:

x x x x

2. Any inhabited house or dwelling;

The Court finds that there is no showing that appellant's main objective was to kill Celerina and her housemates and that the fire was resorted to as the means to accomplish the goal.

In her Affidavit executed on August 11, 1998,[10] Felicitas stated that what she knew is that Celerina wanted appellant, who was renting a house near Celerina's, to move out.

How Felicitas acquired such "knowledge" was not probed into, however, despite the fact that she was cross-examined thereon.[11]

Absent any concrete basis then to hold that the house was set on fire to kill the occupants, appellant cannot be held liable for double murder with frustrated murder. This is especially true with respect to the death of Celerina,

for even assuming *arguendo* that appellant wanted to kill her to get even with her in light of her alleged desire to drive him out of the neighboring house, Celerina was outside the house at the time it was set on fire. She merely entered the burning house to save her grandsons.

While the above-quoted Information charged appellant with "Double Murder with Frustrated Murder," appellant may be convicted of Arson. For the only difference between a charge for Murder under Article 248 (3) of the Revised Penal Code and one for Arson under the Revised Penal Code, as amended by Section 3 (2) of P.D. No. 1613, lies in the intent in pursuing the act.

As reflected above, as it was not shown that the main motive was to kill the occupants of the house, the crime would only be arson, the homicide being a mere consequence thereof, hence, absorbed by arson.[12]

When there is variance between the offense charged in the complaint or information and that proved, and the offense charged is included or necessarily includes the offense proved, conviction shall be for the offense proved which is included in the offense charged, or the offense charged which is included in the offense proved.[13]

Under Section 5 of P.D. 1613, the penalty of reclusion perpetua to death is imposed when death results. In the light of the passage of Republic Act No. 9346,[14] the penalty should be reclusion perpetua.

A word on the damages awarded.

The appellate court affirmed the award of compensatory damages to the heirs of Celerina. But entitlement thereto was not proven.

The appellate court likewise affirmed the award of compensatory damages, actual damages, and moral damages to the heirs of Alvin. Compensatory damages and actual damages are the same, however.[15] Since the trial court awarded the duly proven actual damages of P16,500.00 representing burial expenses, the award of compensatory damages of P50,000.00 does not lie. It is gathered from the evidence, however, that Alvin was hospitalized for five days,[16] hence, an award of P8,500.00 as temperate damages for the purpose would be reasonable.

As for the award to Alvin of moral damages, the records do not yield any basis therefor.

More. The appellate court awarded exemplary damages "to the heirs of the victims," clearly referring to the deceased Celerina and Alvin. Absent proof of the presence of any aggravating circumstances, however, the award does not lie.[17]

When death occurs due to a crime, the grant of civil indemnity requires no proof other than the death of the victim. The heirs of Celerina are thus entitled to an award of P50,000.00 as civil indemnity *ex delicto*.[18] And so are Alvin's.

The appellate court's award of temperate damages of P25,000.00 to Joshua is in order.

WHEREFORE, the assailed Court of Appeals Decision of August 13, 2007 is REVERSED and SET ASIDE, and a NEW one is rendered as follows:

Appellant, Ferdinand T. Baluntong, is found GUILTY beyond reasonable doubt of Simple Arson under Sec. 3(2) of P.D. No. 1613 and is sentenced to suffer the penalty of reclusion perpetua with no eligibility for parole.

Appellant is ORDERED to pay the amount of P50,000.00 to the heirs of Celerina Solangon, and the same amount to the heirs of Alvin Savariz, representing civil indemnity.

Appellant is likewise ORDERED to pay the amount of P16,500.00 to the heirs of Alvin as actual damages for burial expenses, and P8,500.00 as temperate damages for hospitalization expenses.

Appellant is further ORDERED to pay P25,000.00 as temperate damages to the heirs of Celerina.

Finally, appellant is ORDERED to pay P25,000.00 as temperate damages to Joshua Savariz.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Court of Appeals Justice Mariflor Punzalan-Castillo with the concurrence of Justices Marina L. Buzon and Rosmari D. Carandang.

[2] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. The case modified the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Section 3 and Section 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 insofar as they provide for direct appeals from the Regional Trial Courts to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment and allowed intermediate review by the Court of Appeals before such cases are elevated to the Supreme Court.

[3] Records, p.1.

[4] Id. at 134.

[5] Otherwise known as "An Act Which Prohibits the Imposition of Death Penalty in the Philippines," June 24, 2006.

[6] Rollo, pp. 28-29.

[7] TSN, June 9, 1999, pp. 23-24

[8] TSN, September 1, 1999, p. 21.

[9] G.R. No. 170470, September 26, 2006, 503 SCRA 294, 317.

[10] Records, p. 6.

[11] Vide TSN, June 9, 1997, pp. 16-18.

[12] People v. Cedenio, G.R. No. 93485, June 27, 1994, 233 SCRA 456.

[13] Rules of Criminal Procedure, Rule 120, Section 4.

[14] Supra note 5.

[15] Vide, Article 2199, Civil Code.

[16] Vide TSN, Oct. 20, 1999, pp. 5-6.

[17] Art. 2230 of the New Civil Code provides that in criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.

[18] People v. Mokammad, et al. G.R. No. 180594, August 19, 2009.

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