

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGRIPINO GUEVARRA Y MULINGTAPANG ALIAS “BOY DUNGOL,” ACCUSED- APPELLANT.

G.R. No. 182192. October 29, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02367, dated 16 October 2007,[1] affirming with modification the Decision, dated 4 July 2006, of the Batangas City Regional Trial Court (RTC), Branch IV, in Criminal Case No. 12486,[2] finding accused-appellant Agripino Guevarra y Mulingtapang, alias "Boy Dunggol," guilty of murder, and imposing upon him the penalty of reclusion perpetua.

The facts gathered from the records of the case are as follows:

On 30 August 2002, an Information[3] was filed with the RTC charging appellant with murder. The accusatory portion of the information reads:

That on or about August 24, 2002 at around 9:15 o'clock in the evening at Eborá Road, Brgy. Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a caliber .45 pistol, a deadly weapon, with intent to kill and with the qualifying circumstance of treachery, did then and there willfully, unlawfully and feloniously attack, assault and repeatedly shot with said firearm suddenly and without warning one P/Chief Inspector Marcos Barte y Paz while the latter was unarmed and completely defenseless, thereby hitting him on different parts of his body which directly caused the victim's death.

That the special aggravating circumstance of the use of an unlicensed firearm is attendant in the commission of the offense.

When arraigned on 12 November 2002, appellant, assisted by his counsel de oficio, pleaded "Not guilty" to the charge.[4] Trial on the merits thereafter followed.

The prosecution presented as witnesses Anacleto Gonzales (Anacleto), Maria Antonette Gonzales (Antonette), Senior Police Officer 1 Felixberto Cabungcal (SPO1 Cabungcal), SPO1 Florentino Buenafe (SPO1 Buenafe), Dr. Edwin Castillo (Dr. Castillo), Dr. Antonio S. Vertido (Dr. Vertido), and Marita Gonzales Vda. de Barte (Mrs. Barte). Their testimonies are summarized as follows:

Anacleto, cousin of herein deceased victim Police Chief Inspector Marcos P. Barte (Inspector Barte) of the Batangas City Police Station, testified that on 24 August 2002, at around 3:30 p.m., Inspector Barte, accompanied by a certain Roberto Godoy (Godoy) and Ronnie Valiente (Valiente), arrived at his house located at Barangay Kumintang Ibaba, Batangas City. He, Inspector Barte, Godoy, Valiente, and Anacleto's father-in-law, Nicasio Resurreccion (Nicasio), talked and drank gin inside the house. Subsequently, the group, with the exception of Godoy, left the house and went to a videoke bar owned by a certain Sergeant Emilio Vidal (Sgt. Vidal) located at

Ebora Road, Barangay Kumintang Ibaba, Batangas City. They arrived at the videoke bar at about 8:30 p.m. He drank one bottle of beer while Inspector Barte consumed two bottles of beer. Thereafter, at about 9:15 p.m., the group went out of the videoke bar. He saw his wife, Antonette, outside the videoke bar. Antonette approached and talked to him. He also saw Godoy seated in the driver's seat of an owner-type jeep parked near the videoke bar, and a certain Imelda Shin (Imelda) sitting at the back portion of the jeep. Valiente boarded the jeep and sat beside Imelda. Inspector Barte also boarded the jeep and sat in the front passenger's seat beside Godoy. When Anacleto was about to board the jeep, appellant suddenly appeared and approached Inspector Barte. Appellant asked Inspector Barte if he was "Major Barte." Thereupon, he saw appellant shoot Inspector Barte several times with a short firearm. He was then one arm's length from Inspector Barte and one meter away from appellant. Inspector Barte slumped on his seat bloodied while Godoy shouted that he was also hit. Appellant immediately fled the scene.[5]

Subsequently, Anacleto drove the jeep and brought Inspector Barte to the Batangas Regional Hospital. Inspector Barte was pronounced dead on arrival. Godoy was also brought to the said hospital for treatment of his wounds. Later, the police arrived at the hospital and interviewed him about the incident. He executed a sworn statement regarding the incident.[6]

Antonette narrated that on 24 August 2002, at about 8:40 p.m., she, together with Godoy and Imelda, went to a videoke bar owned by Sgt. Vidal at Ebora Road, Barangay Kumintang Ibaba, Batangas City, to fetch her husband, Anacleto. She and Imelda boarded an owner-type jeep driven by Godoy in going to the videoke bar. Upon arriving thereat, she proceeded to the videoke bar, peeped in its window, and saw Anacleto, Inspector Barte, her father, and Valiente therein. She signaled to Anacleto that she would wait for them on the jeep outside the videoke bar. Afterwards, Anacleto, Inspector Barte, Nicasio, and Valiente went out of the videoke bar. Nicasio boarded a tricycle and proceeded home while Valiente and Inspector Barte boarded the jeep. Valiente sat beside Imelda at the backseat of the jeep while Inspector Barte sat beside the driver's seat then occupied by Godoy. When Anacleto was about to board the jeep, she heard a gunshot. Upon turning her head towards the direction of the gunshot, she saw appellant shoot Inspector Barte with a short firearm. Thereafter, she heard Godoy shouting that Inspector Barte was shot and told her to call the police. She immediately proceeded to a nearby drug store where she used a telephone in contacting the police. She saw Anacleto driving the jeep with Inspector Barte on board. Later, she proceeded to the Batangas Regional Hospital where she saw the lifeless body of Inspector Barte in a stretcher. She also saw therein Godoy being treated for wounds.[7]

SPO2 Cabungcal, a member of the Batangas City Police Station, Intelligence Division, testified that he was on duty at the said station on the night of 24 August 2002. On that same night, the station received a report about a shooting incident at Ebora Road, Barangay Kumintang Ibaba, Batangas City. He and several police officers immediately proceeded to the crime scene. Upon arriving thereat, they searched the crime scene and recovered four caliber .45 empty shells, one live caliber .45 ammunition and one deformed caliber .45 slug. Thereafter, they went to the Batangas Regional Hospital where they were informed that Inspector Barte was already dead. He turned over to SPO1 Buenafe, the investigator of the case, the evidence they recovered from the crime scene.[8]

SPO1 Buenafe, a member of the Batangas City Police Station, Investigation Section, averred that he conducted an investigation in the instant case; that after the incident, he went to the Batangas Regional Hospital where he was informed that Inspector Barte was already dead and Godoy was injured; and that SPO1 Cabungcal turned over to him object evidence recovered from the crime scene.[9]

Dr. Castillo, a surgeon assigned at the Batangas Regional Hospital, recounted that he attended to Inspector Barte when the latter was brought to the hospital on the night of 24 August 2002. During the initial examination, he observed that Inspector Barte sustained gunshot wounds and had no blood pressure, cardiac and respiratory rate.

He and some medical staff tried to resuscitate Inspector Barte but to no avail. The gunshot wounds were located on the left temporal area, left anterior chest, right nipple, and left arm of Inspector Barte. He considered the gunshot wounds in the left temporal area and left anterior chest of Inspector Barte fatal. He issued a medico-legal certificate pertaining to Inspector Barte and an anatomical chart showing the location of gunshot wounds sustained by Inspector Barte.[10] His findings, as stated in the medico-legal certificate of Inspector Barte, are as follows:

THIS IS TO CERTIFY that Marcos P. Barte, 46 years of age, male, Filipino of Soro-soro 2, Batangas City, at about 9:30 p.m., August 24, 2002 with the following injuries sustained by him:

Multiple gunshot wounds anterior chest left, Right nipple left temporal area, left arm

NOTE: DEAD ON ARRIVAL.[11]

Dr. Vertido, Medico-Legal Officer of the National Bureau of Investigation (NBI), Southern Tagalog, Region 4, declared that he conducted an autopsy on the corpse of Inspector Barte; that Inspector Barte sustained three gunshot wounds; that the first gunshot wound was located on the left portion of the head which fractured the skull; that the second gunshot wound was situated on the right portion of the chest which perforated the heart and the upper lobe of the left lung exiting at the left side of the back; that the third wound was on the left portion of the chest which penetrated the upper lobe of the left lung and exited at the posterior side of the left arm; and that these wounds caused the death of Inspector Barte.[12] He issued a Certificate of Post-Mortem Examination on Inspector Barte in support of his foregoing findings, viz:

POSTMORTEM FINDINGS

Pallor, lips and nailbed.

Contusion; anterior chest wall, midline, 2 x 3 cm.

GUNSHOT WOUNDS:

1. ENTRANCE 1.3 x 1.0 cm. ovaloid, edges inverted, with a contusion collar widest at its upper border, surrounded by an area of tattooing, 8 x 6 cms. at the left temple 6 cms. in front and 5 cms. above the left external auditory meatus, directed backwards, downwards and medially, involving the skin and underlying soft tissue, fracturing left temporal bone, lacerating corresponding lobe, fracturing and penetrating left midcranial fossa, into the soft tissue of the left posterior neck, 12 cms, below and 10 cm behind the left external auditory meatus where a semideformed slug was recovered.
2. ENTRANCE 1.3 x 1.0 cm. ovaloid, edges inverted, with a contusion collar widest at its lower border located at the right anterior chest wall, 10 cms. from the anterior median line, 125 cms. above the right heel, directed, backward, upward and from right to left involving the skin and underlying soft tissue perforating the heart, and upper lobe of the left lung, then making an EXIT wound, 1.0 x 1.1 cm., ovaloid, edges everted, located at the back left side, (scapular area) 20 cm. from the posterior median line, 137 cm. above the left heel.
3. ENTRANCE 1.2 x 1.0 cm. ovaloid, edges inverted with a contusion collar widest at its lower border, located at the left anterior chest wall, 2 cm. from the anterior median line 131 cm. above the left heel, directed backward, upward and laterally, involving the skin and underlying soft tissues, perforating upper lobe of the left lung then making an EXIT wound, 1 x 1.1 cm. ovaloid, edges everted located at the left arm, posterior aspect, upper 3[rd] 28 cms. above the left elbow.

CAUSE OF DEATH: GUNSHOT WOUNDS, HEAD AND CHEST.[13]

Mrs. Barte, wife of Inspector Barte, testified on the civil aspect of the case. She presented a list of expenses incurred for the wake and burial of Inspector Barte which amounted to P183,425.00. She also submitted official

receipts pertaining to the funeral expenses (P46,250.00), burial lot (P53,000.00), and interment fee (P10,000.00). She claimed that at the time of Inspector Barte's death, the latter was receiving a monthly income of P30,982.00.[14]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) sworn statement of Mrs. Barte (Exhibit A);[15] (2) sworn statement of Anacleto (Exhibit B);[16] (3) sworn statement of Antonette (Exhibit C);[17] (4) sworn statement of SPO1 Buenafe (Exhibit D);[18] (5) death certificate of Inspector Barte (Exhibit E);[19] (6) certification from the PNP, Firearms and Explosives Division, Camp Crame, Quezon City, that appellant is not a licensed/registered firearm holder of any kind and caliber (Exhibit F);[20] (7) four empty bullet shells, one deformed slug and one live ammunition (Exhibit G);[21] (8) list of wake and burial expenses (Exhibit H);[22] (9) official receipt covering the funeral expenses (Exhibit I);[23] (10) official receipt for the burial lot (Exhibit J);[24] (11) anatomical chart showing the location of gunshot wounds sustained by Inspector Barte (Exhibit K);[25] (12) medico-legal certificate of Inspector Barte signed by Dr. Castillo (Exhibit L);[26] (13) pay slip of Inspector Barte for August 2002 (Exhibit M);[27] (14) list of expenses incurred for the food served during the wake and burial of Inspector Barte (Exhibit N);[28] (15) request for autopsy of Inspector Barte signed by Mrs. Barte (Exhibit O);[29] (16) certificate of identification signed by Dr. Vertido (Exhibit P);[30] (17) certificate of post-mortem examination on Inspector Barte (Exhibit Q);[31] (18) autopsy report on Inspector Barte signed by Dr. Vertido (Exhibit R);[32] and (19) anatomical sketch of the location of the gunshot wounds sustained by Inspector Barte prepared by Dr. Vertido.[33]

For its part, the defense presented the testimonies of appellant and Ferdinand Ravino (Ravino) to refute the foregoing accusation. No documentary evidence was presented. Appellant denied any liability and interposed the defense of alibi.

Appellant testified that at the time of the incident (9:15 p.m., 24 August 2002), he was at Barangay Malad, Calapan City, Oriental Mindoro vacationing at the house of a certain Hector Africa (Africa). He arrived therein on the afternoon of 23 August 2002 and left on the morning of 26 August 2002. He was not acquainted with Inspector Barte and came to know that he was accused of killing Inspector Barte when he arrived at Batangas City from Oriental Mindoro on the afternoon of 26 August 2002. He was informed that he would be "salvaged" for killing Inspector Barte. Hence, he became afraid and hid in his house for two weeks. Thereafter, he surrendered to the mayor of Batangas City who turned him over to the Batangas City police. He alleged that Anacleto and Antonette testified against him because he did not support the candidacy of Antonette during the previous election for barangay captain where Antonette lost. He supported then the candidacy of the incumbent barangay captain.[34]

Ravino narrated that he has known appellant since 1991 because they were co-workers in Toyota Motors, Batangas City. On 24 August 2002, at around 12:00 in the afternoon, Africa came to his auto mechanic shop in Calapan, Oriental Mindoro and talked to him. Africa requested him to go to his house at Barangay Malad, Calapan City, Oriental Mindoro, to fix Africa's car and thereafter to drink liquor with him. Subsequently, he went to Africa's house arriving therein at 5:30 p.m. of the same day. He saw Africa, appellant and one helper of Africa inside the house. Africa told him that appellant was taking a vacation at his house. After fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. of the same day. Thereupon, he left Africa's house. Later, he and appellant met at the city jail of Batangas City. He was detained for a criminal charge while appellant was detained on the charge of killing Inspector Barte. During their detention, appellant requested him to testify in his favor to which he acceded. He was still a detainee at the time he testified in the RTC as regards the instant case.[35]

After trial, the RTC rendered a Decision on 4 July 2006 convicting appellant of murder.[36] Appellant was

sentenced to reclusion perpetua. He was also ordered to pay the heirs of Inspector Barte the amounts of P50,000.00 as compensatory damages, P109,250.00 as actual damages, P50,000.00 as moral and exemplary damages, P4,212,312.72 for loss of earning capacity, and cost of suit. The dispositive portion of the RTC Decision reads:

In view of all the foregoing and upon evidence established by the Prosecution, accused Agripino Guevarra y Mulingtapang alias "Boy Dunggol" is hereby found Guilty beyond a reasonable doubt of committing the crime of Murder under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659. The proper penalty would have been death by lethal injection but with the repeal of the death penalty pursuant to Republic Act No. 9346 which was recently signed into law by the President on June 22, 2006, imposition thereof is no longer possible. Consequently, herein accused is sentenced to suffer the penalty of reclusion perpetua and to pay the costs. Further, he shall pay the private offended party P50,000.00 for the death of Major Barte as compensatory damages; P109,250.00 as actual damages sustained which were reflected in the official receipts submitted in evidence; P50,000.00 as moral and exemplary damages; P4,212,312.72 loss of earnings computed on the basis of the pay slip of Major Barte for the month of August, 2002 showing that at the time of his death his full compensation amounted to P30,982.00.

The accused maybe credited with his preventive imprisonment if he is entitled to any and directed to be immediately committed to the National Penitentiary in Muntinlupa City.[37]

Appellant appealed to the Court of Appeals. On 16 October 2007, the appellate court promulgated its Decision affirming with modification the RTC Decision.[38] It held that an additional amount of P25,000.00 as exemplary damages should also imposed on appellant because the qualifying circumstance of treachery attended the killing of Inspector Barte. Thus:

WHEREFORE, premises considered, the July 4, 2006 Decision of the Regional Trial Court of Batangas City, Branch IV, is hereby AFFIRMED with the MODIFICATION that exemplary damages in the amount of P25,000.00 should also be awarded.[39]

Appellant elevated the instant case before us assigning a single error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[40]

Appellant maintains in his lone assigned error that his testimony and that of his corroborating witness, Ravino, were more credible than the testimonies of Anacleto and Antonette; that his denial and alibi were meritorious; and that the mitigating circumstance of voluntary surrender should be appreciated in his favor.

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[41]

After carefully reviewing the evidence on record and applying the foregoing guidelines to this case, we found no cogent reason to overturn the RTC's ruling finding the testimonies of Anacleto and Antonette credible. As an eyewitness to the incident, Anacleto positively identified appellant as the one who shot Inspector Barte with a short firearm. He was merely one arm's length from Inspector Barte and one meter away from appellant during the incident. In addition, the crime scene was well-lighted by a nearby lamp post and lights coming from the videoke

bar which enabled him to recognize appellant. Further, he was familiar with the face of appellant because the latter was his barriomate. Anacleto's direct account of how appellant shot Inspector Barte is candid and convincing, thus:

Q:

Now, while you were outside the [videoke] restaurant at around 9:15 in the evening of August 24, 2002, do you remember any untoward incident that happened thereat?

A:

Yes, sir.

Q:

What was that particular incident?

A:

The shooting of Major Barte (Inspector Barte), sir.

Q:

Who shot Major Barte?

A:

Agripino Guevarra y Mulingtapang alias "Boy Dunggol."

Q:

How did it happen that accused was there at that time and said place?

A:

I did not notice where he came from, he suddenly appeared.

Q:

After he suddenly appeared, what did the accused do?

A:

He approached Major Barte and asked "are you Major Barte?" and afterwards he fired shots at Major Barte.

Q:

Was Major Barte able to answer that question of the accused to him?

A:

No ma'am.

Q:

What happened to Major Barte after having (sic) shot by the accused?

A:

I saw him slumped on his seat on the car, bloodied.

Q:

How far were you from Major Barte at that time?

A:

About one arm['s] length, ma'am.

x x x x

Q:

Now, you said Agripino Guevarra is the one who shot to death Major Barte, if he is in Court this morning, would you be able to identify him?

A:

Yes, ma'am.

Q:

Would you please point to him?

A:

(Note: Witness is pointing to the man wearing a yellow shirt seated in the front row of the Courtroom who answers by the name of Agripino Guevarra when he was asked by the Court). [42]

x x x x

Q:

You stated that while you were talking with Major Barte when the latter was sittted (sic) in the front seat, the accused suddenly appeared?

A:

Yes, sir.

Q:

Where did he suddenly appear, from your right or left?

A:

From my right side, sir.

Q:

Where was he at that time in relation to the jeep?

A:

On the right side of the jeep, sir.

Q:

You are also on the right side of the jeep?

A:

Yes, sir.

Q:

You are also 1 ½ meters from the jeep?

A:

No sir.

Q:

How far were you from the jeep?

A:

More or less one (1) arm length, sir.

Q:

How far was the accused in this case when you first saw him?

A:

We were both on the same distance from the jeep, sir.

Q:

After you saw the accused suddenly appeared on your right side you also saw him put up his gun?

A:

No sir.

Court:

How about you, how far are you from the accused when you first saw him?

Almost one (1) meter, sir.[43]

x x x x

Q: You stated last time that when the accused asked if he is Major Barte the accused immediately shot Major Barte, is that correct?

A:

Yes, sir.

Q: You also stated that the accused shot him five (5) times?

A: No, sir.

Q: How many times did the accused shoot Major Barte?

A: I heard four (4) shots, sir.

Q: When you say you heard four (4) shots you mean to say you did not see him fired (sic) his gun?

A: I saw it, sir.[44]

Antonette's testimony, corroborating the foregoing testimony of Anacleto, was also clear and reliable. Being an

eyewitness to the incident, she pointed to appellant as the one who shot Inspector Barte. Her narration of the incident is truthful, to wit:

Q:

After Major Barte occupied the front seat at the right [side] of the driver and your husband was about to board the jeep, what happened next, if any?

A:

I heard that gunshot, ma'am.

Q:

Upon hearing that gunshot, what did you do?

A:

I turned my head where the gunshot came from, ma'am.

Q:

And what did you find out?

A:

I saw a man shooting a man riding at the right side of the vehicle, ma'am.

Q:

Who was being shot by that person?

A:

Major Barte, ma'am.

Q:

Did you recognize who [shot] Major Barte?

A:

Yes, ma'am.

Q:

Who is that person?

A:

Mr. Agripino Guevarra, ma'am.

x x x x

Q:

You said that you saw Agripino Guevarra shooting Major Barte, do you know this Agripino Guevarra?

A:

Yes, ma'am.

Q:

Even before this date?

A:

Yes, ma'am. Being a native of this barangay and I have been a barangay councilwoman and he became also a barangay tanod.

x x x x

Q:

If he [is] present in Court this afternoon, would you able to identify him?

A:

Yes, ma'am.

Q: Would you please point to him?

A: (Witness is pointing to a man wearing a yellow shirt who answers by the name of Agripino Guevarra when he was asked by the Court). [45]

Further, the foregoing testimonies are consistent with documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Anacleto and Antonette to be clear and credible.

Denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[46] Denial and alibi must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters.[47] For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[48]

Appellant testified that he was vacationing in Africa's house at Barangay Malad, Calapan City, Oriental Mindoro at the time (9:15 p.m.) and date (24 August 2002) of the incident. Ravino claimed that, upon arriving at Africa's house in Calapan Oriental, Mindoro at about 5:30 p.m. of the day of the incident, he saw appellant there. Ravino then proceeded to fix Africa's car. After fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. of the same day. Be that as it may, Ravino neither categorically stated nor confirmed that appellant was present in Africa's house from the time he was fixing Africa's car at past 5:30 p.m. up to the time he was done with it which was before 11:00 p.m. As mentioned earlier, Ravino merely claimed that he saw appellant in Africa's house at about 5:30 p.m. and after fixing Africa's car, he, Africa and appellant had a drinking spree until 11:00 p.m. Thus, it was highly possible that since Ravino's sight was directed or focused on Africa's car as he was fixing it, he did not notice appellant's departure from Africa's house at past 5:30 p.m. Appellant then proceeded to the videoke bar of Sgt. Vidal in Barangay Kumintang Ibaba, Batangas City, where he killed Inspector Barte at around 9:15 p.m. It was also probable that Ravino did not notice appellant's subsequent arrival in Africa's house, which was before 11:00 p.m., from the crime scene because he was still busy fixing Africa's car. The foregoing view is bolstered by appellant's admission that it would only take him 45 minutes to reach Calapan City, Oriental Mindoro from the Batangas pier via a "Supercat" boat.[49] There was, therefore, a great possibility that appellant was present at the scene of the crime when it was committed at about 9:15 p.m. of 24 August 2002. Thus, the defense failed to prove that it was physically impossible for appellant to be at or near the crime scene when the

incident occurred. Besides, we have held that an alibi becomes less plausible as a defense when it is corroborated only by relatives or friends of the accused.[50]

We agree with the RTC and the Court of Appeals that the qualifying circumstance of treachery and the special aggravating circumstance of use of an unlicensed firearm attended the killing of Inspector Barte.

It is settled that aggravating/qualifying circumstances must be alleged in the information and proven during the trial before they can be appreciated.[51]

There is treachery when the offender commits any of the crimes against the 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 any defensive or retaliatory act which the victim might make.[52] The essence of treachery is a deliberate and sudden attack that renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. Two essential elements are required in order that treachery can be appreciated: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any retaliatory act on the part of the offended party who has, thus, no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of means, methods or manner of execution.[53]

In the case at bar, treachery was alleged in the information and all its elements were duly established by the prosecution.

Inspector Barte was sitting inside the jeep when appellant suddenly appeared and approached him. Appellant asked Inspector Barte if he was "Major Barte." However, before Inspector Barte could respond or utter a word, appellant quickly shot him several times in the head and chest with a caliber .45 pistol. The suddenness and unexpectedness of the appellant's attack rendered Inspector Barte defenseless and without means of escape. There is no doubt that appellant's use of a caliber .45 pistol, as well as his act of waiting for Inspector Barte to be seated first in the jeep before approaching him and of shooting Inspector Barte several times on the head and chest, was adopted by him to prevent Inspector Barte from retaliating or escaping. Considering that Inspector Barte was tipsy or drunk and he was seated inside the jeep where the space is narrow, there was absolutely no way for him to defend himself or escape.

Pertinent provision of Presidential Decree No. 1866, as amended by Republic Act No. 8294,[54] states that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. Appellant's use of an unlicensed firearm in killing Inspector Barte was alleged in the information as a special aggravating circumstance. Such circumstance was also duly proven by the prosecution during the trial. The prosecution presented a certification from the PNP Firearms and Explosives Division which attests that appellant was not a licensed/registered firearm holder.[55]

Appellant's assertion that he was entitled to the mitigating circumstance of voluntary surrender is meritorious. For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) that the offender had not been actually arrested; (2) that the offender surrendered himself to a person in authority; and (3) that the surrender was voluntary.[56]

All of the foregoing requisites are present in the case at bar. Appellant had not been actually arrested by the police or other law enforcers. He surrendered unconditionally to the mayor of Batangas City, a person in authority, thereby saving the police trouble and expenses which it would otherwise incur in his search and capture. The fact that appellant surrendered two weeks after the incident is immaterial. We have held that for voluntary surrender to mitigate an offense, it is not required that the accused surrender at the first opportunity.[57] As long as the aforementioned requisites are met, voluntary surrender can be appreciated.[58]

We shall now determine the propriety of the penalties imposed on appellant.

Article 248 of the Revised Penal Code states that murder is punishable by reclusion perpetua to death. Article 63(4) of the same Code provides that if the penalty is composed of two indivisible penalties, as in this case, and both mitigating and aggravating circumstances attended the commission of the crime, the courts shall reasonably allow them to offset one another in consideration of their number and importance. As earlier determined, the mitigating circumstance of voluntary surrender and the aggravating circumstances of treachery and use of an unlicensed firearm were present in the instant case. Nonetheless, the aggravating circumstance of treachery in this case cannot be applied for offsetting because it was already considered as a qualifying circumstance.[59] Thus, only the aggravating circumstance of use of an unlicensed firearm may be utilized in offsetting the mitigating circumstance of voluntary surrender.

We stated earlier that the use of an unlicensed firearm in murder is a special aggravating circumstance and not merely a generic aggravating circumstance. As such, it cannot be offset by an ordinary mitigating circumstance such as voluntary surrender.[60] Thus, the only modifying circumstance remaining in the present case is the special aggravating circumstance of use of an unlicensed firearm. Article 63(1) of the Code provides that if the penalty is composed of two indivisible penalties, as in this case, and there is present only one aggravating circumstance, the greater penalty shall be applied. Consequently, the penalty imposable on appellant is death. However, with the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellant shall be reclusion perpetua. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

- (a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Hence, the RTC and the Court of Appeals were correct in imposing the penalty of reclusion perpetua on appellant.

As to damages, both courts acted accordingly in awarding civil indemnity[61] to the heirs of Inspector Barte since the award of this damage is mandatory in murder cases.[62] Nevertheless, the amount of P50,000.00 imposed as civil indemnity should be increased to P75,000.00 based on prevailing jurisprudence.[63] In *People v. Quiachon*,[64] we explained that even if the penalty of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 is still proper as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In the instant case, the qualifying circumstance of treachery and the special aggravating circumstance of use of unlicensed firearm attended the killing of Inspector Barte. These circumstances were duly alleged in the information and proven during the trial.

The award of moral damages in the amount of P50,000.00 is proper in view of the violent death of Inspector Barte and the resultant grief to his family.[65] Likewise, the award of exemplary damages in the amount of P25,000.00

is in order because the killing of Inspector Barte was committed with the aggravating circumstances of treachery and use of an unlicensed firearm.[66] Also, the award of P109,250.00 as actual damages is appropriate since these were supported by official receipts attached on records.[67]

The heirs of Inspector Barte should also be indemnified for loss of earning capacity pursuant to Article 2206 of the New Civil Code.[68] Consistent with our previous decisions,[69] the formula for the indemnification of loss of earning capacity is:

$$\begin{aligned} &\text{Net Earning Capacity} \\ &= \\ &\text{Life Expectancy} \times \\ &[\text{Gross Annual Income (GAI)} - \text{Living Expenses}] \\ &= \\ &\frac{2}{3} (80 - \text{age of deceased}) \times (\text{GAI} - 50\% \text{ of GAI}). \end{aligned}$$

Inspector Barte's death certificate states that he was 46 years old at the time of his demise.[70] The pay slip issued by the PNP, Camp Crame, Quezon City, to Inspector Barte for August 2002 shows that the latter was earning an annual gross income of P371,784.00.[71]

Applying the above-stated formula, the indemnity for the loss of earning capacity of Inspector Barte is P4,213,551.00, computed as follows:

$$\begin{aligned} &\text{Net Earning Capacity} \\ &= \\ &\frac{2}{3} (34) \times (\text{P}371,784.00 - \text{P}185,892.00) \\ &= \\ &\frac{2}{3} (34) \times \text{P}185,892.00. \\ &= \\ &\text{P}4,213,551.00. \end{aligned}$$

Hence, the amount of P4,212,312.72 awarded to the heirs of Inspector Barte as indemnity for the latter's loss of earning capacity should be increased to P4,213,551.00.

In addition to the damages awarded, we also impose on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[72]

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR H.C. No. 02367, dated 16 October 2007, is hereby AFFIRMED with the following MODIFICATIONS: (1) the civil indemnity of appellant is increased from P50,000.00 to P75,000.00; (2) the indemnity for Inspector Barte's loss of earning capacity is increased from P4,212,312.72 to P4,213,551.00; and (3) an interest on all the damages awarded at the legal rate of 6% from this date until fully paid is imposed.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Azcuna,**] and Nachura, JJ., concur.

[*] Per Special Order No. 531, dated 20 October 2008, signed by Acting Chief Justice Leonardo A. Quisumbing, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on leave.

**] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring; rollo, pp. 2-19.

[2] Penned by Judge Conrado R. Antona; CA rollo, pp. 38-44.

[3] Records, pp. 1-2.

[4] Id. at 18.

[5] TSN, 3 February 2003, pp. 3-6.

[6] Id. at 6-11.

[7] TSN, 3 June 2003, pp. 22-30.

[8] TSN, 1 April 2003, pp. 10.

[9] TSN, 16 September 2006, pp. 3-10.

[10] TSN, 3 June 2003, pp. 3-12.

[11] Folder of Exhibits, Exhibit "L."

[12] TSN, 16 September 2006, pp. 15-27.

[13] Folder of Exhibits, Exh. "R."

[14] TSN, 3 June 2003, pp. 15-17.

[15] Records, p. 6.

[16] Id. at 7.

[17] Id. at 8.

[18] Id. at 9.

[19] Folder of Exhibits, Exh. "E."

[20] Id., Exh. "F."

[21] Records, p. 109.

[22] Folder of Exhibits, Exh. "H."

[23] Id., Exh. "I."

- [24] Id., Exh. "J."
- [25] Id., Exh. "K."
- [26] Id., Exh. "L."
- [27] Id., Exh. "M."
- [28] Id., Exh. "N."
- [29] Id., Exh. "O."
- [30] Id., Exh. "P."
- [31] Id., Exh. "Q."
- [32] Id., Exh. "R."
- [33] Id., Exh. "S" and "T."
- [34] TSN, 7 December 2004, pp. 3-8.
- [35] TSN, 2 May 2006, pp. 3-9.
- [36] CA rollo, pp. 38-44.
- [37] Records, pp. 191-192.
- [38] Rollo, pp. 2-19.
- [39] Id. at 19.
- [40] CA rollo, p. 28.
- [41] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.
- [42] TSN, 3 February 2003, pp. 5-6 and 10-11.
- [43] TSN, 26 February 2003, pp. 12-13.
- [44] Id. at 15-16.
- [45] TSN, 3 June 2003, pp. 26-29.
- [46] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661-662.
- [47] *Dela Cruz v. Court of Appeals*, 414 Phil. 171, 184 (2001); *People v. Lustre*, 386 Phil. 390, 400 (2000).
- [48] Id.
- [49] TSN, 7 December 2004, p. 11.
- [50] *People v. Larranaga*, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662; *People v. Calumpang*, G.R. No. 158203, 31 March 2005, 454 SCRA 719, 736; *People v. Datingginoo*, G.R. No. 95539, 14 June 1993, 223 SCRA 331, 335; *People v. Abatayo*, G.R. No. 139456, 7 July 2004, 433 SCRA 562, 579.
- [51] *People v. Simon*, G.R. No. 130531, 27 May 2004, 429 SCRA 330, 353-354; Section 8 & 9, Rule 110 of the Rules of Court.
- [52] Paragraph 16, Article 14 of the Revised Penal Code.

- [53] Velasco v. People, G.R. No. 166479, 28 February 2006, 483 SCRA 649, 669-670.
- [54] Passed on 6 June 1997.
- [55] Folder of Exhibits, Exh. "F."
- [56] Mendoza v. People, G.R. No. 173551, 4 October 2007, 534 SCRA 668, 697.
- [57] People v. Saul, 423 Phil. 924, 936 (2001).
- [58] Id. at 937.
- [59] People v. Guzman, G.R. No. 169246, 26 January 2007, 513 SCRA 156, 178.
- [60] Mendoza v. People, supra note 56 at 697.
- [61] Erroneously referred to as compensatory damage by the RTC.
- [62] People v. Buban, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.
- [63] Id; People v. Quiachon, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.
- [64] Id.
- [65] People v. Buban, supra note 62 at 134.
- [66] Article 2230 of the Civil Code: "In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."
- [67] Folder of Exhibits, Exhs. "I" and "J."
- [68] Article 2206 of the Civil Code: "The amount of damages for death caused by a crime or quasi-delict shall be x x x in addition: (1) the defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter. x x x."
- [69] People v. Batin, G.R. No. 177223, 28 November 2007, 539 SCRA 272, 295, Manaban v. People, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 525.
- [70] Folder of Exhibits, Exhs. "O."
- [71] Id., Exhs. "M."
- [72] People v. Buban, supra note 62 at 135; Mendoza v. People, supra note 56 at 702.

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