

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EFREN PATELAN LAMBERTE @ “KALBO” AND MARCELINO RUIZ NIMUAN @ “CELINE,” ACCUSED, MARCELINO RUIZ NIMUAN, APPELLANT.

G.R. No. 182918. June 06, 2011

Ponente: BRION, J.

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BRION, J.:

We decide the appeal filed by accused Marcelino Ruiz Nimuan (appellant) [1] from the November 23, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02352. [2]

The Factual Antecedents

On November 25, 2004, the appellant, together with Efren Patelan Lamberte, [3] was charged with murder [4] before the Regional Trial Court (RTC), Branch 31, Agoo, La Union. [5] A year and a half later, on April 7, 2006, the appellant was arrested. [6] On April 12, 2006, the prosecution filed an amended information charging the appellant and Lamberte with the same crime of murder. [7] The appellant pleaded not guilty when arraigned. [8] His co-accused, Lamberte, remained at large. At the trial that followed, the prosecution established the facts outlined below.

At about 6:00 p.m. of September 22, 2004, Eulalia Garcia was tending her sari-sari store along the National Highway in San Eugenio, Aringay, La Union when the appellant and Lamberte came to borrow her gas lamp. She noticed that both were drunk and armed. They said they were looking for a bullet that fell on the ground. After finding the bullet, she asked them where they were going and they answered, “We are going to kill the doctor.” The two then waited under a mango tree. Shortly thereafter, the victim (Dr. Jose Villanueva), on board a truck, passed by Garcia’s store on the way to his poultry farm. The appellant and Lamberte followed on foot. Ten (10) minutes later, Garcia heard two (2) gunshots coming from the direction of the poultry farm. [9]

It appears that the victim arrived at his poultry farm at around 7:00 p.m. to deliver medicines and bread to his workers, Alvin Manolong, Crispino Yaranon and Ferrer Anasario. After the delivery, the victim instructed the workers to resume their work. The workers then proceeded to Building 1 and left the victim standing beside his truck near Building 5. [10]

Subsequently, the workers heard gunfire coming from the victim’s direction. Manolong went down to investigate. On hearing a second shot, Manolong ran towards the parked truck and saw the victim lying on the ground with a gunshot wound in his stomach. Manolong called his companions, yelling that the victim had been shot. [11]

On hearing Manolong’s cries for help, Yaranon and Anasario ran toward Building 5. On the way, they met the appellant and Lamberte. The appellant kicked Yaranon three times and hit him on the stomach with the butt of the carbine he was holding, while Lamberte poked a shotgun at Anasario. The appellant and Lamberte threatened Yaranon and Anasario with harm should they tell anyone that they (the appellant and Lamberte) were responsible for the killing of the victim. The appellant and Lamberte then left, going northward in the direction of the mango

plantation, owned by Atty. Paulino Cases, where both worked as security guards. [12]

A postmortem examination confirmed that the victim died from shotgun wounds in the back. [13] The victim's widow, Dr. Eufemia Villanueva, presented in court the official receipts, amounting to P56,500.00, for the victim's funeral and burial, [14] and the victim's 2003 and 2004 income tax returns to establish loss of earning capacity. [15]

The appellant denied any participation in the killing of the victim, and pointed to Lamberte as the person solely responsible. He claimed that he merely accompanied Lamberte to the victim's farm when the latter suddenly shot the victim; Lamberte threatened him with death if he (appellant) did not escape with him. [16]

The RTC Ruling

In its May 31, 2006 Decision, the RTC found the appellant guilty of murder. It gave credence to the positive testimony of the prosecution witnesses who saw the accused before and after the shooting incident, thus pointing to a conspiracy in the killing of the victim. It rejected the appellant's denial of criminal liability. In imposing the death penalty, the RTC appreciated the qualifying and aggravating circumstances of treachery, evident premeditation and nighttime, without, however, explaining its reasons. The RTC ordered the appellant to pay the heirs of the victim P3 million in lost income, P8 million as moral damages, P2 million as exemplary damages, P100,000.00 as civil indemnity, and P60,000.00 as actual damages. [17]

The CA Ruling

On intermediate appellate review, the CA fully agreed with the RTC's appreciation of the adduced evidence. While the appellate court appreciated the qualifying circumstance of treachery because the appellant was shot at the back, it disregarded nighttime as an aggravating circumstance because it is absorbed by treachery. The CA appreciated evident premeditation because the accused had sufficient time to reflect on the consequences of their acts from the time they told Garcia that they would kill the victim to the time of killing. It likewise appreciated in the appellant's favor the mitigating circumstance of intoxication because Garcia testified that the accused were drunk. Since the mitigating circumstance of intoxication offsets the aggravating circumstance of evident premeditation, the CA sentenced the appellant to suffer the penalty of reclusion perpetua.

On civil indemnity, the appellate court modified the amounts awarded by the RTC. Civil indemnity and moral damages were reduced to P50,000.00 each, while the amount of exemplary damages was reduced to P25,000.00, consistent with prevailing jurisprudence. The amount of actual damages was reduced to P56,150.00, based on actual receipted expenses. [18] The amount for loss of earning capacity was reduced to P622,453.95, [19] based on the victim's income tax returns [20] from 2002 to 2004. [21]

From the CA, the case is now with us for final review.

Our Ruling

We affirm the appellant's conviction for murder.

The testimonies of the prosecution witnesses clearly prove that a conspiracy existed in the commission of the crime. Garcia testified that the appellant and Lamberte had the common design of killing the victim. The fact that each one was armed with a firearm shows that they acted with the singular purpose of killing the victim. Both accused threatened workers Manolong, Yaranon and Anasario with harm should they tell anyone that they (accused) killed the victim. Under these facts, it does not matter who actually shot the victim because of the conspiracy that existed. In conspiracy, the act of one is the act of all; each of the accused is equally guilty of the crime committed. [22]

The CA correctly appreciated the qualifying circumstance of treachery as the victim was shot at the back. [23] The attack was deliberate, sudden and unexpected; it afforded the unsuspecting victim no opportunity to resist or defend himself. [24]

Nonetheless, we find that the CA misappreciated the aggravating circumstance of evident premeditation. For evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of (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. [25]

In this case, there is dearth of evidence on when the accused first conceived of killing the victim and that they were afforded sufficient time to reflect on the consequences of their contemplated crime before its final execution. Moreover, the span of time (less than thirty minutes), from the time the accused showed their determination to kill the victim (when they told Garcia that they were “going to kill the doctor”) up to the time they shot the victim, could not have afforded them full opportunity for meditation and reflection on the consequences of the crime they committed. [26] Thus, the circumstance of evident premeditation cannot be appreciated.

We also find that the CA erred in crediting the appellant with the mitigating circumstance of intoxication simply because Garcia testified that “the accused were both drunk.” [27] For intoxication to be considered as a mitigating circumstance, it must be shown that the intoxication impaired the willpower of the accused that he did not know what he was doing or could not comprehend the wrongfulness of his acts. [28]

In this case, there is no convincing proof of the nature and effect of the appellant’s intoxication. The mitigating circumstance of intoxication cannot be appreciated in the appellant’s favor merely on the testimony of a prosecution witness that he was drunk during the incident. [29] Such testimony does not warrant a conclusion that the degree of the accused’s intoxication had affected his faculties. [30]

The penalty for murder is reclusion perpetua to death under Article 248 of the Revised Penal Code, as amended. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the proper imposable penalty on the appellant is reclusion perpetua.

Lastly, we find it necessary to increase to P30,000.00 the amount of exemplary damages, to conform with recent jurisprudence. [31]

WHEREFORE, the November 23, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02352 is hereby AFFIRMED with MODIFICATION. Appellant Marcelino Ruiz Nimuan is found guilty of murder as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to reclusion perpetua. He is further ordered to pay the heirs of Dr. Jose Villanueva P50,000.00 as civil indemnity ex delicto, P56,150.00 as actual damages, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P622,453.95 as indemnification for loss of earning capacity.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, [*]Peralta, [*]Bersamin, [*]Abad, Villarama, Jr. and [*]Sereno, JJ., concur.

[*] Designated additional member per raffle dated June 1, 2011.

[*] Inhibit.

[*] Designated additional member vice Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 997,

dated June 6, 2011.

[*] Sick Leave.[1] Alias “Celine.”

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Lucas P. Bersamin (now a member of this Court) and Associate Justice Arturo G. Tayag of the Special Second Division of the Court of Appeals; rollo, pp. 2-25.

[3] Alias “Kalbo.”

[4] Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law.

[5] Docketed as Criminal Case No. A-5111; original records, p. 92.

[6] Original records, p. 99.

[7] The accusatory portion of the Amended Information reads:

That on or about the 22nd day of September 2004, in the Municipality of Aringay, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and conspiring, confederating and mutually aiding each other and being then armed with a highpowered firearm, a 12-gauge shotgun, did then and then (sic) willfully, unlawfully and feloniously shoot with the said firearm one DR. JOSE VILLANUEVA, thereby inflicting gunshot wounds on various parts of the latter’s body that were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the aforementioned DR. JOSE VILLANUEVA.

That in the commission of the offense, the qualifying circumstances of treachery and evident premeditation are present as evidenced by the suddenness of the attack upon the person of the deceased victim which eliminated any possibility of his defense and that the accused employed means, methods or forms in the execution thereof specially to ensure its execution without risk to themselves and that the killing was carefully planned by the accused.

That the qualifying aggravating circumstance of nighttime is present as the accused specially sought and took advantage of the darkness of the night and it facilitated the commission of the crime.

That the aggravating circumstance of use of unlicensed firearm is present as the accused used an unlicensed 12-gauge shotgun in shooting the victim as provided for under Section 1, paragraph 3 of the (sic) Republic Act No. 8294.

CONTRARY TO LAW. (Original records, pp. 103-104).

[8] Original records, p. 107.

[9] TSN, April 28, 2006, pp. 16-27.

[10] TSN, April 27, 2006, pp. 2-6, 25-27 and 41-43.

[11] Id. at 7-9, 28-29 and 44-45.

[12] Id. at 10-18, 29-34 and 45-49.

[13] Exhibit “A,” original records, p. 141.

[14] Exhibits “E” and “F,” original records, p. 144.

[15] Exhibits “C” and “D,” original records, pp. 142-143.

[16] TSN, May 23, 2006, pp. 3-8.

[17] Original records, pp. 185-223.

[18] Supra note 14.

[19] The appellate court computed the amount as follows:

Net Earning Capacity = $[2/3 \times (80-57) \times (P81,207.29 - 40,603.65)]$

= $2/3(23) \times 40,603.65$

= $15.33 \times 40,603.65$

= P622,453.95 (Rollo, p. 24.)

[20] The net income for the years 2002, 2003 and 2004 were P99,206.63, P78,408.64, and P66,006.61, or an average net income of P81,207.29; supra note 15.

[21] The dispositive portion of the CA Decision reads:

WHEREFORE, all the foregoing considered, the Decision of the Regional Trial Court of Agoo, La Union, Branch 267 dated May 31, 2006 is hereby AFFIRMED with MODIFICATION. Appellant Marcelo (sic) Ruiz Nimuan is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, attended by circumstances heretofore discussed, and is hereby sentenced to suffer the penalty of Reclusion Perpetua. The appellant is ORDERED to pay the heirs of Dr. Jose Villanueva the amounts of P50,000.00 as civil indemnity; P56,150.00 as actual damages; P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P622,453.95 as indemnification for loss of earning capacity.

SO ORDERED. (Rollo, pp. 24-25.)

[22] People v. Glinio, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 455.

[23] Per police sketch marked Exhibit “G,” original records, p. 10.

[24] People v. Lacaden, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and Gandol v. People, G.R. No. 178233, and People v. Gandol, G.R. No. 180510, December 4, 2008, 573 SCRA 108, 124.

[25] People v. De Guzman, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 66; and People v. Escarlos, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 482.

[26] See People v. Zeta, G.R. No. 178541, March 27, 2008, 549 SCRA 541, 563, citing People v. Discalsota, 430 Phil. 407.

[27] Rollo, p. 21.

[28] Licyayo v. People, G.R. No. 169425, March 4, 2008, 547 SCRA 598, 613; and People v. Nabong, G.R. No. 172324, April 3, 2007, 520 SCRA 437, 456.

[29] Licyayo v. People, supra. See also People v. Pinca, G.R. No. 129256, November 17, 1999, 318 SCRA 270; People v. Belaro, G.R. No. 99869, May 26, 1999, 307 SCRA 591; and People v. Ventura, G.R. No. 90015, April 10, 1992, 208 SCRA 55, 61-62.

[30] Licyayo v. People, supra.

[31] People v. Dela Cruz, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752; and People v. Gutierrez,

G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647.

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