

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX PALING, ERNIE VILBAR @ “DODONG” (AT LARGE), AND ROY VILBAR, ACCUSED,

G.R. No. 185390. March 16, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the April 28, 2006 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00189, which affirmed the March 10, 2003 Decision in Criminal Case No. 10-97 of the Regional Trial Court (RTC), Branch 17 in Kidapawan City, Cotabato. The RTC found accused Alex Paling (Paling) and Roy Vilbar (Vilbar) guilty of murder.

The Facts

Accused Paling and Vilbar, as well as accused Ernie Vilbar (Ernie), were charged with the crime of murder in an Information which reads as follows:

That on or about July 1, 1996, in the Municipality of Pres. Roxas, Province of Cotabato, Philippines, the above-named accused in company with ERNIE VILBAR Alias "DODONG", who is still at large, with intent to kill, conspiring, confederating and mutually helping one another, armed with knives, with treachery, evident premeditation, taking advantage of superiority, did then and there, willfully, unlawfully and feloniously, attack, assault, stab and use physical violence to the person of WALTER NOLASCO, thereby hitting and inflicting upon him multiple [stab] wounds on the different parts of his body, which is the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.

Kidapawan, Cotabato, Philippines, February 10, 1997.[1]

When arraigned on April 3, 1997, Paling and Vilbar, with the assistance of counsel, pleaded "not guilty." [2] However, Ernie remained at large. [3] Thereafter, trial on the merits ensued. [4]

During trial, the prosecution presented three (3) witnesses, namely: Richard Nolasco (Richard), Francisco Perez (Francisco), and Agustin Nolasco. On the other hand, the defense presented Leonida Mondejar, as well as Paling and Vilbar. [5]

The Prosecution's Version of Facts

In the evening of July 1, 1996, Richard, Jojo Paling (Jojo), and Rolly Talagtag (Rolly) were in the house of Paling in Sitio Mahayag, Pres. Roxas, Cotabato watching television. At around 9:15 p.m., the group left the said house and decided to proceed to the other house of Paling situated in the latter's farm at Brgy. Greenhills. This is where the three usually sleep at night. En route, Jojo and Rolly, along with the victim, Walter Nolasco (Walter), were

invited by Paling, Ernie, and Barangay Kagawad Rene Mondejar to a drinking spree at the house of the latter. Jojo, Rolly, and Walter accepted the invitation, while Richard just waited for them outside the house of Paling.[6]

About 15 minutes later, Richard went back to his companions and told them that they had to go home since they still have to go to school the following morning. The three acceded, but Ernie convinced Walter to stay with them a little longer. Thus, Richard, Jojo, and Rolly went ahead, while Walter stayed behind.[7]

At around 10:00 p.m., Francisco, the uncle-in-law of Walter,[8] was roused from his sleep by the barking of his dogs. When he went out to find out why the dogs were barking, he saw Vilbar and Ernie walking beside Walter. They were heading towards Brgy. Greenhills where Paling's farmhouse was located.[9]

At around 10:30 p.m. that same night, Richard, who was already asleep in the farmhouse of Paling, was awakened when he heard Jeniline Paling-Bernesto, the daughter of Paling, shout, "Kill him in a distance. Don't kill him here, kill him away from here." [10]

When Richard went outside to find out what was happening, he saw Paling, Vilbar, and Ernie assaulting Walter. Vilbar was holding Walter, while Paling and Ernie were stabbing him.[11]

After Walter was killed, the three accused warned Richard not to speak about it to anyone; otherwise, they would also kill him. Thereafter, the three left, bringing with them the cadaver of Walter.[12]

Incidentally, Francisco also recounted that about 30 minutes after he first saw Walter in the company of Vilbar and Ernie heading towards Brgy. Greenhills, he was awakened again by the barking of the dogs. When he checked again, he saw Vilbar and Ernie running. But this time, he did not see Walter with them.[13]

The following day, July 2, 1996, at 10:00 a.m., Walter's cadaver was found in the farm of one Jonathan Policarpio.[14]

Version of the Defense

Paling and Vilbar interposed the defense of denial. Paling testified that on July 1, 1996, he worked in his farm at Sitio Mahayag, Pres. Roxas, Cotabato. He stated that when he learned of the death of Walter, he even helped in bringing his cadaver to the house of the latter's grandfather in the presence of policemen and Richard,[15] a first cousin of the victim.[16]

For his part, Vilbar testified that on July 1, 1996, he worked in the drier of the Sta. Catalina Cooperative from 7:30 a.m. to 4:30 p.m. He, therefore, had no opportunity to leave his house since he was already tired from working the entire day.[17]

Ruling of the Trial Court

After trial, the RTC convicted Paling and Vilbar. The dispositive portion of its March 10, 2003 Decision reads:

WHEREFORE, this Court finds and so holds that the prosecution was able to prove the guilt beyond reasonable doubt of accused Alex Paling and Roy Vilbar. Accused Alex Paling and Roy Vilbar are found guilty beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code. Accused Alex Paling and Roy Vilbar are directed to serve the penalty of RECLUSION PERPETUA with its accessory penalties. The detention of Alex Paling from October 13, 1996 up to May 13, 1998 and Roy Vilbar from July 22, 1996 up to May 13, 1998 are counted in full in their favor. They are directed to pay cost. Accused Alex Paling and Roy Vilbar are directed to indemnify the heirs of Walter Nolasco the sum of P50,000.00.

The property bonds posted by the accused for their provisional liberty are cancelled and released. The Register

of Deeds of Cotabato is hereby directed to cancel the annotation in OCT No. P-42589 and TCT No. T-64391.

The Warden of the Office of the Provincial Jail of Cotabato is directed to take accused Alex Paling and Roy Vilbar into custody.

Let Alias Warrant of Arrest be issued against accused Ernie Vilbar with no amount of bail fixed.

SO ORDERED.[18]

The records of this case were forwarded to this Court in view of the Notice of Appeal[19] dated March 24, 2003 filed by Paling and Vilbar, which this Court accepted in its Resolution[20] dated May 24, 2004. On June 17, 2004, the Court required the two accused to submit their appellant's brief.[21]

On September 2, 2004, both accused filed their Appellant's Brief[22] dated August 9, 2004. On the other hand, the Brief for the Appellee[23] dated December 8, 2004 was filed on December 13, 2004. Thereafter, the Court issued a Resolution[24] dated March 14, 2005, transferring the case to the CA for intermediate review conformably with the ruling in *People v. Mateo*. [25]

Essentially, both accused contended that the decision of the RTC is erroneous because the testimony of Richard was misappreciated as the judge who rendered the decision was not the same judge who received the evidence during trial. Also, they claimed that the corroborative witness, Francisco, did not even mention Paling in his open court testimony, thereby allegedly casting doubt on the credibility of the other witness, Richard.[26]

Ruling of the Appellate Court

On April 28, 2006, the CA affirmed the judgment of the lower court in toto.[27] It ruled that contrary to the contention of accused-appellants, the fact that the judge who tried the case was different from the judge who penned the decision does not in any way taint the decision, especially in the instant case where there is scarcity of evidence to doubt the credibility of Richard, the prosecution's principal witness.[28]

The CA further held that it did not find any error or abuse of discretion in the lower court's calibration of the witnesses' credibility, and that even granting in *ex gratia argumenti* that minor contradictions exist in the statements of the prosecution witnesses, these would have no effect on the probative value of their statements as their declarations are consistent in pointing to the accused as *participis criminis* in the killing of the victim.[29]

In its Resolution dated July 30, 2008, [30] the CA treated accused-appellant Paling's letter dated May 18, 2006 as a notice of appeal, in the interest of justice. With respect to accused-appellant Vilbar, the CA Decision became final.

In Our Resolution dated February 25, 2009, We notified the parties that they may file their respective supplemental briefs if they so desired. Both the People and accused-appellant Paling manifested that they are no longer filing a supplemental brief and they are adopting their respective briefs before the CA. Thus, we have this appeal.

The Issues

Paling contends in his Brief[31] that:

THE COURT A QUO RENDERED JUDGMENT SOLELY ON THE TESTIMONY OF THE LONE (EYE) WITNESS RICHARD NOLASCO WHICH WAS MISAPPRECIATED BY THE JUDGE WHO INHERITED THIS CASE FROM THE FORMER PRESIDING JUDGE WHO TRIED AND HEARD THIS CASE FROM ITS INCEPTION TO ITS TERMINATION.

FRANCISCO PEREZ, THE CORROBORATIVE WITNESS, DID NOT EVEN MENTION

ACCUSED-APPELLANT ALEX PALING IN HIS OPEN COURT TESTIMONY.

Our Ruling

We sustain Paling's conviction.

The fact that the judge who rendered judgment was not the one who heard the witnesses does not adversely affect the validity of conviction

Paling alleges that since the judge who penned the appealed decision is different from the judge who heard the testimonies of the witnesses, the former was in no position to observe their demeanor diligently.[32]

We disagree. The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.[33] Citing *People v. Competente*,[34] this Court held in *People v. Alfredo*: [35]

The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction. Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon. (Emphasis in the original.)

Further, "it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand." [36] This is because the judge "can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law." [37] Considering that, in the instant case, the transcripts of stenographic notes taken during the trial were extant and complete, there was no impediment for the judge to decide the case.

Moreover, as correctly found by the CA, there is scarcity of evidence to doubt the credibility of the prosecution's principal witness, Richard. [38] Even if the said witness failed to immediately disclose or identify the accused as the culprits when he was initially interviewed by the police on July 8, 1996, he cannot be faulted for such omission, as it is not uncommon for witnesses "to delay or vacillate in disclosing the identity of the offender after the startling occurrence for fear of reprisal," [39] more so, when he was warned by the three accused not to disclose to anyone the killing he had witnessed.

Also, Paling did not present any evidence which would show that Richard was driven by any improper motive in testifying against him and the other accused. Significantly, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that his testimony is worthy of full faith and credit. [40] Indeed, there is no reason to deviate from the factual findings of the trial court.

Nonetheless, it is the contention of Paling that the testimonies of the prosecution witnesses Richard and Francisco are conflicting in that while the former stated that he saw Paling and the two other accused help one another in assaulting the victim, Francisco only saw Ernie and Vilbar walking beside the victim, and not Paling. [41]

Contrarily, there is nothing conflicting in the testimonies of Richard and Francisco. As a matter of fact, their statements are even consistent in pointing to Paling, Ernie, and Vilbar as the perpetrators of the killing of Walter. [42] In the farmhouse of Paling where he was staying, Richard witnessed the killing of Walter by the three accused, who even warned him immediately afterwards not to speak about it. On the other hand, Francisco, after being awakened by the barkings of his dogs, merely chanced seeing Walter in the company of Ernie and Vilbar

walking by his house towards the direction of Paling's place at around 10:00 p.m. Francisco was again awakened approximately 30 minutes later by the barking of his dogs and saw Ernie and Vilbar running in the opposite direction. Thus, Francisco's testimony was consistent with the fact that after Walter was killed, Ernie and Vilbar rushed away from the crime scene. And the fact that Paling was not in the company of Walter, Ernie, and Vilbar neither shows that Paling could not have been in his house nor that he did not participate in the killing of Walter.

Besides, the issue posed is one of credibility of witnesses, a matter that is peculiarly within the province of the trial court. [43] Absent a clear showing that the findings of the trial court are tainted with arbitrariness, capriciousness, or palpable error, We generally defer to its assessment.[44]

Alibi is an inherently weak defense

Paling denies participation in the killing of Walter and, as mentioned earlier, asserts that on July 1, 1996, he worked in his farm at Sitio Mahayag, Pres. Roxas, Cotabato. To bolster his claim of innocence, he also testified that when he learned of the victim's death, he even helped in bringing his cadaver to the house of the latter's grandfather in the presence of policemen and Richard.[45]

In this regard, it bears stressing that "for alibi to prosper, it is not enough for the accused to prove that he was in another place 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." [46]

Significantly, the place where Paling claimed to be was just within the immediate vicinity, if not within the vicinity itself, of the crime scene. Verily, it was not physically impossible for Paling to be present at the locus criminis at the time the crime was committed.

Moreover, this Court has repeatedly held that "alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses." [47] Notably, "it is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence." [48] There being no strong evidence adduced to overcome the testimony of the eye witness, Richard, no weight can be given to the alibi of Paling.

The killing of Walter is qualified by abuse of superior strength, not by treachery or evident premeditation

In convicting Paling, the trial and appellate courts appreciated the qualifying circumstance of treachery. In addition, the RTC appreciated the aggravating circumstance of evident premeditation.

We disagree. The killing of Walter was neither attended by treachery nor evident premeditation. In this regard, it is worth noting that "qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence as conclusively as the killing itself." [49]

To prove treachery, the following must be clearly established: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense and retaliation; and (2) the deliberate and conscious adoption of the means of execution.[50] The essence of treachery is "the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend oneself, ensuring the attack without risk to the aggressor, and without the slightest provocation on the part of the victim." [51]

Pertinently, it should be noted that the eyewitness account of Richard does not establish that the perpetrators suddenly and unexpectedly attacked the victim, since at the time he went outside to check the commotion, Vilbar was already holding the victim, while Paling and Ernie were already stabbing him. Noticeably, the events immediately preceding the attack had not been disclosed. Richard, therefore, had no way of knowing whether the attack was indeed sudden and unexpected so as to prevent the victim from defending himself and whether there

was indeed not the slightest provocation on the part of the victim. Hence, treachery cannot be appreciated in the instant case.

Similarly, the qualifying circumstance of evident premeditation cannot also be considered since there was neither proof that Paling and the other accused indeed planned or determined to kill Walter nor was there any proof that the perpetrators had sufficient lapse of time between the determination and the execution to allow them to reflect. In *People v. Dadivo*, this Court enumerated the requirements to prove evident premeditation, to wit:

x x x The requirements to prove evident premeditation are the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.[52]

Evidently, the above-mentioned elements are not present in the case at bar. Consequently, the aggravating circumstance of evident premeditation cannot also be appreciated.

Despite the foregoing disquisition, the crime committed by Paling is still murder and not homicide, since the killing of Walter is qualified by taking advantage of superior strength.

The aggravating circumstance of taking advantage of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressors that is plainly and obviously advantageous to the aggressors and purposely selected or taken advantage of to facilitate the commission of the crime.[53] It is taken into account whenever the aggressor purposely used excessive force that is "out of proportion to the means of defense available to the person attacked." [54] The victim need not be completely defenseless in order for the said aggravating circumstance to be appreciated.[55] As this Court held in *People v. Amodia*: [56]

To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. Taking advantage of superior strength does not mean that the victim was completely defenseless.

In *People v. Ventura*, we opined that there are no fixed and invariable rules in considering abuse of superior strength or employing means to weaken the defense of the victim. Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor vis-à-vis the victim. Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both, and the employment of the means to weaken the defense, although not annulling it. The aggressor must have advantage of his natural strength to ensure the commission of the crime. (Citations omitted.)

In the present case, the victim, Walter, while being restrained by Vilbar, was simultaneously stabbed by Paling and Ernie. Plainly, not only did the perpetrators outnumber their victim, more importantly, they secured advantage of their combined strength to perpetrate the crime with impunity. Under these circumstances, it is undeniable that there was gross inequality of forces between the victim and the three accused.

Penalty Imposed

Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is reclusion perpetua to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of reclusion perpetua.[57]

In the instant case, while Paling was charged with three aggravating circumstances in the Information, only one was proved, thereby qualifying the killing as murder. Consequently, the imposable penalty shall be reclusion perpetua.

Award of Damages

Art. 100 of the Code states that every person criminally liable for a felony is also civilly liable. Hence, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[58]

In cases of murder and homicide, civil indemnity of PhP 50,000 and moral damages of PhP 50,000 are awarded automatically.[59] To be sure, such awards are mandatory without need of allegation and proof other than the death of the victim[60] owing to the fact of the commission of murder or homicide.[61]

This Court, however, additionally grants exemplary damages in the amount of PhP 30,000, in line with current jurisprudence,[62] since the qualifying circumstance of taking advantage of superior strength was firmly established. Under Art. 2230 of the Civil Code, if an aggravating circumstance, either qualifying or generic,[63] accompanies the crime, the award of exemplary damages is justified.

Interest of six percent (6%) per annum from finality of judgment shall likewise be imposed on the award of damages.

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 00189 is AFFIRMED with MODIFICATIONS. Accused-appellant Alex Paling is ordered to pay the heirs of the victim civil indemnity of fifty thousand pesos (PhP 50,000), moral damages of fifty thousand pesos (PhP 50,000), and exemplary damages of thirty thousand pesos (PhP 30,000), with 6% interest per annum on said damages from finality of judgment. Since Roy Vilbar did not appeal the CA Decision, he shall indemnify the heirs of Walter Nolasco in the sum of PhP 50,000.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] CA rollo, p. 9; records, p. 1.

[2] Rollo, p. 7.

[3] Records, p. 13.

[4] Rollo, p. 7.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 17.

[9] Id. at 8.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 9.

[16] Id. at 16.

[17] Id. at 8-9.

[18] CA rollo, pp. 23-24. Penned by Judge Rogelio R. Narisma.

[19] Id. at 25.

[20] Id. at 27.

[21] Id. at 29.

[22] Id. at 37-61.

[23] Id. at 92-115.

[24] Id. at 122.

[25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[26] CA rollo, p. 45.

[27] Rollo, p. 18. The Decision was penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romulo V. Borja and Ricardo R. Rosario.

[28] Id. at 12.

[29] Id. at 13.

[30] Id. at 28-30.

[31] CA rollo, pp. 37-61.

[32] Rollo, p. 46.

[33] *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.

[34] G.R. No. 96697, March 26, 1992, 207 SCRA 591, 598.

[35] G.R. No. 188560, December 15, 2010.

[36] *Garcia v. People*, G.R. No. 171951, August 28, 2009, 597 SCRA 392, 401-402; citing *Decasa v. CA*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 283.

[37] Id. at 402; citing *Decasa v. CA*, id. at 284.

[38] Rollo, p. 12.

[39] *People v. Reyes*, G.R. No. 118649, March 9, 1998, 287 SCRA 229, 243.

[40] *People v. Elarcosa*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 428; citing *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.

[41] Rollo, p. 13.

[42] Id.

[43] Llanto v. Alzona, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

[44] Fuentes v. Court of Appeals, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-710.

[45] Rollo, p. 9.

[46] People v. Alfredo, supra note 35; citing People v. Guerrero, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683 and People v. Garte, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.

[47] Id.

[48] Id.; citing People v. Ranin, Jr., G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309; Velasco v. People, G.R. No. 166479, February 28, 2006.

[49] People v. Elarcosa, supra note 40, at 431; citing People v. Discalsota, G.R. No. 136892, April 11, 2002, 380 SCRA 583, 592.

[50] People v. Vallespin, G.R. No. 132030, October 18, 2002, 391 SCRA 213, 220.

[51] People v. Asis, G.R. No. 191194, October 20, 2010.

[52] G.R. No. 143765, July 30, 2002, 385 SCRA 449, 453.

[53] Valenzuela v. People, G.R. No. 149988, August 14, 2009, 596 SCRA 1, 10-11.

[54] People v. Amodia, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 543; citing People v. de Leon, G.R. No. 128436, December 10, 1999, 320 SCRA 495, 505.

[55] Id.; citing People v. Ventura, G.R. Nos. 148145-46, July 5, 2004, 433 SCRA 389, 411.

[56] Id.

[57] People v. Elarcosa, supra note 40, at 437-438; citing People v. Valdez, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 629.

[58] Id.; citing People v. Tolentino, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[59] Id.; citing People v. Gutierrez, G.R. No. 188602, February 4, 2010 and People v. Mondigo, G.R. No. 167954, January 31, 2008, 543 SCRA 384, 392.

[60] Id.; citing People v. Bajar, G.R. No. 143817, October 27, 2003, 414 SCRA 494, 510.

[61] Id.; citing Razon v. People, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.

[62] Id.

[63] Id.; citing Sumbillo v. People, G.R. No. 167464, January 21, 2010.

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