

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DARWIN BERNABE Y GARCIA, ACCUSED-APPELLANT.

G.R. No. 185726. October 16, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court is an appeal from a Decision[1] of the Court of Appeals (CA) dated July 10, 2008 in CA-G.R.-CR-HC No. 02619 affirming with modification the decision[2] of the Regional Trial Court of Las Piñas City, Branch 202 (RTC) in Criminal Case No. 05-0683 finding accused-appellant Darwin Bernabe y Garcia a.k.a. "Bong" guilty beyond reasonable doubt of the crime of Murder.

The information,[3] dated June 7, 2005, charged accused-appellant with Murder, to wit:

That on or about the 26[th] day of May, 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without justifiable motive, did, then and there, willfully, unlawfully and feloniously, with treachery, evident premeditation abuse of superior strength, and cruelty, assault, attack, hit the head of one JANN MICHAEL OLIVO Y FRANCIA with an iron pipe, causing the latter to fall unconscious, in which state said accused strangled the victim with a G.I. wire, directly causing the death of said JANN MICHAEL OLIVO y FRANCIA.

CONTRARY TO LAW.

When arraigned, accused-appellant pleaded not guilty and trial on the merits ensued.

The prosecution presented six witnesses, namely, Alvin Tarrobago (Alvin), and Jomar Butalid (Jomar), who both witnessed the commission of the crime; Dr. Ruperto Sambilon, Jr., the Medico Legal Officer who performed the autopsy on the victim's body; Nora Olivo, the victim's mother; SPO2 Roger Bato; and Prudencio Aristan. The following narration of events is culled from the testimonies of eyewitnesses Alvin and Jomar, as well as those of the other witnesses.

In the evening of May 25, 2005, accused-appellant invited Jomar, Alvin, and three girls known only as Kambal, Mandy, and Cherry to his house for a drinking spree. Accused-appellant allowed his guests to stay on and sleep in his bedroom.

At about 2:00 a.m. of May 26, 2005, Jomar was awakened by the voice of accused-appellant telling Alvin to join him in buying some cigarettes. Outside the house, they met the victim Jann Michael Olivo. While the three were walking along Chico Street, the victim told accused-appellant that he knew the latter. Accused-appellant poked a gun at the victim and ordered the latter to go with them to accused-appellant's house where he started questioning the victim why the latter was roaming around the house. Jomar, who was in the bedroom, heard accused-appellant strongly utter the words, "Sino ang nagbayad sa iyo na subaybayan ako," to which the victim answered "Walang nagutos sa akin na subaybayan ka." Then, Jomar heard some punching sounds and then he heard a person plead, "Kuya Bong parang awa niyo na ho kahit dito na lang ako tumira sa inyo, huwag mo lang akong patayin."

Accused-appellant replied, "Hindi naman kita papatayin, aminin mo lang sa akin kung sinong nagbayad sa iyo para subaybayan ako. Sabihin mo lang sa akin at dodoblehin ko ang bayad." [4]

Unable to go back to sleep, Jomar peeped outside the bedroom. He saw accused-appellant holding a piece of wood while the victim was sitting near the front door of the house. He also saw Alvin, who was seemingly frightened, seated near another room. Jomar stayed inside the bedroom from where he saw accused-appellant hit the victim thrice with the piece of wood until it broke. Accused-appellant then instructed the weakened victim to undress while he went to the kitchen to get a toothbrush and some lotion. Accused-appellant commanded the victim to bend over and the former then put lotion on the victim's butt. The victim shouted in pain as accused-appellant inserted the toothbrush into the victim's anus. [5]

Accused-appellant continued to interrogate the victim and hit the latter two times with a metal pipe. He then ordered the victim to lie down and tied the latter's hands with a plastic straw. Accused-appellant got GI wire or "alambre," placed a gray shirt over the victim's head, and then strangled the latter with the wire. While doing this, accused-appellant called out to Jomar and Alvin and ordered the two to hold the struggling victim's feet. When the victim stopped breathing, accused-appellant got hold of two sacks from his bodega or stockroom, put the lifeless body inside the sacks, placed it at a corner of the house, and covered it with "yero" or GI sheets. In the afternoon of May 26, 2005, accused-appellant and Alvin borrowed the sidecar of Prudencio Aristan (Aristan). [6]

At dawn of May 27, 2005, accused-appellant commanded Alvin and Jomar to load the victim's body on the sidecar and dispose of the same. The two dumped the corpse in a water lily-filled vacant lot located on Guyabano St., Golden Acres Subdivision, Talon Uno, Las Piñas. Thereafter, accused-appellant threatened Alvin and Jomar that he will kill them if they report the incident to the police. Jomar and Alvin then went their separate ways and into hiding. [7]

The victim's body was found at 11:30 a.m. on May 27, 2005 and brought to the Funeraria Filipinas where an autopsy was performed by Medico Legal Officer Dr. Ruperto J. Sambilon, Jr. The Autopsy Report [8] contained the following findings:

Body in early to moderate state of decomposition, bloated and with eyeballs having prominent appearance and seemingly about to pop-out from the eye sockets.

Cyanosis, marked, head, neck and upper areas of the torso.

Lacerated wound, 3.0 cm., forehead, left aspect.

Ligature marks:

- Neck, 55.0 cm. long circumference, oriented horizontally around the neck below the thyroid cartilage. Widest portion 0.7 cm. at the right side and the narrowest portion 0.3 cm. at the left antero-lateral aspect. Approximate depth 0.4-0.5 cm.

- Left wrist area, two (2) in number. Upper one is 16.0 cm long and 2.5 cm. wide and 0.2-0.3 cm. deepest portion, almost completely surrounding the distal 3[rd] of the left forearm near the wrist joint; 12.0 cm. long and 1.0 cm. wide 0.2-0.3 cm. deepest portion, and almost completely [surrounding] the wrist.

- Right wrist area, 16.0 cm. long, 1.0 cm. wide and approximately 0.2 cm. deepest portion, incompletely surrounding the wrist.

Fracture, windpipe (trachea), 2[nd] ring below the thyroid cartilage, complete, close.

Hemorrhage, moderate, soft tissues, surrounding fractured ring. Neck muscular layer, anterior to trachea.

Heart and lungs: with several Tardieu's spots noted in the subepicardial and subpleural layers.

Tracheal wall, markedly congested.

Brain, in moderate liquefaction.

Other visceral organs, congested.

Stomach, about 1/4 filled with yellowish fluid.

CAUSE OF DEATH: ASPHYXIA BY STRANGULATION (Words in brackets ours.)

On June 3, 2005, relatives of Jomar and Alvin arranged the surrender of the two minors to the authorities. Upon inquiry, they divulged what they witnessed and how they allegedly accidentally participated in the commission of the crime. They voluntarily offered themselves to help in the immediate arrest of accused-appellant.[9] On June 4, 2005, Alvin and Jomar executed their respective Sinumpaang Salaysay.[10]

On or about 7:30 p.m. of June 3, 2005, accused-appellant was arrested on follow-up operation at his hideout on Camias St., Golden Acres Subdivision, Talon Uno, Las Piñas. Confiscated from the possession of the accused-appellant were: a) a black nylon holster; b) one (1) live ammunition for a caliber .38 revolver; and c) a knife. The accused-appellant was brought to the Las Piñas Police Station for investigation and proper disposition.[11]

The testimony of Dr. Ruperto J. Sambilon, Jr. was dispensed with in view of the stipulation of facts[12] entered into by the prosecution and the defense, viz:

- Dr. Sambilon was an expert witness;
- He conducted an autopsy on the cadaver of the victim Jann Michael Olivo; and
- Based on his findings, the cause of death of the victim was asphyxia by strangulation.

In lieu of the testimony of the victim's mother, Nora Olivo, the prosecution and the defense entered into the following stipulation of facts:[13]

- She is the mother of the victim, Jann Michael Olivo;
- She can identify her affidavit and certain documents relative to the case;
- Before the death of her son, Jann Michael Olivo, the latter was employed, as per Certification[14] issued by his employer;
- The witness will present several documents to prove the expenses incurred for the burial of the victim; and
- The witness will present the death certificate[15] and the certificate of live birth[16] of the victim, as well as [a] picture of the victim.

Anent the testimony of SPO2 Roger Bato, the prosecution and the defense entered into the following stipulation of facts:[17]

- That the witness was a member of the arresting team who apprehended accused-appellant;
- Upon investigation conducted, two persons by the name of Jomar Butalid and Alvin Tarrobago narrated the incident pertaining to the death of one Jann Michael Olivo;
- In connection with the said investigation, Jomar Butalid and Alvin Tarrobago pointed to accused Darwin Bernabe as the one who killed Jann Michael Olivo; and

- After investigation, the arresting team caused the arrest of the accused-appellant.

The defense made a counter-stipulation that SPO2 Bato had no personal knowledge of the alleged commission of the crime; that the arresting team was not armed with any warrant at the time of arrest; and that the accused-appellant was only arrested eight to nine days after the commission of the crime.

With regard to the testimony of Aristan, the prosecution and the defense entered into a stipulation[18] that both accused-appellant and Alvin borrowed Aristan's pedicab in the afternoon of May 26, 2005.

The defense had another version of the facts. It presented as witnesses accused-appellant Darwin Bernabe, Amy Bandala, and Dr. Francisco Raura. Accused-appellant's account of the incident is as follows:

In the afternoon of May 25, 2005, accused-appellant was cleaning his backyard when Jomar and Alvin arrived and asked him if they could stay in his house. Since he had known the two for more than five (5) months already, accused-appellant allowed the two to stay on condition that they help him clean his backyard. He brought Alvin and Jomar along to the "manukan," which was five (5) streets away from his house, to visit his fighting cocks. After checking the food and medication of his roosters, he invited his caretaker, Noel Wagas, for a drinking session. Alvin and Jomar took some shots of liquor. At around 8:30 p.m., the two asked accused-appellant's permission to go back to the latter's house. Accused-appellant handed them the key to his gate and stayed behind.

Accused-appellant arrived home at around 2:00 a.m. of May 26, 2005 and found Alvin and Jomar having an argument with the victim, who was allegedly unknown to him at the time. He pacified the three and asked the name of the victim who introduced himself as Jann-jann. He told Alvin and Jomar to fix the problem and have Jann-jann leave his house. He then entered his bedroom where he saw three girls sleeping. He got mad and scolded Jomar and Alvin. He slept in another room until around 7:00 a.m. When he woke up, the victim was already gone, while the three girls were still sleeping. He found Jomar and Alvin fixing things on the table.

He went to the manukan to check on his roosters and returned home at around 1:00 p.m. to take his lunch. He rested until 5:00 p.m. and then instructed Alvin to borrow a sidecar in the nearby junkshop and to dispose of the garbage. Thereafter, he proceeded to his brother-in-law's house in Manuyo II, Las Piñas City to borrow money for the vitamins of his fighting cocks. However, his brother-in-law was not there. After waiting for some time, accused-appellant went home. He arrived at his house at around 11:00 p.m. He invited Jomar and Alvin to drink. He noticed that Alvin was nervous. The following morning, he observed Jomar and Alvin pacing back and forth and having a conversation under the aratiles tree, but he did not hear what they were talking about.

According to accused-appellant, Jomar asked if he could borrow money because they were going to some place. He then told the two to sell the scraps in the stockroom and from the proceeds amounting to P500.00, he gave them P300.00, and kept the remaining P200.00. Jomar and Alvin left for Cavite between 7:00 to 7:30 p.m. of May 27, 2005.

Accused-appellant denied the charges hurled against him. He claimed that he had no capacity to strangle the victim because he could not use his left hand effectively after undergoing an operation on his two (2) fingers.

In lieu of the oral testimony of Amy Bandala, the prosecution and the defense entered into a stipulation[19] that Amy Bandala was the Medical Records Supervisor of Las Piñas Doctor's Hospital and she caused the production of the original copy of the Record of Operation[20] of accused-appellant which showed that on June 15, 2003, Dr. Francisco Raura operated on the accused-appellant's neglected fracture on the 4[th] and 5[th] metacarpal fingers.

On December 4, 2006, the RTC rendered its judgment convicting accused-appellant of the crime charged, thus:

WHEREFORE, accused Darwin Bernabe y Garcia a.k.a. "Bong" is hereby pronounced guilty beyond

reasonable doubt of the crimes (sic) of murder defined in Article 248 of the Revised Penal Code, as amended, and there being no mitigating or aggravating circumstances in the commission of the crime is meted the penalty of reclusion perpetua. Accordingly, herein accused is hereby ordered to pay the heirs of the victim the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages and P33,000.00 as actual damages.

SO ORDERED.[21]

On appeal, the CA rendered the herein challenged decision dated July 10, 2008, which affirmed with modification the decision of the RTC. The pertinent portions of the CA decision read:

Contrary to the trial court's finding of actual damages in the amount of P33,000.00, the actual damages established in evidence is only P23,000.00, broken down as follows: Official Receipt No. 1333222 (Exhibit "D") dated 05/31/2005 issued by the Manila Memorial Park Cemetery, Inc. in the amount of P10,000.00 for cremation fee; and Official Receipt No. 4191 (Exhibit "I") dated 10 June 2005 issued by the Funeraria Filipinas, Inc. in the sum of P13,000.00 as payment for the funeral services.

When actual damages proven by receipts during the trial amount to less than P25,000.00, such as in the present case, the award of temperate damages for P25,000.00, is justified in lieu of actual damages for a lesser amount. Hence, the amount of P25,000.00 as temperate damages is awarded to the heirs of the victim in lieu of the actual damages of P23,000.00 as proven by said official receipts. 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.

The trial court also found that there was no aggravating nor mitigating circumstance and imposed on appellant the penalty of reclusion perpetua.

We modify.

The qualifying circumstance of treachery being present, the crime committed by the appellant is Murder under Article 248. The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death. However, in view of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," signed into law on June 24, 2006, the penalty imposed must be reduced from death to reclusion perpetua without eligibility for parole.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 04 December 2006 in Crim. Case No. 05-0683 of the Regional Trial Court, Las Piñas City, Branch 202, which found accused-appellant Darwin Bernabe y Garcia a.k.a. "Bong" guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, as amended, is AFFIRMED with MODIFICATION in that, the accused-appellant is hereby sentenced to reclusion perpetua without eligibility for parole and ordered to indemnify the heirs of the victim Jann Michael Francia Olivo the amounts of Php 75,000.00 as civil indemnity, Php 50,000.00 as moral damages, Php 25,000.00 as exemplary damages, Php 25,000.00 as temperate damages and an interest on all the damages awarded at the legal rate of 6% from this date until fully paid.[22]

On March 6, 2009 and April 2, 2009, the Office of the Solicitor General (OSG) and accused-appellant filed their respective manifestations that they would no longer file any supplemental brief and they were submitting the case for decision based on the pleadings filed.

The instant appeal is anchored on the catch-all argument that accused-appellant's guilt has not been proven beyond reasonable doubt.

Accused-appellant capitalizes on the alleged inconsistencies in the testimonies of eyewitnesses Alvin and Jomar in their direct examination and cross examination. Accused-appellant points out that Alvin had testified that he and accused-appellant first saw the victim outside accused-appellant's house. However, on cross examination,

Alvin stated that they saw the victim on Chico Street, the street next to Camias Street where accused-appellant's house was located. Alvin likewise testified that he was locked up inside the bedroom while accused-appellant was inflicting harm upon the victim. He witnessed the incident because the bedroom window was facing the living room, where the incident allegedly took place. However, on cross examination, he allegedly admitted that it was impossible for him to have seen what was happening at the sala through the bedroom window. While Jomar corroborated the testimony of Alvin that it was the accused-appellant who killed the victim, he never testified that they were locked inside the room when the incident allegedly happened. According to him, he witnessed the incident because he went outside the room. Accused-appellant even ordered him and Alvin to hold the victim's feet, which order they obeyed.

Accused-appellant suggests that it is quite strange why Alvin and Jomar went into hiding right after the incident, if they were not the ones who killed the victim, while he remained in his house. He could have fled if he was indeed responsible for the crime. Lastly, accused-appellant maintains that he was incapable of strangling the victim because the bones of his two fingers were broken.

We are not persuaded by the aforesaid arguments of accused-appellant. Hence, the appeal must be denied.

True, there were discrepancies in the testimonies of the two eyewitnesses, particularly as to their participation (or non-participation) in the murder of the victim. There was an apparent attempt on the part of both witnesses, especially of Alvin, to downplay their role in the whole incident. These discrepancies, however, are not sufficient to negate the guilt of accused-appellant. The evident attempt of Alvin and Jomar to downplay their participation in the commission of the crime did not completely render weightless the evidentiary value of their testimonies.

Alvin, who was seventeen (17) years old when presented in court, recounted the acts of accused-appellant in killing the victim, thus:

Q

When you further saw Bong hitting Jann-Jann with a piece of wood in his leg, what happened next after that?

A

When he repeatedly harm (sic) Jann-Jann, it was at that time when he tied the hands of Jann-Jann at his back, Sir.

xxx.

Q

Now what happened afterwards when he finished tying both hands of Jann-Jann at Jann-Jann's back?

A

Jann-Jann pleaded not to kill him, Sir.

Q

Now, after Jann-Jann pleaded to Darwin not to kill him, what did Darwin do, if any?

A

Bong did not [heed] such plea and he [seemed] to be out of his mind, Sir.

Q

And, what happened afterwards?

A

Then, he hit Jann-Jann with a piece of pipe [on] his head, Sir.

Q

What object did Bong use in hitting Jann-Jann in his head?

A

Bakal, Sir.

Q

When he hit Jann-Jann with a hard metal object in his head, what happened to Jann-Jann?

A

He lost consciousness, Sir.

Q

After Jann-Jann lost consciousness because of the hit (sic) in his head with the use of a metal object by Bong, what happened afterwards?

A

It was at that time that Bong strangled Jann-Jann, Sir.

Q

With the use of what, Mr. Witness?

A

With a wire, Sir.

Q

How did he do that? What did he do with the wire before he strangled Jann-Jann?

A

Tinali po sa leeg niya, sir.

SP QUIAMBAO

Your Honor, the witness has just demonstrated on how the accused Bong alias Darwin Bernabe wrapped ... the wire around the neck of the deceased Jann Michael Olivo.

Q

And, what did he do after he finished 'tinali sa leeg iyong wire' in the neck of the deceased Jann Michael Olivo?

xxx.

A

He strangled viciously Jann-Jann, Sir.

Q

With the use of what instrument, Mr. Witness?

A

The wire was wrapped around his hands, Sir.

Q

What happened when he strangled Jann Michael Olivo with the use of a metal wire?

A

When he saw Jann-Jann dead, it was the time he put Jann-Jann's body inside a sack, Sir.

Q

Are you saying, Mr. Witness, that when Bong strangled Jann-Jann with the use of that wire, that was the time you came to know that Jann Michael Olivo has died?

A

Yes, sir.[23] (Words in brackets ours.)

Alvin's testimony was corroborated by Jomar, who was sixteen (16) years old when he was presented in court. The trial court summarized his testimony, thus:

The aforesaid testimony was, likewise, corroborated by witness Jomar Butalid in his affidavit dated June 4, 2005. He narrated that on the day of the incident, he saw the accused holding a piece of wood while Alvin was sitting near another room seemingly frightened. He also saw the victim sitting near the front door of the house. Frightened at the scenery he saw, Jomar never left the room. Subsequently, Bong called him and ordered him to guard the said victim. He then saw Bong hit the victim thrice with the piece of wood until it broke. After which, he again saw the accused [strike] the victim's head with a pipe and later, strangled him to death with a wire.[24]

Alvin and Jomar were consistent in pointing to accused-appellant as the one who hit the victim with a metal pipe in the head causing the latter to lose consciousness, and who strangled the victim to death using a G.I. wire (alambre).

The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailants.[25]

In *People v. Togahan*,[26] the Court likewise held:

While witnesses may differ in their recollections of an incident, it does not necessarily follow from their disagreement that all of them should be disbelieved as liars and their testimonies completely discarded as worthless. As long as the mass of testimony jibes on material points, the slight clashing statements neither dilute the witnesses' credibility nor the veracity of their testimony, for indeed, such inconsistencies are but natural and even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.

The trial court is correct in disregarding the minor inconsistencies in the testimonies of Alvin and Jomar. We quote with approval its findings on this matter:

In the case at bar, there may be a few minor inconsistencies in both the statements of the prosecution witnesses

as Alvin Tarrobago stated that he was at the room where Jomar Butalid was sleeping and saw through a window facing the sala the ordeal that the victim [had] gone through in the hands of the accused while Jomar Butalid narrated that he went out of the said room and saw the accused hitting the victim whereas Alvin was merely sitting in the sala. However, these matters do not affect the undeniable fact that the accused [had] committed the crime charge[d]. The primordial concern is the fact that it was the accused himself who killed the victim through strangulation and as testified by the two (2) prosecution witnesses who saw the said dastardly act. The qualifying circumstances of treachery and cruelty indeed attended the killing of Jann Michael Olivo. Assuming ex gratia arguendo that the statement of Jomar Butalid would be believed, i.e., that he and Alvin helped the accused in holding the legs of the victim, they would still be exempted from criminal liability as they did the said act because of fear. Article 12 of the Revised Penal Code exempts a person from criminal liability if he acts under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear of equal or greater injury, because such persons did not act with freedom.

The trial court accorded greater weight to the testimonies of the prosecution witnesses and dismissed accused-appellant's defenses of denial and alibi, holding the same as self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. As often stressed by this Court, the issue of credibility of witnesses is a function properly lodged with the trial court, whose findings are entitled to great weight and accorded the highest respect by the reviewing courts.[27]

Accused-appellant attempts to deflect culpability to Alvin and Jomar by pointing out that they were the ones who went into hiding right after the incident. As the Court held in *People v. Simon*,[28] however, different people react differently to a given situation, and there is no standard form of behavioral response when one is confronted with a strange, startling, or frightful experience. In this case, we take into account the fact that Alvin and Jomar were still minors at the time they witnessed accused-appellant's brutality. Moreover, accused-appellant threatened to kill said witnesses if they reported the matter to the authorities, as shown in Alvin's testimony below:

Q

And, after you were able to [dispose of] the body of the deceased, what happened afterwards?

A

I and Jomar were led off by Bong and we were told by Bong not to tell anything to the police because he is going to kill us, Sir.

Q

What did you feel when you were threatened by accused Darwin Bernabe that you and Jomar would be killed if ever you are going to tell to the police as to what happened?

A Jomar and I were so afraid, Sir.

Q

And, eventually, what did you do after the lapse of certain number of days after this incident happened?

A

Jomar and I went separate ways and we [hid] for a while and we were bothered by our conscience, Sir.[29]

Likewise in *People v. Simon*,[30] the Court belittled the defense's attempt to destroy the credibility of the prosecution witness, declaring thus:

xxx There is no clear cut standard form of behavior that can be drawn. Witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal

investigations due to a variety of valid reasons. One may immediately report the incident to the proper authorities, while another, in fear and/or avoiding involvement in a criminal investigation, may keep to himself what he had witnessed. Others reveal the perpetrator of the crime only after the lapse of one year or so to make sure that the possibility of a threat to his life or to his loved ones is already diminished, if not totally avoided.

As to accused-appellant's defenses of alibi and denial, he must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the locus delicti or within its immediate vicinity. Between the categorical statements of the prosecution witnesses on one hand and the bare denial of accused-appellant on the other, the former must perforce prevail. Accused-appellant's alibi does not meet the requirement of physical impossibility as he was within the immediate vicinity of the scene of the crime. The manukan was merely five (5) streets away from his house, while Manuyo II is also within Las Piñas City. In *People v. Crisanto*,^[31] the Court reiterated:

It is jurisprudentially-embedded that where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers, three (3) kilometers, or even five (5) kilometers, the same are not considered to be too far as to preclude the possibility of the presence of the accused at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking. xxx

Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.^[32]

Lastly, accused-appellant claims that he is physically incapable of perpetrating the alleged criminal act against the victim because the bones of his two fingers were already broken.

Evidence on record reveals that the disability relied upon by accused-appellant did not render him incapable of perpetrating the crime. The testimony of defense witness Dr. Francisco Raura, the surgeon who operated on accused-appellant's hand on June 15, 2003, belied accused-appellant's claim, thus:

Q:

But, after the surgery that you performed on the accused on June 15, 2003, would you say that accused has lost total function of his left hand?

A:

Temporarily, yes Sir.

Q:

So, in the long period of time after the surgery, is it a consequence after that surgery that the accused would regain the total function of his left hand?

A:

Usually, Sir, but not all.

Q:

But at this time, you could tell this Honorable Court that the accused, at this time, has lost the total function of his left hand?

A:

Sir, when we speak of total function is not capable of doing anything.

Q:

Yes, that is what I am trying to ask you?

A:

The affected bone is only 4[th] and 5[th] and the majority bones that are needed for the proper function to which are your first, second and third, it is only fourth and fifth. So, if ever there would be some problem after the procedure, it is a little percentage only, Sir.

Q:

So, you are definite in stating, Mr. Witness, that the first, second and third hand bones of the accused, he is still capable of making use of his left hand?

A:

Yes, Sir.[33]

The two courts below correctly appreciated treachery, which qualified the killing of Jann Michael Olivo to Murder. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. As affirmed by the CA, the RTC found, thus:

As vividly narrated by the prosecution witnesses, the attack on the victim Jann Michael Olivo y Francia was sudden wherein the victim had no inkling or opportunity to anticipate the imminence of the attack of the accused nor was he in a position to defend himself or repel the aggression because he was unarmed. To ensure the success of his criminal design, the accused hit the legs of the deceased victim several times with a piece of wood so the latter would be crippled and have no means to escape. Then, the accused hit the victim with a piece of pipe on the head which rendered the victim unconscious. Lastly, the accused strangled the victim to death by the use of a wire.[34]

We agree with the CA when it appreciated cruelty as an aggravating circumstance in the murder of the victim. Accused-appellant, with unmitigated cruelty, inhumanly augmented the suffering of the victim. We quote with approval the following disquisition of the CA on this matter:

We also appreciate the presence of the aggravating circumstance of cruelty as appellant deliberately and inhumanly augmented the suffering of the victim. Paragraph 21, Article 14 of the Revised Penal Code provides that there is cruelty in the commission of a felony when the wrong done in the commission of the crime is deliberately augmented by causing other wrong not necessary for its commission. There is no cruelty when the other wrong is done after the victim is already dead. The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission, or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. In the instant case, appellant slapped the victim; hit the victim's legs with a piece of wood; tied the victim's hands at his back; hit him on the head by a piece of pipe; and when he lost consciousness, appellant strangled him with a wire. Witness Jomar further narrated in his Sinumpaang Salaysay (Exhibit `Q-1'), viz:

S: Nakita kong pinalo ng kahoy ni Bong iyong nakalikmong lalaki (biktima) sa ibabang tuhod nito na napa-aray sa sakit at dalawa (2) pang sunod na hataw na nagpatumba sa biktima. Nabali iyong kahoy sa huling hataw ni BONG kaya lalong nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nagalit ito at pinatayo itong biktima na umaaringking sa sakit. Pagkatapos ay nag-utos itong si BONG na maghubad ng kanyang suot na damit at sapatos itong biktima na noon ay naka-briefs na lang. Nakita kung

pumunta sa parating kusina itong si BONG at kumuha ng sepilyo at lotion na nakalagay sa sisidlang bilog at inutusan ang noon ang takot na umiiyak na biktima na hubarin ang kanyang briefs. Pinatuwad ni Bong and biktima na hubad na ang briefs at pinahiran ito ng lotion sa puwet.

08T: Pagkatapos ano ang sumunod na pangyayari?

S: Isinaksak ni BONG and hawak na sepilyo sa puwet ng biktima at napasigaw sa sakit ito at nagmakaawa pero parang sayang saya itong si Bong na nagsabi ng `IYAN ANG PEBORIT KONG LARO, MASARAP BA GUSTO MONG ULITIN KO?

It is clear from the foregoing that cruelty attended the appellant's commission of the crime.

The CA's ruling finds support in *People v. Bonito*,^[35] where the Court held, thus:

xxx The test in appreciating cruelty as an aggravating circumstance is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission and inhumanly increased the victim's suffering or outraged or scoffed at his/her person or corpse. The victim in this case was already weak and almost dying when appellant Bonito inserted the cassava trunk inside her private organ. What appellant Bonito did to her was totally unnecessary for the criminal act intended and it undoubtedly inhumanly increased her suffering. xxx

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death. However, in view of Republic Act No. 9346,^[36] which was signed into law on June 24, 2006, the penalty imposed must be reduced from death to reclusion perpetua without eligibility for parole.

We now review the award of damages. The CA modified the damages awarded by the trial court and made the following awards: P75,000.00 as civil indemnity, P25,000.00 as temperate damages, P50,000 as moral damages, and P25,000.00 as exemplary damages.

As to damages awarded by the CA, modification is in order. When death occurs as a result of a crime, the heirs of the deceased are entitled to civil indemnity for the death of the victim without need of proof of damages. Prevailing jurisprudence dictates the award of civil indemnity in the amount of P75,000.00.^[37] Likewise, the awarded moral damages should be increased to P75,000.00 and the exemplary damages increased to P30,000.00 to conform with current jurisprudence.^[38]

The two courts below made no pronouncement as to the loss of earning capacity. Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. The certificate of employment which did not state the victim's salary is not enough proof for lost income to be recovered. There must likewise be an unbiased proof of the deceased's average income. An award for loss of earning capacity refers to the net income of the deceased, i.e., his total income net of expenses.^[39]

WHEREFORE, the appeal is hereby DENIED and the assailed Decision convicting accused-appellant, imposing the penalty of reclusion perpetua without eligibility for parole, is AFFIRMED with the MODIFICATION that the monetary awards to be paid by accused-appellant are as follows: P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages, and P25,000.00 as temperate damages; and interest on all the damages awarded at the legal rate of 6% per annum from this date until fully paid is imposed.^[40]

SO ORDERED.

Nachura*, Brion***, Peralta****, and Bersamin, JJ., concur.

* Additional member as per Special Order No. 740.

** Acting Chairperson as per Special Order No. 739.

*** Additional member as per Special Order No. 751.

**** Additional member as per Special Order No. 754.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Mario L. Guariña III and Ricardo R. Rosario concurring; rollo, pp. 2-35.

[2] Record, pp. 156-172.

[3] Id. at 1.

[4] Id. at 10.

[5] Id. at 11.

[6] Id. at 13, 77.

[7] TSN, Jan. 23, 2006, pp. 46-49.

[8] Record, p. 85.

[9] Id. at 14.

[10] Id. at 6-12.

[11] Id. at 14.

[12] Id. at 50.

[13] Id. at 53.

[14] Id. at 102.

[15] Id. at 17.

[16] Id. at 95.

[17] Id. at 66.

[18] Supra note 6.

[19] Id. at 131.

[20] Id. at 126, 148.

[21] Id. at 88.

[22] Id. at 34-35.

[23] TSN, Jan. 23, 2006, pp. 32-37.

- [24] Supra note 2, at 168. Supra note 10, at 11.
- [25] *People v. Valla*, G.R. No. 111285, January 24, 2000, 323 SCRA 74, 82.
- [26] G.R. No. 174064, June 8, 2007, 524 SCRA 557, 572.
- [27] *People v. Francisco Buban*, G.R. No. 170471, May 11, 2007, 523 SCRA 118, 130-131.
- [28] G.R. No. 130531, May 27, 2004, 429 SCRA 330, 351.
- [29] TSN, Jan. 23, 2003, pp. 48-49.
- [30] Supra note 28.
- [31] G.R. No. 120701, June 19, 2001, 358 SCRA 647, 658-659.
- [32] *People v. Baniega*, G.R. No. 139578, February 15, 2002, 377 SCRA 170, 181.
- [33] TSN, August 23, 2006, pp. 167-168.
- [34] Supra note 2 at 170.
- [35] G.R. No. 128002, October 10, 2000, 342 SCRA 405, 427.
- [36] An Act Prohibiting the Imposition of Death Penalty in the Philippines.
- [37] *People v. Regalario*, G.R. No. 174483, March 31, 2009.
- [38] Ibid.
- [39] *People v. Panabang*, G.R. Nos. 137514-15, January 16, 2002, 373 SCRA 560, 575.
- [40] *People v. Guevarra*, G.R. No. 182192, October 29, 2008.

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