

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE VILBAR, ACCUSED-APPELLANT.

G.R. No. 186541. February 01, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated February 14, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00270 which modified the Judgment[2] promulgated on August 6, 2001 by the Regional Trial Court (RTC), Branch 35, of Ormoc City, in Criminal Case No. 5876-0. The RTC originally found accused-appellant Vicente Vilbar guilty beyond reasonable doubt of the crime of murder for treacherously stabbing with a knife the deceased Guilbert Patricio (Guilbert), but the Court of Appeals subsequently held accused-appellant liable only for the lesser crime of homicide.

The Information charging accused-appellant with the crime of murder reads:

That on or about the 5[th] day of May 2000, at around 7:00 o'clock in the evening, at the public market, this city, and within the jurisdiction of this Honorable Court, the above-named accused, VICENTE VILBAR alias Dikit, with treachery, evident premeditation and intent to kill, did then and there willfully, unlawfully and feloniously stab, hit and wound the victim herein GUILBERT PATRICIO, without giving the latter sufficient time to defend himself, thereby inflicting upon said Guilbert Patricio mortal wound which caused his death. Post Mortem Examination Report is hereto attached.

In violation of Article 248, Revised Penal Code, as amended by R.A. 7659, Ormoc City, June 13, 2000.[3]

When accused-appellant was arraigned on July 31, 2000, he pleaded not guilty to the criminal charge against him.[4]

During the pre-trial conference, the parties already admitted that Guilbert was stabbed at the Public Market of Ormoc City on May 5, 2000 at around seven o'clock in the evening, and that immediately before the incident, accused-appellant was at the same place having a drinking spree with a certain Arcadio Danieles, Jr. and two other companions. However, accused-appellant denied that it was he who stabbed Guilbert Patricio.[5] Trial then ensued.

The prosecution presented the testimonies of Maria Liza Patricio (Maria Liza),[6] the widow of the deceased, and Pedro Luzon (Pedro),[7] an eyewitness at the scene. The defense offered the testimonies of accused-appellant[8] himself and Cerilo Pelos (Cerilo),[9] another eyewitness. On rebuttal, the prosecution recalled Pedro to the witness stand.[10]

Below is a summary of the testimonies of the witnesses for both sides:

Maria Liza testified that in the evening of May 5, 2000, she was watching her child and at the same time attending to their store located in the Ormoc City public market. It was a small store with open space for tables for drinking being shared by other adjacent stores. At around 7:00 o'clock in the evening, her husband, Guilbert

Patricio (Guilbert) arrived from work. He was met by their child whom he then carried in his arms. Moments later, Guilbert noticed a man urinating at one of the tables in front of their store. The man urinating was among those engaged in a drinking spree in a nearby store. It appears that the accused was with the same group, seated about two meters away. Guilbert immediately admonished the man urinating but the latter paid no attention and continued relieving himself. Guilbert then put down his child when the accused rose from his seat, approached Guilbert, drew out a knife and stabbed him below his breast. The accused, as well as his companions, scampered away while Guilbert called for help saying "I'm stabbed." At that time, she was getting her child from Guilbert and about two feet away from the accused. She easily recognized the accused because he would sometimes drink at their store. Guilbert was immediately brought to the hospital where he later expired 11:35 of the same evening. She declared that for Guilbert's medical and hospitalization expenses, the family spent about P3,000.00. As for the wake and burial expenses, she could no longer estimate the amount because of her sadness.

Pedro, an eyewitness at the scene, corroborated Maria Liza's testimonial account of the events. On that night, he was drinking together with a companion in Maria Liza's store. He recalled Guilbert admonishing a person urinating in one of the tables fronting the store. Thereafter, he saw the accused pass by him, approach Guilbert and then without warning, stab the latter. The accused then ran away and left. Together with his drinking companion, they rushed Guilbert to the hospital. Pedro asserted that the area's illumination was "intense" because of the big white lamp and that he was certain that it was the accused who attacked Guilbert.

Denial was the accused's main plea in exculpating himself of the charge that he killed Guilbert. He claimed that in the evening of May 5, 2000, he and his wife went to the public market (new building) to collect receivables out of the sale of meat. Afterwards, they took a short cut passing through the public market where they chanced upon his wife's acquaintances who were engaged in a drinking spree while singing videoke. Among them were Dodong Danieles (Dodong for brevity) and his younger brother. They invited him (the accused) and his wife to join them. While they were drinking, Dodong had an altercation with Guilbert that stemmed from the latter's admonition of Dodong's younger brother who had earlier urinated at the Patricio's store premises. Suddenly, Dodong assaulted Guilbert and stabbed him. Fearing that he might be implicated in the incident, the accused fled and went to the house of his parents-in-law. Thereafter, he went back to the market for his wife who was no longer there. When he learned that the victim was brought to the Ormoc District Hospital, he went there to verify the victim's condition. He was able to talk with the mother and the wife of Guilbert as well as the police. He was thereafter invited to the precinct so that the police can get his statement. The next day, the parents of Dodong Danieles came to his parents-in-law's house to persuade him not to help the victim's family. He declined. Half a month later, he was arrested and charged for the death of Guilbert Patricio.

The defense also presented one Cerilo Pelos ("Cerilo") who claimed to have personally witnessed the stabbing incident because he was also drinking in the public market on that fateful night. He insisted that Guilbert was stabbed by someone wearing a black shirt, whose identity he later on learned to be Dodong Danieles.[11]

On August 6, 2001, the RTC promulgated its Decision finding accused-appellant guilty of murder and decreeing thus:

WHEREFORE, all the foregoing duly considered, the Court finds the accused Vicente Vilbar alias Dikit GUILTY beyond reasonable doubt of the crime of murder as charged, and hereby sentences him to imprisonment of reclusion perpetua, [and ordered] to pay the offended party the sum of P75,000.00 as indemnity, the sum of P3,000.00 as medical expenses, the sum of P50,000.00 as moral damages.

If the accused is a detainee, his period of detention shall be credited to him in full if he abides by the term for convicted prisoners, otherwise, for only 4/5 thereof.[12]

The foregoing RTC Judgment was directly elevated to us for our review, but in accordance with our ruling in

People v. Mateo,[13] we issued a Resolution[14] dated December 1, 2004 referring the case to the Court of Appeals for appropriate action.

Accused-appellant, represented by the Public Attorney's Office, [15] and plaintiff-appellee, through the Office of the Solicitor General,[16] filed their Briefs on August 15, 2006 and April 30, 2007, respectively. The Court of Appeals made the following determination of the issues submitted for its resolution:

On intermediate review, accused (now accused-appellant) seeks the reversal of his conviction for the crime of murder or in the alternative, the imposition of the proper penalty for the crime of homicide. He argues that the trial court erred in giving credence to the inconsistent, irreconcilable, and incredible testimonies of the prosecution witnesses, to wit: (1) the exact number of persons drinking with accused-appellant in the adjacent store; (2) what Maria Liza was doing at the exact time of stabbing; and (3) the accused-appellant's reaction after he stabbed the victim. Moreover, accused-appellant argues that if he was indeed the culprit, why did he approach Guilbert's family in the hospital immediately after the stabbing incident? Granting without admitting that a crime of murder was committed, accused-appellant insists that he could only be held guilty of homicide for it was not proven beyond reasonable doubt that treachery and evident premeditation existed. He specifically directs our attention to the following details: (1) there was a heated argument between the victim and a member or members of his group; (2) the stabbing happened in a spur of the moment; and (3) the victim then was not completely defenseless.

Meanwhile, the OSG stresses that the alleged inconsistencies in the testimonies of the prosecution witnesses are minor and inconsequential given the positive identification of the accused-appellant as the assailant. As to accused-appellant's contention that he is innocent because he even went to the hospital and conferred with Guilbert's relatives immediately after the stabbing incident, the OSG maintains that such actuation is not a conclusive proof of innocence.

The issues for resolution are first, the assessment of credibility of the prosecution witnesses; and second, the propriety of conviction of the accused-appellant for murder.[17]

The Court of Appeals rendered its Decision on February 14, 2008, in which it accorded great respect to the assessment by the RTC of the credibility of the witnesses. The inconsistencies and inaccuracies in the testimonies of the prosecution witnesses are relatively trivial, minor, and do not impeach their credibility. The positive identification and categorical statements of the prosecution witnesses that it was accused-appellant who stabbed Guilbert prevail over accused-appellant's self-serving denial. However, the appellate court did not find that treachery attended the stabbing of Guilbert and, thus, downgraded the crime to homicide. It also reduced the award of civil indemnity. The dispositive portion of the Court of Appeals decision sentenced accused-appellant as follows:

WHEREFORE, the 1 August 2001 Decision appealed from finding accused-appellant VICENTE VILBAR @ "Dikit" guilty beyond reasonable doubt of murder is MODIFIED. The Court finds the accused appellant GUILTY beyond reasonable doubt of HOMICIDE and is hereby sentenced to suffer the penalty of eight years and one day of prison mayor medium, as minimum, to fourteen years and eight months of reclusion temporal medium, as maximum. He is also ordered to pay the heirs of Guilbert Patricio the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php3,000.00 as actual damages.[18]

Accused-appellant now comes before us on final appeal.

In our Resolution[19] dated April 15, 2009, we gave the parties the opportunity to file their respective supplemental briefs, but the parties manifested that they had already exhausted their arguments before the Court of Appeals.[20]

After a scrutiny of the records of the case, we find that the submitted evidence and prevailing jurisprudence duly

support the findings and conclusion of the Court of Appeals.

Evidence in this case chiefly consists of testimonial evidence. Both the RTC and the Court of Appeals gave credence and weight to the testimonies of the prosecution witnesses.

Case laws mandate that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court." [21] There is no compelling reason for us to depart from the general rule in this case.

Prosecution witnesses Maria Liza and Pedro both positively and categorically identified accused-appellant as the one who stabbed Guilbert.

Maria Liza vividly recounted her traumatic moment as follows:

Q:

Mrs. Patricio, do you know the accused in this case in the person of Vicente Vilbar alias "Dikit?"

A:

Yes, sir.

Q:

Why do you know him?

A:

He used to go there for drinking in our store.

Q:

How long have you known this person?

A:

About three (3) months.

x x x x

Q:

Mrs. Patricio, can you recall where were you in the evening at about 7:00 o'clock of May 5, 2000?

A:

I was at the store.

Q:

Where?

A:

In the market.

Q:

What were you doing in the store?

A:

I was watching after my, attending to my child there.

Q:

How old was the child?

A:

Two (2) years old.

Q:

When you were attending to your child at this particular time, what happened?

A:

My child saw my husband arriving.

Q:

What happened after your child saw your husband arrived at the store you were tending?

A:

He met him.

Q:

And what did your husband do when he was met by your child?

A:

He cradled the child.

Q:

What happened after that?

A:

So at 7:00 o'clock that evening there was somebody urinated and my husband told that someone not to urinate that place because that was a table.

Q:

Do you know who was this someone admonished by your husband not to urinate because that was a table?

A:

No, sir.

Q:

Do you know where did he come from?

A:

They were drinking.

Q:

Do you know who was his companion while they were drinking?

A:

No, only that Vicente Vilbar.

Q:

From where he came from or from where he was drinking in the group of persons together with the accused Vicente Vilbar, how far was the place wherein they were drinking to where he urinated from where the group was drinking?

A:

Just near.

Q:

When you said near, can you estimate the distance?

COURT INTERPRETER

The witness estimated a distance at about 2 meters.

x x x x

Q:

What was the reaction of the person urinating when your husband told him not to urinate?

A:

He continue urinating.

Q:

What was the reaction of your husband when he did not heed to the advice not to urinate?

A:

He put down the child, this Vicente Vilbar rose.

Q:

Rose from where?

A:

From the table.

Q:

And what happened?

A:

Without any word stabbed my husband.

Q:

What did he use in stabbing your husband, this Vicente Vilbar?

A:

Knife.

Q:

Do you know, were you able to see where he kept the knife which he used in stabbing your husband?

A:

From his waist.

Q:

When the said Vicente Vilbar delivered the stabbed thrust to your husband, was your husband hit?

A:

He was hit.

Q:

On what part of his body was your husband hit?

A:

Just below the breast.

x x x x

Q:

Below the left nipple?

A:

Yes, sir.

Q:

What happened after your husband was hit below the left nipple?

A:

Vicente Vilbar ran away and my husband told me to call for some help and he said, "I'm stab."

x x x x

Q:

By the way, how far were you to your husband Guilbert Patricio when he was stabbed?

A:

I was behind Vicente Vilbar.

Q:

When you said you were behind, how far from Vicente Vilbar?

A:

Just near, sir, from my husband next was the one who urinated, next Vicente Vilbar and I was behind.[22]
(Emphases supplied.)

Pedro corroborated Maria Liza's testimony, recalling the same sequence of events the night of May 5, 2000, viz:

Q:

Who was the companion of Guilbert when he arrived in the vicinity?

A:

He was alone.

Q:

So what happened after his arrival?

A:

When he arrived he was with his child.

Q:

And what did he do with the child?

A:

He carried his child in his arms.

Q:

And then what happened after he carried his child?

A:

There was someone who [urinated] somewhere behind us and he was admonished by this Guilbert Patricio by saying, "Bay, don't urinate there it would somehow create a bad smell and considering that this is a drinking area."

Q:

Who was that person who relieved himself just nearby?

A:

I did not know.

Q:

Whose group was he coming from?

A:

From Vicente Vilbar's companion.

Q:

Did that person who was admonished accede to the request of Guilbert Patricio not to relieve just nearby?

A:

He just did not do something, he just relieved.

Q:

So that person who was admonished in fact urinated?

A:

Yes, sir.

Q:

And so what happened?

A:

I saw this Vicente Vilbar stood up and pass behind me and went to Guilbert Patricio and just immediately stabbed him.

Q:

What was the weapon used in stabbing?

A:

It seems like a knife (and the witness demonstrated to the Court the length of the weapon at about 10 inches with the width of about 2 inches).

Q:

When this stabbing incident took place, was it in front of you or was it behind?

A:

In front of me but I was facing his back.

x x x x

Q:

Will you please point to us a part of your body that he was hit by the stab thrust?

COURT INTERPRETER

The witness demonstrated below his left nipple and the witness was pointing to the position below his left nipple.

x x x x

Q:

At the time of that incident which was on the evening of May 5, 2000, did you already know that the person whom you just pointed earlier was Vicente Vilbar?

A:

I did not know about his complete name but I know of him as "Dikit" as alias and his face.

x x x x

Q:

Under what circumstance that you learned of his name?

A:

Because I ask the victim himself, that Guilbert Patricio by saying, "Who was that person who stabbed you Dong?," and then he said "He is known to be Dikit and his real name is Vicente Vilbar."

Q:

Prior to the incident, have you seen this Dikit or Vicente Vilbar?

A:

Yes, because after we had our tuba drinking spree in that same day they were there also.

Q:

Would you recall how many times you have seen Vicente Vilbar prior to the incident?

A:

I could not just count how many times but what I'm sure is we know him.

Q:

Could it be more than five (5) times?

A:

It could be.[23] (Emphases supplied.)

The RTC, assessing the aforequoted testimonies, declared:

Maria Liza Patricio is credible. She recognizes the accused, she was just behind him when he stabbed her husband who was facing the accused. There was proper illumination of the place x x x and her testimony was not destroyed in the cross-examination. Her testimony is positive and spontaneous. The Court notes nothing in her demeanor and flow of testimony that would indicate some contradiction or incredibility.

The other witness, Pedro Luzon, corroborates the testimony of Maria Liza Patricio. x x x.[24]

The RTC and the Court of Appeals brushed aside the alleged inconsistencies in the testimonies of Maria Liza and Pedro,[25] these being relatively trivial and insignificant, neither pertaining to the act constitutive of the crime committed nor to the identity of the assailant. Also, these minor contradictions were expected from said witnesses as they differ in their impressions of the incident and vantage point in relation to the victim and the accused-appellant.

In contrast, accused-appellant admitted being present at the scene and time of the commission of the crime but asserted that one Dodong Danieles was the perpetrator thereof. Yet, the RTC was unconvinced by the version of events as testified to by accused-appellant himself and Cerilo, because:

In the observation of the Court, the accused is inconsistent and he talked unintelligibly. His testimony is not credible and perceived to be flimsy excuses. If it is true that his wife was with him at the time of the incident and he was not involved in the stabbing, why did he have to leave the place and his wife and go to the house of his parents-in-law rather than their house? The accused should have presented his wife to corroborate his

testimony in that regard, and also his parents-in-law so the latter can testify regarding the alleged visitors, the alleged parents of one Dodong Danieleles who came to their place when the accused was also there days after the incident, telling him not to help the family of the victim.

The accused's witness, Cerilo Pelos, is the farthest of the expected witnesses for the defense. He and the accused were not acquaintances and they only came to know each other in prison where Pelos is also detained for another charge. x x x. The testimony of the witness is hazy and full of generalities, even the way he speaks, the Court notes some inconsistency in his voice and incoherence in his testimony.[26]

A closer perusal of the testimony of accused-appellant's corroborating witness, Cerilo, reveals just how incoherent and elusive he was in giving particular details about the stabbing incident:

Q:

Now, while you were there, what happened?

A:

When I arrived there, I arrived with this people having a drinking spree and I myself went to the other table near this people and this quite thin or slim guy was standing in front of them and one of these people who were having drinking spree seemed to relieve himself not to the C.R. but beside the store.

Q:

Now, you said a while ago that there were four (4) companions of the accused. Now, tell us, were all of the four (4) people that you are referring to that exclude the accused?

A:

There were four (4) of them including the accused, sir.

Q:

Now, you said that there was somebody from the group who relieved himself, is that right?

A:

Yes, sir, urinated.

Q:

And what happened when he urinated?

A:

He was confronted by that slim guy because he did not urinate in the C.R. but just beside the store.

Q:

And what happened when the confrontation took place?

A:

They exchanged words and after that th[e] slim guy left the one who urinated because it seemed that they were having an argument.

Q:

And then, what happened after that?

A:

The one who confronted left and this accused stood up went to this slim guy and talked to him.

Q:

This slim guy you are referring to is the person who urinated?

A:

Yes, sir.

Q:

And so what happened with that meeting between the accused and the slim guy that you are referring to?

A:

They were still and they were talking, sir.

Q:

Were you able to hear what they were talking about?

A:

No, sir, because the place was quite cacophonous.

Q:

And what happened after that?

A:

They were still talking when the one who urinated went back to the table.

Q:

And what happened after this person who urinated went back to the table?

A:

They conversed with the one wearing black and after the conversation he stood up and went to the slim guy.

Q:

Who stood up?

A:

The one named Dodong, the one who was in black and the one who stabbed.

Q:

So, you said that this one wearing black approached the slim guy?

A:

Yes, sir.

Q:

And what happened after that?

A:

So then, he stabbed him and the one he stabbed ran away, because he was hit.

Q:

How about the accused, where was the accused then when the man in black stabbed the slim guy?

A:

There, and they were still converging (sic) with each other with the slim guy, sir.

Q:

And what did he do after the man in black stabbed the slim [g]uy?

A:

He ran away passing by the Apollo and (while the witness was demonstrating by pressing his hand to his chest) that he was hit.

Q:

How about you, what did you do after that?

A:

When the commotion of the people subsided, I asked from the people around there about the name of the man in black and after getting the name of the said person, I called up the Police Precinct I to inform them about the incident.

x x x x

Q:

Now, this person whom you said who stabbed the victim, did you meet him before?

A:

Not yet, sir.

x x x x

Q:

As such a police asset, did you endeavor to know the personalities who were involved in that stabbing incident?

A:

Yes, sir.

Q:

Now, did you get name?

A:

I only got one name only the name of that guy in black, sir.

Q:

Why, did you interview the man in black?

A:

I asked from those who were there hanging out if ever they know that person.

Q:

Did you not follow the assailant after the stabbing incident?

A:

No sir, because after I asked about his name from the bystanders, I immediately called up.[27] (Emphases supplied.)

Cerilo failed to mention what weapon was used to stab Guilbert or describe the manner Guilbert was stabbed. Cerilo also appeared to have mixed-up the personalities in his narration. He first identified the "slim guy" to be Guilbert who reprimanded the person who urinated, but he subsequently referred to the "slim guy" as the person who urinated. Moreover, Cerilo's identification of the purported assailant of Guilbert as a certain "Dodong" is highly unreliable, given that Cerilo admitted that he learned of said assailant's name from an unidentified spectator of the stabbing incident.

The fact that it was accused-appellant who stabbed Guilbert to death on the night of May 5, 2000 was already established beyond reasonable doubt. The next question is what crime for which accused-appellant should be held liable: murder as held by the RTC or homicide as adjudged by the Court of Appeals.

We agree with the Court of Appeals that accused-appellant is guilty only of homicide in the absence of the qualifying circumstance of treachery.

In a number of cases, surveyed in *People v. Rivera*,^[28] we ruled that treachery cannot be appreciated simply because the attack was sudden and unexpected:

[W]e agree with accused-appellant that the qualifying circumstance of treachery was not established. Surveying the leading decisions on this question, in *People v. Romeo Magaro* we recently stated:

In *People v. Magallanes*, this Court held:

"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 the defense which the offended party might make. Thus, for treachery or alevosia to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. . . .

. . . where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected. As has been aptly observed the accused could not have made preparations for the attack, . . .; and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done.

Treachery cannot also be presumed from the mere suddenness of the attack. . . . In point is the following pronouncement we made in *People v. Escoto*:

We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not of itself, suffice to support a finding of alevosia, even if the purpose was to

kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. . . ."

In *People v. Bautista*, it was held:

" . . . The circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of alevosia necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself. . . ."

Applying these principles to the case at bar, we hold that the prosecution has not proven that the killing was committed with treachery. Although accused-appellant shot the victim from behind, the fact was that this was done during a heated argument. Accused-appellant, filled with anger and rage, apparently had no time to reflect on his actions. It was not shown that he consciously adopted the mode of attacking the victim from behind to facilitate the killing without risk to himself. Accordingly, we hold that accused-appellant is guilty of homicide only.[29]

Similar to *Rivera* and the cases cited therein, the prosecution in the instant case merely showed that accused-appellant attacked Guilbert suddenly and unexpectedly, but failed to prove that accused-appellant consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. As aptly observed by the Court of Appeals:

While it appears that the attack upon the victim was sudden, the surrounding circumstances attending the stabbing incident, that is, the open area, the presence of the victim's families and the attending eyewitnesses, works against treachery. If accused-appellant wanted to make certain that no risk would come to him, he could have chosen another time and place to stab the victim. Yet, accused-appellant nonchalantly stabbed the victim in a public market at 7:00 o'clock in the evening. The place was well-lighted and teeming with people. He was indifferent to the presence of the victim's family or of the other people who could easily identify him and point him out as the assailant. He showed no concern that the people in the immediate vicinity might retaliate in behalf of the victim. In fact, the attack appeared to have been impulsively done, a spur of the moment act in the heat of anger or extreme annoyance. There are no indications that accused-appellant deliberately planned to stab the victim at said time and place. Thus, we can reasonably conclude that accused-appellant, who at that time was languishing in his alcoholic state, acted brashly and impetuously in suddenly stabbing the victim. Treachery just cannot be appreciated.[30]

Lastly, we review the penalty and damages imposed by the Court of Appeals upon accused-appellant.

The penalty prescribed by law for the crime of homicide is reclusion temporal.[31] Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of reclusion temporal in its medium term which has a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of prision mayor which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, the imposition of imprisonment from twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, is in order.

As to the award of damages to Guilbert's heirs, we affirm the amounts of P50,000.00 as moral damages and

P50,000.00 as civil indemnity. Medical and burial expenses were indisputably incurred by Guilbert's heirs but the exact amounts thereof were not duly proven. So in lieu of actual damages, we award Guilbert's heirs P25,000.00 as temperate damages. Article 2224 of the Civil Code provides that "[t]emperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." [32]

WHEREFORE, the instant appeal of accused-appellant is hereby DENIED for lack of merit. The Decision dated February 14, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00270 is hereby AFFIRMED with MODIFICATION. Accused-appellant Vicente Vilbar is found GUILTY of the crime of HOMICIDE, for which he is SENTENCED to imprisonment of twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, and ORDERED to pay the heirs of Guilbert Patricio the amounts of P50,000.00 as moral damages, P50,000.00 as civil indemnity, and P25,000.00 as temperate damages.

SO ORDERED.

Corona, C.J. (Chairperson) Bersamin, Del Castillo, and Villarama, Jr., concur.

[1] Rollo, pp. 4-13; penned by Associate Justice Pampio A. Abarintos with Associate Justices Francisco P. Acosta and Amy C. Lazaro-Javier, concurring.

[2] CA rollo, pp. 14-18; penned by Judge Fortunito L. Madrona.

[3] Records, p. 2.

[4] Id. at 31.

[5] Id. at 46-47.

[6] TSN, October 16, 2000.

[7] TSN, November 14, 2000.

[8] TSN, February 6, 2001.

[9] TSN, May 9, 2001.

[10] TSN, July 4, 2001.

[11] Rollo, pp. 5-7; culled from the assailed decision of the Court of Appeals.

[12] Id. at 17.

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

[14] CA rollo, p. 38.

[15] Id. at 57-78.

[16] Id. at 91-106.

[17] Rollo, pp. 8-9.

[18] Id. at 13.

[19] Id. at 28.

[20] Id. at 30-33 and 34-37.

[21] Decasa v. Court of Appeals, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

[22] TSN, October 16, 2000, pp. 8-16.

[23] TSN, November 14, 2000, pp. 8-12.

[24] CA rollo, p. 16.

[25] These inconsistencies refer to (1) the exact number of persons drinking with accused-appellant at the adjacent store; (2) what Maria Liza was doing at the exact time of the stabbing; and (3) the accused-appellant's reaction after he stabbed the victim.

[26] CA rollo, p. 16.

[27] TSN, May 9, 2001, pp. 10-22.

[28] 356 Phil. 409 (1998).

[29] Id. at 435-436.

[30] Rollo, p. 12.

[31] Revised Penal Code, Article 249.

[32] People v. Sally, G.R. No. 191254, October 13, 2010, 633 SCRA 293, 306-307.

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