

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEOZAR DELA CRUZ Y BALOBAL, ACCUSED-APPELLANT.

G.R. No. 188353. February 16, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

Leozar Dela Cruz appeals to us the Decision[1] dated February 27, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 02562, which affirmed with modification the September 5, 2006 Decision[2] in Criminal Case No. 03-2871 of the Regional Trial Court (RTC), Branch 62 in Makati City. The RTC convicted him of the crime of murder qualified by treachery.

The Facts

In an Information[3] filed on August 11, 2003, accused-appellant Leozar Dela Cruz y Balobal was indicted for the crime of murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about the 30[th] day of April, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a samurai, with intent to kill and with treachery and evident premeditation, and with superior strength did then and there, willfully, unlawfully and feloniously hack with a samurai one VINCENT PIMENTEL Y APOON cutting the latter's neck thereby inflicting mortal wounds which directly caused his untimely death.

Upon arraignment, Elmer pleaded not guilty to the above charge.

Gleaned from the testimonies of eye-witness Sheryll C. Blanco; Carolina Agullana, the common-law wife of the victim; Police Officer 2 Ricardo Valenton Tan, who investigated the crime; and Police Inspector (P/Insp.) Dr. Benjamin Venancio J. Lara, the facts as found by the trial court and established by the prosecution are as follows:

In the evening of April 30, 2003, at about quarter past 7 o'clock, Leozar, a part-time tricycle driver, was standing about two meters from Sheryll who was with her friends Arman Taculod and Mark Anthony Medida with his wife Charissema Daton. Sheryll and her friends were passing time and seated at Mockingbird St. near Blueberry and Milkweed Sts. in Barangay Rizal, Makati City. They saw three girls arrive who handed Leozar a letter. Leozar then left and after about five to 10 minutes, Leozar emerged from an alley with a two-foot samurai in his hands. Leozar was very angry, cursing, and hacking plants with the samurai. Upon seeing what Leozar was doing, Mark Anthony and Charissema went inside their house while Sheryll and Arman moved to a store some six to seven meters away from Leozar.

Meanwhile, arriving from Blueberry St. where he left his common-law wife Carolina inside a tricycle, Vincent Pimentel turned left to Mockingbird St. Leozar then greeted Vincent and announced that the latter owes him money, at which Vincent gave Leozar PhP 50 then proceeded to the alley. When Vincent went out of the alley and returned to Mockingbird St., Leozar suddenly placed his arm around Vincent and slit Vincent's neck with the

samurai. Leozar then ran away while Vincent staggered towards Blueberry St. and fell.[4] Carolina, who was inside a tricycle, saw Vincent holding his neck and fall down bleeding. Carolina and Arman rushed Vincent to the hospital but the latter died before reaching it.[5] The cause of Vincent's death was "hemorrhagic shock secondary to an incised wound of the neck."[6]

Subsequently, on February 10, 2005 or almost two years after the killing, when Sheryll went to the Makati City Jail to visit her live-in partner, she saw Leozar--detained for the killing of Vincent--who told her not to testify against him.[7]

On the other hand, Leozar denied the charges against him and proffered the defense of alibi. His defense was that he could not have been at the scene of the killing for he was drinking with his friend Mark Magat at the latter's house located on Bougainvilla St., Barangay Pembo, Makati City, from 3:00 p.m. to 11:00 p.m. and passed the night at the latter's place as he got drunk. This alibi was corroborated by the testimonies of Mark[8] and Mark's father and grandmother, Pedro Magat[9] and Emolina Buccat.[10]

The defense likewise presented Leozar's co-detainees at the Makati City Jail, Mark Anthony and Christopher Labradores. Mark Anthony testified on seeing Mark with Vincent just prior to the killing and seeing Mark toting a samurai immediately after the killing.[11] Christopher testified that he was cooking at his house in Block 131, Lot 10, Mockingbird St., Barangay Rizal, Makati City at the time of the incident when he saw Arman carrying a samurai in his hands, and heard a commotion thereafter caused by the death of Vincent who was slashed in the throat.[12]

It must be noted that Arman Taculod died before he could testify for the prosecution. It is quite apparent that the defense tried to pin Arman as the assailant of Vincent, perhaps on account of his death. This is quite unbelievable for it was Arman who accompanied Carolina in bringing Vincent to the hospital. Upon the investigation of the police, Arman likewise executed a sworn statement[13] identifying Leozar as the assailant of Vincent but was not able to testify in court on account of his death.

Mark Anthony, however, could not, when shown his Sinumpaang Salaysay,[14] explain why he identified Leozar as the assailant of Vincent. (It must be noted that he was an eyewitness to the crime being with Mark Magat, Sheryll, and his wife Charissema when the incident happened.) He merely denied executing it and averred that all he could recall was that the police coerced him to sign a blank piece of paper with the promise that they will give him money so he can go home to Cebu.

The Ruling of the RTC

On September 5, 2006, the RTC rendered its Decision, finding Leozar guilty beyond reasonable doubt of murder attended by treachery and sentencing him to reclusion perpetua. The dispositive portion reads:

WHEREFORE, in view thereof, the Court, in finding the accused guilty of the crime of Murder qualified by the aggravating circumstance of treachery without an mitigating circumstance being proven, the Court sentences Leozar dela Cruz y Balobal to suffer the penalty of reclusion perpetua and orders him to pay moral damages of P100,000 in addition to the civil indemnity of P50,000.00.

SO ORDERED.[15]

The trial court found the testimony of eye-witness Sheryll of how the killing transpired to be factual, straightforward, and convincing. She was unwavering and certain in her identification of Leozar as the assailant of Vincent. The testimony of Vincent's common-law wife Carolina on what happened after the slashing of Vincent's throat corroborated the testimony of Sheryll. Moreover, the trial court appreciated the testimony of P/Insp. Lara on the explanation of the conclusions regarding the nature and variety of neck wounds and how they can cause

death in a victim, as in this case.

Maintaining, however, that the crime committed was only homicide, Leozar appealed the above decision to the appellate court.

The Ruling of the CA

On February 27, 2008, the CA rendered the appealed decision, affirming the findings of the RTC and the conviction of Leozar but modifying the award of damages. The fallo reads:

WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION in that the award of moral damages is reduced to PHP50,000.00 and PHP 25,000.00 is additionally awarded as exemplary damages. In all other respects the appealed Decision is AFFIRMED. With double costs against the appellant.

SO ORDERED.[16]

At the outset, the appellate court aptly noted that Leozar, in his appeal, no longer disputes the fact that he committed the killing of Vincent. The sole question remaining is whether the killing of Vincent was attended with treachery so as to qualify the crime to murder.

In rejecting Leozar's contention that there was no treachery and in affirming the factual findings of the RTC, the appellate court held that the prosecution sufficiently established all the elements of treachery as enumerated in *People v. Aguila*[17] and *People v. Recepcion*.[18] Moreover, citing *People v. Agudez*,[19] it ratiocinated that the use of the samurai with a 24-inch blade which inflicted the fatal wound and the location of the wound at the neck of Vincent demonstrated the deliberate and treacherous nature of the assault.

The CA's modified decision granted exemplary damages of PhP 25,000 following *People v. Galigao*,[20] and reduced moral damages to PhP 50,000 in conformity with *People v. Samson*.[21] Thus, the instant appeal is before us.

The Issues

Both accused-appellant Leozar and the Office of the Solicitor General (OSG), representing the People of the Philippines, opted not to file any supplemental brief, since neither are there new issues raised nor are there supervening events transpired. They correspondingly filed their respective Manifestation and Motion[22] and Manifestation,[23] to the effect that the Brief for the Accused-Appellant[24] and Brief for the Appellee[25] filed before the CA are adopted in this appeal.

Leozar raises the same assignment of errors as in his Brief, to wit: first, that the courts a quo erred in appreciating the qualifying aggravating circumstance of treachery; and second, that the courts a quo gravely erred in convicting him of murder instead of homicide.

The Court's Ruling

The appeal is without merit.

Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

ART. 248. Murder.--Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to

weaken the defense, or of means or persons to insure or afford impunity;

- In consideration of a price, reward, or promise;

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

- On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

- With evident premeditation;

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the offender killed the victim, (2) through treachery, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are:

- That a person was killed.

- That the accused killed him.

- That the killing was attended by any of the qualifying circumstances mentioned in Art. 248.

- The killing is not parricide or infanticide.[26]

Here, the fact of the death of Vincent Pimentel is undisputed, that it is neither parricide nor infanticide, and that Leozar killed him. This was established by the trial and appellate courts. In fact, in his appeal before the CA and the one at bench, Leozar solely questions the appreciation of the qualifying aggravating circumstance of treachery, which, if not appreciated, would make the offense he committed merely homicide instead of murder.

What is, thus, before us is the same core issue resolved by the CA on whether the killing of Vincent Pimentel was attended by treachery. In qualifying the crime to murder, the trial court correctly appreciated, as affirmed by the CA, the qualifying aggravating circumstance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[27] The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[28] For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.[29]

Thus, the issue of the presence of treachery hinges on the account of eyewitness Sheryll. She was not only certain and unwavering in her positive identification of accused-appellant Leozar as the assailant of Vincent Pimentel, but her testimony, aptly noted by the courts *a quo*, was factual, straightforward, and convincing on how the murder transpired. To quote directly from her testimony:

Fiscal Odronia:

Was accused Leozar Dela Cruz already holding a samurai when he walked to the alley?

Sheryll:

None yet, sir.

Q:

So, you're telling this Honorable court that it was only after he came out from the alley that you saw him holding a samurai?

A:

Yes, sir.

x x x x

Q:

And the place where you were, could you still see Leozar Dela Cruz?

A:

Yes, sir.

x x x x

Q:

Do you know how much Vic Pimentel paid Leozar Dela Cruz?

A:

Fifty Pesos (Php50.00), sir.

Q:

How did you get to know that Vic Pimentel paid the amount of Php50.00 to Leozar Dela Cruz?

A:

We heard it, sir.

Q:

Was Leozar Dela Cruz still holding the samurai which you earlier claimed he was holding when Vic Pimentel paid him Php50.00?

A:

Yes, sir.

Q:

When Vic Pimentel paid Php50.00 Leozar Dela Cruz, did they converse afterwards?

A:

No more, sir, then he proceeded to Mocking Bird [sic] Street.

Q:

Immediately after Vic Pimentel paid Leozar Dela Cruz, what did Vic Pimentel do?

A:

He walked towards at [sic] Milkweed Street.

Q:

So, are you telling this Honorable Court that he went away from where Leozar Dela Cruz was at that time?

A:

Yes, sir, because he went somewhere.

Q:

So, when Vic Pimentel walked away from Leozar Dela Cruz, what else happened, if any?

A:

When he emerged from the alley (eskinita) Leozar put his arms around him and then he slit (ginilitan) his neck.

Q:

What did Leozar Dela Cruz use in slashing the neck of Vincent Pimentel?

A:

Samurai, sir.

Q:

Earlier you mentioned that Vic Pimentel entered an alley, is that correct?

A:

Yes, sir.

Q:

And when he emerged from the alley Leozar Dela Cruz in the vernacular "inakbayan siya" and afterwards slashed his neck, is that correct?

A:

Yes, sir.

x x x x

Q:

Are you telling this Honorable Court that the place where Leozar Dela Cruz slashed the neck of Vincent Pimentel is precisely the same place where Vincent Pimentel paid Leozar Dela Cruz Php50.00?

A:

Yes, sir.

Q:

With that answer would you mind then to reconcile your earlier answer that after Vincent Pimentel paid Leozar Dela Cruz fifty pesos he walked away?

A:

He left, sir, then when he emerged from the alley while he was walking Leozar approached him and then it also happened there almost at exactly at the same place where he paid.

x x x x

Q:

When Vincent Pimentel paid Leozar Dela Cruz the amount of fifty pesos, did they quarrel?

A:

No, sir.

Q:

Immediately before Leozar Dela Cruz in the vernacular "inakbayan si Vincent Pimentel" did they quarrel?

A:

No, sir.

Q:

So, after Leozar Dela Cruz slashed the neck of Vincent Pimentel, what else happened, if any?

A:

After that, he ran and Vic was still walking towards Blueberry Street and afterwards he just fell.

Q:

How about the samurai which you claimed Leozar Dela Cruz using slashing the neck of Vincent Pimentel, did Leozar Dela Cruz taking with him when he [ran] away?

A:

Yes, sir.

Q:

How far were you in relation to the place where Leozar Dela Cruz in the vernacular "inakbayan si Vincent Pimentel" and slashed his neck?

A:

From my place to where you are seated.

FISCAL ODRONIA: May we ask if the defense is willing to stipulate that the distance is around two (2) to three (3) meters, Your Honor.

ATTY. PAGGAO: We stipulate, Your Honor.

COURT:

Noted.

Fiscal Odronia: By the way, you mentioned about samurai could you mind to describe to the Honorable Court how long that samurai is?

A:

Around twenty four (24) inches.

COURT:

What else did you notice?

A:

No more, Your Honor.

x x x x

Fiscal Odronia: Earlier you mentioned and you actually identified the person by the name of Leozar Dela Cruz, is that correct?

A:

Yes, sir.

Q:

My question is, how is this Leozar Dela Cruz related to the Leozar Dela Cruz, which you claimed you saw in the vernacular "inakbayan si Vincent Pimentel" and slashed Vincent Pimentel's neck?

A:

Yes, sir.

Q:

And is this Leozar Dela Cruz present in the courtroom today?

A:

Yes, sir.

Q:

And can you identify if he is indeed present in this courtroom?

A:

Yes, sir.

Q:

Please point to him if he is indeed present?

A:

Yes, sir.

INTERPRETER:

Witness tapped the shoulder of the accused and when asked his name he identified himself as Leozar Dela Cruz.[30] (Emphasis supplied.)

From the foregoing transcript, it is clear that the attack was sudden affording the victim absolutely no opportunity to defend himself, much less to retaliate. The above testimony was not at all rebutted by the defense. And more revealing is the fact that the appeal of Leozar merely focuses on the appreciation of the qualifying aggravating

circumstance of treachery, which for all intents and purposes amounts to owning up to the killing of Vincent Pimentel.

The fact that Leoar and Vincent did not quarrel prior to the killing is indicative of the treachery employed by Leoar. After Vincent paid Leoar some money, he left and went inside the alley. When Vincent came back to Mockingbird St. from the alley, Leoar deliberately employed means with treachery affording Vincent no opportunity to defend himself, i.e., Leoar draped his arm around Vincent and slash/slit his neck using a 24-inch bladed samurai. The fatal neck wound caused Vincent's death, described in his death certificate as "hemorrhagic shock secondary to an incised wound of the neck." All told, the victim was unaware of the imminent attempt on his life, and was not in a position to defend himself. Clearly, treachery was present in this killing.

Finally, as regards the damages awarded by the CA, we find them in order. Civil indemnity ex delicto is mandatory and is granted to the heirs of the victim without need of any evidence or proof of damages other than the commission of the crime.[31] Based on current jurisprudence, the award of civil indemnity ex delicto of PhP 50,000 in favor of the heirs of Vincent Pimentel is in order.[32] The CA also correctly awarded moral damages in the amount of PhP 50,000 in view of the violent death of the victim and the resultant grief to his family.[33]

Moreover, if a crime is committed with an aggravating circumstance, either qualifying or generic, an award of PhP 30,000 as exemplary damages is justified under Art. 2230 of the Civil Code. Besides, the entitlement to moral damages having been established, the award of exemplary damages is proper.[34]

WHEREFORE, premises considered, we AFFIRM with MODIFICATION the CA's February 27, 2008 Decision in CA-G.R. CR No. 02562, in that the award of exemplary damages is increased to PhP 30,000.

No pronouncement as to costs.

SO ORDERED.

Corona, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Rollo, pp. 2-19. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Estela M. Perlas-Bernabe.

[2] CA rollo, pp. 19-30. Penned by Judge Selma Palacio Alaras.

[3] Id. at 9.

[4] TSN, August 3, 2005, pp. 7-93 and October 3, 2005, pp. 3-19, testimony of Sheryll C. Blanco.

[5] TSN, April 11, 2005, pp. 3-22, testimony of Carolina Agullana.

[6] Records, p. 110, Death Certificate of Vincent Pimentel.

[7] TSN, August 3, 2005, pp. 63-66, testimony of Sheryll C. Blanco.

[8] TSN, May 15, 2003, pp. 5-23, testimony of Mark Magat.

[9] TSN, April 3, 2006, pp. 4-39, testimony of Pedro Magat.

[10] TSN, May 8, 2008, pp. 20-35, testimony of Emolina Buccat.

[11] TSN, April 17, 2006, pp. 3-61, testimony of Mark Anthony Medida.

[12] TSN, May 8, 2005, pp. 4-18, testimony of Christopher Labradores.

- [13] Records, pp. 9-11.
- [14] Id. at 12-13, Exhibit "P."
- [15] CA rollo, p. 30.
- [16] Rollo, p. 18.
- [17] G.R. No. 171017, December 6, 2006, 510 SCRA 642, 659.
- [18] G.R. Nos. 141943-45, November 13, 2002, 391 SCRA 558, 590.
- [19] G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692.
- [20] G.R. Nos. 140961-63, January 14, 2003, 395 SCRA 195, 209.
- [21] G.R. No. 124666, February 15, 2002, 377 SCRA 25.
- [22] Rollo, pp. 34-36, dated October 5, 2009.
- [23] Id. at 37-38, dated October 8, 2009.
- [24] CA rollo, pp. 39-56.
- [25] Id. at 75-96.
- [26] 2 L.B. Reyes, THE REVISED PENAL CODE CRIMINAL LAW 469 (16[th] ed., 2006).
- [27] People v. Amazan, G.R. Nos. 136251 & 138606-07, January 16, 2001, 349 SCRA 218, 233; People v. Bato, G.R. No. 127843, December 15, 2000, 348 SCRA 253, 261.
- [28] People v. Albarido, G.R. No. 102367, October 25, 2001, 368 SCRA 194, 208; citing People v. Francisco, G.R. No. 130490, June 19, 2000, 333 SCRA 725, 746.
- [29] People v. Amazan, *supra* note 27.
- [30] TSN, August 3, 2005, pp. 13-37.
- [31] People v. Ausa, G.R. No. 174194, March 20, 2007, 518 SCRA 602, 617.
- [32] Id.; España v. People, G.R. No. 163351, June 21, 2005, 460 SCRA 547, 555-556.
- [33] People v. Tubongbanua, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 743.
- [34] Frias v. San Diego-Sison, G.R. No. 155223, April 3, 2007, 520 SCRA 244, 258.

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