

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ABAIGAR, ACCUSED-APPELLANT.

G.R. No. 199442. April 07, 2014

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

An Information[1] was filed charging appellant Francisco Abaigar with the crime of murder, the accusatory portion of which reads:

That on or about the 11[th] day of July 2001, at about 9:00 o'clock in the evening, at Barangay Rosalim, Municipality of San Jorge, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, without any justifiable cause, with intent to kill, and by means of treachery and evident premeditation, attack, assault and use personal violence upon the person of JOSEPH GABUYA by shooting him with the use of a homemade shotgun locally known as "Bardog", which the accused had conveniently provided himself for the purpose, hitting the victim's left side of the face and behind the head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW.[2]

During his arraignment on August 4, 2004, appellant pleaded not guilty to the charge.[3]

On December 6, 2007, the trial court rendered its Judgment[4] finding appellant guilty as charged. The dispositive portion of the Judgment reads:

WHEREFORE, accused Francisco Abaigar is hereby found GUILTY beyond reasonable doubt of the crime of Murder and is hereby meted the penalty of Reclusion Perpetua.

Said accused shall also indemnify the heirs of deceased Joseph Gabuya death indemnity in the amount of Php75,000.00, moral damages of Php50,000.00 and exemplary damages in the amount of Php20,000.00.

In line with Sec. 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to immediately transmit the living body of accused Francisco Abaigar to the New Bilibid Prison, Muntinlupa City, Metro Manila, where he may remain to be detained.

In the service of his sentence he shall be credited for the period he was under preventive detention, provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code as amended.

SO ORDERED.[5]

The trial court lent credence to the testimony of prosecution witness Relecita del Monte (Relecita) that at about 9 o'clock in the evening of July 11, 2001, at a distance of about 3½ meters, she saw appellant shoot Joseph Gabuya (Gabuya) from behind hitting the victim at the back of his head. The trial court disregarded appellant's denial and

alibi. It found incredulous appellant's claim that he returned to sleep immediately after hearing bursts of gunshots near his house and his disavowal of any knowledge about the death of Gabuya whose house is just 30 arms length away from his house. His flight after the incident was considered an indication of guilt. The trial court also found that treachery attended the killing as the victim was merely in the act of opening the front door of his house without any inkling of the impending attack coming from behind.

Aggrieved, appellant appealed before the Court of Appeals. In a Decision[6] dated June 22, 2010, the appellate court affirmed in full the Judgment of the trial court, viz:

WHEREFORE, the Judgment of the Regional Trial Court (RTC), Branch 41, of Gandara, Samar, in Criminal Case No. 02-0100 finding accused-appellant, Francisco Abagar, guilty beyond reasonable doubt of the crime of Murder is AFFIRMED in toto.

SO ORDERED.[7]

Hence, this appeal.

In a Resolution[8] dated January 25, 2012, we required both parties to submit their Supplemental Briefs but they opted to adopt the briefs they filed before the Court of Appeals.

Appellant basically argues that the trial court and the Court of Appeals erred in lending credence to the testimony of eyewitness Relecita. Appellant claims that Relecita could have forewarned the victim of his presence if indeed Relecita saw him in the vicinity; and that it was improbable that Relecita could see him considering the poor lighting condition of the place.

We are not persuaded.

It is settled that the assessment of the credibility of witnesses is within the province and expertise of the trial court. In this case, we find no cogent reason to depart from the findings of the trial court. The court below categorically found that Relecita had no ill motive to testify against appellant; she "has no reason to impute on him the heinous crime of murder had she not witnessed the actual killing of the victim." [9] Similarly, the appellate court found Relecita to have "positively identified the appellant as the perpetrator of the crime." [10] Also, the failure of Relecita to warn the victim of the appellant's impending attack should not be taken against her. Neither should it be taken as a blemish to her credibility.

As regards the visibility, the appellate court correctly ruled that the distance between Relecita and appellant, the light coming from a 50-watt bulb on the street post about eight meters away from the place where the victim was shot, the light coming from passing vehicles, and the light coming from the kerosene lamp in the house of the appellant are enough to illuminate the place and for Relecita to positively identify the appellant.

We agree with the trial court and the Court of Appeals that treachery attended the commission of the crime. Records show that the victim was about to enter his house when suddenly he was shot from behind by the appellant hitting him at the back of his head. The victim suffered five gunshot wounds, four of which proved fatal.

Considering the qualifying circumstance of treachery, appellant was correctly found guilty of murder; there being no aggravating circumstance other than the qualifying circumstance of treachery, both the trial court and the appellate court correctly sentenced appellant to reclusion perpetua pursuant to Article 248 of the Revised Penal Code. However, he is not eligible for parole.[11]

As regards the damages awarded, we note that the trial court did not award actual damages. In lieu thereof, the heirs of the victim are entitled to an award of temperate damages in the amount of P25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved." [12] "This

award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification.”[13] Exemplary damages must likewise be increased to P30,000.00 in line with prevailing jurisprudence. In addition, all damages awarded shall earn interest at the rate of 6% per annum from finality of this judgment until fully paid.

WHEREFORE, the appeal is DISMISSED. The June 22, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00866 which affirmed in full the December 6, 2007 Judgment of the Regional Trial Court of Gandara, Samar, Branch 41, finding appellant Francisco Abaigar guilty beyond reasonable doubt of the crime of murder is AFFIRMED with MODIFICATIONS that appellant is without eligibility for parole; he is ordered to pay the heirs of the victim the amount of P25,000.00 as temperate damages; and the award of exemplary damages is increased to P30,000.00. In addition, interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Records, pp. 4-5.

[2] Id. at 4.

[3] Id. at 62.

[4] Id. at 306-312; penned by Presiding Judge Rosario B. Bandal.

[5] Id. at p. 312.

[6] CA rollo, pp. 72-83; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez.

[7] Id. at 82.

[8] Rollo, pp. 27-28.

[9] Records, p. 310.

[10] CA rollo, p. 78.

[11] Section 3 of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) provides:

Person convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[12] People v. Lucero, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 543.

[13] People v. Beduya, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289, citing People v. Carillo, 388 Phil. 1010, 1025 (2000).

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