

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTORIANO VILLAR @ BOY, A CCUSED-APPELLANT.

G.R. No. 202708. April 13, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In an Information dated September 21, 1987, Wilson Suitos (Wilson Vic Suitos (Vic), Alvaro Suitos (Alvaro) and appellant Victoriano Villar @ Boy (appellant), were charged with the murder of Jesus Ylarde. The case was docketed as Criminal Case No. T-846.

Among the accused, Alvaro was the first to be apprehended and tried. In a Decision[1] dated August 12, 1988, the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 38, found Alvaro guilty of murder.[2] Alvaro appealed all the way to this Court docketed as G.R. No. 95951. On March 24, 1993, this Court rendered its Decision[3] affirming his conviction, thus:

From the foregoing, the conviction of appellant must be upheld.

After reviewing the records of the case, We find that a modification in the indemnity awarded is in order. Actual damages were proved in the amount of P11,575 and not P20,000.00 as found by the trial court. In determining the loss of earning capacity of 49[-]year old Ylarde, We use the formula for life expectancy adopted in *Davila v. CA*: $2/3 \times (80-49) =$ life expectancy of 20 years. This figure is multiplied by the annual net income of the deceased (P16,000) equivalent to P320,000 to fix the amount of loss of earning capacity. Death indemnity in the amount of P50,000.00 is also awarded.

The award of indemnity to the heirs of Jesus Ylarde is modified and accused is hereby ordered to pay: actual damages in the amount of P11,575; death indemnity in the amount of P50,000.00; loss of earning capacity in the amount of P320,000.00; and moral damages in the amount of P20,000.00 without subsidiary imprisonment in case of insolvency.

WHEREFORE, the decision appealed from is hereby AFFIRMED subject to the modifications stated above. Costs against the accused-appellant.

SO ORDERED.[4]

Apprehended next was Wilson who pleaded not guilty during his arraignment.[5] On January 30, 1996, the RTC rendered its Decision[6] likewise finding him guilty of murder.[7] Wilson appealed his conviction. On March 31, 2000, this Court, in G.R. No. 125280 rendered its Decision,[8] disposing thus:

WHEREFORE, the assailed Decision of the trial court of Lingayen, Pangasinan, finding accused-appellant WILSON SUITOS GUILTY of MURDER and ordering him to indemnify, jointly and severally with his co-accused Alvaro Suitos, the heirs of the deceased the sum of P11,575.00 for actual damages, P320,000.00 for loss of earnings of the victim and P50,000.00 for death indemnity is AFFIRMED with the MODIFICATION that the amount of moral damages is increased to P50,000.00. Costs against accused-appellant.

SO ORDERED.[9]

Next to be apprehended and tried was appellant.

Ruling of the Regional Trial Court

On arraignment, appellant entered a plea of not guilty.[10] Trial on the merits thereafter ensued. In a Decision[11] dated August 8, 2008, the RTC convicted appellant of murder based on the eyewitness accounts of the victim's daughters. Juvy Ylarde (Juvy) testified that at around 6 o'clock in the evening of September 5, 1987, she and her father were sitting in front of their store in Umingan, Pangasinan, when Alvaro, Wilson and appellant suddenly emerged from the ice cream parlor located in front of their store. Alvaro shot her father first hitting the latter on his forehead and causing him to fall down. Although the first shot proved fatal, Wilson and appellant still fired shots at the victim. Thereafter, the trio fled from the crime scene followed by Vic who was driving a tricycle. Vivian Ylarde corroborated her sister's testimony. She claimed that at the time of the shooting, she was studying inside their store when several shots rang out.

The RTC did not believe appellant's alibi that he was in Cubao, Quezon City at the time of the incident for being uncorroborated and self-serving, and especially in view of his positive identification by the deceased's daughters. The RTC also considered appellant's flight. It noted that although he knew of the charge against him as early as 1987, appellant did not surrender; instead, he went into hiding and was apprehended only after almost 18 years. Finally, the RTC held that the killing was qualified by treachery.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, accused VICTORIANO VILLAR @ Boy is hereby found GUILTY beyond reasonable doubt of murder qualified by treachery under Art. 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of reclusion perpetua, and is ordered to indemnify, jointly and severally with his co-accused Alvaro Suitos and Wilson Suitos, the heirs of the deceased Jesus Ylarde the sum of P11,575.00 as actual damages, P320,000.00 for loss of earnings of the victim, P50,000.00 for death indemnity and P50,000.00 for moral damages. Costs against the accused.

SO ORDERED.[12]

Ruling of the Court of Appeals

In his brief filed before the CA, appellant contended that the prosecution failed to prove that he conspired with Alvaro and Wilson. He argued that based on the testimony of Juvy, appellant pointed his gun at her (Juvy) not at the victim; however, when he fired, it was the victim who was hit.

The CA however found appellant's contentions without merit. In its January 31, 2012 Decision,[13] the CA affirmed the RTC's judgment in full. It concurred in the findings of the RTC that there was conspiracy among the assailants, i.e., - they simultaneously emerged from the ice cream store; successively shot the victim; and fled from the crime scene together. The CA also disregarded appellant's alibi that he was in Quezon City at the time of the shooting for being uncorroborated and self-serving, and in view of his positive identification by the deceased's daughters. Moreover, his unexplained flight (and hiding for 18 years) was considered an indication of guilt. The CA also found the qualifying circumstance of treachery to have attended the killing.

The dispositive portion of the assailed CA Decision reads as follows:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED. The assailed Decision dated August 8, 2008 of the Regional Trial Court (RTC), Lingayen, Pangasinan, Branch 38, is hereby AFFIRMED in toto.

SO ORDERED.[14]

Hence, this appeal. In a Resolution[15] dated October 10, 2012, we required the parties to submit their Supplemental Briefs. However, both parties opted not to file their briefs.

The appeal lacks merit.

The courts below correctly found appellant guilty of murder. It has been sufficiently established that appellant, in conspiracy with his co-accused, treacherously shot and killed the victim, Jesus Ylarde. The Court, in G.R. No. 95951 and G.R. No. 125280 had already found his co-accused -Alvaro and Wilson - guilty of murder. Appellant was thus properly sentenced to suffer the penalty of reclusion perpetua. Moreover, appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines.

Anent the damages awarded, we find the award of moral damages in the amount of P50,000.00 correct. However, the award of civil indemnity must be increased from P50,000.00 to P75,000.00 in line with prevailing jurisprudence. Moreover, the heirs of the deceased are entitled to an award of exemplary damages in the amount of P30,000.00. As regards the award of actual damages in the amount of P11,575.00, the same must be modified. As we held in *People vs. Villanueva*,[16] "when actual damages proven by receipts during the trial amount to less than P25,000.00, as in this case, the award of temperate damages of P25,000.00 is justified in lieu of actual damages of a lesser amount." Thus, we delete the award of P11,575.00 as actual damages; in lieu thereof, we grant temperate damages in the amount of P25,000.00. In addition, all damages awarded shall earn interest at the rate of 6% per annum from date of finality of this judgment until fully paid.

However, the RTC and the CA erred in the award of loss of earning capacity. Records show that the widow of the deceased testified that her husband "has a net income of P16,000.00 a year as farmer, sari-sari store owner, driver and operator of two tricycles and caretaker of Hacienda Bancod." [17] Thus, lost earnings in the amount of P320,000.00 was awarded computed as follows: " $\frac{2}{3} \times (80-49)$ =life expectancy of 20 years . . . multiplied by the annual net income of the deceased (P16,000.00), equivalent to P320,000.00." [18] However, it is also on record that the widow of the deceased subsequently testified that "before his death, her husband earns P50.00 a day as tricycle driver and P150.00 from their sari-sari store and had a net income of P4,000.00 a month. As a farmer her husband produces 270 cavans of palay a year with a price of P135.00 a cavan weighing 50 kilos." [19]

Preliminarily, we note that the indemnity for lost earnings was erroneously computed. It is already settled jurisprudence that "the formula that has gained acceptance over time has limited recovery to net earning capacity; $x \times x$ [meaning], less the necessary expense for his own living." [20] Here, the computation for lost income of P16,000.00 did not take into consideration the deceased's necessary expenses.

Moreover, it was explained in *Da Jose v. Angeles* [21] that -

Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

Corollarily, we also held in *OMC Carriers, Inc. v. Nabua*[22] that -

For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.

Finally, in *People v. Gonza*,[23] we declared that -

Finally, the trial court was correct in not awarding damages for lost earnings. The prosecution merely relied on Zenaida Mortega's self-serving statement, that her husband was earning P5,000 per month as a farmhand. Compensation for lost income is in the nature of damages and requires due proof of the amount of the damages suffered. For loss of income due to death, there must be unbiased proof of the deceased's average income. Also, the award for lost income refers to the net income of the deceased, that is, his total income less average expenses. In this case, Zenaida merely gave a self-serving testimony of her husband's income. No proof of the victim's expenses was adduced; thus, there can be no reliable estimate of his lost income.

In fine, it is settled that the indemnity for loss of earning capacity is in the form of actual damages; as such, it must be proved by competent proof, "not merely by the self-serving testimony of the widow." [24] By way of exception, damages for loss of earning capacity may be awarded in two instances: 1) the victim was self-employed and receiving less than the minimum wage under the current laws [25] and no documentary evidence available in the decedent's line of business; and, 2) the deceased was employed as a daily wage worker and receiving less than the minimum wage. [26] Here, the award for loss of earning capacity lacks basis. For one, the widow of the deceased gave conflicting testimonies. At first, she testified that her husband "has a net income of P16,000.00 a year as farmer, sari-sari store owner, driver and operator of two tricycles and caretaker of Hacienda Bancod." [27] Next, she claimed that "before his death, her husband earns P50.00 a day as tricycle driver and P150.00 from their sari-sari store and had a net income of P4,000.00 a month. As a farmer her husband produces 270 cavans of palay a year with a price of P135.00 a cavan weighing 50 kilos." [28] Aside from giving inconsistent statements, the amounts mentioned were arbitrary and were not proved to be below the prescribed minimum wage. Plainly, this case does not fall under any of the exceptions exempting the submission of documentary proof. To reiterate, "[a]ctual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts." [29] In fine, the award of loss of earning capacity must be deleted for lack of basis.

ACCORDINGLY, we ADOPT the findings of the trial court as affirmed by the Court of Appeals. The assailed January 31, 2012 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 03517 finding appellant Victoriano Villar @ Boy GUILTY beyond reasonable doubt of the crime of murder is AFFIRMED with MODIFICATIONS that appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines; the award for loss of earning capacity is deleted for lack of basis; the award of civil indemnity is increased to P75,000.00; appellant is ordered to pay exemplary damages in the amount of P30,000.00; the award of actual damages is deleted; in lieu thereof, temperate damages in the amount of P25,000.00 is awarded; and all damages awarded shall earn interest at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[1] Records, pp. 85-95; penned by Judge Antonio M. Belen.

[2] The dispositive portion of the Decision reads:

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, this Court finds and holds the accused, Alvaro Suitos alias Barang guilty of the crime of MURDER as charged in the information filed against him beyond peradventure of doubt, and pursuant to law, hereby sentences said accused to serve the penalty of Reclusion Perpetua (Life Imprisonment) and to pay the costs. The accused is further ordered to indemnify the heirs of the deceased, Jesus Ylardo, the sum of twenty thousand (P20,000.00) pesos as actual damages; two hundred thousand (P200,000.00) pesos as the amount of support they receive or would have received from the deceased had he not died as a result of the killing and thirty thousand (P30,000.00) pesos as moral damages without subsidiary imprisonment in case of insolvency.

SO ORDERED. (Id. at 94-95.)

[3] Id. at 121 -136; penned by Associate Justice Rodolfo A. Nocon and concurred in by Chief Justice Andres R. Narvasa and Associate Justices Teodoro R. Padilla, Florenz D. Regalado and Jose C. Campos, Jr. See also 220 SCRA 419.

[4] People v. Suitos, G.R. No. 85951, March 24, 1993, 220 SCRA419, 430-431. This Decision became final and executory on April 19, 1993. See records, p. 120.

[5] Records, p. 145.

[6] Id. at 260-273; penned by Judge Antonio M. Belen.

[7] The dispositive portion of the Decision reads:

In view of all the foregoing considerations, the court finds and holds the accused, Wilson Suitos, guilty beyond reasonable doubt of the crime of Murder as charged in the information filed against him defined and penalized under Article 248 of the Revised Penal Code and conformable thereto, pursuant to law, hereby sentences said accused to suffer the penalty of Reclusion Perpetua and to pay the costs.

The court further orders the accused Wilson Suitos to indemnify jointly and severally with his co-accused Alvaro Suitos (P11,575.00) Pesos as actual damages; Three Hundred Twenty Thousand (P320,000.00) Pesos as loss of earnings of the victim; Fifty Thousand (P50,000.00) Pesos as death indemnity and Twenty Thousand (P20,000.00) Pesos as moral damages without subsidiary imprisonment in case on insolvency.

Meantime, let the record of this case be sent to the files with respect to the accused Boy Villar, considering that up to the present he is not yet arrested, without prejudice on the part of the prosecution to prosecute said accused after he is apprehended.

Let the corresponding alias warrant of arrest be issued against Boy Villar to be served by the PNP, Umingan, Pangasinan, CIS, Urdaneta and NBI, Dagupan City.

SO ORDERED. (Id. at 272-273)

[8] Id. at 298-307; penned by Associate Justice Josue N. Bellosillo and concurred in by Associate Justices Vicente V. Mendoza, Leonardo A. Quisumbing, Arturo B. Buena and Sabino R. De Leon, Jr.

[9] Id. at 306.

[10] Id. at 344.

[11] Id. at 417-426; penned by Judge Teodoro C. Fernandez.

[12] Id. at 425-426.

[13] CA rollo, pp. 189-210; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Manuel M. Barrios.

[14] Id. at 209-210.

[15] Rollo, pp. 30-31.

[16] 456 Phil. 14, 29 (2003).

[17] Records, p. 89.

[18] Id. at 134. This amount was adopted by the Court in G.R. No. 125280.

[19] Id. at 266.

[20] Philtranco Service Enterprises, Inc. v. Paras, G.R. No. 161909, April 25, 2012, 671 SCRA 24, 45.

[21] G.R. No. 187899, October 23, 2013, 708 SCRA 506, 519-520.

[22] G.R. No. 148974, July 2, 2010, 622 SCRA 624, 640.

[23] 461 Phil. 167, 187(2003).

[24] Serra v. Mumar, GR. No. 193861, March 14, 2012, 668 SCRA 335, 347.

[25] Id.

[26] Da Jose v. Angeles, supra note 20.

[27] Records, p. 89.

[28] Id. at 266.

[29] Tan v. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011, 639 SCRA 471, 481 citing Viron Transportation Co., Inc. vs. Delos Santos, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

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