PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO ZABALA y BALADA AND ROMEO ALBIUS JR. y BAUTISTA, ACCUSED-APPELLANTS.

G.R. No. 203087. November 23, 2015

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is an appeal from the Decision[1] dated February 2, 2012 of the Court of Appeals (Of) in CA-G.R. CR-HC No. 04847 which affirmed in toto the Judgment[2] dated September 29, 2010 of the Regional Trial Court (RTC), Branch 38, Daet, Camarines Norte finding appellants Edgardo B. Zabala and Romeo B. Albius, Jr. guilty of the crime of murder and sentenced them to suffer the penalty of reclusion perpetua.

In an Information[3] dated April 22, 2004, appellants were charged with murder before the RTC of Daet, Camarines Norte, the accusatory portion of which reads as follows:

> That between 9:30 to 10:00 in the evening of December 12, 2003, at Purok 3, Mangcamagong, Basud, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and mutually helping each other, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously box and smash with a stone the face of one Joseph Agapay y Redondo, inflicting upon him mortal injuries which caused his death, to the damage and prejudice of the heirs of the victim.
>
> CONTRARY TO LAW.[4]

Appellant Edgardo was arraigned on July 27, 2004,[5] while appellant Romeo was arraigned on June 21, 2005.[6] Both pleaded not guilty to the crime charged.

The prosecution presented Joseph Agapay Sr., the victim's father, Aldrin Zabala and Cesar Lopez, Joseph's friends, and Dr. Victoria B. Gonzales, the Municipal Health Officer of Basud, Camarines Norte.

The evidence for the prosecution showed that at 8 o'clock in the evening of December 12, 2003, the victim, Joseph Agapay (Joseph), Cesar Lopez (Cesar), Emmanuel Rumbawa (Emmanuel), Roland Albius (Roland) and Aldrin Zabala (Aldrin) were exchanging stories at the house of their friend, Catherine Perez, located in Barangay Site, Mangcamagong, Basud, Camarines Norte.[7] At 9 o'clock in the evening, Joseph told his friends that he was going home, and the latter offered to accompany him on his way home. Joseph declined but his friends still decided to follow him after five minutes.[8] While Joseph was walking along the road, appellants Romeo and Edgardo suddenly appeared and followed Joseph from behind.[9] When Joseph's friends were about 15 to 20 meters away from him, the group heard the latter's outcry[10] and saw appellant Romeo place his left hand on Joseph's shoulder and instantly box the latter,[11] while appellant Edgardo held Joseph's hands from behind.[12] Joseph struggled to free himself from appellant Edgardo's hold until they fell down the nearby creek.[13] Despite Joseph's plea, appellant Edgardo continued throwing fist at Joseph[14] and ordered him to shut up.[15]

Appellant Romeo, who was then standing beside the creek, saw Joseph's friends looking and approached them and told them to just go home and not to get involved,[16] hence, the group then all ran away from the crime scene.[17] However, Aldrin and Roland immediately returned to the crime scene and saw appellants mauling Joseph who then fell to the ground unconscious.[18] Appellant Edgardo then smashed Joseph's head with a stone.[19] Aldrin and his friends reported the incident to the police the following day and executed their respective sworn affidavits.

Both Aldrin and Cesar testified that they know appellants as they are neighbors and friends. Cesar also declared that he would go to appellants' houses three or four times a week talking to them or their siblings.[20]

Dr. Victoria B. Gonzales conducted a post mortem examination on Joseph's body and testified on the death certificate[21] she issued where it was indicated that Joseph died of intracranial hemorrhage secondary to multiple depressed fractures of the skull with brain hermation. She said that the fractures of the skull with brain hermation was caused by the pressure exerted on the victim's skull caused by a hard object such as a stone.[22]

Appellant Romeo denied knowing the victim[23] and claimed that he was with his wife and child at their house in Lalawigan, Mercedes which is around 4 1/2 hours drive away from Barangay Mangcamagong.[24] He admitted knowing prosecution witness Aldrin[25] and that he had been in Mangcamagong several times because his parents live there.[26] Appellant Edgardo also denied knowing Joseph.[27] He claimed that on the night of the incident, he was tending his store at Barangay Mangcamagong;[28] and that he knew prosecution witnesses Aldrin and Cesar because they live in the same barangay.[29] Geronimo Credo corroborated Edgardo's alibi saying that he and a companion were having a drinking spree at appellant Edgardo's balcony while the latter was watching the store.

On September 29, 2010, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, finding both accused EDGARDO ZABALA y BALADA and ROMEO BAUTISTA y ALBIUS guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Art. 248 of the Revised Penal Code, they are hereby sentenced to reclusion perpetua.
>
> The accused, jointly and severally, arc likewise ordered to pay the heirs of Joseph Agapay Jr. of the following:
>
> (a) civil indemnity -
>
> P 75,000.00
>
> (b) moral damages -
>
> P 50,000.00
>
> (c) exemplary damages
>
> P 25,000.00
>
> P150,000.00
>
> SO ORDERED.[30]

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The RTC found that although it was dark at the time the crime was committed, prosecution witnesses were able to identify appellants as the perpetrators of the crime charged; that conspiracy between appellants was established and that treachery attended the commission of the crime.

On September 30, 2010, the RTC issued a Supplemental Judgment[31] where the name of the accused Romeo Bautista y Albius, Jr. written in the caption of the case, the opening sentence, as well as the dispositive portion of the judgment, was corrected to Romeo Albius Jr. y Bautista.

Appellants appealed their case before the CA. After the filing of their respective briefs, the CA submitted the case for decision.

On February 2, 2012, the CA rendered its Decision which affirmed in toto the RTC judgment.

Appellants filed this appeal seeking to annul and set aside their conviction. We required the parties to file supplemental briefs if they so desire. Both parties manifested that they are adopting the briefs filed in the CA.

Appellants are now before us for a final review of their conviction contending that the prosecution failed to prove their guilt beyond reasonable doubt. They also argue that assuming that they killed Joseph, it was a reversible error to find that treachery attended the killing.

Appellants contend that they are innocent of the crime charged as the prosecution failed to sufficiently prove their identities beyond reasonable doubt. They anchor their claim on the lighting condition on the night of December 12, 2003 as well as the fact that Aldrin recognized appellant Romeo when the incident was already over.

We are not convinced.

Prosecution witness Aldrin positively identified appellants as the persons who mauled and killed Joseph on the night of December 12, 2003. He testified that both appellants mauled Joseph until the latter fell to the ground unconscious, and then appellant Edgardo smashed Joseph's face with a stone.[32] Aldrin's testimony that appellant Edgardo smashed Joseph's face with a stone was confirmed by the testimony of Dr. Gonzales that Joseph died of intracranial hemorrhage due to multiple depressed fractures of the skull with brain hermation which was caused by the pressure exerted on the victim's skull.[33]

Prosecution witness Cesar declared that he saw appellant Romeo suddenly put his left arm on Joseph's shoulder and instantly boxed him while appellant Edgardo was holding Joseph's hands from behind.[34] Both Cesar and Edgardo declared that appellant Romeo even told their group not to be involved.[35]

Cesar was able to identify appellant Edgardo through his voice when he was uttering "huwag kang maingay" while delivering fistic blows on the victim.[36] In People v. Reyes,[37] we held that once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance. The sound of a person's voice is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[38] Notably, both witnesses testified that they know appellants as they are neighbors and friends;[39] and that Cesar would go to appellants' houses three or four times a week talking with them or their siblings,[40] hence, there is no doubt that Cesar was familiar with appellant Edgardo's voice. In fact, appellants also admitted that they know the witnesses and they know them.[41]

Jurisprudence dictates 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 the findings are accorded high respect, if not conclusive effect.[42] This is more true if such findings were affirmed by the CA, since it is settled that when the trial court's findings have been affirmed by the appellate court, these findings are generally binding upon this Court.[43] We see no reason to depart from

this rule.

Appellants' defenses of denial and alibi were correctly rejected by the RTC. Appellant Romeo's claim that he was in Lalawigan, Mercedes, Camarines Norte at the time the crime was committed was not supported and it was not shown that there was physical impossibility for him to be at the crime scene at Mangcamagong, Basud. Appellant Edgardo admitted that he was at Mangcamagong, Basud attending to his store on the fateful night, thus it was not physically impossible for him to be at the crime scene. While appellant Edgardo presented Credo to corroborate his claim, we agree with the RTC when it found Credo's testimony doubtful since after knowing that Edgardo was a suspect, he still did not tell his superior officer in CAFGU Detachment nor went to the Basud Police Station to tell that appellant Edgardo was tending his store when the incident happened.

Appellants' alibi and denial cannot prevail as against the positive identifications made by the prosecution witnesses who were not shown to have any improper motive to falsely testify against them. Where there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[44]

We agree that conspiracy between appellants was established in this case. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit the felony.[45] Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their acts.[46] It was convincingly shown that both appellants had acted in concert to achieve a common purpose of assaulting and killing Joseph. Appellants were together when they followed Joseph walking along the road; appellant Romeo held Joseph by his shoulder and boxed him while appellant Edgardo held Joseph's hands from behind. Appellant Romeo told Joseph's friends who saw what was happening to go home and not to be involved; appellants continued mauling Joseph and when he fell to the ground unconscious, appellant Edgardo smashed his face with a stone. Appellants walked away together from the crime scene as soon as they had achieved their common purpose.

We also find that treachery attended the commission of the crime. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make.[47] Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[48]

Joseph was walking home unsuspecting of the imminent danger to his life. Appellants came from behind and in a sudden and unexpected manner assaulted Joseph who was not able to defend himself from such attack. In fact, he was continuously mauled until he fell to the ground unconscious and then appellant Edgardo smashed his head with a stone. Even if the attack is frontal but is sudden and unexpected, giving no opportunity for the victim to repel it or defend himself, there would be treachery.[49]

All told, the RTC did not err in convicting appellants of the crime of murder as all the elements[50] of the crime are present, to wit: (a) a person was killed; (b) the accused killed that person; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248,[51] and (d) the killing was neither parricide nor infanticide.

Article 248 of the Revised Penal Code, as amended, prescribes the penalty of reclusion perpetua to death for murder. There being no aggravating or mitigating circumstance, the RTC correctly imposed the penalty of reclusion perpetua on appellants, pursuant to Article 63, paragraph 2 of the RPC.[52]

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Anent the award of damages, we find that a modification is in order. The RTC's award of P75,000.00 as civil indemnity to the heirs of Joseph should be reduced to P50,000.00. The civil indemnity of P75,000.00 is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty but cannot be imposed on the appellant because of the prohibition in R.A. No. 9346 or An Act Prohibiting the Imposition of Death Penalty in the Philippines. In People v. Salome,[53] we explained the basis for increasing the amount of civil damages to P75,000.00 as follows:

> The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in People v. Sambrano which states:
> As to damages, we have held that if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be P75,000.... Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of P50,000.00 as moral damages should also be increased to P75,000 pursuant to current jurisprudence on qualified rape, x x x

It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still Php75,000.00. x x x.[54]

In People v. Qiiiachon,[55] we ruled:

> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: P75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty; P75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.
>
> Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, the civil indemnity of P75,000.00 is still proper because, following the ratiocination in People v. Victor, the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. The Court declared that the award of P75,000.00 shows "not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity.[56]

Hence, based on the above-mentioned ratiocinations, the main consideration in the determination of the amount of damages to be awarded is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender.[57] In this case, since the circumstances surrounding the crime call for the imposition of reclusion perpetua only, the proper civil indemnity should only be P50,000.00.[58]

The RTC's award of P50,000.00 moral damages is proper. The award of P25,000.00 exemplary damages should be increased to P30,000.00 in line with current jurisprudence on the matter.[59]

Lastly, the interest rate of 6% per annum is imposed on all damages awarded from the date of finality of this ruling until fully paid.[60]

WHEREFORE, the appeal is DISMISSED. The Decision dated February 2, 2012 of the Court of Appeals in CA-GR. CR-HC No. 04847 which affirmed in toto the Judgment dated September 29, 2010 of the Regional Trial Court of Daet, Camarines Norte, Branch 38, finding appellants Edgardo B. Zabala and Romeo B. Albius, Jr. guilty of the crime of murder is AFFIRMED WITH MODIFICATIONS that the award of P75,000.00 as civil

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indemnity be reduced to P50,000.00 and the exemplary damages of P25,000.00 be increased to P30,000.00. The award of P50,000.00 is retained. All monetary awards for damages shall earn interest at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr., (Chairperson), Villarama, Jr., Reyes, and Leonen,[*] JJ., concur.

December 28, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___November 23, 2015___ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 28, 2015 at 9:40 a.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring; rollo, pp. 2-11.

[2] Per Judge Roberto A. Rscaro, Docketed as Criminal Case No. 12004; CA rollo, pp. 23-36.

[3] Id. at 15.

[4] Id.

[5] Records, p. 24.

[6] Id. at 69.

[7] TSN, September 24, 2008, pp. 4-5.

[8] Id. at 5-6.

[9] Id. at 8-9.

[10] Id.

[11] Id. at 9-10.

[12] Id..; TSN, March 30, 2007, p. 4.

[13] TSN, September 24, 2008 pp. 10-11

[14] Id at 13.

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[15] Id. at 16.

[16] Id. at 15; TSN, March 30, 2007, p. 11.

[17] Id.

[18] TSN, March 30, 2007, pp. 3-5.

[19] Id.

[20] TSN, March 30, 2007, p. 9; TSN September 24, 2008, pp. 18-19.

[21] Exhibit "A," records, p. 122.

[22] TSN, March 24, 2009, pp. 5-6.

[23] TSN, January 19, 2010, p.2.

[24] Id. at 4.

[25] Id. at 10.

[26] TSN, March 18, 2010, p. 7.

[27] Id.

[28] TSN, March 17, 2010, p. 3.

[29] TSN, March 18, 2010, pp. 3-5.

[30] CA rollo, p. 36.

[31] Id. at 37-38.

[32] TSN, March 30, 2007, pp. 3-5.

[33] TSN, March 24, 2009, pp. 5-6.

[34] TSN, September 24, 2008, pp. 9-10.

[35] Id. at 15; TSN, March 30, 2007, p. 11.

[36] TSN, September 24, 2008, pp. 13, 16.

[37] 369 Phil. 61, 76 (1999).

[38] People v. Avendaño, 444 Phil. 338, 357 (2003), citing People v. Gayomma, 374 Phil. 249, 257 (1999); People v. Enad, 402 Phil. 1, 17 (2001), citing People v. Avillano, G.R. No. 111567, March 13, 1997, 269 SCRA 553, 561.

[39] TSN, March 30, 2007, p. 9; TSN September 24, 2008, p. 18.

[40] TSN, September 24, 2008, pp. 18-19.

[41] TSN, January 19, 2010, p. 10; TSN, March 18, 2010, pp. 3-5.

[42] People v. Adallom, 683 Phil. 618, 637 (2012).

[43] Id., citing Decasa v. Court of Appeals, 554 Phil. 160, 180 (2007).

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[44] People v. Lopez, 640 Phil. 532, 548 (2010). See Velasco v. People, 518 Phil. 780, 794 (2006); People v. Nicolas, 448 Phil. 253, 266 (2003).

[45] People v. PO Valdez, et al. 679 Phil. 279, 291 (2012), citing Art. 8, 2nd Par., Revised Penal Code; Aradillos v. Cowl of Appeals, 464 Phil. 650, 668 (2004); People v. Ogapay, 160 Phil. 897, 904 (1975).

[46] Id., citing People v. Cabrera, 311 Phil. 33, 41 (1995).

[47] Revised Penal Code, Art. 14, par. 16.

[48] People v. Lopez, et al., 640 Phil. 532, 549 (2010), citing People v. Ducabo, 560 Phil. 709, 725 (2007).

[49] Rivera v. People, 515 Phil. 824, 835 (2006), citing People v. Coscos, 424 Phil. 886, 903 (2002).

[50] People, v. Dela Cruz, 626 Phil. 631, 639 (2010).

[51] 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 reclucion perpetua, to death if committed with any of the following attendant circumstances:

1. 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;

2. In consideration of a price, reward, or promise;

3. 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;

4. 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;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[52] Article 63. Rules for the application of indivisible penalties. - x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

[53] 532 Phil. 368 (2006).

[54] Id. at 385.

[55] 532 Phil. 414 (2006).

[56] Id. at 427-428. (Citations omitted)

[57] People v. Combate, 653 Phil. 487, 515 (2010), citing See People v. Sarcici, 615 Phil. 97, 124 (2009).

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[58] Id. at 516. Id.

[60] People v. Gani, G.R. No. 195523, June 5, 2013, 697 SCRA 530, 540, citing People v. Amistoso, G.R. 201447, January 9, 2013, 688 SCRA 376, 395; People v. Arpon, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 540.

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