

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE SALIBAD Y DILO, ACCUSED-APPELLANT.

G.R. No. 210616. November 25, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the Decision[1] dated June 25, 2013 of the Court of Appeals (CA) in CA-G.R. CR HC No. 05247 convicting accused-appellant Eddie Salibad y Dilo of the crime of murder.

We state the antecedents based on the findings of the lower courts hereunder quoted:

Appellant was indicted for Murder in an Amended Information[2] dated October 3, 2008, the accusatory portion of which reads:

"That on or about the 1[st] day of June 2008, at Lepanto, Municipality of Mankayan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with deliberate intent to kill, using an unlicensed caliber .45 firearm, did then and there willfully, unlawfully and feloniously shoot one RAYMUNDO DACUYAN Y CABANNAG thereby inflicting a gunshot wound on his abdomen that caused his death, to the damage and prejudice of the heirs of RAYMUNDO DACUYAN Y CABANNAG.

That in the commission of the crime, the qualifying aggravating circumstance of use of unlicensed firearm is present. The qualifying circumstance of treachery is also present because the attack was so sudden and without any provocation on the part of the victim thereby making him totally defenseless and ensuring no risk on the part of the accused.

CONTRARY TO LAW."

During the arraignment on October 7, 2008, appellant pleaded "not guilty" to the crime charged. Pre-trial conference was terminated on January 13, 2009. Thereafter, trial on the merits ensued.

The evidence for the prosecution as summarized in the People's Brief are hereby adopted as follows:

"On June 1, 2008, at about 2:00 in the afternoon, Manuel Binwag (Manuel) and Diego Aclibon (Diego) went to the 1030 level of the mine site of Lepanto Mining Company at Paco, Mankayan, Benguet and asked permission from Raymundo Dacuyan (Raymundo), the security guard of the place, to allow them to dig scrap iron near the river. Raymundo allowed them to dig but only until 3:00 in the afternoon. They collected scrap iron until Raymundo ordered them to stop at about 3:30 in the afternoon. After talking to them, Raymundo turned around to go back to his post. At that moment, appellant Eddie Salibad [accused-appellant] suddenly appeared in front of Raymundo and instantaneously shot him hitting him in the middle right portion of his abdomen. Raymundo was able to prevent a second shot from being fired at him but fell to the ground in that instant. The second shot hit the wall. Manuel and Diego ran away after they saw Raymundo fall down. While running, they heard another gunshot. Manuel and Diego were only about thirty (30) feet[3] x x x from where the shooting incident occurred.

Acting on a text message forwarded by the Chief of Police of Mankayan Police Station that a man with a gun was running down the UCCP Compound, Aurora St., Mankayan, Benguet, two (2) teams were immediately formed and dispatched by SPO3 Oliver Paleng (SPO3 Paleng) in response to the said report. Before the teams could leave the police station, a certain Myrick Campos (Myrick) arrived and informed them that his brother-in-law stole his gun from him. Together with Myrick, the team of PO1 Robert Velasco (PO1 Velasco) reached San Roque, Paco, Mankayan, Benguet at about 4:00 in the afternoon and waited for the person described in the message. At about 4:45, the team saw a person with an object bulging on his waist walking towards them. The said person - who turned out to be [accused appellant] - was identified by Myrick as his brother-in-law who took his gun. The police officers then frisked appellant and found the gun on his waist, with two (2) live ammunitions in the magazine and one (1) empty shell in his pants pocket. [Accused-appellant] was brought to the police station and the confiscated gun, ammunitions and empty shells were marked and brought to the crime laboratory for examination. It was subsequently confirmed that [accused-appellant] was not a licensed or registered firearm holder.

Meanwhile, the lifeless body of Raymundo was brought to the Lepanto Chapel where an autopsy was conducted on June 3, 2008 by Dr. Jaime Rodrigo Leal (Dr. Leal) of the PNP Crime Laboratory upon the request of the Mankayan Police Station. Dr. Leal found that Raymundo sustained one gunshot [wound] at the right upper quadrant of the abdomen; that the bullet penetrated the abdomen but did not make an exit; and that the bullet was recovered at the level of the tenth thoracic vertebra. It was concluded that the cause of Raymundo's death was bleeding secondary to the gunshot injury."

Appellant presented a different version of the events, to wit:

"On June 1, 2008, Eddie Salibad was at a drinking place known as 'Uwaynasdi' with his cousin and brother. They spent most of the day imbibing bottles of 4x4 and 2x2 from nine o'clock in the morning (9:00 am) until two o'clock in the afternoon (2:00 p.m.); the hour when the curfew or ban against drinking alcohol takes effect. Salibad and his companions left the drinking place to go to the Plaza but along the way, three (3) men blocked the path of his younger brother. In an attempt to diffuse the situation and prevent the possible mauling of his brother, Salibad tried to pacify the men only to receive some punches and be mauled himself. He suffered a black eye from the encounter. He went to the Municipal Hall to report the incident but instead of being assisted by the police, he was again boxed and physically maltreated by a police officer. So, he went to his camp in Mankayan where he took his gun intent on protecting himself as he walked his way home to Cabiten.

He ha[d] not gone far when someone came and chased him. Fearing for his life, he fled. He intended to go to Aurora but did not know the way so he took the route going down to the river and followed the river's flow. It Was this path that lead him to the compound of Lepanto where the security guard, Raymundo Dacuyan, stood sentry at the portal of 1030 Level. Salibad sought permission from the guard that he be allowed to enter the compound but the latter forbade him. Determined to go home via San Roque, he went about his way passing through the portal and approaching the guard. The latter grabbed his hand in an attempt to get his gun that was, at that time, tucked on his back right underneath his white shirt. To prevent losing his only source of protection, Salibad turned his back away and face[d] the guard. He held on to the gun but the guard stopped his move by clasp[ing] his hand that was holding the firearm. They began to grapple and fight for the possession of the weapon. At this point, their brawl caused the gun to get cocked and when Salibad inadvertently pulled the trigger, the gun went off. The first shot did not hit anyone. They continued to fight and for the second time, the gun was cocked, the trigger pulled and a second shot was fired.

Somehow, the guard was able to press the release button and [the] gun's magazine fell on the ground. But the fighting ensued and for the third time, the gun went off. By this time, Salibad's fear was overwhelming and so at the first chance of escape, he took the gun and ran towards what he perceived as the way home. At San Roque, by the waiting shed, he was approached by several men who introduced themselves as police officers. He was frisked and his gun was confiscated together with the empty shell found in his pocket and the magazine with three (3) bullets. They took him up a mountain and in the woods, they mauled him until he lost

consciousness. When he woke up, he was a[t] the police station.

The accused admitted that he did not have a license to carry or to possess a firearm. He, however, denied having shot the deceased guard and of seeing and knowing any of the witnesses who positively identified him, namely[:] Manuel Binwag and Diego Aclibon. When [asked] why he did not report the incident to any authorities, the accused expressed his fear of the policemen who boxed him and threatened to silence him."

After trial on the merits, the trial court rendered a Judgment[4] dated May 18, 2011, the dispositive portion of which reads:

"WHEREFORE, the court finds the Accused, guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer Reclusion Perpetua.

On the civil aspect of the case, the Accused is hereby ordered to pay the Heirs of the victim Raymundo Dacuyan, represented by his widow, Tomasa Dacuyan, the amount of One Hundred [Thousand] (P100,000.00) Pesos, as actual damages and One Hundred Thousand (P100,000.00) Pesos, as moral damages.

SO ORDERED."

Upon appellant's motion, the trial court rendered the assailed Amended Judgment dated June 16, 2011 x x x.[5]

The dispositive portion of the RTC Amended Judgment[6] reads:

WHEREFORE, the Court finds the Accused, guilty beyond reasonable doubt of the crime of Murder. He is hereby sentenced to suffer Reclusion Perpetua.

On the civil aspect of the case, the Accused is hereby ordered to pay the Heirs of the victim Raymundo Dacuyan, represented by his widow, Tomasa Dacuyan, the amount of One Hundred Sixty[-]Two Thousand Five Hundred Sixty[-]Four (P162,564.001 Pesos, as actual damages and One Hundred Thousand (P100,000.00) Pesos, as moral damages.

SO ORDERED.[7]

Accused-appellant filed an appeal before the CA which affirmed the RTC Decision convicting accused-appellant and giving credence to the testimonies of Manuel Bin wag (Manuel) and Diego Aclibon (Diego) who saw the killing of Raymundo. The CA pointed out that accused-appellant was validly arrested without a warrant and that the search incidental thereto was lawful. More, the CA ruled that accused-appellant could not question his arrest at that point as failure to question the validity of an arrest before entering a plea constitutes a waiver thereof. The CA lowered the moral damages awarded from P100,000.00[8] to P50,000.00 and awarded temperate damages in the amount of P25,000.00 in lieu of actual damages for failure of the prosecution to present receipts as proof of actual damages. The CA also awarded the additional amounts of P75,000.00 as civil indemnity and P30,000.00 as exemplary damages. The fallo of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Amended Judgment dated June 16, 2011 in Criminal Case No. 555-CR-08 is hereby AFFIRMED with MODIFICATION. Appellant Eddie Salibad y Dilo is hereby ordered to indemnify the heirs of Raymundo Dacuyan y Cabannag the amounts of (a) P75,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P30,000.00 as exemplary damages; and (d) P25,000.00, as actual damages,[9] all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.[10]

Hence, this appeal.

The issues raised for the consideration of the Court are:

- Whether the testimony of prosecution witnesses Manuel and Diego that accused-appellant killed the victim, employing treachery, was sufficient for a conviction of murder.
- Whether there is a need to present the firearm itself for the appreciation of the special aggravating circumstance of the use of an unlicensed firearm; and
- Whether the amounts of civil indemnity and damages awarded were proper.

We affirm accused-appellant's conviction.

Accused-appellant is guilty of murder.

The elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code, as amended; (4) the killing neither constitutes parricide or infanticide.[11]

In this case, Raymundo was killed and it was established by the prosecution, through the testimony of eyewitnesses Manuel and Diego and that accused-appellant killed Raymundo with a gunshot to the abdomen. Manuel narrated the incident as follows:

PROS. COPAS:

Q:

What was Raymundo Dacuyan doing when you saw Eddie Salibad [arrive]?

[MANUEL BINWAG]

A:

Sir, he was talking to us to leave because we go beyond the time he said. [He was asking us to leave as we went beyond the time he allowed us to collect scrap iron.]

x x x x

Q:

While he was telling [you that], what happen[ed] next[,] if any?

A:

After saying that he was about to turn around to enter or proceed but then he was facing already the suspect, sir.

Q:

And when he was about to turn around and found that the suspect was in front of him, what [happened]?

A:

Sir, the suspect shot him.

Q:

Were you able to see if he was hit?

A:

Yes, sir.

Q:

What part of his body was hit?

A:

Here, sir. (Witness pointed to his middle right of the abdomen).[12]

[TSN, March 24, 2009]

PROS. COPAS:

Q:

Mr. [W]itness, do you recall where [you were] on the first day of June 2008, particularly at about 3:00 o'clock in the afternoon?

[DIEGO ACLIBON]

A:

We were in Mines 1030 level, Sir.

x x x x

Q:

While in [the] same place, do you recall any unusual event that happen[ed]?

A:

There was shooting, Sir.

Q:

Who shot who?

A:

Mr. Eddie Salibad, Sir.

Q:

[Who] did Mr. Salibad [shoot]?

A:

Sir, Raymundo Dacuyan.

Q:

And were you able to see the actual shooting?

A:

Yes, Sir.

x x x x

Q:

How long did it take Eddie Salibad to shoot Raymundo Dacuyan from the time you [noticed him]?

A:

He just went there and shot him, Sir.

x x x x

Q:

Would you know what part of his body was hit[,] if any?

x x x x

A:

Here, Sir. (Witness pointed to his right portion of the abdomen.)[13]

We find that the eyewitnesses described the killing of Raymundo in sufficient detail describing how the victim was fatally shot, what part of the body was shot, when he was shot, the type of weapon that was used in the crime and the identity of the shooter.[14] We note that the eyewitnesses' narration of Raymundo's murder is consistent with the medical findings[15] indicating the location of the fatal wound. The testimonies of Manuel and Diego are also consistent with one another which is an indication that they indeed witnessed the incident. More, we find the testimony of the witnesses credible in view of the finding of the RTC and CA that the eyewitnesses were disinterested witnesses who have no ill motive in testifying against accused-appellant.[16]

Accused-appellant questions his conviction on the ground that witnesses Manuel and Diego were 30 feet away,[17] gathering scrap iron, in a place below the scene of the crime.

We are not persuaded by accused-appellant's claim. The eyewitnesses' statements were correctly given credence by the lower courts. Indeed, the test of credibility is not based solely on proximity. The Court has affirmed convictions based on the testimony of witnesses who identified assailants from a distance of 31 feet[18] and even from a distance of 50 meters away, while witnesses were gathering coconuts, with tall and short shrubs between the witnesses and the place where the felony occurred.[19] It is settled that the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. The rule is even more stringently applied if the CA concurred with the RTC.[20] We find no reason to rule otherwise in this case.

As for the qualifying circumstance of treachery, paragraph 16 of Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[21]

The RTC and CA correctly ruled that the eyewitnesses were able to establish treachery on the basis of Manuel and Diego's testimony that accused-appellant shot the victim immediately after arriving as the latter turned around after talking to the witnesses.[22] The Court has ruled that the essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked.[23] In *People v. Perez*,[24] it was explained that a frontal attack, such as the shooting in this case, does not necessarily rule out treachery. The qualifying circumstance may still be appreciated if the attack was so sudden and so unexpected that the deceased had no time to prepare for his or her defense. The sudden appearance of accused-appellant while Raymundo was preoccupied talking to Manuel and Diego and the use of a firearm resulted in a situation where the attack caught the victim by surprise depriving him of the chance to put up any defense before the fatal shot was fired. While he was able to parry a second shot, the first shot fired by appellant has already inflicted a fatal wound in the victim's body. Thus, treachery was correctly appreciated in this case.

Accused-appellant's conviction for murder attended by the special aggravating circumstance of the use of an unlicensed firearm was proved by evidence independent of the unlicensed firearm itself.

Accused-appellant[25] himself agrees that an accused is estopped from assailing the legality of his arrest if he fails to raise such defense before arraignment.[26] Accused-appellant stresses, however, that a waiver of an illegal warrantless arrest does not carry with it a waiver of inadmissibility of evidence seized during the illegal warrantless arrest.[27] Accused-appellant asserts that the lower courts erred in admitting the unlicensed firearm as evidence because the warrantless search was illegal. The prosecution, on the other hand, argues that accused-appellant was lawfully arrested on the basis of a text message forwarded by the Chief of Police about a man holding a gun[28] running down the UCCP Compound and the identification of the accused-appellant by Myrick as the man who stole his gun. Consequently, the search which yielded the gun was lawful. The prosecution added that even assuming that the gun found in the possession of accused-appellant is found to be inadmissible, accused-appellant may still be convicted of murder aggravated by the use of an unlicensed firearm, as the felony was proved by evidence independent of the firearm itself.

We find the issue of the firearm's admissibility inconsequential as the use of the unlicensed firearm in committing the crime, and even the crime itself, were proved by evidence independent of the firearm seized from accused-appellant.

The Court has clarified that there is no need to present the firearm itself to prove the existence of an unlicensed firearm. *People v. Narvasa*[29] is instructive on this matter, viz.:

x x x In *People v. Lualhati*, this Court merely stated that the existence of the firearm must be established; it did not rule that the firearm itself had to be presented as evidence. Thus, in *People v. Orehuela*, the Court held that the existence of the firearm can be established by testimony, even without the presentation of the said firearm,
x x x

The Court has used these guidelines not only for the crime of illegal possession of an unlicensed firearm itself but also in the appreciation of the special aggravating circumstance of using an unlicensed firearm[30] in the commission of a crime.[31]

In this case, we find the testimony of Manuel and Diego as to the existence of the firearm and its use in the crime of murder coupled with the Certification[32] from the Philippine National Police Firearms and Explosives Division to the effect that accused-appellant was not a licensed firearm holder of any kind and caliber sufficient to consider the special aggravating circumstance of use of an unlicensed firearm. Consequently, the CA and RTC correctly imposed the maximum penalty of reclusion perpetua for the crime of murder aggravated by the use of an unlicensed firearm.

Damages awarded must be modified.

We deem it proper to increase the award of civil indemnity from P75,000.00 to P100,000.00; moral damages from P50,000.00 to P100,000.00; and exemplary damages from P30,000.00 to P100,000 in line with *People v. Gambao*[33] This increased award of damages has been applied by the Court to a similar case[34] where the use of an unlicensed firearm was considered a special aggravating circumstance in the crime of murder which would have warranted the imposition of the death penalty if not for the provisions of Republic Act No. 9346.[35]

As to the actual damages claimed by the heirs of the victim, the Court has held that only expenses supported by

receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.[36] Unfortunately, in this case, the heirs of the victim were not able to substantiate their claims through receipts. Nevertheless, it is proper to award temperate damages[37] in lieu of actual damages since the heirs of the victim suffered a loss but could not produce documentary evidence to support their claims. In line with prevailing jurisprudence involving convictions for murder,[38] the Court affirms the CA's award of P25,000.00 as temperate damages[39] in favor of the heirs of the victim.

WHEREFORE, in light of all the foregoing, the appeal is hereby DISMISSED. The Decision dated June 25, 2013 of the Court of Appeals in CA-G.R. CR IIC No. 05247 convicting accused-appellant Eddie Salibad y Dilo of murder is AFFIRMED with MODIFICATION. Accused-appellant is sentenced to reclusion perpetua without eligibility for parole[40] and ordered to pay the heirs of Raymundo Dacuyan P100,000.00 as civil indemnity; P100,000.00 as moral damages; P100,000.00 as exemplary damages; and P25,000.00 as temperate damages in lieu of actual damages, with interest of six percent (6%) per annum on all damages awarded from the finality of this Decision until fully paid.

With costs against accused-appellant.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Del Castillo,[*] and Reyes, JJ., concur.

December 28, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____November 25, 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

[*] Designated additional Member per Raffle dated September 24, 2014.

[1] Rollo, pp. 2-14. Penned by Associate Justice Sesonando E. Villon and concurred in by Associate Justices Florito S. Macalino and Angelita A. Gacutan.

[2] Records, p. 47.

[3] TSN, March 10, 2009, p. 14.

[4] CA rollo, pp. 127-138. Penned by Presiding Judge Agapito K. Laoagan, Jr.

[5] Rollo, pp. 3-5.

[6] CA rollo, pp. 44-55.

[7] Id. at 55.

[8] The amount reflected in the fallo of the RTC Amended Judgment is P100,000.00 but stated as P75,000.00 in the CA Decision, rollo, p. 13.

[9] Temperate damages per discussion on rollo, p. 13.

[10] Rollo, pp. 13-14.

[11] People v. De Castro, G.R. No. 205316, June 29, 2015, p. 5.

[12] TSN, March 10, 2009, p. 15.

[13] TSN, March 24, 2009, pp. 3-5.

[14] TSN, March 10, 2009, pp. 15-16; id. at 5-6.

[15] Records, pp. 9-13.

[16] Rollo, p. 10.

[17] TSN, March 10, 2009, p. 14.

[18] Avelino v. People, G.R. No. 181444, July 17, 2013, 701 SCRA 477, 487.

[19] People v. Dolorido, 654 Phil. 467, 476 (2011).

[20] People v. Abat, G.R. No. 202704, April 2, 2014, 720 SCRA 557, 564. People v. Dolorido, supra note 19.

[22] TSN, March 10, 2009, p. 15; TSN, March 24, 2009, p. 5.

[23] People v. Matibag, G.R. No. 206381, March 25, 2015, p. 5.

[24] 404 Phil. 380, 382(2001).

[25] CA rollo, p. 118.

[26] People v. Martinez, 652 Phil. 347, 359 (2010); See also Miclat, Jr. v. People, 672 Phil. 191, 203 (2011); Rebellion v. People, 637 Phil. 339, 345 (2010).

[27] CA rollo, p. 118, citing People v. Martinez, id.

[28] TSN, June 16, 2009, p. 5; Joint Affidavit of apprehending officers PO1 Andy C. Patugad and PO1 Robert W. Velasco, records, p. 8.

[29] 359 Phil. 168, 179 (1998), citing People v. Lualhati, G.R. Nos. 105289-90, July 21, 1994, 234 SCRA 325, 332 and People v. Orehuella, G.R. Nos. 108780-81, April 29, 1994, 232 SCRA 82, 96.

[30] R.A. No. 8294, Section 1 reads:

SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

x x x x

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

[31] People v. Agcanas, 674 Phil. 626, 635-636 (2011).

[32] CA rollo, p. 82.

[33] G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533. We take this opportunity to increase the amounts of indemnity and damages, where, as in this case, the penalty for the crime committed is death which, however, cannot be imposed because of the provisions of R.A. No. 9346:

1. P100,000.00 as civil indemnity;
2. P100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
3. P100,000.00 as exemplary damages to set an example for the public good. (Emphasis supplied)

[34] *People v. Matibag*, supra note 23, at 7.

[35] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[36] Referring to the award of actual damages. (*People v. Sanchez*, 367 Phil. 545, 569 [1999].)

[37] CIVIL CODE OF THE PHILIPPINES, Article 2224 reads:

ART. 2224. Temperate 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 cannot, from the nature of the case, be proved with certainty.

[38] *Almojuela v. People*, G.R. No. 183202, June 2, 2014, 724 SCRA 293, 307; *People v. Llobera*, G.R. No. 203066, August 5, 2015, p. 15; *People v. Villariez*, G.R. No. 211160, September 2, 2015.

[39] The amount of P25,000.00 was awarded as temperate damages by the CA per discussion on rollo, p. 13, and not actual damages as referred to in the fallo of the CA Decision.

[40] II. (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify reclusion perpetua in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346. (A.M. No. 15-08-02-SC)

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