

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MC HENRY SUAREZ Y ZURITA, JOHN JOSEPH RAVENA Y ACOSTA AND JOHN PAUL VICENCIO Y BARRANCO, ACCUSED-APPELLANTS.

G.R. No. 224889. October 19, 2016

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the October 20, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR H.C. No. 01723, which affirmed the June 21, 2013 Decision[2] of the Regional Trial Court, Branch 35, Iloilo City (RTC), in Criminal Case No. 11-69572, finding accused Me Henry Suarez y Zurita (Suarez), John Joseph Ravena y Acosta (Ravena) and John Paul Vicencio y Barranco (Vicencio) guilty beyond reasonable doubt of the crime of Murder.

Suarez, Ravena and Vicencio were indicted for Murder in an Information, dated February 7, 2011, which alleged that accused, conniving and mutually helping each other, stabbed and killed one Roger Setera (Roger) on or about the 2nd day of February 2011 and that the killing was qualified by treachery and abuse of superior strength.

Version of the Prosecution

The People's version of the events as summarized by the Office of the Solicitor General (OSG) in the Consolidated Appellee's Brief[3] are as follows:

Prosecution witness Nancy Lauresta ("Nancy") is an employee of 123 Videoke Bar located at Bonifacio St. in Oton, Iloilo. On February 2, 2011, she was one of the employees working at the said bar, opening it at around 4:00 p.m. and attending to the customers therein. At around 9:30 p.m., appellants Vicencio and Suarez arrived at the bar. Appellant Ravena joined them later on. Roger Setera (Roger), the victim in this case, arrived at 10:30 p.m. with two (2) of his companions.

At 12 o'clock midnight, appellants decided to leave. Before actually leaving however, two (2) incidents involving appellants occurred. First, while still inside the bar, appellant Vicencio uttered, "Parts, wala sang matabo sa aton" ("Parts, nothing will happen to us"). Suarez, who was holding a bottle, threw it against the floor and then said, "Ano guid haw" ("So what"). The second incident happened as appellants were exiting the bar. They were stopped on the way out by the cashier who told them that they have yet to pay their bill. Appellant Ravena then took out a P100.00 bill from his pocket and gave it to the cashier saying "Ta, here's the P100.00, you might tell my mother that I did not pay the bill." This was not enough though as the balance of P40.00 remained. It was a Tiyay Esang who settled the balance later on.

After these two (2) incidents, appellants left the bar and proceeded to a lamppost outside. The lamppost stood 3 meters away from where Nancy was standing as she was gathering bottles and cleaning the tables outside. While standing, Suarez broke a bottle again and the three started to push each other. At this point, the victim Roger was also outside the bar and shouted at appellants, "You all go home." Appellants made a sign to Roger with their fingers, beckoning the latter to come closer. In response to this, Roger approached them. When Roger Setera got close, Vicencio and Suarez started to simultaneously and continuously box him. Roger

parried their punches with his arm. While this was going on, Ravena who was positioned at the back of Roger delivered a stab blow to the latter's back. Ravena then ran away followed by Suarez and Vicencio. They ran to the back portion of the market headed towards the beach area.

Prosecution witness Prudencio Taño ("Pradencio"), who was drinking with Roger along with other companions did not notice that Roger had left his chair and went to appellants. He was only alerted when he and his companions heard Roger shout that he was hit. Prudencio stood up and went to Roger and asked him, "What happened to you, Pre?" Roger then replied, "They stabbed me and I am wounded!" Prudencio then asked Roger who was it that stabbed him and Roger replied with "the children." Afterwards, Prudencio saw "Jun" and "Bongbong" running towards the dark area. Prudencio called for a tricycle because Roger asked that he be brought to the hospital. Roger was loaded onto a tricycle and brought to the police station in order that Roger be transferred to the ambulance that was parked there, as well as to blotter the incident. At the police station, they reported the incident to PO3 Jose Minerva ("PO3 Minerva") who was on duty that night. Roger told him that he was "stabbed by three persons he knew." Prudencio and PO3 Minerva accompanied Roger in the ambulance. Inside the ambulance, Prudencio asked Roger who was it that stabbed him and Roger replied that it was "Joseph Acosta" or "Janjan." When they arrived at the hospital, Prudencio called up the family of Roger, her sister, Sharon, and Arty. Naciongayo. Aforementioned persons followed by policemen. The following morning Roger died.

After Roger was taken to the hospital, PO3 Minerva went back to the crime scene in order to investigate. When he arrived there, he met the attendants of 123 Videoke Bar including Nancy Lauresta. He asked the attendants who stabbed Setera and was told that it was appellants who stabbed Roger. After this initial investigation, the police conducted a hot pursuit operation, through which they were able to arrest Suarez and Vicencio. Appellant Ravena, however, was able to flee and, thus, was not apprehended in the operation.

Dr. Owen Jaen Lebaquin, Medico-Legal Officer, PNP Camp Delgado, conducted the autopsy on the cadaver of Roger. In connection with his examination, he issued Medico-Legal Report No. M-060-2011 which revealed that Roger sustained "stab wound at the right lumbar area of the back which also lacerated the right kidney, measuring by 3 x 1 cm., 10 cm. from the posterior midline, 15 cm. deep, directed anteriorwards slightly upwards medialwards lacerating the right kidney" and that he died "due to a stab wound at the right lumbar area at the back."

Accordingly to Dr. Lebaquin, the assailant could have been standing directly at the back of Roger when the stab blow was inflicted. The wound sustained by Roger was fatal because it lacerated the kidney. However, instantaneous death could have been prevented with immediate medical attention.[4]

Version of the Defense

Suarez, Ravena and Vicencio denied the accusation against them and gave the following version in their Appellants Brief to substantiate their claim of innocence:

On February 2, 2011, at around 1:00 in the afternoon, Ravena was at his house washing his clothes when Vicencio, his childhood friend, arrived for a visit. After washing his clothes for two hours, Ravena rested. Later, Vicencio invited Ravena to play basketball at the plaza. At around 3:10 o'clock that afternoon, Vicencio and Ravena arrived at the plaza and hanged out for twenty minutes. Thereafter, "they played basketball for more than an hour. At 4:45 o'clock in the afternoon, they went back to the house of Ravena and hanged out there until 8:30 o'clock in the evening.

At past 8:30 o'clock in the evening, Vicencio and Ravena went to the 123 Videoke Bar and arrived there at 9:00 o'clock. Tiyy Esang, Panoy Vicencio Ariane and Royroy Salcedo and his two companions were already there. Ravena and Vicencio settled on one of the tables and talked with each other. Fifteen minutes after, they ordered two bottles of Red Horse beer.

While Vicencio and Ravena were drinking, at about 10:00 o'clock, they saw Suarez passed by, walking on his way home. They invited the latter to join them. Suarez joined them and they ordered a bottle of Red Horse for him. While they were drinking, Ravena noticed the argument which ensued between Roger and Royroy when Roger denied the latter's request to buy him a drink. In this altercation, Royroy told Roger, "You will have something later."

Vicencio, Ravena and Suarez continued drinking until 11:30 o'clock that evening and prepared themselves to go home. They chipped-in to pay the bill amounting to P120.00. Vicencio and Ravena paid the bill to the cashier. When they were about to go out, the cashier called their attention that their bill was not fully paid. They argued with the cashier that they paid for what they had consumed. Tiya Esang pacified them and paid the balance of P40.00.

On their way out of the videoke bar, suddenly, Suarez threw an empty bottle on the road as a reaction to the embarrassing situation which arose from the argument relating to the payment of their account. Vicencio and Ravena approached him and asked him why he threw the bottle. Suarez did not answer. Momentarily, Roger approached them and uttered, "Gaano kamo dodri, gapaisog-isog?" ("Are you displaying your bravery here?"). Upon hearing Roger's statement, Suarez and Vicencio fled. Then the group of Royroy approached Roger and a fight ensued between them. Ravena ran away and when he reached his house, he rested for a while. When his mother asked him why he was running home and catching his breath, he answered that a dog was running after him. His mother told him to rest.

The following day, Ravena heard that Roger was killed and that he was one of the suspects. At first, he did not mind the imputation but on February 3, 2011, he asked his mother to call his uncle Buddy Carvajal so that the latter can accompany him to surrender at the police station. Accompanied by his father, girlfriend and Carvajal, he surrendered.

Suarez, for his part, fled towards the house of his grandmother where he was staying near the beach. While he was walking towards the beach for fresh air, he was surprised when policemen accosted him and told him to go with them to the police station. At the police station, he asked the authorities what his offense was, however, he was told to keep quiet and not to ask questions. Later, he heard that he was one of the suspects in the stabbing incident that happened at the videoke bar. Later, the ambulance which brought Roger to the hospital arrived. Its driver asked as to who was the companion of Royroy Salcedo in stabbing Roger because that was the name that was uttered by the latter.

Vicencio heard a shout emanating from inside of the videoke bar and for fear that he might be implicated because Suarez threw a bottle of beer, he fled. When he arrived home, he went to the kitchen to look for food but found nothing. His mother Virginia woke up and gave him money to buy bread at Red's which is located in front of the gymnasium. On his way thereto, a policeman named Saluya arrested him. He protested his arrest and asked the policeman what his offense was but the policeman did not answer. At the police station, the policeman told him that he will be released if the other suspect was captured.

On the night of February 2, 2011, Jesus Suarez (Tiyay Esang), together with Panoy Villavicencio, was at the videoke bar drinking when Vicencio, Ravena and Suarez arrived. Suarez approached her to buy them drinks, however, she told him that she had no money. When she and Panoy finished drinking, she went to the cashier and inquired how much was the balance of the group of Suarez. The cashier informed her that the balance was P40.00, so she paid it. Before she left the videoke bar, she told Vicencio, Ravena and Suarez to go home immediately after they were through. Then, she left the place.

Virginia Vicencio was lying down when her son Vicencio arrived. The latter told her that he was starving and was looking for food. She told him that there was no food and gave him money to buy bread. Then, she heard someone calling her and told that her son was arrested. She went out of the house and proceeded to where his son was. There, she saw her son being held by police officers Minerva and Sabijon. The policemen were asking her son who his companions were so that he will be released. Later, her son was brought to and detained

at the police station.[5]

The Ruling of the RTC

On June 21, 2013, the RTC rendered its decision finding Suarez, Ravena and Vicencio guilty as charged. It did not lend credence to the twin defenses of denial and alibi proffered by the accused, stating that said defenses could not prevail over the testimony of Nancy Lauresta (Nancy), who categorically and convincingly testified that she saw Ravena stab Roger while he was being punched by Suarez and Vicencio. The RTC noted that the accused could not show any ill motive that could have impelled Nancy to falsely implicate them in such a heinous crime. Hence, it concluded that there is neither cause nor reason to withhold credence from her testimony.

The RTC also wrote that the testimony of Prudencio Taño (Taño) on Roger's dying declaration effectively unmasked the identities of the accused as his assailants. It was, however, of the view that evidence of treachery was wanting because Roger must have been forewarned of the risk and danger that could befall him. Hence, it could not be said that the boxing and stabbing were consciously and deliberately adopted by the accused. Nevertheless, it opined that the attendance of abuse of superior strength qualified the killing to murder. The RTC added that the manner by which the accused committed the felonious act revealed a community of criminal design. Hence, it concluded that there was conspiracy. The decretal portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding accused MC HENRY SUAREZ y ZURITA, JOHN JOSEPH RAVENA y ACOSTA, and JOHN PAUL VICENCIO y BARRANCO, GUILTY, beyond reasonable doubt of MURDER under Article 248 of the Revised Penal Code. Accordingly, each is hereby sentenced to surfer the penalty of RECLUSION PERPETUA.

As civil liability, they are ordered to pay, jointly and severally, the heirs of Roger Setera the amounts of P75,000.00 as indemnity ex-delicto, P75,000.00 as moral damages, P30,000.00 as exemplary damages and P104,446.44 as actual damages and an interest of 6% per annum on all the awards of damages from the finality of judgment until fully paid.

They shall be credited with the full time of the preventive imprisonment they have undergone under the conditions set out in Article 29 of the Revised Penal Code.

SO ORDERED.[6]

Not in conformity, Suarez, Ravena and Vicencio appealed the RTC decision before the CA.

The Ruling of the CA

In its assailed October 20, 2015 Decision, the CA found no palpable error in the judgment of conviction rendered by the RTC against Suarez, Ravena and Vicencio. According to the CA, the narration of Nancy as to how the event took place and the exact participation of Suarez, Ravena and Vicencio in the commission of the crime, deserved credence and full probative weight. It likewise gave evidentiary weight on Roger's dying declaration, as testified to by Taño which revealed that Ravena was the person who stabbed him and that Suarez and Vicencio participated in the commission of the crime. In its assessment, the accused acted in concert and in pursuance of a common objective. It added that the qualifying circumstance of abuse of superior strength attended the killing of Roger. Hence, it agreed that the crime committed by the accused was murder. In the end, it decreed:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated 21 June 2013 of the Regional Trial Court of Iloilo City, Branch 35, in Criminal Case No. 11-69572 finding appellants Me Henry Suarez y Zurita, John Joseph Ravena y Acosta and John Paul Vicencio y Barranco guilty beyond reasonable doubt of Murder is AFFIRMED in toto.

SO ORDERED.[7]

Hence, this appeal.

In a Resolution,[8] dated July 27, 2016, the Court required both parties to file their supplemental briefs, if they so desired. Both parties, however, opted to adopt the briefs they filed before the CA as their supplemental briefs.[9]

The Issues

Although Ravana is no longer questioning in his Appellant's Brief the finding of the RTC as to his guilt for the killing of Roger, nonetheless, he prays for the modification of his conviction from murder to homicide. He submits for the Court's review the following assignment of errors he previously presented before the CA:

I

THE HONORABLE REGIONAL TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT JOHN JOSEPH RAVENA AND HIS CO-ACCUSED OF THE CRIME OF MURDER BY APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH BASED ON ITS FINDINGS THAT THERE WAS A COMBINED STRENGTH AMONG THE THREE (3) ACCUSED IN ORDER TO CONSUMMATE THE OFFENSE INSPITE OF LACK OF EVIDENCE TO SUPPORT THE PRESENCE OF THE AFORESAID QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH.

II

THE HONORABLE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER INSTEAD OF HOMICIDE.[10]

In their separate Appellants' Brief, Suarez and Vicencio insisted on their innocence of the crime charged, pleading the following

GROUND

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS SUAREZ AND VICENCIO OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[11]

II

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE ACCUSED APPELLANTS SUAREZ AND VICENCIO ACTED IN CONCERT WITH RAVENA IN STABBING THE VICTIM.[12]

THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH WHEN IT WAS NOT PROVEN BY THE PROSECUTION.[13]

Synthesized, the issues herein focus on: (a) the credibility of the prosecution witness Nancy Lauresta; (b) the sufficiency of the prosecution evidence to prove the commission of the crime and the identities of the culprits thereof; (c) the existence of conspiracy; and (d) the presence or absence of the qualifying circumstance of abuse of superior strength.

The Ruling of the Court

The appeal is partly meritorious.

Both the RTC and the CA considered Nancy's eyewitness testimony credible. The Court concurs with this finding of the courts below.

The Court reiterates that the trial judge's evaluation of the credibility of a witness and of his testimony is accorded the highest respect because of his unique opportunity to directly observe the demeanor of the witness that enables him to determine whether the witness is telling the truth or not.[14] Such evaluation, when affirmed by the CA, is binding on the Court unless the appellant reveals facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[15]

In the case at bench, however, the accused did not present any fact or circumstance of weight that the RTC or the CA overlooked, misapprehended, or misinterpreted that, if considered, would alter the finding that they were responsible for the killing of Roger herein. Accordingly, the Court sees no reason to disregard the total credence accorded by the lower courts to Nancy's eyewitness account.

To the Court's view, Nancy's identification of all the accused as the perpetrators was positive and reliable for being based on her recognition of each of them during the incident. Despite grueling cross-examination, she steadfastly related the principal occurrence and had consistently and invariably identified accused as the culprits of the gruesome killing. She is very familiar with each of the accused as they were regular customers of the videoke bar and were all residents of the same barangay, which eliminated any possibility of mistaken identification. She spotted them from a distance of only three meters away under a good condition of visibility as the incident happened under a lighted lamppost. Moreover, Nancy detailed the distinct acts committed by each of the accused during their assault on Roger.

There was no better indicator of the reliability and accuracy of her recollection than its congruence with the physical evidence adduced at the trial. The result of the post-mortem examination conducted by Dr. Owen Jaen Lebaquin (Lebaquin) showed that the victim sustained a "stab wound at the right lumbar area of the back which also lacerated the right kidney, measuring by 3 x 1 cm., 10 cm. from the posterior midline, 15 cm. deep, directed anteriorwards slightly upwards medialwards lacerating the right kidney,"[16] which confirmed Nancy's testimonial declaration about the victim having been stabbed at his back.

The Court finds that Nancy had no malicious motive whatsoever to falsely testify against the accused. Her admitted resentment against accused Ravena for non-payment of his loan to her, apart from being flimsy and self-serving, had no relevant value. It could not have moved her to make up stories against him just to get even. The penalty is not commensurate. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that their testimonies are entitled to full faith and credit.[17]

Aside from the testimony of Nancy, the dying declaration of Roger left no doubt as to the identity of the perpetrator. Roger was very well aware of his imminent death and his declaration to Taño that Ravena was responsible for his stab wound was made in the belief that he would not survive his injury. The declarations of Roger related to circumstances pertaining to his impending death and he would have been competent to testify had he survived.

Accused Suarez and Vicencio contend that Roger's dying declaration failed to implicate them to the killing inasmuch as it did not specifically mention them as his assailants. The argument is untenable. The Court adopts with conformity the following disquisition of the CA on this score:

xxx It bears stressing that when Setera (Roger) was first asked who stabbed and wounded Mm, he answered that it was "the children." When Setera was asked a second time if he knew who stabbed him, he categorically pointed to appellant Ravena as the perpetrator. Thus, while appellants Suarez and Vicencio were not named, their companion Ravena was clearly identified as the person who stabbed Setera. Since it was established that appellants were together at the time and date of the incident, it can be safely concluded that "the children" who Setera pointed to as the persons who stabbed and wounded him were in fact Ravena, Suarez and Vicencio. This Court entertains no doubt as to their participation in the crime charged.[18]

Accordingly, Roger's dying declaration, taken together with the positive testimony of Nancy, established the guilt of the accused beyond reasonable doubt.

Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest.[19] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[20]

Here, the evidence on record disclosed that upon hearing the commotion caused by accused, Roger, who was then outside the videoke bar, yelled at them to go home. All the accused then flashed the "dirty finger" at Roger and beckoned him to come closer to them. Roger reacted to the taunts and approached them. When Roger got close to them, Suarez and Vicencio started raining fist blows on him. Roger defended himself by parrying the punches with his arms. Ravena, who was positioned behind Roger, suddenly delivered the fatal blow. Specifically, Ravena stabbed Roger at the right lumbar area which lacerated his right kidney. After the stabbing, the three accused ran away.

The combined efforts of the accused were perpetrated with concerted coordination, indicating their common objective to inflict injury on Roger. Thus, conspiracy is present. The fact that Suarez and Vicencio only delivered punches against Roger would not exculpate them from criminal liability considering that their overt acts were crucial in the commission of the crime. Action in concert to achieve a common design is the hallmark of conspiracy. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.[21]

In their defense, the accused simply invoked denial. Such defense is inherently weak and cannot prevail over the positive identification made by prosecution witness Nancy and the dying declaration of Roger himself. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.[22]

Accused' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused was somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[23] Accused miserably failed to discharge this burden.

The fact that accused presented witnesses to corroborate their respective alibis deserve scant consideration. Their testimonies could only be viewed with skepticism due to the weakness of the alibi said witnesses were corroborating. Accused could easily fabricate an alibi and ask their relatives and Mends to corroborate it.[24] Further, the Court is not convinced with the argument interposed by accused Suarez and Vicencio that it was highly improbable for them, after having killed someone, to continue to stay in an area relatively near the locus criminis where they could be easily located and arrested. They maintain that their non-flight supports their plea of innocence. Unfortunately for accused, there is no case law holding non-flight as an indication or as conclusive proof of innocence.[25]

Treachery

The Court upholds the finding of the RTC that treachery did not attend the killing of Roger. There is treachery when the following essential elements are present, viz: (a) at the time of the attack, the victim was not in a

position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[26] As correctly ruled by the RTC, the fight which ensued between Roger and all the accused was not planned and happened in the spur of the moment. Hence, it cannot be declared with certainty that the boxing and stabbing were consciously and deliberately adopted by the accused to thereby ensure the commission of the offense without risk to them arising from the defense which the offended party might make. Besides, Roger had already been forewarned of the danger that might befall him before he approached the accused.

Abuse of Superior Strength

Now, was the killing of Roger committed with abuse of superior strength?

The Court rules in the negative. The conviction of the accused for murder is substantively flawed, as both the RTC and the CA erroneously appreciated the presence of abuse of superior strength as a qualifying circumstance. An examination of the evidence tells us that no conclusive proof exists showing the presence of this circumstance in the commission of the crime.

Both the RTC and CA similarly reached the conclusion that the accused employed abuse of superior strength to ensure the execution and success of the crime. The CA wrote:

xxx The deliberate intent on the part of appellants to abuse their superior strength and number over Setera can be inferred from the way they planned their attack on him. While Setera was distracted from the simultaneous punches thrown by Suarez and Vicencio, Ravena purposely took advantage of the situation and stabbed Setera at the back with ease. The disparate inequality of strength and number created an unfair advantage in favor of appellants.[27]

This reasoning is flawed.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime.[28] It has been held that the mere presence of two assailants, one of them armed with a knife, does not ipso facto indicate an abuse of superior strength.[29] Mere superiority in numbers is not indicative of the presence of this circumstance.[30]

In *People v. Casingal*,[31] it was held that the fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants consciously sought the advantage, or that they had the deliberate intent to use this advantage.[32] To take advantage of superior strength means to purposely use force excessively out of proportion to the means of defense available to the person attacked.[33] The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[34]

Here, the prosecution failed to proffer proof as to the relative disparity in age, size and strength, or force, except the showing that three assailants, one of them (Ravena) armed with a pointed object, attacked Roger. Neither did it present evidence to show that Roger suffered from an inferior physical condition from which the circumstance could be inferred. In fact, there was evidence that Roger was able to parry the fist blows delivered by Suarez and Vicencio.

The events leading to the stabbing belie any finding of deliberate intent on the part of the accused to abuse their superior strength. The testimony of the prosecution witness, Nancy, showed that the encounter between Roger and his assailants was unplanned and unpremeditated.

Roger was simply outside the videoke bar, while the assailants were pushing each other after Suarez threw a bottle on the ground. When Roger screamed at Suarez, Ravena and Vicencio and told them to go home, all of them beckoned him to come closer. Thereafter, the fight ensued. Indeed, there was no conscious effort on the part of the accused to use or take advantage of any superior strength and number that they then enjoyed. Particularly, it was not clearly shown that the accused, taking advantage of their number, purposely resorted to simultaneously and continuously punch Roger so that Ravena would be free to stab him at the back. The evidence on this point is simply too sketchy and insufficient for a definitive conclusion. To qualify a killing to murder, the circumstances invoked must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.[35] What was shown with certainty and clarity is the accused' intent to kill, as shown by the stab wound in the right lumbar area of the back of Roger lacerating his right kidney which resulted in his death the following morning.

In the light of the foregoing, the Court is compelled to rule out the presence of abuse of superior strength as a qualifying circumstance. In sum then, the Court finds Suarez, Ravena and Vicencio guilty only of homicide, defined in, and penalized by, Article 249 of the Revised Penal Code. There being no modifying circumstances in the commission of homicide, accused should each be meted an indeterminate penalty, the minimum of which shall be taken from the entirety of prision mayor, ranging from six (6) years and one (1) day to twelve (12) years, and the maximum period of which shall be taken from the medium period of reclusion temporal, ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

The award of actual damages in the amount of P104,446.44 should be maintained as the same had been duly proved by the heirs of Roger. The amounts to be awarded as civil indemnity and moral damages should be fixed at P50,000.00 each, being in consonance with the prevailing jurisprudence.[36] Considering that no aggravating circumstance was proven during the trial, the award of P30,000.00 as exemplary damages must be deleted. Further, in line with the Court's recent pronouncement, the interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[37]

WHEREFORE, the assailed October 20, 2015 Decision of the Court of Appeals in CA-G.R. CEB-CR H.C. No. 01723 is MODIFIED as follows:

1)

Mc Henry Suarez y Zurita, John Joseph Ravena y Acosta and John Paul Vicencio y Barranco are found guilty beyond reasonable doubt of the crime of Homicide. Accordingly, each is sentenced to an indeterminate penalty of Six (6) Years and One (1) Day of prision mayor, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal, as maximum;

2)

Mc Henry Suarez y Zurita, John Joseph Ravena y Acosta and John Paul Vicencio y Barranco are ordered to pay, jointly and severally, the heirs of Roger Setera the amounts of P104,446.44 as actual damages, P50,000.00 as civil indemnity and P50,000.00 as moral damages. The award of P30,000.00 as exemplary damages is deleted.

3)

The accused-appellants are ordered to pay, jointly and severally, legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.

Carpio, (Chairperson), Brion, and Del Castillo, JJ., concur.
Leonen, J., on official leave.

[1] Penned by Associate Justice Germane Francisco D. Legaspi with Associate Justice Pamela Ann Abella Maxino and Associate Justice Jhosep Y. Lopez, concurring; rollo, pp. 5-13.

[2] Penned by Judge Fe Gallon-Gayanilo; CA rollo, pp. 27-39.

[3] Id. at 100-120.

[4] Id. 105-107.

[5] Id. at 17-19.

[6] Id. at 39.

[7] Rollo, p. 12.

[8] Id at 19A-20.

[9] Id. at 27-29; 33-34.

[10] CA rollo, p. 19.

[11] Id. at 48.

[12] Id. at 53.

[13] Id. at 55.

[14] *People v. Pascual*, 541 Phil. 369, 377 (2007).

[15] *People v. Domingo*, 616 Phil. 261, 269 (2009).

[16] CA rollo, p. 30.

[17] *People v. Tabaco*, 336 Phil 773, 796 (1997).

[18] Rollo, p. 10.

[19] *People v. de la Rosa, Jr.*, 395 Phil 643, 659 (2000).

[20] *People v. Del Castillo*, 679 Phil. 233, 254 (2012).

[21] *People v. Drew*, 422 Phil. 614, 628 (2001).

[22] *People v. Calonge*, 637 Phil. 435, 455 (2010).

[23] *People v. Abella*, 624 Phil 18, 36 (2010).

[24] *People v. Torres*, G.R. No. 189850, September 22, 2014, 735 3CRA 687, 704.

[25] *People v. Diaz*, 443 Phil. 67, 89 (2003).

[26] *People v. Villarico, Sr.*, 662 Phil. 399, 422 (2011).

[27] Rollo, p. 9.

- [28] *People v. Daquipil*, 310 Phil. 327, 348 (1995).
- [29] *People v. Asis*, 349 Phil. 736, 747 (1998).
- [30] *People v. Escoto*, 313 Phil. 785, 800 (1995).
- [31] 312 Phil. 945, 956 (1995).
- [32] *Valenzuela v. People*, 612 Phil. 907, 917 (2009).
- [33] *People v. Ventura*, 477 Phil. 458, 484 (2004).
- [34] *People v. Moka*, 273 Phil. 610, 621 (1991).
- [35] *People v. Baltar, Jr.*, 401 Phil. 1, 14 (2000).
- [36] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.
- [37] *People v. Maglente*, G.R. No. 201445, November 27, 2013, 722 SCRA 388, 405.

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