

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CEZAR CORTEZ AND FROILAN BAGAYAWA, ACCUSED, CEZAR CORTEZ, ACCUSED-APPELLANT.*G.R. No. 239137. December 05, 2018*

Ponente: PERLAS-BERNABE, J.

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Before the Court is an ordinary appeal[1] filed by accused-appellant Cezar Cortez (Cezar) assailing the Decision[2] dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08301 which affirmed the Decision[3] dated April 4, 2016 of the Regional Trial Court of Angeles City, Branch 60 (RTC) in Criminal Case No. 10401, finding him guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder, respectively defined and penalized under Articles 249 and 248 of the Revised Penal Code (RPC).

The Facts

This case stemmed from an Information[4] filed before the RTC charging Cezar Cortez and Froilan Bagayawa (Froilan) of the crime of Robbery with Multiple Homicide, defined and penalized under Article 294 (1) of the RPC, the accusatory portion of which states:

That on or about the 19[th] day of May, 1988, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with intent [to] gain, and by means of force, violence and/or intimidation of persons, rob, steal, take and carry away from the house/bake shop of MR. & MRS. MARIO PUNZALAN and MINDA DUARTE PUNZALAN, located along McArthur Hi-way Rd., Bgy. Virgen Delos Remedios, Angeles City, cash money valued at P50,000.00 and assorted jewelries, belonging to the spouses Mario Punzalan, against their will and consent, and the accused in pursuance of and on occasion of the said Robbery with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault, strike, stab and hit MARIO PUNZALAN, MINDA DUARTE PUNZALAN, JOSIELYN MESINA, BABY MESINA, and EFREN VILLANUEVA, with a knife and wooden club with a length approximately one meter and four inches in diameter on the different parts of their bodies, thereby inflicting upon the [latter] fatal stab wounds, causing the death of the said MARIO PUNZALAN, MINDA DUARTE PUNZALAN, JOSIELYN MESINA, BABY MESINA, and EFREN VILLANUEVA.

ALL CONTRARY TO LAW.[5]

The prosecution alleged that in the evening of May 19, 1988, eyewitness Janet Quiambao (Janet) was sleeping with her cousins, namely, Baby Mesina (Baby) and Jocelyn[6] Mesina (Jocelyn), in a room at the back of "Minda's Bakery" owned by her sister, Minda Punzalan (Minda), and brother-in-law, Mario Punzalan (Mario), located along Old Remedian Barbeque Place in Angeles City. Minda and Mario were occupying the other room of the bakery, while their bakers, Cezar and Froilan, were staying in another room upstairs. At around two (2) to three (3) o'clock in the morning of the following day, Janet was awakened by a banging sound on the wall. She then peeped through the door of her room and saw Cezar hitting Mario on the head with an object similar to a

rolling pin while the latter was asleep. Subsequently, she witnessed Cezar stabbing Minda with a knife and Froilan stabbing his co-baker, Efren Villanueva (Efren). Shortly thereafter, Cezar and Froilan forcibly entered Janet's room and proceeded to stab and kill Baby and Jocelyn. Fortunately for Janet, she was able to immediately hide under a table just before Cezar and Froilan barged in, leaving her unscathed. After Cezar and Froilan left, Janet came out of her hiding place and saw the dead bodies of her relatives. Janet's assertions were then corroborated by Mario and Minda's son, Richard Punzalan (Richard), who was able to hide with his sister at the back of an electric fan during the whole ordeal.[7]

Meanwhile, Mario's brother, Leonardo Punzalan (Leonardo), also corroborated Janet and Richard's testimonies, stating that on the day of the incident, he dropped by "Minda's Bakery" before going to the market to check if they needed anything. Upon arrival thereat, he saw Janet crying, with the latter telling him that Mario, Minda, Efren, Baby, and Jocelyn are already dead. Leonardo then went to inspect the dead bodies, noticing that Mario's watch was missing. Leonardo and Janet then went to report the matter to the police, who in turn, conducted a manhunt for Cezar and Froilan, killing the latter in the process. Consequently, they inspected Froilan's body and recovered the missing watch of Mario. Finally, Leonardo claimed that Cezar was initially apprehended but was able to escape.[8]

On December 28, 1988, the case was archived for failure to apprehend Cezar, but the same was revived after his arrest in 2010.[9]

In his defense, Cezar invoked denial and alibi, maintaining that at the time of the incident, he was working for the husband of his sister, Salvador Pineda, as a stay-in "tinapa maker" in San Jose, Concepcion, Tarlac. He claimed that he did not know Froilan or any of the five (5) victims. He also insisted that he only learned of the case against him when he was arrested in 2010, which arrest was allegedly conducted without the benefit of a warrant.[10]

The RTC Ruling

In a Decision[11] dated April 4, 2016, the RTC found Cezar guilty beyond reasonable doubt not of the crime charged, but of two (2) counts of Homicide for the deaths of Mario and Efren and three (3) counts of Murder for the deaths of Minda, Baby, and Jocelyn, and accordingly: (a) for each count of Homicide, sentenced him to suffer the penalty of imprisonment of eight (8) years of prision mayor, as minimum, to seventeen (17) years of reclusion temporal, as maximum, and ordered to pay the heirs of Mario and Efren the amounts: (a) of P50,000.00 as civil indemnity and P25,000.00 as temperate damages each; and (b) for each count of Murder, sentenced him to suffer the penalty of reclusion perpetua, and ordered to pay the heirs of Minda, Baby, and Jocelyn the amounts of P50,000.00 as civil indemnity and P25,000.00 as temperate damages each.[12]

The RTC found that the prosecution failed to prove the elements of the crime of Robbery, considering that the witnesses' testimonies focused more on the killings of the victims, and that it was not established that the watch recovered from Froilan indeed belonged to Mario.[13] Nonetheless, the prosecution had established, through the positive testimonies of the witnesses, that Cezar and Froilan killed Mario, Efren, Minda, Baby, and Jocelyn. In this regard, the RTC opined that the killing of Mario and Efren was not attended by the circumstances of treachery and abuse of superior strength, there being no showing of facts tending to prove their existence. On the other hand, the RTC ruled that the killings of Minda, Baby, and Jocelyn were attended by abuse of superior strength, considering that Minda was reportedly pregnant at the time of the incident, while Baby and Jocelyn were defenseless when the perpetrators killed them.[14]

Aggrieved, Cezar appealed to the CA.[15]

The CA Ruling

In a Decision[16] dated June 29, 2017, the CA affirmed Cezar's conviction for two (2) counts of Homicide and three (3) counts of Murder, with the following modifications: (a) for each count of Homicide, he is sentenced to suffer the penalty of eight (8) 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, and ordered to pay the heirs of Mario and Efren the amounts of P50,000.00.00 as civil indemnity, P50,000.00 as moral damages, and P50,000 as temperate damages each; (b) for each count of Murder, he is sentenced to suffer the penalty of reclusion perpetua, and ordered to pay the heirs of Minda, Baby, and Jocelyn the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and P75,000.00 as temperate damages each; and (c) all damages shall earn legal interest at the rate of six percent (6%) per annum from finality of the judgment until full payment.[17] It held that the killings of Mario and Efren were not attended by any qualifying circumstances; while the killings of Minda, Baby, and Jocelyn were attended by abuse of superior strength, as they were attacked in the middle of the night while they were sleeping, unarmed, and defenseless.[18]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Cezar is guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder.

The Court's Ruling

The appeal is denied.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [19]

Guided by the foregoing considerations, the Court deems it proper to modify Cezar's conviction to one (1) count of Homicide, for the killing of Efren, and four (4) counts of Murder, for the killings of Mario, Minda, Baby, and Jocelyn, as will be explained hereunder.

To successfully prosecute the crime of Murder, the following elements must be established: (a) a person was killed; (b) the accused killed him or her; (c) the killing is not Parricide or Infanticide; and (d) the killing was accompanied with any of the qualifying circumstances mentioned in Article 248 of the RPC.[20] Notably, if the accused killed the victim without the attendance of any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide, a conviction for the crime of Homicide will be sustained.[21]

As it is undisputed that Cezar and Froilan were responsible for the killing of Efren, Mario, Minda, Baby, and Jocelyn, the Court is left to determine whether or not the qualifying circumstances of treachery and/or abuse of superior strength, as alleged in the information, obtains in this case.

Case law instructs that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." In other words, to appreciate treachery, it must be shown that: (a) the means of execution employed gives the victim no opportunity to defend himself or retaliate; and (b) the methods of execution were deliberately or consciously adopted; indeed, treachery cannot be presumed, it must be proven by clear and convincing evidence.[22]

On the other hand, abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. 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 purposely sought the advantage, or that they had the deliberate intent to use this advantage.[23]

To recall, the RTC ruled that neither of the aforesaid circumstances attended the killings of Efren and Mario, while abuse of superior strength was present in the killings of Minda, Baby, and Jocelyn. However, a more circumspect review of the records reveals that: (a) Mario's killing was attended by treachery; (b) Minda, Baby, and Jocelyn's killings were qualified into Murder not by abuse of superior strength, but by treachery; and (c) neither circumstance attended Efren's killing.

Anent Mario's killing, records clearly show that Cezar killed Mario by hitting him on the head with an object similar to a rolling pin while he was sleeping, thereby indicating that Cezar purposely sought such means of attack against Mario so as the latter would have no opportunity to defend himself or retaliate and thus, ensuring the execution of the criminal act.[24] Hence, contrary to the courts a quo's findings, there is sufficient factual basis to support the existence of treachery, and therefore, the same may be properly appreciated.

As to the killings of Minda, Baby, and Jocelyn, the courts a quo opined that abuse of superior strength attended their killings, considering that Cezar and Froilan used deadly weapons, i.e., knives, in killing them.[25] Although there have been cases where abuse of superior strength was appreciated where a male equipped with a deadly weapon attacked an unarmed and defenseless woman,[26] jurisprudence nonetheless provides that for abuse of superior strength to be appreciated, "[t]he evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked." [27] In this case, it does not appear that Cezar and Froilan specifically sought the use of deadly weapons so as to be able to take advantage of their superior strength against Minda, Baby, and Jocelyn. In fact, their criminal design to raid the house and consequently, to use deadly weapons in killing whomever they encounter therein was applied indiscriminately, regardless of whether their victims were male (Mario and Efren) or female (Minda, Baby, and Jocelyn). Therefore, there is reasonable doubt as to whether abuse of superior strength may be appreciated in this case. Nevertheless, the Court finds that the qualifying circumstance of treachery may be appreciated in this case, considering that Minda, Baby, and Jocelyn - similar to Mario - were attacked in the middle of the night while they were sleeping, unarmed, and defenseless.[28] As such, their killings were still correctly classified as Murders.

Finally, suffice it to say that the killing of Efren was properly classified as Homicide absent any factual averment showing that the same is attended by treachery and/or abuse of superior strength.

In fine, the Court holds that Cezar should be held liable for one (1) count of Homicide for the killing of Efren, and for four (4) counts of Murder for the killings of Mario, Minda, Baby, and Jocelyn, respectively defined and penalized under Articles 249 and 248 of the RPC. Under the said Code, the crime of Homicide is punishable by reclusion temporal, the range of which is from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law and there being no modifying circumstance, it is proper to sentence him with the penalty of imprisonment for the indeterminate period of eight (8) years and one (1) day of prison mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum.[29] As to the crime of Murder, the same is penalized with reclusion perpetua to death. However, since both penalties are

indivisible and there are no aggravating circumstance other than the qualifying circumstance of treachery, the lower of the two (2) penalties, which is reclusion perpetua, should be properly imposed for each count of Murder.[30]

Anent the award of damages, the Court notes that the CA's imposition of the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as temperate damages for the crime of Homicide is proper. Likewise, the imposition of the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages for each count of Murder is correct, except as to the amount of P75,000.00 as temperate damages which must be reduced to P50,000.00 in line with prevailing jurisprudence.[31] Accordingly, all damages awarded to the heirs of Mario, Minda, Efren, Baby, and Jocelyn, should earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

WHEREFORE, the appeal is DENIED. The Decision dated June 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08301 finding accused-appellant Cezar Cortez (Cezar) guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder is hereby AFFIRMED with MODIFICATIONS as follows:

(a) As to the killing of Efren Villanueva, accused-appellant Cezar is found GUILTY beyond reasonable doubt of one (1) count of Homicide, defined and penalized under Article 249 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of imprisonment for a period of eight (8) 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, and ordered to pay the heirs of the victim the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as temperate damages, with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until full payment; and

(b) As to the killings of Mario Punzalan, Minda Punzalan, Baby Mesina, and Jocelyn Mesina, accused-appellant Cezar is found GUILTY beyond reasonable doubt of four (4) counts of Murder, defined and penalized under Article 248 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of reclusion perpetua, for each count, and ordered to pay the heirs of the aforesaid victims the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and P50,000.00 as temperate damages, for each count, all with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until full payment.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Caguioa, A. Reyes, Jr., and Carandang, JJ., concur.

[1] See Notice of Appeal dated July 20, 2017; rollo, pp. 16-17.

[2] Rollo, pp. 2-15. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Zenaida T. Galapate-Laguilles, concurring.

[3] CA rollo, pp. 46-65. Penned by Presiding Judge Eda P. Dizon-Era.

[4] Dated June 8, 1988; records, pp. 1-2.

[5] Records, p. 1.

[6] "Josielyn", "Joseilyn", or "Jesielyn" in some parts of the records.

[7] See rollo, pp. 4-5 and CA rollo, pp. 47-48.

- [8] See rollo, p. 5 and CA rollo, pp. 47-48.
- [9] See CA rollo, p. 46.
- [10] See rollo, p. 5 and CA rollo, p. 49.
- [11] CA rollo, pp. 46-65.
- [12] Id. at 64-65.
- [13] Id. at 50.
- [14] Id. at 49-64.
- [15] See Notice of Appeal dated May 4, 2016; id. at 13-14.
- [16] Rollo, pp. 2-15.
- [17] Id. at 14.
- [18] Id. at 7-13.
- [19] See *People v. Manlao*, G.R. No. 234023, September 3, 2018.
- [20] See *Ramos v. People*, 803 Phil. 775, 783 (2017), citing *People v. Las Piñas*, 739 Phil. 502, 524 (2014).
- [21] See *Wacoy v. People*, 761 Phil. 570, 578 (2015), citing *Villanueva v. Caparas*, 702 Phil. 609, 616 (2013); citation omitted.
- [22] *People v. Casas*, 755 Phil. 210, 221 (2015); citation omitted.
- [23] See *People v. Villanueva*, 807 Phil. 245, 253 (2017), citing *People v. Beduya*, 641 Phil. 399, 410 (2010).
- [24] See *People v. Antonio, Jr.*, 441 Phil. 425, 436 (2002).
- [25] See rollo, p. 12 and CA rollo, p. 64.
- [26] See *People v. Brodett*, 566 Phil. 87, 92 (2008), citing *People v. Tubongbanua*, 532 Phil. 434, 450 (2006).
- [27] See *People v. Miraña*, G.R. No. 219113, April 25, 2018, citing *People v. Villanueva*, 807 Phil. 245, 253 (2017); citation omitted.
- [28] See rollo, p. 12.
- [29] See paragraph 1, Article 64 of the RPC.
- [30] See Article 63 of the RPC.
- [31] See *People v. Jugueta*, 783 Phil. 806, 848 and 846-847 (2016).

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