PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERT ALEGRE Y NAZARAL, ACCUSED-APPELLANT.

G.R. No. 254381. February 14, 2022

Ponente: HERNANDO, J.

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HERNANDO, J.:

This appeal[1] seeks to reverse and set aside the January 30, 2020 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12447, which affirmed the November 13, 2018 Decision[3] of the Regional Trial Court (RTC) of Valenzuela City, Branch 75, in Criminal Case No. 179-V-14 finding accused--appellant Gilbert Alegre y Nazaral (Alegre) guilty beyond reasonable doubt of the crime of Murder.

The Factual Antecedents:

On February 7, 2014, an Information[4] for Murder was filed against Alegre, the accusatory portion of which reads:

> That on or about December 1, 2013, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named, without any justifiable cause, with deliberate intent to kill and acting with treachery, did then and there willfully, unlawfully and feloniously shoot with a gun one Ronald Pascua y Raza (victim), hitting the latter's head and neck, thereby inflicting upon the latter serious physical injuries which caused his death.
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> CONTRARY TO LAW.[5]

Upon his arraignment on March 21, 2014, Alegre pleaded "not guilty" to the crime charged.[6] After the termination of the preliminary conference[7] and pre-trial,[8] trial on the merits subsequently ensued.

Version of the Prosecution:

On December 1, 2013, at around 7:00 p.m., security guards John Monito Tagle (Tagle), Ronald Pascua y Raza (Pascua), and Isidro Magpusao (Magpusao), were on duty at Century Glass Center located in Valenzuela City. At that time, they had just finished eating and Pascua was washing dishes.[9]

A few moments later Tagle heard a knock on the gate. He opened the gate and saw Alegre, who was also a security guard thereat. Tagle asked Alegre what he was doing there and the latter replied that he just dropped by to ask how they were and to know if he could already report for duty. Tagle informed Alegre to report to the operations manager and he subsequently let him in.[10]

Alegre then told Tagle that Pascua had been saying bad things about him. Tagle cautioned him to keep quiet as Pascua was just washing dishes inside. However, Pascua overheard their conversation and asked Alegre about what he was saying. Alegre then started cursing at Pascua and told him that he lost his job because of him. A heated exchange ensued between the two. Tagle tried to pacify and stop the squabble by leading Alegre out of the premises. However, Alegre continued to shout and curse at Pascua, who did not back down and also shouted expletives against Alegre.[11] Afterwards, Alegre motioned to his waist area and drew his .38 caliber gun. Pascua

then told Alegre, "wag mo akong daanin sa ganyan," but Alegre still pulled the trigger and shot him on the neck.[12] When Pascua dropped to the ground, Alegre approached him, almost kneeled on top of him, and proceeded to shoot him on the head.[13] Tagle then wrestled the gun away from Alegre, and he and Magpusao closed the gate to prevent Alegre from leaving but he was able to escape through another exit. Nevertheless, Tagle was able to chase after him and Alegre was brought to the police precinct thereafter.[14]

Pascua instantly died from the shooting and was later taken to Candido Funeral Homes. The autopsy conducted by medico-legal officer Police Chief Inspector Jocelyn Cruz confirmed that he died due to the gunshot wounds on the head and neck.[15] By reason of his death, Pascua's family allegedly incurred expenses totaling the amount of P86,900.00.[16]

Version of the Defense:

For his part, Alegre averred that on the day of the incident, he went to Century Glass Center to retrieve his things. At the premises, he saw Pascua, who started shouting and cursing at him. Alegre asked him what he wanted, but Pascua continued to hurl invectives at him. Alegre got fed up and brought out his gun. Pascua then told him not to resort to such, but Alegre already lost his patience and shot Pascua. Shocked at the sight of Pascua falling to the ground, Alegre ran out and boarded a "kuliglig" to leave the place.[17]

Ruling of the Regional Trial Court:

In a Decision dated November 13, 2018, the RTC ruled that all the elements of the crime of Murder were present in this case. The RTC found that the killing was qualified by treachery when Alegre deliberately shot Pascua twice, one on the head and another on the neck, which the latter did not foresee and which did not give him the opportunity to defend himself.[18] The dispositive portion of the RTC Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused GILBERT ALEGRE Y NAZARAL guilty beyond reasonable doubt of the crime of Murder punishable under Article 248 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of Reclusion Perpetua without eligibility for parole.
>
> The accused is hereby ordered to pay the heirs of Ronald Pascua y Raza the following:
> 1. civil indemnity in the amount of Php 100,000.00;
> 2. moral damages in the amount of Php 100,000.00;
> 3. exemplary damages in the amount of Php 100,000.00; and
> 4. actual damages in the amount of Php 86,900.00.

The aforesaid monetary award payable by accused are subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

With costs against the accused.[19]

Aggrieved, Alegre appealed to the CA, averring that the RTC gravely erred in convicting him of Murder despite the failure of the prosecution to prove all the elements thereof, and to prove his guilt beyond reasonable doubt.[20] In particular, Alegre argued that treachery was not sufficiently alleged in the Information and was not adequately proved during trial.[21]

Ruling of the Court of Appeals:

On January 30, 2020, the CA promulgated its Decision denying Alegre's appeal. Similar to the RTC, the CA

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found that the prosecution sufficiently proved all the elements of Murder, including the qualifying circumstance of treachery. It likewise held that the same was adequately alleged in the Information, and noted that this issue was only brought up for the first time on appeal; thus, it became too late for Alegre to raise such an objection pursuant to Section 9, Rule 117 of the Rules of Court.[22] The CA thus ruled:

> WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Regional Trial Court of Valenzuela City, Branch 75, dated 13 November2018 in Criminal Case No. 179-V-14 is AFFIRMED.
>
> SO ORDERED.[23]

Hence, this appeal.

Issue:

In this case, Alegre admitted to shooting Pascua. There is no question that such act led to Pascua's death.[24] Thus, the sole issue to be resolved is whether the qualifying circumstance of treachery attended the killing of Pascua.

Our Ruling

After a judicious review of the records of the case, the Court holds that the conviction of Alegre for Murder cannot be upheld. He is properly liable only for Homicide.

Treachery exists when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[25] To appreciate treachery as a qualifying circumstance, two conditions must be met: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself/herself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, denying the latter any chance to protect himself, and thereby ensuring its commission without posing any risk to the aggressor.[26]

Jurisprudence dictates that for treachery to be appreciated, it must be sufficiently pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the charge against him.[27] In People v. Solar[28] (Solar), this Court held that:

> [I]t is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done "with treachery" or "with abuse of superior strength" or "with evident premeditation" without specifically describing the acts done by the accused that made any or all of such circumstances present. Borrowing the words of the Court in Dasmariñas, "to merely state in the information that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law."
>
> An information alleging that treachery exists, to be sufficient, must therefore have factual averments on how the person charged had deliberately employed means, methods or forms in the execution of the act that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged.[29]

Further, the Court, in Solar, laid down the following guidelines for the guidance of the Bench and Bar:

> 1. Any information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts

> relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules [on] Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.
>
> Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.
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> x x x x
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> 5. For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, (i.e., whether he previously filed either a motion to quash under Section 3(e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.[30]

Here, it is conceded that the Information against Alegre is defective insofar as it merely averred the existence of the qualifying offense of treachery without specifying the particular acts and circumstances that would constitute such. However, it is submitted that Alegre is deemed to have waived this defect, considering his failure to avail of the proper procedural remedies.[31]

Based on the records, Alegre did not question the supposed insufficiency of the Information filed against him, through either a motion to quash or a motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Alegre is deemed to have understood the acts imputed against him by the Information.[32] Further, as the CA had observed, the issue on the insufficiency of the Information was only raised for the first time on appeal.

From the foregoing, since Alegre is considered to have waived his right to question the defective statement of the aggravating or qualifying circumstance in the Information, treachery may be appreciated against him if proven during trial.[33]

On this score, both the RTC and CA found that treachery was present in this case. In its decision, the CA ruled:

> In this case, Alegre drew a gun. While Pascua told Alegre to not resort to violence ("Wag mo akong daanin sa ganyan"), Alegre proceeded to shoot him in the neck, a vulnerable area. Immediately thereafter, as Pascua slumped to the ground, Alegre approached Pascua and shot him in close range on the head. There was no way for Pascua, who was unarmed, and had instantaneously fallen, to retaliate. The attack was sudden, and being co-workers in Century Glass, Pascua could not have expected that Alegre would actually shoot him, in the neck no less.
>
> Moreover, the means Alegre employed to execute the crime was deliberately and consciously adopted. As pointed out by the OSG, Alegre brought a gun to the company premises when he allegedly only meant to retrieve his things. As soon as Tagle let him in, Alegre started talking about how Pascua had said bad things about him that cost him his job. Alegre knew exactly what he wanted to do when he went to Century Glass Center.[34]

The Court disagrees. It has been repeatedly held that "chance encounters, impulse killing or crimes committed at the spur of the moment or that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack."[35] Stated otherwise, there can be no treachery when the attack is preceded by a heated exchange of words between the accused and the

victim, or when the victim is aware of the hostility of the assailant towards the former.[36]

Here, Alegre had a heated altercation with Pascua before he finally lost his patience and shot him. When Pascua slumped to the ground after getting shot in the neck, Alegre moved closer and proceeded to shoot him in the head. Upon realizing what he had just done, he ran and attempted to escape, but was eventually caught by Tagle.

Based on the attendant facts, Alegre's acts were more of a result of a sudden impulse or a spur of the moment decision due to his previous heated altercation with the victim, rather than a planned and deliberate action. There is no showing that he consciously employed a particular mode of attack in order to facilitate the killing without any risk to himself. It appears that Alegre shot Pascua because he got fed up and was carried away by the anger arising from his confrontation with the deceased. Further, it bears noting that Alegre shot Pascua in their workplace and in the presence of Tagle and Magpusao. If Alegre deliberately intended that no risk would come to him, he could have chosen another time and place to attack Pascua to ensure success in committing the crime. The records are also bereft of any indication that Alegre went to Century Glass Center knowing that Pascua would actually be there. Moreover, it is clear that Pascua was aware of Alegre's hostility against him and that there was a possibility of an impending atttack.

Given the circumstances, the Court finds that treachery was wanting in this case. In the absence thereof, Alegre can only be convicted of Homicide, not Murder.

Under Article 249 of the Revised Penal Code, the penalty imposed for the crime of Homicide is reclusion temporal.[37] Considering that no modifying circumstances attended the commission of the crime, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be taken from the range of the medium period of reclusion temporal, with the minimum penalty selected from the range of prision mayor. Thus, this Court hereby imposes upon Alegre 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.[38]

Anent the award of damages, this Court finds that the RTC incorrectly granted P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages to the heirs of the victim. In People v. Silvederio III,[39] this Court explained that these amounts are imposed when the penalty is death but reduced to reclusion perpetua because of Republic Act No. (RA) 9346.[40] Since the penalty imposed by the RTC in this case was reclusion perpetua only (not "death but reduced to reclusion perpetua pursuant to RA 9346"), the amounts awarded should have been P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages.[41] At any rate, considering that the conviction of the accused has been downgraded to Homicide, the amounts of the said damages must be modified to P50,000.00 each, following the ruling in People v. Jugueta.[42]

With regard to the actual damages awarded, this Court also finds that the RTC erred when it granted the amount of P86,900.00, given that this amount was a mere estimate provided by the wife of Pascua.[43] The amount of actual damages awarded to the heirs of the victim should be P59,712.25 since this is the amount supported by the receipts on record.[44] Finally, the amounts awarded shall earn interest of six percent (6%) per annum reckoned from the finality of this Decision until full payment.

WHEREFORE, the appeal is GRANTED IN PART. The Court DECLARES accused-appellant Gilbert Alegre y Nazaral GUILTY of HOMICIDE, for which he is SENTENCED to suffer the indeterminate 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. He is further ordered to PAY the heirs of Ronald Pascua y Raza the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P50,000.00 as exemplary damages, and P59,712.25

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as actual damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J., (Chairperson), Inting, Gaerlan, and Dimaampao, JJ., concur.

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[1] Rollo, pp. 13-15.

[2] Id. at 4-12. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Louis P. Acosta.

[3] CA rollo, pp. 51-62. Penned by Presiding Judge Lilia Mercedes Encarnacion A. Gepty.

[4] Records, p. 1.

[5] Id.

[6] Id. at 32-33.

[7] Id. at 39-41.

[8] Id. at 45-48.

[9] Rollo, p. 5.

[10] Id.

[11] Id.

[12] Id. at 5-6.

[13] Id. at 6.

[14] Id.

[15] Id.

[16] Id.; Records, pp. 62-76.

[17] CA rollo, p. 54.

[18] Id. at 60-61.

[19] Id. at 61-62.

[20] Id. at 39.

[21] Id. at 43-47.

[22] Rollo, p. 11; Rule 117, Sec. 9. Failure to Move to Quash or to Allege Any Ground Therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

[23] Rollo, p. 11.

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[24] Id. at 10.

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

[26] People v. Guro, G.R. No. 230619, April 10, 2019.

[27] People v. Natindim, G.R. No. 201867, November 4, 2020.

[28] G.R. No. 225595, August 6, 2019.

[29] Id.

[30] Id.

[31] People v. Ukay, G.R. No. 246419, September 16, 2020.

[32] Id.

[33] Id.

[34] Rollo, p. 11.

[35] People v. Menil, G.R. No. 233205, June 26, 2019.

[36] Id.

[37] ART. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[38] People v. Ukay, supra note 31.

[39] G.R. No. 239777, July 08, 2020, citing People v. Jugueta, 783 Phil. 806 (2016).

[40] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," Approved: June 24, 2006.

[41] People v. Silvederio III, G.R. No. 239777, July 08, 2020, citing People v. Jugueta, 783 Phil. 806 (2016).

[42] People v. Menil, supra note 35, citing People v. Jugueta, supra.

[43] Records, p. 158.

[44] Id. at 157-172.

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