

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARMANDO CABALLERO, RICARDO CABALLERO, MARCIANO CABALLERO, JR., AND ROBITO CABALLERO, ACCUSED.

G.R. Nos. 149028-30. April 02, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court on automatic review is the Decision[1] of the Regional Trial Court of San Carlos City, Negros Occidental, Branch 57, convicting appellants Armando Caballero, Ricardo Caballero and Marciano Caballero, Jr. of murder in Criminal Cases Nos. RTC-1217 and RTC-1218 and meting on each of them the supreme penalty of death and ordering them to pay damages; and of frustrated murder in Criminal Case No. RTC-1219 and imposing on them the penalty of reclusion perpetua.

The Antecedents

Teresito (Dodong) Mondragon and his family lived in a compound surrounded by a barbed-wire fence at New Sumakwel, Broce Street, San Carlos City, Negros Occidental. Living in the same compound were Ricardo Caballero and his family; and Myrna Bawin, the sister of Eugene Tayactac, and her family. Beside the compound was the house of Leonilo Broce, a nephew of Wilma Broce.

In the afternoon of August 3, 1994, Armando (Baby), Robito (Bebot) and Marciano, Jr. (Jun), all surnamed Caballero, were having a drinking spree in the house of their brother Ricardo in the Mondragon Compound. At about 7:00 p.m. of said date, Eugene Tayactac and Arnold Barcuma arrived in the sari-sari store of Wilma Broce which was across the Mondragon Compound. Eugene had dinner in the store while Arnold proceeded to the house of Susana Broce, Eugene's girlfriend, for a chat. Susana's house was about 15 meters away from the store of Wilma. Momentarily, Armando arrived in the store and asked Eugene in an angry tone: "Gene mopalit ka?" (Gene, will you buy?). Eugene replied: "What is this all about? We don't have any quarrel between us." Armando left the store but stood by the gate of the barbed-wired fence of the Mondragon Compound. His brothers Ricardo, Robito and Marciano, Jr. joined him. Ricardo and Robito were armed with knives. When Wilma told Eugene that she was closing the store already, he stood up and left the store on his way to Susana's house. At that time, Myrna Bawin, who was standing by the window of their house saw her brother Eugene going out of the store and proceeding to the house of Susana. She called out to him and advised him to go home. Myrna then left the window to pacify her crying baby.

As Eugene walked by the gate of the Mondragon Compound, Armando suddenly grabbed Eugene towards the compound. Eugene resisted. Spontaneously, Ricardo, Marciano, Jr. and Robito joined Armando and assaulted Eugene. Armando took the wooden pole supporting the clothesline and hit Eugene with it. The latter tried to parry the blows of the Caballero brothers, to no avail. In the process, Eugene was stabbed three times. As Eugene was being assaulted, Myrna returned to the window of her house and saw the Caballero brothers assaulting Eugene. She shouted for help for her hapless brother. Wilma, who witnessed the whole incident, was shocked to

immobility at the sudden turn of events.

From the nearby house of Susana, Arnold saw the commotion and rushed to the scene to pacify the protagonists. Arnold told the Caballero brothers: “Bay, what is the trouble between you and Eugene?” However, Ricardo accosted Arnold and stabbed the latter on the left side of his body. Forthwith, Robito, Marciano, Jr. and Armando ganged up on Arnold. Two of them stabbed Arnold on his forearm. Arnold fled for his life and hid under the house of a neighbor.

For his part, Leonilo rushed from his house to where the commotion was. He was, however, met by Robito who stabbed him on the chest. Wounded, Leonilo retreated and pleaded to his uncle Lucio Broce for help: “Tio, help me because I am hit.” The commotion stopped only upon the arrival of Teresito Mondragon who was able to pacify the Caballero brothers. They all returned to the compound.

In the meantime, Lucio Broce, the uncle of Leonilo brought the injured Eugene, Leonilo and Arnold to the Planters Hospital for medical treatment. Eugene and Leonilo eventually died from the stab wounds they sustained.

Dr. Filped A. Maisog performed an autopsy on the cadaver of Eugene. He signed a postmortem report containing the following findings:

POST-MORTEM EXAMINATION

Name: Eugenio Tayactac, 22 years old, male, single
Address: New Sumakwel, San Carlos City, Neg. Occ.
Place of Incident: New Sumakwel, San Carlos City, Neg. Occ.
Place of Examination: San Carlos City Hospital
Date & Time of Incident: August 3, 1994 @ 8:30 P.M.
Date & Time Examined: August 3, 1994 @ 10:40 P.M.

Post-Mortem Findings:

=

Stab wound (L) anterior chest 2 cm. 5[th] ICS MCL directed postero laterally, lacerating (L) auricle of the heart, and the (L) pulmonary artery and the left middle lobe of the lungs;

=

Stab wound (R) anterior chest 2 cm. long 5[th] ICS parasternal line directed posteriorly;

=

Stab wound (R) posterior chest level 7[th] ICS 2 cm. long directed anteriorly.

CAUSE OF DEATH: Severe Hemorrhage secondary to Multiple Stab wounds with Massive Hemothorax (L) and Hemopneumothorax (R).[2]

He testified that the stab wounds could have been caused by a sharp-edged single-bladed or double-bladed instrument, or by three instruments.[3]

Dr. Jose Carlos L. Villarante performed an autopsy on the cadaver of Leonilo. He signed a postmortem report containing the following findings:

POST-MORTEM EXAMINATION

Name: Leonilo Broce, 22 years old, male, married
Address: New Sumakwel, San Carlos City, Neg. Occ.

Place of Incident: New Sumakwel, San Carlos City, Neg. Occ.

Place of Examination: San Carlos City Hospital

Date & Time of Incident: Aug. 3, 1994 @ 8:30 P.M.

Date & Time Examined: Aug. 3, 1994 @ 8:45 P.M.

Post-mortem findings:

=

Stab wound, (R) post chest, about the level of the 6[th] and 7[th] RICS, post. axillary line.

CAUSE OF DEATH: Hypovolemic shock secondary to multiple organ injury.[4]

Dr. Edgardo B. Quisumbing attended to and operated on Arnold Barcuma. He signed a medical certificate stating that Arnold sustained the following injuries:

=

Lacerated wound 2 cm. (R) forearm middle 3[rd]

=

Incised wound 2 inches (L) forearm middle 3[rd]

=

Stabbed wound, 2 inches in length (L) chest, anterior axillary line at the level of the 7[th] intercostal space, penetrating thoracic cavity and abdominal cavity.

... ..[5]

On the witness stand, Dr. Quisumbing testified that the wounds sustained by Arnold could have been caused by three different sharp-pointed instruments.[6] He further testified that Arnold would have died because of the stab wound on his chest, were it not for the timely medical intervention.

On August 5, 1994, Armando, Ricardo, Marciano, Jr. and Robito, were charged with Murder for the death of Leonilo Broce. The Information, docketed as Criminal Case No. RTC 1217 reads:

That on or about 8:00 o'clock, P.M., August 3, 1994 at New Sumakwel, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, armed with pieces of wood and hunting knives, and with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, with the use of said weapons, attack, assault and use personal violence upon the person of one LEONILO BROCE, by striking the latter with the use of pieces of wood and stabbing him, thereby inflicting upon said Leonilo Broce physical injury described as follows:

= Stabbed wound (R) chest penetrating thoracic cavity.

and which injury caused massive hemorrhage which resulted to the death of Leonilo Broce.

That an aggravating circumstance of abuse of superior strength is attendant in the commission of the offense.

CONTRARY TO LAW.[7]

They were also charged with the same crime for the death of Eugene Tayactac in an Information docketed as Criminal Case No. RTC-1218, which reads:

That on or about 8:00 o'clock, P.M., August 3, 1994 at New Sumakwel, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, armed with pieces of wood and hunting knives, and with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, with the use of said weapons, attack, assault and use personal violence upon the person of one EUGENE TAYACTAC, by striking the latter with use of pieces of wood and stabbing him thereby inflicting upon said Eugene Tayactac physical injuries which resulted to the death of the latter.

That an aggravating circumstances of abuse of superior strength is attendant in the commission of the offense.

CONTRARY TO LAW.[8]

Another Information was filed against the Caballero brothers for frustrated murder for the injuries of Arnold Barcuma. Docketed as Criminal Case No. RTC-1219, it reads:

That on or about 8:00 o'clock, P.M., August 3, 1994 at New Sumakwel, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and helping one another, armed with pieces of wood and hunting knives, with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of one ARNOLD BARCUMA, by striking him with the use of pieces of wood and stabbing him, thereby inflicting upon the latter physical injuries which would have resulted to the death of said Arnold Barcuma, thus performing all the acts of execution, which would have produced the crime of "Murder", as a consequence, but nevertheless did not produce it, by reason of causes independent of the will of the accused that is, the timely medical assistance rendered to said Arnold Barcuma.

That an aggravating circumstance of abuse of superior strength is attendant in the commission of the offense.[9]

Ricardo, Armando and Marciano, Jr., assisted by counsel, were arraigned on September 15, 1994. They pleaded not guilty to all the charges. Robito Caballero remained at-large.

Ricardo, Armando and Marciano, Jr. invoked the defenses of denial and alibi. They adduced evidence that Ricardo was employed as electrician in the Office of the City Engineer of San Carlos City. Armando was a motor cab driver. Robito resided in H.C. Rigor Street, San Carlos City while Marciano, Jr. was a resident of Don Juan Subdivision, San Carlos City and was employed with the Victorias Milling Corporation.

On August 3, 1994, at 8:00 a.m., Robito left San Carlos City and went to Bacolod City. Armando went to the house of his brother Ricardo to help in the construction of the latter's house and to take care of Ricardo's fighting cocks while he was in his office. Ricardo arrived home at 8:00 p.m. and had dinner with his family and Armando. Momentarily, their sister Mila and their younger brother Marciano, Jr. arrived in the house of Ricardo. Marciano, Jr. allegedly was mauled by a group of men and sustained an abrasion, a contusion and swelling of the left side of his face. Ricardo and Armando brought their brother Marciano, Jr. to the hospital for treatment. On August 4, 1994, Marciano, Jr. was treated for:

= Linear abrasion (L) scapula region;

= Contusion (R) lower lip lateral side;

= Swelling left face.

No. of days of healing: 5-7 days barring complication.[10]

Ricardo, Armando and Marciano, Jr. denied killing Eugene and assaulting Arnold. They also denied having any

altercation with the victims. They also denied stabbing Leonilo. They had no idea why Wilma, Arnold and Myrna would implicate them for the deaths of Leonilo and Eugene and for the injuries of Arnold.

After due proceedings, the trial court rendered judgment on May 7, 2001 finding all the three accused, now appellants guilty beyond reasonable doubt as principals of the crimes charged, the decretal portion of which reads:

WHEREFORE, accused Armando Caballero, alias “Baby”, Ricardo Caballero, alias “Ricky” and Marciano Caballero, Jr., alias “Jun”, having been found GUILTY beyond reasonable doubt of the offenses charged them as principals, are hereby sentenced to suffer:

- In Criminal Case No. RTC-1217 for the murder of Leonilo Broce, there being no mitigating circumstance present, with the attendant aggravating circumstances of treachery and abuse of superior strength, the maximum penalty of death and to pay the heirs of Leonilo Broce the sum of P75,000.00 as indemnity;
- In Criminal Case No. RTC-1218, for the murder of Eugene or Eugenio Tayactac, there being no mitigating circumstance present, with the attendant aggravating circumstances of treachery and abuse of superior strength, the maximum penalty of death; and to pay the heirs of Eugene Tayactac the sum of P75,000.00 as indemnity; and
- In Criminal Case No. RTC-1219, for Frustrated Murder, for having seriously inflicted injuries upon the person of Arnold Barcuma which nearly resulted to his death, there being no mitigating circumstance present, an imprisonment of twelve (12) years, as minimum, to seventeen (17) years, four (4) months and one (1) day, with no award as to damages, no evidence having been introduced to establish, the same; and
- To pay the costs in all three (3) cases.

SO ORDERED.[11]

In convicting the accused, the trial court found that all of them conspired to kill Eugene and Leonilo and cause injuries to Arnold. While the trial court stated that it was only appellant Armando who stabbed Eugene, and only the accused Robito who stabbed Leonilo, however, it concluded that all of them were equally liable for the deaths of Leonilo and Eugene and for the injuries of Arnold.

In their Brief, the accused, now appellants assail the decision of the trial court contending that:

I

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS IN CRIMINAL CASES NOS. 1217-1219 DESPITE THE FACT THAT THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCES OF TREACHERY AND ABUSE OF SUPERIOR STRENGTH ON THE ASSUMPTION THAT INDEED ACCUSED-APPELLANTS KILLED THE VICTIMS.

III

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON ACCUSED-APPELLANTS ON THE ASSUMPTION THAT INDEED THEY KILLED THE VICTIMS.[12]

The Court will delve into and resolve the first two assignments of errors.

The appellants aver that the prosecution failed to prove beyond reasonable doubt their respective guilt for the deaths of Eugene and Leonilo and for the injuries sustained by Arnold. They assert that the trial court committed reversible error in rejecting their defenses of denial and alibi. They claim that at the time of the incident they were

in the San Carlos Hospital for the treatment of the injuries of appellant Marciano, Jr.

The appellants are partly correct.

The trial court correctly found that all the appellants conspired to kill Eugene and assault Arnold; hence, they are criminally liable for the death of Eugene and for the injuries sustained by Arnold. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy is always predominantly mental in composition because it consists primarily of a meeting of minds and intent.[13] Conspiracy must be proved with the same quantum of evidence as the crime itself, that is, by proof beyond reasonable doubt.[14] However, direct proof is not required. Conspiracy may be proved by circumstantial evidence. Conspiracy may be proved through the collective acts of the accused, before, during and after the commission of a felony, all the accused aiming at the same object, one performing one part and another performing another for the attainment of the same objective, their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[15] The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself or may consist of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.[16] Direct proof of a person in agreement to commit a crime is not necessary. It is enough that at the time of the commission of a crime, all the malefactors had the same purpose and were united in their execution.[17] Once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them for in contemplation of the law, the act of one is the act of all.[18]

Criminal conspiracy must always be founded on facts, not on mere inferences, conjectures and presumptions.[19] Mere knowledge, acquiescence to or approval of the act without cooperation or agreement to cooperate, is not enough to constitute one party to a conspiracy absent the intentional participation in the act with a view to the furtherance of the common objective and purpose.[20] Moreover, one is not criminally liable for his act done outside the contemplation of the conspirators. Co-conspirators are criminally liable only for acts done pursuant to the conspiring on how and what are the necessary and logic consequence of the intended crime.[21]

In this case, when appellant Armando asked Eugene at the store of Wilma whether the latter was going to buy something from the store, Eugene was peeved and remonstrated that he and Armando had no quarrel between them. Appellant Armando was likewise irked at the reaction of Eugene because from the store, appellant Armando stationed himself by the gate of the Mondragon Compound near the sari-sari store of Wilma. Appellants Ricardo, Marciano, Jr. and Robito joined their brother, appellant Armando at the gate. Appellant Ricardo and accused Robito were armed with knives. When Eugene passed by the gate to the compound, appellant Armando pulled Eugene to the gate but when the latter resisted, all the appellants ganged up on Eugene. Appellant Armando took the wooden support of the clothesline and hit Eugene with it. Eugene was stabbed three times on his chest even as he tried to parry the thrusts. When Arnold rushed to the situs criminis to pacify the appellants and accused Robito, appellant Ricardo stabbed him on the left side of his body. The other appellants and accused Robito joined appellant Ricardo and ganged up on Arnold. They stabbed Arnold anew twice on his forearm. Teresito Mondragon, the father-in-law of appellant Ricardo intervened and forthwith, all the appellants, including accused Robito returned to the Mondragon Compound. Patently, all the appellants by their simultaneous collective acts before and after the commission of the crimes were united in one common objective, to kill Eugene, and cause injuries to Arnold for trying to intervene and prevent bloodshed. Hence, all the appellants are criminally liable for the death of Eugene and for the injuries of Arnold. It does not matter who among the appellants stabbed Eugene or inflicted injuries on Arnold. The act of one is the act of the others.

However, for the death of Leonilo, the Court believes that the appellants are not criminally liable. The prosecution failed to adduce evidence that the appellants and the accused Robito conspired to kill Leonilo. The appellants did

not actually see Leonilo rushing out from his house to the situs criminis. They had no foreknowledge that the accused Robito would stab Leonilo. There was no evidence presented by the prosecution to prove that all the appellants assisted the accused Robito in killing Leonilo. It must be recalled that Leonilo rushed out of his house when he saw the commotion, with the intention of aiding the victim or pacifying the protagonists. He was, however, stopped by accused Robito who suddenly stabbed him on the chest. Leonilo retreated and asked for help. Wilma Broce testified that only the accused Robito stabbed Leonilo:

Q

After that, what happened next?

A

Leonilo Broce came out of his house.

Q

Where is the house of Leonilo Broce?

A

Still located at Sumakwel.

Q

In that case, the very house where Eugene Tayaktak leaned on when he was ganged up by the four?

A

Yes.

Q

What happened after that?

A

When he came out from the house and saw that it was Eugene Tayaktak, he proceeded to approach them but he was not able to approach them because he was met by Robit “Bebot” Caballero and stabbed by Robito Caballero.

Q

Was LeoniloBroce (sic) hit when he was stabbed by Robito Caballero?

A

Yes. He immediately ran back and said: “Tio, help me because I am hit.”

INTERPRETER’S (observation)

Witness demonstrating by holding her left armpit.

Q

Was Eugene Tayaktak able to escape from the attach (sic) of the Caballero brothers?

A

Not (sic).

Q

Now what happened to Eugene Tayaktak?

A

He appeared very weak and he was staggering.

Q

Do you know where Eugene Tayaktak now?

A

Already dead.

Q

What happened to Leonilo Broce, where is he now?

A

The two of them were (sic) already dead.

Q

Now, when did the trouble stop if it stopped?

A

It stopped when Dodong Mondragon arrived.

Q

What did the accused do after the trouble was stopped?

A

They went inside the compound of his (sic) father.

Q

What happened next?

A

Nothing happened. Both of them were brought to the hospital.[22]

In sum, the trial court committed reversible error in convicting the appellants of murder for the death of Leonilo. As this Court held in *People v. Flora*: [23]

However, we cannot find Edwin Flora similarly responsible for the death of Emerita Roma and the injury of Flor Espinas. The evidence only shows conspiracy to kill Ireneo Gallarte and no one else. For acts done outside the contemplation of the conspirators only the actual perpetrators are liable. In *People v. De la Cerna*, 21 SCRA 569, 570 (1967), we held:

“ ... And the rule has always been that co-conspirators are liable only for acts done pursuant to the conspiracy. For other acts done outside the contemplation of the co-conspirators or which are not the necessary and logical consequence of the intended crime, only the actual perpetrators are liable. Here, only Serapio killed (sic) Casiano Cabizares. The latter was not even going to the aid of his father Rafael but was fleeing away when shot.”

To conclude, appellant Edwin Flora is guilty beyond reasonable doubt only of the murder of Ireneo Gallarte. He has no liability for the death of Emerita Roma nor the injuries of Flor Espinas caused by his co-accused Hermogenes Flora.

Crimes Committed by Appellants

In Criminal Case No. RTC-1218, the appellants are guilty as co-principals by direct participation of murder, qualified by treachery. In order that treachery may be considered as a qualifying circumstance, the prosecution is burdened to prove that

.... (1) the employment of means of execution that give the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberately or consciously adopted.[24]

Even a frontal attack is treacherous if it is sudden and the victim is unarmed. The essence of treachery is a swift and unexpected attack on the unarmed victim.[25]

In this case, Eugene was unarmed. He had no inkling that he would be waylaid as he sauntered on his way to his girlfriend Susana's house. On the other hand, appellant Armando was armed with a wooden pole while appellant Ricardo and accused Robito were armed with knives. The attack on the hapless Eugene was swift and unannounced. Undeniably, the appellants killed Eugene with treachery.

In Criminal Case No. RTC-1219, the appellants are guilty of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code which reads:

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

The essential elements of a frustrated felony are as follows:

Elements:

- The offender performs all the acts of execution;
- All the acts performed would produce the felony as a consequence;
- But the felony is not produced;

- By reason of causes independent of the will of the perpetrator.[26]

In the leading case of *United States v. Eduave*,^[27] Justice Moreland, speaking for the Court, distinguished an attempted from frustrated felony. He said that to be an attempted crime the purpose of the offender must be thwarted by a foreign force or agency which intervenes and compels him to stop prior to the moment when he has performed all the acts which should produce the crime as a consequence, which act it is his intention to perform.

The subjective phase in the commission of a crime is that portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which, with prior acts, should result in the consummated crime. Thereafter, the phase is objective.

In case of an attempted crime, the offender never passes the subjective phase in the commission of the crime. The offender does not arrive at the point of performing all of the acts of execution which should produce the crime. He is stopped short of that point by some cause apart from his voluntary desistance.

On the other hand, a crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime is not consummated by reason of the intervention of causes independent of the will of the offender. In homicide cases, the offender is said to have performed all the acts of execution if the wound inflicted on the victim is mortal and could cause the death of the victim barring medical intervention or attendance.^[28]

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commission of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) words uttered by the offender at the time the injuries are inflicted by him on the victim.

In this case, appellant Armando was armed with a wooden pole. Appellant Ricardo and accused Robito used knives. Dr. Quisumbing, who attended to and operated on Arnold, testified that the stab wound sustained by Arnold on the left side of his body was mortal and could have caused his death were it not for the timely and effective medical intervention:

Q

And how about the size and the depth of the wounds and how big is each wound and how deep.

A

The first wound is 2 cm. and the 2nd is about 2 inches and the 3rd is 2 inches in the left, penetrating the chest near the thorax along the lateral line.

Q

So, aside from the 3rd wound there are wounds which are not really very serious?

A

As I said before, the most serious is the 3[rd] wound.

Q

So even without the other wounds the 3[rd] wound - - it could be the cause of the death of the victim?

A

Yes, Sir.[29]

It cannot be denied that the appellants had the intention to kill Arnold. The appellants performed all the acts of execution but the crime was not consummated because of the timely medical intervention.

Treachery attended the stabbing of Arnold because he was unarmed and the attack on him was swift and sudden. He had no means and there was no time for him to defend himself. In sum, the appellants are guilty of frustrated murder.

The appellants' denial of the crimes charged in Criminal Case Nos. RTC-1218 and RTC-1219 cannot prevail over Wilma's and Arnold's positive and straightforward testimonies that the appellants killed Eugene and stabbed Arnold. Moreover, Wilma and Arnold had no motive to falsely implicate the appellants for the said crimes; hence, their testimony must be accorded full probative weight.[30]

Equally barren of merit is appellants' defense of alibi. Alibi as a defense is inherently weak for it is easy to fabricate and difficult to disprove. To merit approbation, the appellants were burdened to prove with clear and convincing evidence that at the time the crimes were committed, they were in a place other than the situs of the crimes such that it was physically impossible for them to have committed said crimes.[31] The appellants dismally failed in this respect. They testified that they were at the house of appellant Ricardo, which was conveniently near the place where Eugene was killed and Arnold was assaulted. Moreover, the records show that Marciano, Jr. was treated for his superficial injuries on August 4, 1996, a day after the incident. This belies the claim of appellants Ricardo and Armando that they were allegedly in the hospital at the time of the incident.

Penalties Imposable on Appellants

The trial court imposed the death penalty on appellants in Criminal Case No. RTC-1218 on its finding that treachery and abuse of superior strength were attendant in the killing of Eugene. The Solicitor General does not agree with the trial court and contends that abuse of superior strength was absorbed by treachery; hence, should not be considered as a separate aggravating circumstance in the imposition of the penalty on the appellants. The Court agrees with the Solicitor General. Abuse of superior strength, concurring with treachery is absorbed by treachery.[32]

The penalty for murder under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, is reclusion perpetua to death. Since aside from the qualified circumstance of treachery, no other modifying circumstance was attendant in the commission of the crime, the proper penalty for the crime is reclusion perpetua conformably with Article 63 of the Revised Penal Code.

In Criminal Case No. RTC-1219, for frustrated murder, the Solicitor General contends that the indeterminate penalty of from 12 years of reclusion temporal as minimum, to 17 years, 4 months and 1 day of reclusion temporal as maximum, imposed on the appellants is not correct. The Court agrees with the Solicitor General. The penalty for frustrated murder is one degree lower than reclusion perpetua to death, which is reclusion

temporal.[33] The latter penalty has a range of 12 years and 1 day to 20 years. The maximum of the indeterminate penalty should be taken from reclusion temporal, the penalty for the crime taking into account any modifying circumstances in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of prision mayor which is one degree lower than reclusion temporal. Since there is no modifying circumstance in the commission of frustrated murder, the appellants should be meted an indeterminate penalty of from nine (9) years and four (4) months of prision mayor in its medium period as minimum to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum.

Civil Liabilities of Appellants

The trial court ordered the appellants in Criminal Case No. RTC-1218 to pay in solidum the heirs of the victim Eugene Tayactac, the amount of P75,000 by way of indemnity. The trial court did not award moral damages to said heirs. This is erroneous. Since the penalty imposed on the appellants is reclusion perpetua, the civil indemnity should be only P50,000. The heirs of the victim should also be awarded the amount of P50,000 as moral damages.[34]

In Criminal Case No. RTC-1219, the trial court did not award moral damages to the victim Arnold Barcuma on its finding that the prosecution failed to adduce any evidence to prove said damages. The Court disagrees with the trial court. The victim Arnold Barcuma himself testified on his injuries.[35] He is entitled to moral damages in the amount of P25,000.[36] Having suffered injuries and undergone medical treatment he is, as well entitled to actual damages, which in the absence of evidence would, nevertheless, entitle him to an award of temperate or moderate damages, herein fixed at P10,000.

The Verdict of the Court

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of San Carlos City (Negros Occidental), Branch 57, in Criminal Cases Nos. RTC-1217 up to RTC-1219 is **AFFIRMED** with the following **MODIFICATIONS**:

- In Criminal Case No. RTC-1217, the Court, finding the appellants not guilty of the crime charged for failure of the prosecution to prove their guilt beyond reasonable doubt, **REVERSES** the judgment of the trial court and **ACQUITS** them of the said charge.
- In Criminal Case No. RTC-1218, the appellants are found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, qualified by treachery, and are sentenced to suffer the penalty of reclusion perpetua and ordered to pay in solidum the heirs of the victim Eugene Tayactac, the amounts of P50,000 as civil indemnity and P50,000 as moral damages.
- In Criminal Case No. RTC-1219, the appellants are found guilty beyond reasonable doubt of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code and are hereby sentenced to suffer an indeterminate penalty of from nine (9) years and four (4) months of prision mayor in its medium period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. The appellants are hereby ordered to pay in solidum to the victim Arnold Barcuma the amount of P25,000 as moral damages and P10,000 as temperate or moderate damages.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and Azcuna, JJ., concur.

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- [1] Penned by Acting Presiding Judge Roberto S. Javellana.
- [2] Records, Criminal Case No. RTC-1218, p. 8.
- [3] TSN, December 5, 1996, pp. 5-6 & 20.
- [4] Records, Criminal Case No. RTC-1217, p. 8.
- [5] Id., at 202.
- [6] TSN, December 8, 1996, p. 8.
- [7] Id., at 1-2.
- [8] Records, Criminal Case No. RTC-1218, p. 1.
- [9] Id., at 403-404.
- [10] Records, Criminal Case No. RTC 1217, p. 387.
- [11] Id., at 415-416.
- [12] Rollo, pp. 68-69.
- [13] *People v. Medina*, 292 SCRA 436 (1998).
- [14] *Fernandez v. People*, 341 SCRA 277 (2000).
- [15] See note 13, *supra*.
- [16] *People v. Ponce*, 341 SCRA 352 (2000).
- [17] *People v. Sualog*, 344 SCRA 690 (2000); *People v. Buluran*, 325 SCRA 476 (2000).
- [18] See note 16, *supra*.
- [19] *People v. Campos*, 202 SCRA 387 (1991).
- [20] *People v. Bragaes*, 203 SCRA 555, (1991).
- [21] *People v. Flora*, 334 SCRA 262 (2000).
- [22] TSN, September 26, 1995, pp. 15-16.
- [23] See note 21, *supra*.
- [24] *People v. Azugue*, 268 SCRA 711 (1997).
- [25] *People v. Floro*, 316 SCRA 304 (1999).
- [26] REYES, REVISED PENAL CODE, 1998 ed., Vol. I, p. 99.
- [27] 36 Phil. 209.

[28] *People v. Maguikay*, 237 SCRA 587 (1994); *People v. Sumalpong, et al.*, 284 SCRA 464 (1998).

[29] TSN, December 5, 1996, pp. 9-10.

[30] *People v. Milliam*, 324 SCRA 155 (2000).

[31] *People v. Blanco*, 324 SCRA 280 (2000).

[32] *People v. Riglos*, 339 SCRA 562 (2000).

[33] REVISED PENAL CODE, Article 61, par. 2.

[34] *People v. Marlon Delim, et al.*, G.R. No. 142773, January 28, 2003.

[35] TSN, July 19, 1995, pp. 22-25; TSN, March 11, 1997, pp. 7-9, 26-28.

[36] NEW CIVIL CODE, Article 2219, par. 1.

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