



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 184601

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
DEL CASTILLO,* and
REYES, *JJ.*

- versus -

MARCIAL MALICDEM y
MOLINA,
Accused-Appellant.

Promulgated:

NOV 12 2012

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D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before this Court is the appeal of the April 21, 2008 **Decision**¹ of the Court of Appeals in CA-G.R. CR.-H.C. No. 02522,² which affirmed with modification the July 31, 2006 **Decision**³ of the Regional Trial Court (RTC),

* Per Raffle dated October 17, 2012.

¹ Rollo, pp. 2-24; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring.

² Entitled *People of the Philippines v. Marcial Malicdem y Molina*.

³ CA rollo, pp. 51-66; penned by Judge Rolando G. Misleng.

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Branch 42, Dagupan City in Crim. Case No. 2002-0561-D, entitled *People of the Philippines v. Marcial Malicdem y Molina*, that found appellant Marcial Malicdem guilty beyond reasonable doubt for the crime of murder.

On September 12, 2002, the following information for the crime of murder was filed against appellant:

That on or about August 11, 2002 in the evening at Brgy. Anolid, Mangaldan, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, stab and hit WILSON S. MOLINA, inflicting upon him a fatal stab wound on the vital part of the body, causing his untimely death to the damage and prejudice of his heirs.

CONTRARY to Article 249 of the Revised Penal Code as amended by RA 7659.⁴

Appellant was arraigned on October 17, 2002 where he pleaded not guilty.⁵ Trial on the merits ensued thereafter.

The prosecution presented the following as its witnesses: Dr. Ophelia T. Rivera (Dr. Rivera), Bernardo Casullar (Bernardo), Joel Concepcion (Joel), Felipe Molina (Felipe), and Maricon Nicolas (Maricon).

The defense presented as witnesses appellant and his wife, Anabel Malicdem (Anabel). Essentially, the appellant invoked self-defense to justify his participation in the cause of death of Wilson S. Molina (Wilson).

After both parties presented their respective evidence, the RTC rendered its Decision on July 31, 2006 convicting the accused of the crime charged.

⁴ Records, p. 3; signed by Teofilo A. Chiong, Jr., 2nd Assistant Provincial Prosecutor.
⁵ Id. at 25.

The RTC summarized the testimonies of Bernardo and Joel in open court as follows:

On the night of August 11, 2002, as it was their practice after dinner, they met with Wilson near the artesian well. At around 9:00 p.m., while they were seated on the septic tank, appellant arrived asking if they knew the whereabouts of his godson, Rogelio⁶ Molina (Rogelio). They answered in the negative. They noticed that appellant was reeking of alcohol and was drunk. Appellant asked again for the whereabouts of Rogelio. As they stood to leave, appellant suddenly embraced Wilson and lunged a six-inch knife to the left part of his chest. When appellant moved to strike again, Wilson was able to deflect this blow which resulted to a cut on his right arm. Intending to help his friend, Bernardo was hit by the knife in his stomach. In the course of aiding Wilson, Joel boxed the appellant. During the brawl, Francisco Molina, Rogelio's father, arrived at the scene, but was stabbed in the stomach by appellant. Appellant then ran away. Afterwards, Joel brought Wilson aboard a police patrol car to the Region I Medical Center in Dagupan City where Wilson was declared dead on arrival.⁷

In her post-mortem report, Dr. Rivera, Municipal Health Officer of Mangaldan, Pangasinan, stated:

FINDINGS:

Abrasion, 1.2 x 0.5 cm, just above the eyebrow, lateral aspect, left.

Stabbed (sic) wound, 3 cm, wound directed laterally and downward, parasternal line, infraclavicular area, left.

Abrasion (Teeth impression mark), middle third, anterior aspect, upper arm, left.

⁶ ROGEL in some parts of the *Rollo*.
⁷ CA *rollo*, pp. 60-61.

Stabbed (sic) wound, 3.5 cm, wound directed upward and posteriorly, middle third, medioposterior aspect, forearm, right.

Abrasion, 0.5 x 0.8 cm, lateral aspect, knee, left.

Abrasion, 2 x 1 cm, knee, right.

CAUSE OF DEATH:

CARDIORESPIRATORY ARREST SECONDARY TO
HYPOVOLEMIC SHOCK DUE TO STAB WOUND.⁸

The RTC gave a gist of the testimonies of appellant and Anabel as follows: Appellant and Anabel were in their house on the night of the incident. Appellant was looking after their children, aged four and seven, while Anabel was cooking dinner. When Anabel informed appellant that dinner was ready, he and Anabel went out to look for his godson, Rogelio. They went to the house of Rogelio's parents to look for the latter. They were informed, however, that Rogelio was not there. Rogelio's mother advised them to look outside.⁹

On their way home, the couple passed by the artesian well where Bernardo, Joel and Wilson were loitering. Appellant inquired from the three if they had seen Rogelio. Bernardo, allegedly, sarcastically replied "No, we have not seen him. Why do you look for him here, you have your eyes, you have your feet."¹⁰ When appellant voiced out his observation that the three were drunk, he allegedly was struck by a bottle by Bernardo. Appellant tried to block the blow but the bottle still hit his right eyelid. A fistfight erupted between Bernardo and appellant, causing the bottle that Bernardo was holding to fall. Meanwhile, Joel and Wilson stationed themselves on different sides of the appellant. It was here that Anabel allegedly saw Wilson drawing a knife. She shouted a warning to her husband. Having

⁸ Records, p. 83.

⁹ CA *rollo*, pp. 55-57.

¹⁰ TSN, October 28, 2004, p. 7.

issued her warning, Wilson boxed Anabel in the mouth and approached appellant. Appellant quickly grabbed a piece of bamboo and waited for Wilson to approach him. When Wilson was near enough, appellant grabbed hold of Wilson's arm and grappled with him for possession of the knife. While this was going on, Bernardo joined the melee and proceeded to repeatedly punch appellant. Appellant made a side-move causing Bernardo to be hit by the knife held by Wilson in the stomach. Still grappling for possession of the knife with Wilson, Francisco Molina, Rogelio's father, arrived and tried to pacify the combatants. Appellant hit Francisco on the cheek. Weak from the blows he had received, appellant fell to the ground. Anabel had to help him up so that they could go home. Bernardo followed and shouted: "I will kill you, I will make sure that I will have my revenge."¹¹

On cross examination, appellant stated that after Bernardo was hit with the knife, there was a continued grappling for the knife. Finally, appellant was able to throw Wilson to the ground. He said that the knife did not fall to the ground but was held by Wilson. Unfortunately, when Wilson was thrown to the ground he fell on the knife he was still holding.¹²

The RTC, after observing inconsistencies in the testimonies of the appellant and his wife, found appellant guilty beyond reasonable doubt of the crime of murder and declared:

Undoubtedly, the prosecution was able to prove clearly and convincingly that [appellant] killed [Wilson] not in self defense. The sudden attack [on Wilson] by [appellant] without the former having [an] inkling of the evil act of [appellant] and opportunity to defend himself constitute the qualifying aggravating circumstance of treachery.

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¹¹ TSN, May 27, 2004, pp. 6-11.

¹² TSNs, October 28, 2004, pp. 16-17 and November 23, 2004, pp. 4-5.

WHEREFORE, premises considered, [appellant] MARCIAL MALICDEM his guilt having been proved beyond reasonable doubt of the felony of MURDER, is hereby convicted of the said felony and, there being no other aggravating nor mitigating circumstances, is sentenced to suffer the penalty of RECLUSION PERPETUA. In addition, he is ordered to pay ₱38,800 for actual damages, ₱50,000 for the death of Wilson Molina and another ₱50,000 as moral damages to the heirs of the victim.¹³

Appellant filed his notice of appeal on September 15, 2006. The same was given due course.

The Court of Appeals affirmed with modification the July 31, 2006 decision of the RTC and disposed of the appeal in the following manner:

WHEREFORE, premises considered, the Decision of the Regional Trial Court of Dagupan City, Branch 42, promulgated on August 31, 2006, in Criminal Case No. 2002-0561-D finding [appellant] guilty beyond reasonable doubt of the crime of murder, and sentencing him to suffer the penalty of *reclusion perpetua* is hereby **AFFIRMED with MODIFICATION** in that aside from the damages awarded by the trial court, [appellant] is also directed to pay exemplary damages in the amount of ₱25,000.¹⁴

Petitioner's confinement was confirmed by the Bureau of Corrections on December 15, 2008.¹⁵

Hence, this appeal.¹⁶ Both the appellee¹⁷ and appellant¹⁸ waived the filing of supplemental briefs and adopted the briefs they filed before the Court of Appeals.

Appellant made the following assignment of errors in his appeal:

¹³ CA rollo, p. 66.

¹⁴ Rollo, p. 24.

¹⁵ Id. at 31.

¹⁶ CA rollo, pp. 191-193.

¹⁷ Rollo, pp. 42-44.

¹⁸ Id. at 33-36.

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN ITS INTERPRETATION OF FACTS.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE APPARENT INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE [APPELLANT] FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.¹⁹

Appellant posits that the Court of Appeals misinterpreted the facts and circumstances of the case. He argues that minor inconsistencies and contradictions particularly in his and Anabel's testimonies did not affect their credibility as witnesses. He avers that the prosecution's version of the events was highly incredible since it was testified to that there was no grudge between the appellant and victim prior to the incident.

We affirm the April 21, 2008 Decision of the Court of Appeals with modification respecting the award of damages.

Time and again, this Court has stated that, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances which would alter a conviction, it generally defers to the trial court's evaluation of the credibility of witnesses especially if such findings are affirmed by the Court of Appeals.²⁰ This must be so since the trial courts are in a better position to decide the question of credibility, having heard the

¹⁹ CA rollo, p. 89.

²⁰ *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 663.

witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination.²¹

In *People v. Clores*,²² this Court had occasion to state that:

When it comes to the matter of credibility of a witness, settled are the guiding rules, some of which are that (1) the [a]ppellate court will not disturb the factual findings of the lower [c]ourt, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, which showing is absent herein; (2) the findings of the [t]rial [c]ourt pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness. (Citations omitted.)

Given the factual circumstances of the present case, we see no need to depart from the foregoing rules. Appellant failed to present proof of any showing that the trial court overlooked, misconstrued or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. Prosecution witnesses positively identified appellant to have stabbed the victim.

We agree that the death of Wilson at the hands of appellant was not occasioned by self-defense. For this Court to consider self-defense as a justifying circumstance, appellant has to prove the following essential elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.²³ The Court has repeatedly stated that a person who invokes self-defense has the burden to prove all the aforesaid elements. The Court also

²¹ *People v. Escleto*, G.R. No. 183706, April 25, 2012.

²² 263 Phil. 585, 591 (1990).

²³ *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 502-503.

considers unlawful aggression on the part of the victim as the most important of these elements. Thus, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.²⁴

As stated in *People v. Fontanilla*²⁵:

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

x x x It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability
x x x.

Based on the summary of facts by the RTC as affirmed by the Court of Appeals, the defense failed to discharge its burden to prove unlawful aggression on the part of Wilson by sufficient and satisfactory proof. The records were bereft of any indication that the attack by Wilson was not a mere threat or just imaginary. Bernardo, Joel and Wilson were just in the act of leaving when appellant suddenly plunged a knife to Wilson's chest.

Anent the finding of treachery by the RTC, we agree that appellant's act of suddenly stabbing Wilson as he was about to leave constituted the

²⁴ Id. at 503.

²⁵ G.R. No. 177743, January 25, 2012, 664 SCRA 150, 158, citing *People v. Nugas*, G.R. No. 172606, November 23, 2011, 661 SCRA 159, 168.

qualifying circumstance of treachery. As we previously ruled, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.²⁶ Here, appellant caught Wilson by surprise when he suddenly embraced him and proceeded immediately to plunge a knife to his chest. The swift turn of events did not allow Wilson to defend himself, in effect, assuring appellant that he complete the crime without risk to his own person.

Moreover, we agree with the Court of Appeals that the claim of appellant that accident was the cause of the death of the victim, cannot be taken into consideration in lieu of self-defense. As we stated in *Toledo v. People*²⁷:

The petitioner is proscribed from changing in this Court, his theory of defense which he adopted in the trial court and foisted in the CA – by claiming that he stabbed and killed the victim in complete self-defense. The petitioner relied on Article 12, paragraph 4 of the Revised Penal Code in the trial and appellate courts, but adopted in this Court two divergent theories – (1) that he killed the victim to defend himself against his unlawful aggression; hence, is justified under Article 11, paragraph 1 of the Revised Penal Code; (2) that his bolo accidentally hit the victim and is, thus, exempt from criminal liability under Article 12, paragraph 4 of the Revised Penal Code.

It is an aberration for the petitioner to invoke the two defenses at the same time because the said defenses are intrinsically antithetical. There is no such defense as accidental self-defense in the realm of criminal law.

Self-defense under Article 11, paragraph 1 of the Revised Penal Code necessarily implies a deliberate and positive overt act of the accused to prevent or repel an unlawful aggression of another with the use of reasonable means. The accused has freedom of action. He is aware of the consequences of his deliberate acts. The defense is based on necessity which is the supreme and irresistible master of men of all human affairs, and of the law. From necessity, and limited by it, proceeds the right of

²⁶ *People v. Laurio*, G.R. No. 182523, September 13, 2012.

²⁷ 482 Phil. 292, 301-309 (2004).

self-defense. The right begins when necessity does, and ends where it ends. Although the accused, in fact, injures or kills the victim, however, his act is in accordance with law so much so that the accused is deemed not to have transgressed the law and is free from both criminal and civil liabilities. On the other hand, **the basis of exempting circumstances under Article 12 of the Revised Penal Code is the complete absence of intelligence, freedom of action, or intent, or the absence of negligence on the part of the accused. The basis of the exemption in Article 12, paragraph 4 of the Revised Penal Code is lack of negligence and intent.** The accused does not commit either an intentional or culpable felony. The accused commits a crime but there is no criminal liability because of the complete absence of any of the conditions which constitute free will or voluntariness of the act. An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.

Self-defense, under Article 11, paragraph 1, and accident, under Article 12, paragraph 4 of the Revised Penal Code, are affirmative defenses which the accused is burdened to prove, with clear and convincing evidence. Such affirmative defenses involve questions of facts adduced to the trial and appellate courts for resolution. **By admitting killing the victim in self-defense or by accident without fault or without intention of causing it, the burden is shifted to the accused to prove such affirmative defenses. He should rely on the strength of his own evidence and not on the weakness of that of the prosecution. If the accused fails to prove his affirmative defense, he can no longer be acquitted.**

X X X X

x x x With the failure of the petitioner to prove self-defense, the inescapable conclusion is that he is guilty of homicide as found by the trial court and the CA. He cannot even invoke Article 12, paragraph 4 of the Revised Penal Code. (Citations omitted and emphases supplied.)

Hence, we sustain the findings of the trial court and the Court of Appeals of the qualifying circumstance of treachery attended the commission of the crime.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty

of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.²⁸

However, to conform to existing jurisprudence the Court must modify the amount of indemnity for death and exemplary damages awarded by the courts *a quo*.

Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.²⁹

The heirs of the victim was able to prove before the trial court, actual damages in the amount of ₱38,300.00. Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime.³⁰ Moral damages in the sum of ₱50,000.00 should be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.³¹ As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.³²

With respect to the award of exemplary damages, we agree with the Court of Appeals that the victim's heirs are entitled to it. We have previously stated:

²⁸ *People v. Escleto*, G.R. No. 183706, April 25, 2012.

²⁹ *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 758.

³⁰ *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 520-521.

³¹ *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384; *People v. Fontanilla*, *supra* note 25 at 162.

³² *People v. Escleto*, *supra* note 28.

Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.³³

However, recent jurisprudence pegs the award of exemplary damages at ₱30,000.00.³⁴

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.³⁵

WHEREFORE, the appeal is **DISMISSED**. The April 21, 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02522 is **AFFIRMED**. Appellant **MARCIAL MALICDEM Y MOLINA** is found **GUILTY** beyond reasonable doubt of **MURDER**, and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is further ordered to pay the heirs of Wilson S. Molina the amounts of ₱38,300.00 as actual damages, ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

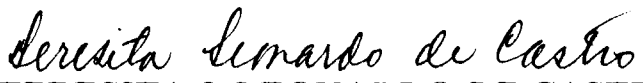
No pronouncement as to costs.

³³ *People v. Salafranca*, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 517, citing *People v. Catubig*, 416 Phil. 102, 119-120 (2001).


³⁴ *People v. Escleto*, supra note 28.

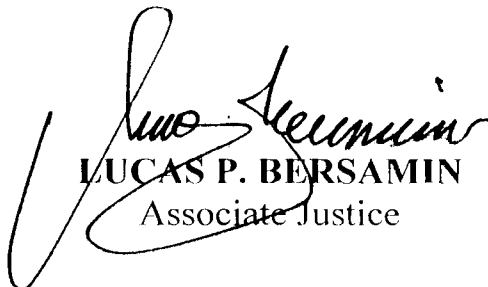
³⁵ *Id.*

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


BIENVENIDO L. PEYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice