



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 195525

Present:

- versus -

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

WILFREDO GUNDA *alias* FRED,
Accused-Appellant.

Promulgated:

FEB 05 2014 *HAR Cabalag Perfecto*

X -----

DECISION

DEL CASTILLO, *J.:*

On appeal is the March 30, 2010 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 00397 which affirmed with modification the May 20, 2005 Decision² of the Regional Trial Court (RTC) of Borongan, Eastern Samar, Branch 2, finding appellant Wilfredo Gunda *alias* Fred (appellant) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

At about 4:00 o'clock in the afternoon of May 25, 1997, the victim, Eladio Globio, Sr., and his son, Eladio Jr., were walking along a trail at *Sitio Candulungon, Barangay Cabay, Balangkayan, Eastern Samar*. Suddenly, when Eladio Jr. was about 10 meters ahead of his father, the latter was waylaid by appellant and his unidentified companions. The John Does held the victim's arms whereupon appellant stabbed him several times. Fearing for his life, Eladio Jr.

¹ CA *rollo*, pp. 96-110; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Agnes Reyes Carpio and Socorro B. Inting.

² Records, pp. 340-360; penned by Judge Arnulfo O. Bugtas.

fled. The unidentified assailants pursued him. Fortunately, he was able to outrun them and was able to reach their house. In the morning of the following day, Eladio Jr. went to the house of his sister and informed her of the death of their father. They then reported the incident to the police authorities who eventually arrested the appellant. The body of the victim was recovered and post-mortem examinations revealed that he suffered multiple stab wounds which caused his death.

Aside from Eladio Jr., Teofilo Ambal, Jr. (Ambal) who is a brother-in-law of the appellant, also witnessed the crime. In the afternoon of May 25, 1997, while Ambal was at his farm gathering feeds for his pigs, he saw appellant who was armed with a wooden pole position himself at the back of the victim and strike the latter's head with the wood. The companions of appellant then held the victim's arms whereupon appellant drew a bolo locally known as *depang* from his waist and stabbed the victim several times. Fearing for his life, Ambal likewise left the crime scene.

On July 31, 1997, an Information³ was filed charging appellant and the John Does with the crime of murder. The accusatory portion of the Information reads:

That on May 25, 1997, at about 4:00 o'clock in the afternoon at *Sitio Candulungon, Barangay Cabay, Balangkayan, Eastern Samar, Philippines*, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill and with evident premeditation and treachery, and without justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound Eladio Globio, Sr., with the use of a sharp bladed weapon (*Depang*) which the accused provided themselves for the purpose, thereby inflicting injuries upon the latter, which injuries caused the death of the victim, to the damage and prejudice of the heirs of the victim.

CONTRARY TO LAW, with aggravating circumstances that the crime committed in an uninhabited place and the superior strength [sic].⁴

Arraigned on September 10, 1997, appellant pleaded not guilty to the charge.⁵ The other accused who have not been identified remained at large.

Appellant denied the charge against him. He claimed that in the afternoon of May 25, 1997, he was at *Barangay Camada* gathering and cleaning rattan poles.

³ Id. at 5.

⁴ Id.

⁵ Id. at 59-60.

Ruling of the Regional Trial Court

On May 20, 2005, the RTC of Borongan, Eastern Samar, Branch 2, rendered its Decision⁶ finding appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, finding accused Wilfredo Gunda guilty beyond reasonable doubt of the crime of murder, he is sentenced to suffer the penalty of DEATH; and to pay the heirs of the victim the sum of ₱50,000.00 as civil indemnity, another sum of ₱50,000.00 as moral damages; and another sum of ₱25,000.00 as exemplary damages.

SO ORDERED.⁷

The trial court disregarded the denial of the appellant. On the other hand, it lent full credence to the testimonies of Eladio Jr. and Ambal who both positively identified appellant as the assailant. The RTC noted that their testimonies coincided with the postmortem findings of Dr. Samuel Baldono that the victim suffered multiple stab wounds which caused his death. The RTC likewise brushed aside the alibi of appellant. It noted that although he claimed that he was in *Barangay Camada* at the time of the incident, appellant failed to prove that it was physically impossible for him to be present at *Barangay Cabay* where the crime took place. Appellant even admitted that the distance between the two *barangays* could be traversed in an hour or even less. The RTC also found that appellant conspired with the John Does in committing the crime. It also noted that treachery attended the commission of the crime because the victim was unarmed and totally unaware of the impending attack. The attack was sudden thus depriving the victim of any opportunity to escape or defend himself.

In imposing the death penalty, the RTC considered treachery and conspiracy as qualifying circumstances.

Ruling of the Court of Appeals

On March 30, 2010, the CA rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated May 20, 2005 of the Regional Trial Court (RTC), 8th Judicial Region, Branch 2, Borongan, Eastern Samar, is AFFIRMED with MODIFICATION that the lesser penalty of Reclusion Perpetua instead of Death be imposed against appellant.

⁶ Id. at 340-360.

⁷ Id. at 360.

SO ORDERED.⁸

The CA affirmed the factual findings of the trial court that indeed, it was appellant, in conspiracy with the other John Does, who killed the victim. The CA also agreed with the findings of the trial court that the killing was done in a treacherous manner. However, the CA noted that although the trial court properly appreciated treachery and conspiracy to have attended the commission of the crime, the presence of both would not warrant the imposition of the death penalty. It ratiocinated that -

Treachery in the present case is a qualifying, not a generic aggravating circumstance. Its presence served to characterize the killing as murder; it cannot at the same time be considered as a generic aggravating circumstance to warrant the imposition of the maximum penalty. Since treachery qualified the commission of the crime to murder, this circumstance could no longer be appreciated anew as a generic aggravating circumstance to warrant the imposition of the death penalty. Furthermore, although there was conspiracy in this case, it is neither a qualifying circumstance [nor] a generic aggravating circumstance to warrant the imposition of the supreme penalty of death.

The penalty for the crime of murder is reclusion perpetua to death. The two penalties being both indivisible, and there being neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty of reclusion perpetua should be applied pursuant to the second paragraph of the Revised Penal Code.⁹

Aggrieved, appellant filed this appeal¹⁰ to which the CA gave due course in its Resolution¹¹ of December 1, 2010.

On March 21, 2011, we required the parties to file their respective supplemental briefs.¹² However, both parties opted not to file their briefs anymore considering that their arguments had been amply discussed in the briefs that they filed before the CA.¹³

Our Ruling

We dismiss the appeal.

Based on the above narrations, we find no cogent reason to depart from the findings of the trial court as affirmed by the CA, that appellant is guilty beyond

⁸ CA *rollo*, pp. 109-110.

⁹ Id. at 109.

¹⁰ Id. at 131.

¹¹ Id. at 133.

¹² *Rollo*, p. 22.

¹³ Id. at 24-26; 33-34.

reasonable doubt of the crime of murder. Two prosecution witnesses positively identified him as the person who waylaid the victim, and with the help of his conspirators, stabbed the victim several times. According to the postmortem findings, the victim suffered 12 stab wounds which caused his death. There is also no doubt in our mind that the attack on the victim was attended by treachery. The victim was unarmed and had no inkling of the impending attack on his person. In fact, he was just on his way home together with his son Eladio Jr. The victim was attacked by appellant from behind with a blow to his head with a wooden pole. His cohorts then held the victim's arms rendering him helpless and immobile. In such position, there is no opportunity for the victim to escape or even offer a feeble resistance. Appellant then delivered the *coup de grâce* by stabbing the victim multiple times. Undoubtedly, treachery qualified the killing to murder. "There is treachery when the offender commits [a crime] 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."¹⁴ As regards conspiracy, the CA correctly ruled that it is not a circumstance which would aggravate or qualify the crime.

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly held that the proper imposable penalty is *reclusion perpetua*, the lower of the two indivisible penalties. "It must be emphasized, however, that [appellant is] not eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that 'persons convicted of offenses punished with *reclusion perpetua*, or whose sentence will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended'."¹⁵

As regards the damages, the amount of civil indemnity must be increased to ₱75,000.00 in line with prevailing jurisprudence.¹⁶ Exemplary damages must likewise be increased to ₱30,000.00.¹⁷ Moral damages in the amount of ₱50,000.00, however, was correctly awarded by the trial court and the CA.¹⁸ Moreover, we note that the trial court and the CA did not award actual damages. In lieu thereof, we award temperate damages in the amount of ₱25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved."¹⁹ "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of

¹⁴ *People v. Jalbonian*, G.R. No. 180281, July 1, 2013, citing *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

¹⁵ *People v. Bacatan*, G.R. No. 203315, September 18, 2013.

¹⁶ *People v. Jalbonian*, supra note 14.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 543.

indemnification.”²⁰ In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.²¹

WHEREFORE, the appeal is **DISMISSED**. The March 30, 2010 Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 00397 which affirmed with modification the May 20, 2005 Decision of the Regional Trial Court of Borongan, Eastern Samar, Branch 2, finding appellant Wilfredo Gunda *alias* Fred guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATIONS**. As modified, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is ordered to pay the heirs of the victim the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. Interest on all damages awarded is imposed at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

²⁰ *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289, citing *People v. Carillo*, 388 Phil. 1010, 1025 (2000).

²¹ *People v. Jalbonian*, supra note 14.

ATTESTATION

I attest 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.

**ANTONIO T. CARPIO**

*Associate Justice
Chairperson*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

