



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 190322

Present:

- versus -

CARPIO, *Chairperson,*
DEL CASTILLO,
MENDOZA,
REYES,* *and*
LEONEN, *JJ.*

VIRGILIO AMORA y VISCARRA,
Accused-Appellant.

Promulgated:

NOV 26 2014

HAMCabalugo

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RESOLUTION

DEL CASTILLO, J.:

The qualifying circumstance of treachery does not require that the perpetrator attack his victim from behind. “Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.”¹

On appeal is the August 28, 2009 Decision² of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03294, which affirmed with modification the February 21, 2008 Decision³ of the Regional Trial Court (RTC), Branch 84, Malolos City, Bulacan. The RTC convicted Virgilio Amora y Viscarra (appellant) of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim Romeo Gibaga (Romeo) ₱50,000.00 as civil indemnity, ₱35,000.00 for funeral expenses, and ₱16,770.69 for medical expenses. *Mallu*

* Per Special Order No. 1881 dated November 25, 2014.

¹ *People v. Alfon*, 447 Phil. 138, 148.

² CA *rollo*, pp. 110-123; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Fernanda Lampas Peralta and Ramon R. Garcia.

³ Records, pp. 181-187; penned by Presiding Judge Wilfredo T. Nieves

Factual Antecedents

On November 30, 2004, appellant was charged with murder defined and penalized under Article 248 of the Revised Penal Code (RPC). Pertinent portions of the Information⁴ filed against him read:

That on or about the 12th day of September 2004, in San Jose Del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon and with intent to kill one Romeo Gibaga, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon the said Romeo Gibaga, hitting him on the trunk, thereby inflicting upon him mortal wound[s] which directly caused his death.

Contrary to law.⁵

Upon arraignment on January 18, 2006, appellant entered a plea of not guilty to the offense charged. Thereafter, pre-trial and trial on the merits followed.

Version of the Prosecution

The prosecution presented the testimonies of eyewitnesses Maricris Alidon (Maricris), Anselmo Benito (Anselmo), and Aurelio Amora (Aurelio). Linda Gibaga (Linda), the wife of the victim Romeo, and Dr. Felimon C. Porciuncula, Jr. (Dr. Porciuncula), the Medico-Legal officer who conducted the autopsy on the body of the victim, also testified for the prosecution. Their testimonies are summarized below.

On September 12, 2004 at around 5:45 p.m., Anselmo, Aurelio, and the victim Romeo were walking on their way to Sampol Market in San Jose Del Monte City. Maricris and her son were tailing them about four meters behind. As they were making their way to the market, they saw appellant in his store located on the right side of the street. Suddenly, appellant rushed towards them and stabbed Romeo twice - one on the chest and another on the abdomen. They were all caught by surprise due to the suddenness of the attack. Romeo fell to the ground while appellant quickly ran away from the scene. Aurelio chased appellant but failed to catch up with him. Maricris went to Romeo's house to inform his wife Linda about what had just happened.

Upon hearing the news from Maricris, Linda rushed to the scene of the crime but did not find her husband there as Romeo was already brought by Anselmo to the Sapang Palay District Hospital. Later on, he was transferred to

⁴ Id at 2-3.

⁵ Id. at 2.

East Avenue Medical Center where he died after three days. Linda testified that before Romeo passed away, he told her that appellant was his assailant.⁶

Due to Romeo's injuries and eventual death, Linda spent ₱16,770.69 for hospital expenses, ₱35,000.00 for funeral expenses, and ₱50,000.00 as expenses for the wake.

Dr. Porciuncula testified that Romeo died due to two fatal stab wounds. The first stab wound penetrated his chest and pierced his heart while the wound on his abdomen pierced the pancreas and his small intestines. Both stab wounds appeared to have been caused by a single-bladed weapon.⁷

Version of the Defense

The appellant was the lone witness presented by the defense. He declared on the witness stand that on September 12, 2004, at around 5:45 p.m., he was working as a construction worker in a site 8 to 9 kilometers away from his residence. On his way home, Nestor Basco, his neighbor, informed him about a stabbing incident that had just taken place near his home. Upon arriving at his house, his wife and his parents told him that the stabbing incident took place in front of their store and that the alleged assailant passed through their yard to the street at the back. The alleged assailant managed to escape, and the stabbing was wrongly imputed against appellant.

On December 9, 2004, appellant was arrested. He claimed that he does not know Romeo, whom he never met before the stabbing incident. The only reason he could think of why he is being falsely accused was that he turned down Anselmo's request for ₱200.00 to buy *shabu*. This happened when they were having a drinking spree with Aurelio the day before the stabbing incident. According to appellant, Anselmo got infuriated by his refusal and threw a bottle of gin at him.

Ruling of the Regional Trial Court

On February 21, 2008, the RTC rendered its Decision convicting appellant of the crime of murder. It found that the stabbing of Romeo was attended by the qualifying circumstance of treachery as it was "sudden and unexpected such that [Romeo] was unable to react or defend himself from the assault of [appellant]"⁸

The dispositive part of the RTC Decision reads:

⁶ TSN, April 17, 2006, pp. 5-7.

⁷ See Medico Legal Report No. M-535-04, records, p. 136.

⁸ Id. at 186.

WHEREFORE, finding the accused guilty beyond a reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua* and to indemnify the family of the deceased Romeo Gibaga the following amounts:

1. Php16,770.69 for medical expenses;
2. Php35,000.00 for funeral services; and
3. Php50,000.00 for civil indemnity.

SO ORDERED.⁹

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the Decision of the RTC. It held in its August 28, 2009 Decision, thus:

WHEREFORE, the Decision dated February 21, 2008 of the Regional Trial Court, Branch 84, Malolos City is hereby AFFIRMED with modification in that the heirs of the victim are additionally awarded Php25,000.00 as temperate damages and ₱50,000.00 as moral damages.

SO ORDERED.¹⁰

Faulting the Decision of the CA, appellant now appeals to this Court advancing the same issues he raised before the CA.

Assignment of Errors

Appellant asserts that:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

GRANTING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS CRIMINALLY LIABLE, THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.¹¹

⁹ Id at p. 187.

¹⁰ CA *rollo*, p. 122.

¹¹ Id. at 29.

Our Ruling

The appeal has no merit.

Appellant argues that the prosecution has failed to establish his guilt beyond reasonable doubt. Citing the testimony¹² of prosecution witness Aurelio, appellant posits that the eyewitnesses could not have possibly identified the true assailant because it was already 5:45 p.m. and the place where the stabbing incident occurred was almost shrouded in darkness. Appellant also stresses that witness Aurelio, by his own statement, was drunk at the time of the incident, thereby impairing his perception and making his judgment in identifying the assailant unreliable. Because there is uncertainty as to the identity of the true malefactor, appellant asserts that he is entitled to an acquittal.

We are not persuaded.

The RTC is correct in giving weight and credence to the testimonies of the prosecution witnesses, *viz*:

x x x the Court finds the testimonies of the former ([Maricris, Anselmo, and Aurelio]) straightforward and credible, hence, [deserving] recognition and respect as truthful account of what actually transpired during the incident in question. The Court likewise noted the assertions of [Maricris, Anselmo, and Aurelio] that they are familiar with or know the accused and the victim well since they are neighbors in Sapang Palay, San Jose del Monte City, Bulacan. The Court therefore does not doubt [Maricris, Anselmo, and Aurelio] in identifying the accused as the attacker and assailant of [Romeo]. Besides, no evidence was offered to show ulterior motive on the part of [Maricris, Anselmo, and Aurelio] to testify falsely against the accused.¹³

It bears stressing that the RTC Decision finding appellant guilty of the charge was not based solely on the testimony of Aurelio. Two other eyewitnesses positively identified the appellant as the person who stabbed Romeo. Anselmo and Maricris were consistent in their testimonies identifying appellant as the perpetrator of the crime. Excerpts of their testimonies are reproduced below:

[FISCAL ROQUE:]

Q: You said that you were walking together with Aurelio Amora and Romeo Gibaga[. W]hile you were walking, what happened if any?

[ANSELMO BENITO:]

A: Romeo Gibaga was suddenly stabbed, sir.

¹² Id. at 34-35.

¹³ Records, p. 185.

Q: In relation to you, where was this Romeo Gibaga before he was stabbed?

A: He was at my left side, sir.

Q: How about this Aurelio Amora, where was he?

A: Aurelio was at my right side, sir.

Q: While this Aurelio Amora was on your right and this Romeo Gibaga on your left, you mentioned that somebody came and stabbed this Romeo Gibaga[. W]ere you able to see or notice where this assailant came from before he stabbed Romeo Gibaga?

A: Yes, sir.

Q: Where?

A: He came from behind, sir.

x x x x

Q: Considering your position, are you in a position to tell us whether this Romeo Gibaga actually saw the assailant before he was stabbed?

A: Yes, sir.

Q: What did he do?

A: None, sir.

Q: Why was he not able to react before he was stabbed?

A: Because he was not aware, sir.

Q: Mr. Witness[,] you mentioned that you were able to see this person who stabbed Romeo Gibaga[. I]f he is now present, can you identify him?

A: Yes, sir.

Q: Kindly look around and point him out?

THE INTERPRETER:

Witness pointed to a person x x x wearing a detainee's t-shirt who identified himself as Virgilio Amora.

Q: And you mentioned that Romeo Gibaga was stabbed by this accused whom you [have just] identified[. W]ere you able to see the weapon that was used in stabbing Romeo Gibaga?

A: No, sir.¹⁴

x x x x

[FISCAL ROQUE :]

Q: And while you were there going to Sampol Market, do you still recall x x x any unusual incident that transpired?

[MARICRIS ALIDON:]

A: Yes, sir.

Q: And what was this unusual incident, Madam witness?

¹⁴ TSN, January 15, 2007, pp. 4-7.

A: The stabbing incident that happened to Romeo Gibaga, sir.

Q: And were you able to see who stabbed him?

A: Yes, sir.

Q: Who was he?

A: Virgilio Amora, sir.

Q: If he is present today, will you be able to identify him?

A: Yes, sir.

Q: Kindly look around and point him out?

THE INTERPRETER:

The witness pointed to a person who identified himself as Virgilio Amora.¹⁵

It is clear that the witnesses have properly identified the appellant as the perpetrator of the crime. As testified to by the witnesses and correctly ruled by the RTC and the CA, he was the person who attacked, stabbed and killed Romeo.

Appellant tried to impeach the testimonies of Anselmo and Aurelio claiming that their motive for falsely testifying against him was because of his refusal to give them money for *shabu*.

The Court finds that appellant's assertion is a mere speculation that deserves scant consideration. His explanation is neither supported by evidentiary proof nor buttressed by established facts. We have consistently ruled that positive identification by credible witnesses prevails over self-serving statements of the accused. Such statements cannot be given greater evidentiary weight over affirmative declarations of eyewitnesses.

Finally, appellant claims that at the time of the commission of the crime, he was working at a construction site 8 to 9 kilometers away from the scene of the crime. He argues that it was thus impossible for him to be the person who stabbed and killed Romeo.

Appellant's defenses of denial and alibi must likewise fail.

For the defense of alibi to prosper, "the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime"¹⁶ during its commission. "Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been

¹⁵ TSN, February 27, 2006, pp. 4-5

¹⁶ *People v. Mosquera*, 414 Phil. 740, 749 (2001).

physically present at the scene of the crime and its immediate vicinity when the crime was committed.”¹⁷

In this case, the appellant failed to satisfy these requirements. While a distance of 8 to 9 kilometers is quite far, appellant was not able to satisfactorily substantiate his claims regarding his whereabouts. Aside from his own testimony, appellant did not bother to present the testimony of other witnesses or any other proof to support his defense. Since he claimed that his parents and wife saw the stabbing incident and that the assailant allegedly even entered their yard, it is puzzling why he did not present them as witnesses to bolster his denial.

In any case, eyewitnesses positively identified the appellant to be present at the scene of the crime. “Time and again, this Court has consistently ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.”¹⁸

The Court finds no reason to disturb the factual findings of the RTC. The rule is well-settled that factual findings of the trial court regarding the credibility of witnesses are accorded great weight and utmost respect given that trial courts have firsthand observation of the witnesses’ demeanor while testifying in court. We shall not supplant our own interpretation of the witnesses’ testimonies for that of the trial judge since he is in the best position to determine the issue of credibility of witnesses. Moreover, in the absence of misapprehension of facts or grave abuse of discretion, and especially when the CA, as in this case, has affirmed the findings of the trial judge, the assessments and conclusions of the trial court shall not be overturned.

Treachery

Paragraph 16, Article 14 of the RPC provides that “[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.” Thus in order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. “The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner,

¹⁷ *People v. Trayco*, 612 Phil. 1140, 1161 (2009).

¹⁸ *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 218.

affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.”¹⁹

In this case, the appellant’s sudden attack on Romeo amply demonstrates that treachery was employed in the commission of the crime. The eyewitnesses were all consistent in declaring that the appellant in such a swift motion stabbed Romeo such that the latter had no opportunity to defend himself or to fight back.²⁰ The deliberate swiftness of the attack significantly diminished the risk to himself that may be caused by the retaliation of the victim.

It is of no consequence that appellant was in front of Romeo when he thrust the knife to his torso. Records show that appellant initially came from behind and then attacked Romeo from the front. In any event, “[e]ven a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it,”²¹ as in this case.

Undoubtedly, the RTC and CA correctly held that the crime committed was murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

Penalties and Awards of Damages

The penalty for the crime of murder is *reclusion perpetua* to death. The RTC, as affirmed by the CA, is correct in holding that the appellant must suffer the penalty of *reclusion perpetua*, the lower of the two indivisible penalties, by reason of the absence of any aggravating circumstance. “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 sentences 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.”²²

With regard to the award of civil indemnity *ex delicto*, the same must be increased from ₱50,000.00 to ₱75,000.00 in line with prevailing jurisprudence.²³ Civil indemnity is mandatory and is granted without need of evidence other than the commission of the crime.²⁴ We uphold the CA in awarding moral damages to the heirs of Romeo in the amount of ₱50,000.00. “As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional

¹⁹ *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

²⁰ TSN, February 27, 2006, p. 7; TSN, January 15, 2007, p. 4; TSN, February 26, 2007, pp. 5-6.

²¹ *People v. Alfon*, *supra* note 1.

²² *People v. Bacatan*, G.R. No. 203315, September 18, 2013, 706 SCRA 170, 186.

²³ *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 569.

²⁴ *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

pain and anguish on the part of the victim's family.”²⁵ We likewise award exemplary damages in the amount of ₱30,000.00 since the qualifying circumstance of treachery was proven by the prosecution. When a crime is committed with an aggravating circumstance, whether qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code.²⁶ The CA however erred in awarding temperate damages in lieu of actual damages in the amount of ₱25,000.00. Records show that the RTC already awarded the heirs of the victim actual damages consisting of ₱16,770.69 as medical expenses and ₱35,000.00 as funeral expenses. These expenses were fully supported by receipts.²⁷

Lastly, all damages awarded shall be subject to 6% *per annum* interest from the finality of this Resolution until fully paid, also in line with prevailing jurisprudence.

WHEREFORE, the appeal is **DISMISSED**. The August 28, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03294, which affirmed with modification the Decision of the Regional Trial Court, Branch 84, Malolos, Bulacan, finding appellant Virgilio Amora y Viscarra guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with the following modifications**:

- (1) the appellant is not eligible for parole;
- (2) the award of civil liability *ex delicto* is increased from ₱50,000.00 to ₱75,000.00;
- (3) the appellant is **ORDERED** to pay the heirs of Romeo Gibaga the amount of ₱30,000.00 as exemplary damages;
- (4) the award of ₱25,000.00 as temperate damages is **DELETED**; and
- (5) the appellant is **ORDERED** to pay the heirs of Romeo Gibaga interest at the legal rate of 6% *per annum* on all the amounts of damages awarded, commencing from the date of finality of this Resolution until fully paid.

Costs against appellant.

²⁵ Id. at 530-531.

²⁶ CIVIL CODE, Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

²⁷ Records, pp. 133-134.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution 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 Resolution 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*