

FIRST DIVISION

[G.R. No. 198110, July 31, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILSON ROMAN, ACCUSED-APPELLANT.**

DECISION

REYES, J.:

This is an appeal from the Decision^[1] dated February 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03972, which affirmed with modification the Judgment^[2] dated June 10, 2009 of the Regional Trial Court (RTC) of Iriga City, Branch 35, in Criminal Case No. IR-4231.

The Antecedent Facts

On November 11, 1996, Wilson Roman (accused-appellant) was charged with Murder before the RTC of Iriga City, Branch 35. Upon arraignment on February 6, 2004, accused-appellant pleaded not guilty to the charge.^[3] Thereafter, trial on the merits ensued.

The prosecution presented the following as witnesses: Elena Romero (Romero), Asterio Ebuenga (Ebuenga), Martin Borlagdatan (Borlagdatan), Elisea Indaya (Indaya), Ramil Baylon (Baylon), SPO1 Medardo Delos Santos and Dr. Teodora Pornillos (Dr. Pornillos). The defense, on the other hand, presented the testimony of the accused-appellant and Delia Tampoco (Tampoco).

Prosecution witness Romero testified that in the morning of June 22, 1995, she was at a wedding party in the house of a certain Andang Toniza in Barangay Coguit, Balatan, Camarines Sur, when she witnessed the accused-appellant hacks Vicente Indaya (victim) unrelentingly with a bolo. The victim was hit on his head, nape, right shoulder, base of the nape and right elbow before he fell on the ground and instantly died.^[4]

Borlagdatan, who was also at the wedding party, testified that he was at the kitchen, getting rice to be served for the guests, when he heard someone shouting that somebody was hacked. When he went out to check what the commotion is about, he saw the victim lying on his stomach, drenched in his own blood, while the accused-appellant was standing in front of him, holding a bolo. Borlagdatan tried to seize possession of the bolo from the accused-appellant but the latter made a downward thrust, hitting his right thumb. He left the place and proceeded to the nearby health center to have his wound treated.^[5]

The testimonies of Ebuenga and Ramil Baylon, who were also in attendance at the wedding party, corroborated the testimony of Borlagdatan.

Ebuenga testified that he was only two (2) feet away from the accused-appellant and the victim when the former hacked the latter at the back of his head, nape and left shoulder.^[6] Baylon, on the other hand, demonstrated in open court how the incident transpired, with him acting as the accused-appellant and a court employee as the victim. With the court employee had his back to Baylon, the latter mimicked how the accused-appellant hacked the victim five (5) times. The accused-appellant continued to hack the victim even when he was already on his knees.^[7]

Indaya, wife of the victim, testified that she learned of the incident from her sister-in-law, Consorcia Villaflor. They immediately proceeded to the crime scene and saw her husband lying on his stomach, with five (5) hack wounds at the back of his head. She further testified on the damages sustained by their family from the untimely demise of the victim, who is a father to eleven (11) children and the breadwinner of the household.^[8]

Dr. Pornillos interpreted in open court the Necropsy Report^[9] executed by Dr. Mario Bañal (Dr. Bañal), who conducted the post-mortem examination on the cadaver of the victim. She testified that the victim sustained seven (7) hack wounds. The first and second wounds were inflicted at the back of the head and at the posterior lobe, respectively, while the third and fourth wounds were found at the skull. The fifth and sixth wounds were inflicted at the left shoulder of the victim while the seventh wound was at the back portion, above the waist and along the spine. She further testified that the weapon used could be a bolo and that the assailant was positioned at the back of the victim. She also confirmed that the wounds could have been inflicted while the victim is already down on the ground.^[10]

The accused-appellant proffered a different version of the incident. He testified that on June 22, 1995, he went to the house of his parents-in-law in *Barangay Coguit*, Balatan, Camarines Sur to bring the bamboos he towed from San Isidro, Balatan, Camarines Sur. On his way back, he met his close friend, Abundio Belbis (Belbis), who cajoled him to come with him to a wedding party at *Barangay Coguit*, Balatan, Camarines Sur. At the wedding venue, he saw the victim having a heated exchange of words with his brother-in-law, Geronimo Villaflor (Villaflor), who happened to be his friend. He pacified the two and told Villaflor to leave. Thereafter, he joined Belbis and had some drinks. After twenty (20) minutes, the victim suddenly appeared, loudly tapped their table and, while pointing at him, exclaimed, "*Son of a bitch, I'll kill you! Why are you pacifying me[?] You are just like your friends.*" He stood up and turned to leave. While leaving, however, he heard a woman shouting, "*Wilson, you will be hacked!*" When he turned his head, he saw the victim running towards him with a bolo. Seeing the impending attack, he moved back, making him lean on the fence, but still he was hit on his left hand at the back of his palm. While wrapping his palm with a towel, the victim hit him once again but he was able to dodge. He got mad and lost control of himself so he pulled his bolo from the scabbard and hacked the victim.^[11]

Tampoco, on the other hand, testified that when she saw the victim aiming to hack the accused-appellant, she shouted, "*Wilson, you will be hacked!*" With her warning, the accused-appellant was able to move back and avoid the attack. However, the victim moved and lunged at the accused-appellant again. The accused-appellant was hit once but was, thereafter, able to seize possession of the bolo from the victim

and hacked the latter.^[12]

The Ruling of the RTC

On June 10, 2009, the RTC rendered a decision,^[13] finding the accused- appellant guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the prosecution having proven the guilt of the accused WILSON ROMAN beyond reasonable doubt for the felony of murder, he is hereby CONVICTED and sentenced to suffer imprisonment from twenty years and one day to forty years of *reclusion perpetua*. He is further ordered to indemnify the heirs of Vicente Indaya represented by Elisea B. Indaya the following amount: 1)For the death of Vicente Indaya – Pesos: One Hundred Thousand ([P]100,000.00); 2)actual Damages in the amount of Pesos: Fifty Thousand ([P]50,000.00); 3)Moral Damages in the amount of Pesos: Fifty Thousand ([P]50,000.00); and the cost of suit.

SO ORDERED.^[14]

The RTC ruled that the prosecution was able to establish all the elements constitutive of the crime charged. Specifically, it was able to prove the identity of the accused-appellant as the perpetrator of the crime through the categorical testimonies of Romero, Ebuenga, Borlagdatan and Baylon who personally witnessed the hacking of the victim. Further, the qualifying circumstance of treachery was also sufficiently established by the consistent accounts of the witnesses that the accused-appellant attacked and hacked the victim from behind, while he was unarmed and defenseless, until he was down on the ground.^[15]

The RTC also dismissed the plea of self-defense proffered by the accused-appellant. It ruled that the accused-appellant's bare claim that the unlawful aggression initially came from the victim cannot stand against the overwhelming evidence presented by the prosecution showing that it was him who attacked and repeatedly hacked the victim to his death. It noted the variance between the testimonies of the accused-appellant and his witness, Tampoco, as to where the bolo that was used in the crime came from.^[16] The accused-appellant testified, thus:

“Q What did you do, if any?

A I was able to pull my bolo out of the scabbard and hacked him.”^[17]

On the other hand, Tampoco testified:

“Q While Wilson Roman, the accused was in that position, what [did] Vicente Indaya do if any?

A What Vicente Indaya did was to move to where I was standing and then Vicente Indaya lunged at Wilson Roman.

Q Then after that what happened?

A Wilson Roman was able to seize the bolo.

Q Before Wilson Roman was able to seize the bolo held by

Vicente Indaya, was Wilson Roman hit by that bolo?
A Yes, sir.

Q You said that accused Wilson Roman was able to seize the bolo from the victim, Vicente Indaya and Wilson Roman hacked Indaya, that's why he died?
A Yes, sir."^[18]

As regards the civil liability, the RTC ordered the accused-appellant to indemnify the heirs of the victim with actual and moral damages.^[19]

The Ruling of the CA

On appeal, the CA affirmed with modification the ruling of the RTC in a Decision^[20] dated February 28, 2011, disposing thus:

WHEREFORE, in view of all the foregoing, the assailed Decision of the Regional Trial Court dated June 10, 2009 is hereby **AFFIRMED with MODIFICATION** on the damages. Accordingly, accused-appellant Wilson Roman is directed to pay the heirs of Vicente Indaya the amount of [P]50,000.00 as civil indemnity, [P]50,000.00 as moral damages, [P]25,000.00 as temperate damages and [P]30,000.00 as exemplary damages. The award of actual damages of [P]50,000.00 is deleted.

SO ORDERED.^[21]

The CA ruled that the RTC correctly dismissed the accused- appellant's plea of self-defense to extricate himself from criminal liability. It pointed out that the eyewitnesses' accounts confirmed that the accused- appellant was the unlawful aggressor and not the victim. It was established during the trial that the victim was only walking in the yard when the accused-appellant attacked him from behind.

Further, the CA noted that the disparity of the wounds sustained by the accused-appellant and the victim militates against the claim of self-defense. While the accused-appellant sustained a superficial cut at the back of his palm, measuring an inch, the victim was inflicted with seven (7) hack wounds on his head, neck and shoulder, all of which were mortal.^[22]

The CA, however, modified the award of damages, ratiocinating thus:

In consonance with the Supreme Court's pronouncements, WE reduce the award of civil indemnity given by the trial court from [P]100,000.00 to [P]50,000.00 while the amount of [P]50,000.00 as moral damages is maintained.

As to actual damages, the heirs of the victim of murder are not entitled thereto because said damages were not duly proved with a reasonable degree of certainty. To be entitled to actual damages, it is necessary to prove the actual amount of loss with reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.

In the present case, no proof was presented that the heirs of Vicente Indaya actually spent the amount of [P]50,000.00 awarded by the court *a quo*. However, under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Thus, in lieu of actual damages, the award of [P]25,000.00 as temperate damages is proper.

Likewise, exemplary damages is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying. In this case, since the qualifying circumstance of treachery was established, WE award the amount of [P]30,000.00 as exemplary damages.^[23] (Citations omitted)

On March 10, 2011, the accused-appellant, through the Public Attorney's Office, filed a Notice of Appeal^[24] with the CA, pursuant to Section 13(c), Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC.

The Issues

The issues for consideration of this Court in the present appeal are the following:

(1) Whether the accused-appellant may properly invoke self- defense;
and

(2) Whether the qualifying circumstance of treachery exists.

The accused-appellant contends that the prosecution was not able to establish his guilt beyond moral certainty. He argues that he should not be held criminally liable for the death of the victim as he only acted in self- defense from the unlawful aggression exerted by the latter. He was just walking when he was suddenly attacked by the victim with a bolo and that he swung his own bolo only to save himself from the impending danger to his person.^[25]

The accused-appellant further asseverates that there was a reasonable necessity for him to use his bolo to repel the unlawful aggression of the victim as it is the only weapon available to him at the time of the attack. He adds that the unlawful aggression was exerted by the victim without any provocation on his part.^[26]

Even granting that the theory of self-defense is unavailing to him, the accused-appellant contends that he should only be convicted of the lesser crime of homicide for failure of the prosecution to establish the presence of treachery. He claims that the evidence on record failed to show that there was a conscious effort on his part to adopt a particular means, method or form of attack to ensure the commission of the crime, without affording the victim any opportunity to defend himself. And, considering that treachery cannot be presumed, he opines that any doubt as to its existence must be resolved in his favor.^[27]

For their part, the Office of the Solicitor General (OSG) maintains that the accused-appellant's guilt for the crime of murder was proven beyond reasonable doubt. The testimonies of the prosecution witnesses were positive, clear and consistent in that the victim was unarmed when he was attacked from behind by the accused-