

FIRST DIVISION

[G.R. No. 199892, December 10, 2012]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTURO PUNZALAN, JR., ACCUSED-APPELLANT,**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision^[1] dated April 29, 2011 of the Court of Appeals in CA-G.R. CR.-B.C. No. 02816 denying the appeal of appellant Arturo Punzalan, Jr. of the Decision^[2] dated March 21, 2007 of the Regional Trial Court (RTC) of Iba, Zambales and affirming his conviction for the complex crime of double murder with multiple attempted murder, with certain modifications on the civil liability imposed on appellant.^[3]

In August 2002, Seaman 1st Class (SN1) Arnulfo Andal, SN1 Antonio Duclayna, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya, and SN1 Erlinger Bundang were among the members of the Philippine Navy sent for schooling at the Naval Education and Training Command (NETC) at San Miguel, San Antonio, Zambales. On August 10, 2002, at around 5:00 or 6:00 in the afternoon, they went to the "All-in-One" Canteen to have some drink. Later, at around 10:00 in the evening, they transferred to a nearby videoke bar, "Aquarius," where they continued their drinking session. Shortly thereafter, a heated argument between SN1 Bacosa and appellant ensued regarding a flickering light bulb inside "Aquarius."^[4] When SN1 Bacosa suggested that the light be turned off ("*Patayin ang ilaw*"), appellant who must have misunderstood and misinterpreted SN1 Bacosa's statement belligerently reacted asking, "*Sinong papatayin?*," thinking that SN1 Bacosa's statement was directed at him.^[5] SN1 Cuya tried to pacify SN1 Bacosa and appellant, while SN1 Bundang apologized to appellant in behalf of SN1 Bacosa. However, appellant was still visibly angry, mumbling unintelligible words and pounding his fist on the table.^[6]

To avoid further trouble, the navy personnel decided to leave "Aquarius" and return to the NETC camp. They walked in two's, namely, SN1 Bundang and SN1 Domingo in the first group, followed by the group of SN1 Bacosa and SN1 Cuya, and SN1 Andal and SN1 Duclayna in the last group, with each group at one arm's length distance from the other.^[7] Along the way, they passed by the NETC sentry gate which was being manned by SN1 Noel de Guzman and F1EN Alejandro Dimaala at that time.^[8] SN1 Andal and SN1 Duclayna even stopped by to give the sentries some barbecue before proceeding to follow their companions.^[9]

Soon after the navy personnel passed by the sentry gate, SN1 De Guzman and F1EN Dimaala flagged down a rushing and zigzagging maroon Nissan van with plate number DRW 706. The sentries approached the van and recognized appellant, who

was reeking of liquor, as the driver. Appellant angrily uttered, "*kasi chief, gago ang mga 'yan!*," while pointing toward the direction of the navy personnel's group. Even before he was given the go signal to proceed, appellant shifted gears and sped away while uttering, "*papatayin ko ang mga 'yan!*"^[10] While F1EN Dimaala was writing the van's plate number and details in the logbook, he suddenly heard a loud thud. Meanwhile, SN1 De Guzman saw how the van sped away towards the camp and suddenly swerved to the right hitting the group of the walking navy personnel prompting him to exclaim to F1EN Dimaala, "*chief, binangga ang tropa!*" SN1 De Guzman then asked permission to go to the scene of the incident and check on the navy personnel.^[11]

When they were hit by the vehicle from behind, SN1 Cuya and SN1 Bacosa were thrown away towards a grassy spot on the roadside. They momentarily lost consciousness.^[12] When they came to, they saw SN1 Duclayna lying motionless on the ground.^[13] SN1 Cuya tried to resuscitate SN1 Duclayna, while SN1 Bacosa tried to chase the van.^[14]

SN1 Domingo was not hit by the van as he was in the first group and was pushed away from the path of the speeding van. He was able to see the vehicle's plate number. He also tried to chase the van with SN1 Bacosa but they turned around when the vehicle made a U-turn as they thought that it would come back for them. The vehicle, however, sped away again when other people started to arrive at the scene of the incident.^[15]

SN1 De Guzman found SN1 Cuya administering cardiopulmonary resuscitation (CPR) on SN1 Duclayna. He also saw the misshapen body of SN1 Andal lying some 50 meters away, apparently dragged there when the speeding van hit SN1 Andal. SN1 Cuya instructed SN1 De Guzman to get an ambulance but the car of the officer on duty at that time arrived and they boarded SN1 Duclayna's body to the vehicle to be brought to the hospital.^[16] The other injured navy personnel, namely, SN1 Cuya, SN1 Bacosa, and SN1 Bundang, were brought to the infirmary for treatment.^[17]

Members of the local police soon arrived at the scene of the crime. Senior Police Officer (SPO) 1 Roberto Llorico, the police investigator, found the bloodied lifeless body of SN1 Andal lying on the side of the road. SPO1 Llorico was informed that appellant was the suspect. Fortunately, one of the responding officers was appellant's neighbor and led SPO1 Llorico to appellant's place where they found appellant standing near his gate. Appellant appeared drunk and was reeking of alcohol. They also saw the van parked inside the premises of appellant's place. Its front bumper was damaged. When they asked appellant why he ran over the navy personnel, he simply answered that he was drunk. The police officers then invited appellant to the police station and brought the van with them.^[18]

A post mortem examination was conducted on the bodies of SN1 Andal and SN1 Duclayna by Dr. Jericho Cordero of Camp Crame Medical Division. Dr. Cordero's findings were that the injuries sustained by SN1 Andal were fatal and caused by a hard blunt object that hit his body. The force of the impact was such that the internal organs like the kidneys, mesentery and spleen were also fatally injured. SN1 Andal died of cardio- respiratory arrest as a result of massive blunt traumatic injuries to the head, thorax and abdomen. On the other hand, SN1 Duclayna

sustained fatal injuries to the head and liver. The head and neck injuries were such that a lot of blood vessels were ruptured and the fractures were embedded in the brain. The laceration on the liver, also a mortal injury, was a blunt traumatic injury.
[19]

As regards the other navy personnel, SN1 Cuya suffered lacerated wounds on the head and different parts of the body for which he was confined at the infirmary for about eighteen (18) days; [20] SN1 Bacosa sustained injuries on his knee and left hand and stayed in the infirmary for a day; [21] and SN1 Bundang suffered injuries to his right foot. [22]

Appellant was thereafter charged under an Information [23] which reads as follows:

That on or about the 10th day of August 2002, at about 11:00 o'clock in the evening, in Brgy. West Dirita, Municipality of San Antonio, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, while driving and in control of a Nissan Van with plate no. DRW 706, did there and then wilfully, unlawfully and feloniously, bump, overrun, smash and hit from behind with the use of the said van, the following persons: Antonio Duclayna, Arnulfo Andal, Evelio Bacosa, Danilo Cuya, Erlinger Bundang and Cesar Domingo, all members of the Philippine [N]avy then assigned at the Naval Education and Training Command in San Antonio, Zambales, thereby inflicting upon them the following physical injuries, to wit:

DANILO CUYA:

"Head Injury, grade 1 (Lacerated wound 5.0 cm, occipito- parietal area, (L) and lacerated wound, Lower lip) 2 to VA"

EVELIO BACOSA:

"Multiple abrasion, wrist, volar surface (L), 2nd digit, abrasion, dorsum, (L) foot"

ERLINGER BUNDANG:

"Abrasion, medial malleolus, (R)"

ARNULFO ANDAL:

"Head Injury, Grade IV; (Depressed Fracture, Frontal: Lacerated wounds, 8.0 cm 3.0 cm. forehead, and 5.0 cm parietal, (R);

Avulsion, medial aspect, upper arm to elbow, hip and inguinal area, (L);

Multiple abrasion, anterior and posterior chest, knees and (R) foot-secondary to VA"

ANTONIO DUCLAYNA:

"Head Injury, Grade IV (Lacerated wound, Contusion, Hematoma (R) Parietal) secondary to VA"

which act of said accused directly caused the death of Arnulfo Andal and Antonio Duclayna, and in so far as Danilo Cuya, Evelio Bacosa and Erlinger Bundang were concerned, said accused performed all the acts of execution which would produce the crime of Murder as a consequence, but nevertheless, did not produce said crime by reason of cause/s independent of his will, that is, by the timely and able medical assistance rendered to said Danilo Cuya, Evelio Bacosa and Erlinger Bundang, which prevented their death, and finally as to Cesar Domingo, said accused commenced the commission of the acts constituting Murder directly by overt acts, but was not able to perform all the acts of execution by reason of some cause other than accused's own desistance, that is due to the timely avoidance of the van driven by accused, and that the commission of the crimes was attended with treachery, evident premeditation, cruelty and use of a motor vehicle, and by deliberately and inhuman[ely] augmenting the suffering of the victim Arnulfo Andal, to the damage and prejudice of Danilo Cuya, Evelio Bacosa, Erlinger Bundang and Cesar Domingo and the family and heirs of the deceased Arnulfo Andang and Antonio Duclayna.

When arraigned, appellant maintained his innocence.^[24]

After pre-trial, trial ensued and the prosecution presented evidence to establish the facts stated above.

In his defense, appellant testified that in the evening of August 10, 2002, he was drinking with Marvin Acebeda and Romeo Eusantos at the "Aquarius" videoke bar. When he sang, the navy personnel who were also inside the bar laughed at him as he was out of tune. He then stood up, paid his bills and went out. After a while, Acebeda followed him and informed him that the navy personnel would like to make peace with him. He went back inside the bar with Acebedo and approached the navy personnel. When SN1 Bacosa appeared to reach out for appellant's hand, appellant offered his hand but SN1 Bacosa suddenly punched appellant's right ear. To avoid further altercation, appellant left the bar with Acebeda in tow. Appellant went home driving his van, with the spouses Romeo and Alicia Eusantos who hitched a ride as passengers. When they passed by the sentry, somebody threw stones at the van. When he alighted and inspected the vehicle, he saw that one of the headlights was broken. Thereafter, he saw SN1 Bacosa and another man approaching him so he went back inside the van but the duo boxed him repeatedly on his shoulder through the van's open window. When he saw the four other navy personnel coming towards him, he accelerated the van. During the whole incident, Romeo was asleep as he was very drunk while Alicia was seated at the back of the van. Upon reaching appellant's home, the spouses alighted from the van and proceeded to their place. After 20 minutes, police officers arrived at appellant's house and told him that he bumped some people. Appellant went with the police officers to the police station where he was investigated and detained.^[25]

Appellant's only other witness was Alicia Eusantos. She testified that she and her husband hitched a ride with appellant in the evening of August 10, 2002. She did not notice any unusual incident from the time they rode the vehicle until they alighted from it. She learned about the incident on the following day only when her statement was taken by the police.^[26]

After the parties have rested their respective cases, the RTC of Iba, Zambales found appellant guilty and rendered a Decision dated March 21, 2007 with the following dispositive portion:

IN VIEW THEREOF, accused ARTURO PUNZALAN, JR. is found GUILTY beyond reasonable doubt of the complex crime of Double Murder qualified by treachery with Attempted Murder attended by the aggravating circumstance of use of motor vehicle and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.

For the death of SN1 Antonio Duclayna and SN1 Arnulfo Andal, civil indemnity of P50,000.00 each is awarded to their heirs. This is in addition to the amount of moral damages at P50,000.00 each for the emotional and mental sufferings, plus P12,095.00 to the heirs of Duclayna representing actual damages.

Accused is likewise ordered to pay SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang P30,000.00 each or an aggregate amount of P120,000.00 as indemnity for their attempted murder.^[27]

Appellant filed an appeal with the Court of Appeals. In his brief,^[28] appellant claimed that the trial court erred in not finding that he may not be held criminally liable as he merely acted in avoidance of greater evil or injury, a justifying circumstance under paragraph 4, Article 11 of the Revised Penal Code. His act of increasing his vehicle's speed was reasonable and justified as he was being attacked by two men whose four companions were also approaching. He asserted that the attack against him by the two navy personnel constituted actual and imminent danger to his life and limb. The sight of the four approaching companions of his attackers "created in his mind a fear of greater evil," prompting him to speed up his vehicle to avoid a greater evil or injury to himself. According to appellant, if he accidentally hit the approaching navy men in the process, he could not be held criminally liable therefor. The instinct of self-preservation would make one feel that his own safety is of greater importance than that of another.^[29]

Appellant further faulted the trial court in appreciating the qualifying circumstance of treachery. He asserted that nothing in the records would show that he consciously or deliberately adopted the means of execution. More importantly, treachery was not properly alleged in the Information.^[30]

The Office of the Solicitor General (OSG), on behalf of the People of the Philippines, refuted the arguments of appellant and defended the correctness of the RTC Decision. In its brief,^[31] the OSG claimed that the trial court rightly rejected