

THIRD DIVISION

[G.R. No. 188353, February 16, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEOZAR DELA CRUZ Y BALOBAL, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

The Case

Leozar Dela Cruz appeals to us the Decision^[1] dated February 27, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 02562, which affirmed with modification the September 5, 2006 Decision^[2] in Criminal Case No. 03-2871 of the Regional Trial Court (RTC), Branch 62 in Makati City. The RTC convicted him of the crime of murder qualified by treachery.

The Facts

In an Information^[3] filed on August 11, 2003, accused-appellant Leozar Dela Cruz y Balobal was indicted for the crime of murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about the 30th day of April, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a samurai, with intent to kill and with treachery and evident premeditation, and with superior strength did then and there, willfully, unlawfully and feloniously hack with a samurai one VINCENT PIMENTEL Y APOON cutting the latter's neck thereby inflicting mortal wounds which directly caused his untimely death.

Upon arraignment, Elmer pleaded not guilty to the above charge.

Gleaned from the testimonies of eye-witness Sheryll C. Blanco; Carolina Agullana, the common-law wife of the victim; Police Officer 2 Ricardo Valenton Tan, who investigated the crime; and Police Inspector (P/Insp.) Dr. Benjamin Venancio J. Lara, the facts as found by the trial court and established by the prosecution are as follows:

In the evening of April 30, 2003, at about quarter past 7 o'clock, Leozar, a part-time tricycle driver, was standing about two meters from Sheryll who was with her friends Arman Taculod and Mark Anthony Medida with his wife Charissema Daton. Sheryll and her friends were passing time and seated at Mockingbird St. near Blueberry and Milkweed Sts. in *Barangay* Rizal, Makati City. They saw three girls arrive who

handed Leozar a letter. Leozar then left and after about five to 10 minutes, Leozar emerged from an alley with a two-foot samurai in his hands. Leozar was very angry, cursing, and hacking plants with the samurai. Upon seeing what Leozar was doing, Mark Anthony and Charissema went inside their house while Sheryll and Arman moved to a store some six to seven meters away from Leozar.

Meanwhile, arriving from Blueberry St. where he left his common-law wife Carolina inside a tricycle, Vincent Pimentel turned left to Mockingbird St. Leozar then greeted Vincent and announced that the latter owes him money, at which Vincent gave Leozar PhP 50 then proceeded to the alley. When Vincent went out of the alley and returned to Mockingbird St., Leozar suddenly placed his arm around Vincent and slit Vincent's neck with the samurai. Leozar then ran away while Vincent staggered towards Blueberry St. and fell.^[4] Carolina, who was inside a tricycle, saw Vincent holding his neck and fall down bleeding. Carolina and Arman rushed Vincent to the hospital but the latter died before reaching it.^[5] The cause of Vincent's death was "hemorrhagic shock secondary to an incised wound of the neck."^[6]

Subsequently, on February 10, 2005 or almost two years after the killing, when Sheryll went to the Makati City Jail to visit her live-in partner, she saw Leozar--detained for the killing of Vincent--who told her not to testify against him.^[7]

On the other hand, Leozar denied the charges against him and proffered the defense of alibi. His defense was that he could not have been at the scene of the killing for he was drinking with his friend Mark Magat at the latter's house located on Bougainvilla St., *Barangay* Pembo, Makati City, from 3:00 p.m. to 11:00 p.m. and passed the night at the latter's place as he got drunk. This alibi was corroborated by the testimonies of Mark^[8] and Mark's father and grandmother, Pedro Magat^[9] and Emolina Buccat.^[10]

The defense likewise presented Leozar's co-detainees at the Makati City Jail, Mark Anthony and Christopher Labradores. Mark Anthony testified on seeing Mark with Vincent just prior to the killing and seeing Mark toting a samurai immediately after the killing.^[11] Christopher testified that he was cooking at his house in Block 131, Lot 10, Mockingbird St., *Barangay* Rizal, Makati City at the time of the incident when he saw Arman carrying a samurai in his hands, and heard a commotion thereafter caused by the death of Vincent who was slashed in the throat.^[12]

It must be noted that Arman Taculod died before he could testify for the prosecution. It is quite apparent that the defense tried to pin Arman as the assailant of Vincent, perhaps on account of his death. This is quite unbelievable for it was Arman who accompanied Carolina in bringing Vincent to the hospital. Upon the investigation of the police, Arman likewise executed a sworn statement^[13] identifying Leozar as the assailant of Vincent but was not able to testify in court on account of his death.

Mark Anthony, however, could not, when shown his *Sinumpaang Salaysay*,^[14] explain why he identified Leozar as the assailant of Vincent. (It must be noted that he was an eyewitness to the crime being with Mark Magat, Sheryll, and his wife Charissema when the incident happened.) He merely denied executing it and averred that all he could recall was that the police coerced him to sign a blank piece

of paper with the promise that they will give him money so he can go home to Cebu.

The Ruling of the RTC

On September 5, 2006, the RTC rendered its Decision, finding Leozar guilty beyond reasonable doubt of murder attended by treachery and sentencing him to *reclusion perpetua*. The dispositive portion reads:

WHEREFORE, in view thereof, the Court, in finding the accused guilty of the crime of Murder qualified by the aggravating circumstance of treachery without an mitigating circumstance being proven, the Court sentences Leozar dela Cruz y Balobal to suffer the penalty of reclusion perpetua and orders him to pay moral damages of P100,000 in addition to the civil indemnity of P50,000.00.

SO ORDERED.^[15]

The trial court found the testimony of eye-witness Sheryll of how the killing transpired to be factual, straightforward, and convincing. She was unwavering and certain in her identification of Leozar as the assailant of Vincent. The testimony of Vincent's common-law wife Carolina on what happened after the slashing of Vincent's throat corroborated the testimony of Sheryll. Moreover, the trial court appreciated the testimony of P/Insp. Lara on the explanation of the conclusions regarding the nature and variety of neck wounds and how they can cause death in a victim, as in this case.

Maintaining, however, that the crime committed was only homicide, Leozar appealed the above decision to the appellate court.

The Ruling of the CA

On February 27, 2008, the CA rendered the appealed decision, affirming the findings of the RTC and the conviction of Leozar but modifying the award of damages. The *fallo* reads:

WHEREFORE, premises considered, the appealed Decision is hereby **AFFIRMED** with **MODIFICATION** in that the award of moral damages is reduced to PHP50,000.00 and PHP 25,000.00 is additionally awarded as exemplary damages. In all other respects the appealed Decision is **AFFIRMED**. With double costs against the appellant.

SO ORDERED.^[16]

At the outset, the appellate court aptly noted that Leozar, in his appeal, no longer disputes the fact that he committed the killing of Vincent. The sole question remaining is whether the killing of Vincent was attended with treachery so as to qualify the crime to murder.

In rejecting Leozar's contention that there was no treachery and in affirming the factual findings of the RTC, the appellate court held that the prosecution sufficiently established all the elements of treachery as enumerated in *People v. Aguila*^[17] and *People v. Recepcion*.^[18] Moreover, citing *People v. Agudez*,^[19] it ratiocinated that the use of the samurai with a 24-inch blade which inflicted the fatal wound and the location of the wound at the neck of Vincent demonstrated the deliberate and treacherous nature of the assault.

The CA's modified decision granted exemplary damages of PhP 25,000 following *People v. Galigao*,^[20] and reduced moral damages to PhP 50,000 in conformity with *People v. Samson*.^[21] Thus, the instant appeal is before us.

The Issues

Both accused-appellant Leozar and the Office of the Solicitor General (OSG), representing the People of the Philippines, opted not to file any supplemental brief, since neither are there new issues raised nor are there supervening events transpired. They correspondingly filed their respective Manifestation and Motion^[22] and Manifestation,^[23] to the effect that the Brief for the Accused-Appellant^[24] and Brief for the Appellee^[25] filed before the CA are adopted in this appeal.

Leozar raises the same assignment of errors as in his Brief, to wit: *first*, that the courts *a quo* erred in appreciating the qualifying aggravating circumstance of treachery; and *second*, that the courts *a quo* gravely erred in convicting him of murder instead of homicide.

The Court's Ruling

The appeal is without merit.

Murder is defined and penalized under Art. 248 of the RPC, as amended, which provides:

ART. 248. *Murder*.--Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive

cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis supplied.)

Thus, for the charge of murder to prosper, the prosecution must prove that: (1) the **offender killed the victim**, (2) **through treachery**, or by any of the other five qualifying circumstances, duly alleged in the Information. Generally, the elements of murder are:

1. That a person was killed.

2. That the accused killed him.

3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.

4. The killing is not parricide or infanticide.^[26]

Here, the fact of the death of Vincent Pimentel is undisputed, that it is neither parricide nor infanticide, and that Leozar killed him. This was established by the trial and appellate courts. In fact, in his appeal before the CA and the one at bench, Leozar solely questions the appreciation of the qualifying aggravating circumstance of treachery, which, if not appreciated, would make the offense he committed merely homicide instead of murder.

What is, thus, before us is the same core issue resolved by the CA on whether the killing of Vincent Pimentel was attended by treachery. In qualifying the crime to murder, the trial court correctly appreciated, as affirmed by the CA, the qualifying aggravating circumstance of treachery.

There is treachery 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.^[27] The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.^[28] For treachery to be considered, two elements must concur: (1) the employment of means of execution that gives the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.^[29]

Thus, the issue of the presence of treachery hinges on the account of eyewitness Sheryll. She was not only certain and unwavering in her positive identification of accused-appellant Leozar as the assailant of Vincent Pimentel, but her testimony, aptly noted by the courts *a quo*, was factual, straightforward, and convincing on