458 Phil. 738

THIRD DIVISION

[G.R. No. 141217, September 26, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EUSEBIO DUBAN *Y* DOMINGO @ "JUN," APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

From the decision[1] of the Regional Trial Court, Branch 18, Manila finding appellant Eusebio Duban y Domingo guilty beyond reasonable doubt of murder for the killing of Dionisio Barboza (the victim) and sentencing him to suffer the penalty of *reclusion perpetua*, he comes to this Court on appeal.

In an information[2] dated October 28, 1997, appellant was indicted as follows:

> That on or about October 9, 1997 at 11:00 am, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon DIONISIO BARBOZA by then and there striking him with a stone at the back of his head, thereby causing traumatic head injury which cause (*sic*) his death thereafter.
>
> Contrary to law.

Upon arraignment[3] on November 18, 1997, appellant, assisted by counsel *de oficio*, entered a plea of not guilty. Thereafter, trial on the merits ensued.

On October 9, 1997, at 11:00 a.m., appellant admittedly hurled at the victim a stone estimated to weigh one kilo, hitting the victim at the right rear portion of his head and ear, causing him to fall on the ground unconscious. The victim died hours later after he was brought to the Jose Reyes Memorial Medical Center.

Appellant claimed self-defense, however. The prosecution claimed otherwise, alleging that it was plain murder.

From the evidence of the prosecution, the following version is established. While prosecution witness Dionisio Poquiz, a jeepney driver, was outside his house at Ramon Magsaysay Boulevard, Sta. Mesa, Manila, the victim, a coconut vendor, passed by, pushing a cart loaded with coconuts. Poquiz bought coconut juice and repaired to the rear seat of his parked jeepney where he sat. As Poquiz was drinking the coconut juice, appellant approached the victim who was standing and waiting for a customer beside his cart. When appellant, a jeepney "barker," was about a meter away from the victim, he suddenly hurled the stone which hit the right rear portion of his head and ear. Appellant then speedily left, foiling Poquiz's

attempt to apprehend him.

The postmortem examination conducted on the victim by Dr. Ravell Ronald R. Baluyot of the National Bureau of Investigation Medico-Legal Division showed the following findings:

> Cyanosis, lips and nailbeds
> Blood, oozing from right ear.
> Lacerated wound, stellate 2.6 x 1.5 cms., scalp, post-auricular area, right.
> Scalp Hematoma, right, extensive.
> Fracture, skill bones: middle and posterior fossae, linear, right.
> Intracranial hemorrhage: Epidural, right parietal area; Subdural and subarachnoid right cerebral hemisphere, extensive.
> Visceral organs, congested.
> Stomach, contains a small amount of brownish fluid.[4] (Underscoring supplied)

Upon the other hand, appellant detailed his self-defense as follows:

At about 12:00 noon of October 9, 1997, after alighting from a jeepney at the "de la Fuente jeepney station," as he was walking on his way home, a jeepney driver whose name he no longer remembers, asked him to drink liquor with him. He declined the invitation as he had not yet eaten. The drunk companion of the driver (the victim) whom he met for the first time got a glass of gin, however, and echoed the offer, but he just the same declined it, prompting the victim to throw the contents of the glass at his face.

Appellant thus shouted invectives at the victim who then took a bolo from the jeepney which he tried to hit him with, but which he (appellant) was able to evade.

> [ATTY. OSORIO:]
> Q: So what did you do when that somebody tried to hit you but missed it (*sic*)?
>
> A: They were inside the jeepney at the time drinking and they alighted from the jeep.
>
> COURT
> Q: How about you what did you do?
>
> A: I also got off from the jeep and I evaded the blows of the bolo aimed at me.[5]

Continuing, appellant claimed that as the victim ran after him, he ran around the jeepney because there was an obstruction. Appellant thus took a stone "placed under the tire of the jeep" and with his right hand he threw it at the victim while the latter was approaching him at a distance of about 3 meters. The stone hit the victim on the "[r]ight side of his head,"[6] thus causing him to fall down. Appellant thereafter ran away and went home.

Brushing aside appellant's claim of self-defense, the trial court found him guilty

beyond reasonable doubt of murder by Decision of November 15, 1999, the dispositive portion of which is quoted *verbatim*:

> **WHEREFORE**, the Court finds the accused, Eusebio Duban y Domingo, guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs.
>
> On the civil liability of the accused, the Court further sentences him to pay the legal heirs of the victim, Dionisio Barboza, moral and nominal damages in the respective sums of P200,000.00 and P70,000.00, and an additional sum of P50,000.00, for the loss of the victim's life with interest thereon at the legal rate of 6% per annum from today until fully paid.
>
> **SO ORDERED.**

Hence, the present appeal anchored on the following assigned errors:[7]

> THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.
>
> ASSUMING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM WITH THE CRIME OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT. (Underscoring supplied)

Appellant contends that the testimony of eyewitness Poquiz, even if he was not shown to have been actuated by any improper motive, is full of improbabilities, hence, it cannot prevail over his (appellant's) testimony.[8]

Appellant cites Poquiz's testimony that he (appellant) was one arm's length away from the victim as was Poquiz from the victim. If that were the case, appellant argues, there would have been no need for him to throw the stone at the victim[9] and Poquiz could have easily apprehended him (appellant).

Whether Poquiz estimated the correct distance from where he was in relation to where appellant and the victim were is immaterial, however, appellant having himself admitted throwing the stone at the victim.

Admittedly, Poquiz was not prompted by ill motive to falsely testify against appellant, hence, his testimony should be entitled to full faith and credit.[10]

Additionally, by appellant's account, he, who is right-handed,[11] threw the stone at the victim who was about 3 meters away, while the latter was facing and approaching him with a bolo. But the victim was admittedly hit at the right **rear** portion of the head,[12] a fact confirmed by the above-stated result of the postmortem examination of the victim. As thus observed by the trial court, appellant's version cannot be believed. For, it is highly improbable that the victim could be hit at the right rear portion of his head if he and appellant were facing each other and appellant threw the stone with his **right hand**,[13] or that the victim could be hit at the same right rear portion of his head if he were chasing appellant.

Neither can appellant's claim that the victim was very drunk and armed with a bolo be believed. The result of the postmortem examination of the victim gave no indication that he was drunk. As for the claim that the victim was armed with a bolo, why appellant did not take the bolo, if indeed he had, after the victim fell down on being hit, is contrary to human experience. For an innocent man under similar circumstances would naturally take it with him to prove his claim of self-defense. Such course of action is fatal to such claim of appellant.[14] And so is his running away from the scene of the incident, for a truly innocent person would normally report the matter to the police.[15] But appellant did not. Instead, he immediately fled.

And while appellant claimed during direct examination that he told his side of the incident when he was arrested two weeks later,[16] the police progress report[17] accomplished on his arrest shows that he, after being apprised of his constitutional rights and of the charge against him, "opted to remain silent."

Persons who act in legitimate defense of their persons or rights invariably surrender themselves to the authorities and describe fully and in all candor all that has happened with a view to justify their acts.[18] But appellant did not.

In fine, appellant's version of the incident and his actuations soon after do not speak of his innocence.

The trial court did not err thus in not crediting appellant's claim of self-defense. Neither did it err in appreciating the presence of treachery in the killing.

The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[19] In the case at bar, the victim was standing and selling coconut,[20] totally oblivious of any impending harm when appellant suddenly threw the stone from behind him.

There is no doubt then that appellant is guilty of murder, penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7569. There being neither mitigating nor aggravating circumstance, the lesser penalty of *reclusion perpetua* was correctly imposed by the trial court, pursuant to Article 63(2) of the Revised Penal Code.[21]

As to the civil aspect of the case, in line with prevailing jurisprudence, the award of indemnity to the heirs of the victim in the amount of P50,000.00 is affirmed, it being awarded without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor. [22]

As for the award by the trial court of moral damages to the legal heirs of the victim in the amount of P200,000.00, not only is the amount exorbitant, there is also no evidence to show that the legal heirs of the victim suffered any mental anguish or serious anxiety arising from the victim's death.