



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
SEP 05 2019
BY: *YSG*
TIME: *9:26*

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**THE PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellee,

- versus -

**DEXTER ASPA ALBINO @
TOYAY and JOHN DOES,**

Accused;

**DEXTER ASPA ALBINO @
TOYAY,**

Accused-Appellant.

G.R. No. 229928

Present:

CARPIO, *Chairperson*,
PERLAS-BERNABE,*
CAGUIOA,
REYES, J., JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

22 JUL 2019

MM Cabalag Perfecto

X-----X

DECISION

LAZARO-JAVIER, J:

The Case

This appeal assails the Decision dated September 13, 2016¹ of the Court of Appeals in CA-G.R. CEB-CR H.C. No. 01596 affirming appellant's conviction for murder, with modification.

* On Official Leave

¹ Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez; *Rollo*, pp. 4-17.

The Proceedings Before the Trial Court

The Charge

By Information dated May 12, 2009, appellant Dexter Aspa Albino @ Toyay was charged with murder for the killing of Marlon Dionzon Soriano, viz.:

That on or about the 10th day of May 2009, in the municipality of Carigara, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring with unidentified persons, with deliberate intent to kill and with treachery, did, then and there willfully and unlawfully and feloniously attack and shoot MARLON DIONZON SORIANO with the use of an unlicensed firearm, which the above-named accused provided himself for the purpose, thereby inflicting upon the victim a gunshot wound at the left chest at the level of 7th ICS which was the direct and immediate cause of death of said Marlon D. Soriano.

CONTRARY TO LAW.²

The case was raffled to the Regional Trial Court - Br. 13, Carigara, Leyte. On arraignment, appellant pleaded “not guilty.”

During the trial, Marlon’s older brother Jerome Soriano, neighbor Arwin Terrado, mother Gertrudes Soriano, PO2 Noel M. Melgar, and Dr. Ma. Bella V. Profetana testified for the prosecution. On the other hand, appellant and one Pablo Flores testified for the defense.

The Prosecution’s Version

Jerome Soriano testified that in the evening of May 9, 2009, he and his siblings Maita and Marlon were attending a benefit dance in Brgy. San Mateo, Carigara, Leyte. They were dancing with fellow residents to the music they requested exclusively for themselves. Appellant’s group, however, danced and mixed with them, thus, causing tension.³

Around 12:45 in the early morning the following day, an altercation ensued just outside the dance area between appellant’s group and some residents in the area. He and Marlon tried to pacify them but appellant drew a revolver from his pocket and shot Marlon in the chest without any warning. As a result, Marlon fell to the ground. He (Jerome) and his friends rushed Marlon to the hospital. Marlon eventually died in the hospital.⁴

He was able to identify his brother’s assailant because the benefit dance was held at a basketball court which was illuminated by six (6) mercury lamps. Too, he was merely two arms-length away from his brother when the latter got shot.⁵

² *Rollo*, p. 5.

³ *CA rollo*, pp. 22-23.

⁴ *Id.* at 22-24.

⁵ *Id.* at 23.

Arwin Terrado, who was also at the benefit dance, corroborated Jerome's testimony.⁶ **Dr. Ma. Bella V. Profetana** testified that Marlon sustained a gunshot wound in the chest causing the latter to massively bleed and get immobilized. Marlon eventually died due to massive bleeding.⁷ The victim's mother **Gertrudes Soriano** testified that their family incurred funeral expenses of Php28,050.00.⁸ Finally, **PO2 Noel M. Melgar** testified that he blotted the incident in the police logbook.⁹

The Defense's Version

Appellant denied the charge. He named Jerome as the person who threatened their group while they were dancing on the floor. They just ignored the threats and walked away. But Jerome grabbed him by the collar and boxed him in the forehead. Then he felt a pointed object on his back, heard a gunshot, and saw Marlon fall to the ground. He did not see who shot Marlon. Because of the commotion, he ran away. Hours later, he got arrested in Brgy. Maraging. The arresting officers informed him that he was the suspect in the killing of Marlon.¹⁰ **Pablo Flores** corroborated appellant's testimony.¹¹

The Trial Court's Ruling

By Judgment dated November 12, 2012,¹² the trial court found appellant guilty of murder, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered, finding accused DEXTER ASPA ALBINO, GUILTY beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, with the killing attended by treachery. The said accused is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties. He is also ordered to indemnify the heirs of Marlon D. Soriano the following amounts: Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, Php30,000.00 as exemplary damages, and Php28,050.00 as actual damages.

No costs.

SO ORDERED.¹³

The trial court gave credence to the testimonies of prosecution witnesses. Jerome and Terrado who positively identified appellant as the one who slayed Marlon. It found that no ill-motive could be ascribed to them when they testified against appellant in the case.¹⁴

⁶ *Id.*

⁷ *Id.* at 23-24.

⁸ *Id.* at 24.

⁹ *Id.*

¹⁰ *Rollo*, pp. 6-7.

¹¹ *Id.* at 7.

¹² Penned by Presiding Judge Lauro A.P. Castillo, Jr.; *CA rollo*, pp. 20-30.

¹³ *CA rollo*, p. 30.

¹⁴ *Id.* at 28.

Further, the trial court found the qualifying circumstance of treachery attended the killing. It found that as testified to by Jerome and Terrado, appellant pulled out a gun and fired it toward the victim without any warning. The victim, therefore, was rendered totally unable to protect or defend himself.¹⁵

Meanwhile, use of an unlicensed firearm was not appreciated as an aggravating circumstance for lack of substantiating evidence.¹⁶

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction against him despite the prosecution's alleged failure to prove the qualifying circumstance of treachery.¹⁷ The crime could not have been committed without risk of retaliation from the victim and his companions since these persons themselves participated in the commotion. In the absence of any qualifying circumstance, appellant prayed that his conviction be downgraded from murder to homicide, and for his prison sentence be modified accordingly.¹⁸

The Office of the Solicitor General (OSG), through Assistant Solicitor General Bernard G. Hernandez and Associate Solicitor II Karla Monica S. Moraleda-Manabat defended the verdict of conviction. The OSG maintained that treachery was proven through the testimonies of Jerome and Terrado.¹⁹

The Court of Appeals' Ruling

Under Decision dated September 13, 2016, the Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, the appeal is DENIED. The Judgment dated November 12, 2012 of the RTC 8th Judicial Region, Branch 13, Carigara, Leyte, finding accused-appellant Dexter Aspa Albino guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 5074, is **AFFIRMED with the modifications** that accused-appellant shall not be eligible for parole, and that all damages awarded in this case shall be subject to interest of 6% per annum reckoned from the finality of this decision until the full payment thereof.

SO ORDERED.²⁰

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew that his conviction be downgraded from murder to homicide. In compliance

¹⁵ *Id.*

¹⁶ *Id.* at 29.

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 48-56.

²⁰ *Rollo*, p. 16.

with Resolution dated April 25, 2017,²¹ both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.²²

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder instead of downgrading it to homicide?

Ruling

The appeal is meritorious.

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz.*:

Article 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;

XXXX

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.²³

Here, appellant prays that his conviction be downgraded from murder to homicide. We therefore focus on the third element: the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC.

The Information alleged that treachery attended the killing of Marlon. There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make.²⁴

The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape.²⁵

²¹ *Id.* at 23-24.

²² *Id.* at 31-32 and 35-36.

²³ See *People v. Villanueva*, 807 Phil. 245, 252 (2017).

²⁴ See *People v. Watamama*, 734 Phil. 673, 682 (2014).

²⁵ *Id.*



Here, appellant's group and the locals were drawn into an altercation when Marlon approached to pacify them. Then, appellant suddenly shot Marlon in the chest. Though sudden, the attack did not amount to treachery. For at that moment, appellant was enraged and did not have time to reflect on his actions. There was no showing that he consciously launched the sudden attack to facilitate the killing without risk to himself. Hence, appellant may only be convicted of homicide.

*People v. Pilpa*²⁶ is apropos, thus:

xxx [M]ere suddenness of the attack is not sufficient to hold that **treachery is present**, where the mode adopted by the assailants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a *barangay tanod*, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. xxx

xxxx

In addition, **the attack itself was frontal**. In *People v. Tugbo, Jr.*, the Court held that treachery was not present because the attack was frontal, and hence, **the victim had opportunity to defend himself**. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of Pilpa and not appreciate the said circumstance. (emphases added, citations omitted)²⁷

In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Marlon Dionzon Soriano. Verily, therefore, appellant may be convicted only for homicide in accordance with Article 249 of the Revised Penal Code, *viz.*:

²⁶ G.R. No. 225336, September 05, 2018.

²⁷ *Id.*



Article 249 of the Revised Penal Code provides, thus:

Article 249. Homicide. - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Applying the Indeterminate Sentence Law,²⁸ appellant should be sentenced to eight (8) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

In accordance with prevailing jurisprudence, the awards of Php75,000.00 civil indemnity and Php75,000.00 moral damages should be decreased to Php50,000.00 each; and the award of Php30,000.00 as exemplary damages should be deleted.²⁹ In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information.³⁰

As for actual damages, the Court of Appeals sustained the award of Php28,050.00 on the basis of receipts presented by the prosecution. Prevailing jurisprudence, however, now fixes the amount of Php50,000.00 as temperate damages in homicide cases. So must it be.³¹

A six percent (6%) interest *per annum* on these amounts should be paid from finality of this decision until fully paid.

ACCORDINGLY, the appeal is **GRANTED**. Appellant **DEXTER ASPA ALBINO @ TOYAY** is found guilty of **HOMICIDE**. He is sentenced to the indeterminate penalty of eight (8) years of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

He is further required to pay Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

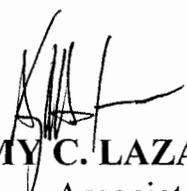
²⁸ Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

²⁹ See *People v. Jugueta*, 783 Phil. 806, 845 (2016).

³⁰ *Id.* at 845-846.

³¹ See *People v. Macaspac*, 806 Phil. 285, 289-290 (2017).

d



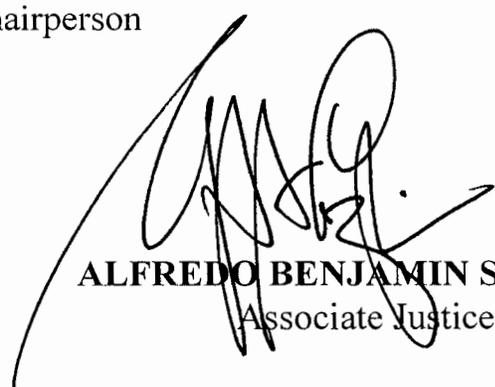
AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice