

THIRD DIVISION

[G.R. No. 132747, February 08, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO CABANDE, ACCUSED-APPELLANT.**

D E C I S I O N

PANGANIBAN, J.:

The arguments and the issues raised in an appellant's brief must pertain to errors allegedly committed by the trial court, not to those matters that are no longer in dispute. Although herein appellant did not strictly adhere to this rule and despite his anemic Brief, this Court carefully pored over the entire records of this case in the interest of substantial justice, and it is thoroughly convinced that the trial court did not err in convicting him of the crimes charged. However, pursuant to current jurisprudence, we are *motu proprio* modifying the award of civil liabilities.

The Case

Appellant Alfredo Cabande appeals the July 24, 1997 Decision^[1] of the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 16) in Criminal Case Nos. 1568-M-90 and 1569-M-90, finding him guilty of two counts of murder and sentencing him to two terms of *reclusion perpetua*.

Assistant Provincial Prosecutor Edsel N. Rutor filed two Informations both dated July 31, 1990, charging appellant with murder. The Information in Criminal Case No. 1568-M-90 reads as follows:

"That on or about the 20th day of May, 1990, in the [M]unicipality of San Ildefonso, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill one Vicente Trinidad, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with the said gun he was then provided the said Victor Trinidad, hitting the latter, on his body, thereby causing him serious physical injuries which directly caused his death."^[2]

The Information in Criminal Case No. 1569-M-90 was similarly worded, except for the name of the victim, who was Victor Trinidad in lieu of Vicente Trinidad.^[3]

In an Order dated August 28, 1990, the RTC ordered the consolidation of the two cases.^[4] The proceedings were stalled because appellant surrendered only in 1993. When arraigned on July 28, 1993, appellant, with the assistance of counsel,^[5] entered a plea of not guilty. Trial on the merits ensued. On August 26, 1997,^[6] the

trial court promulgated its assailed Decision dated July 24, 1997, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, herein accused is hereby found guilty beyond reasonable doubt of the crime of double murder and pursuant to Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of 'RECLUSION PERPETUA' for each offense charged against him under Criminal Cases Nos. 1568-M-90 and 1569-M-90. The period for accused's preventive detention shall be deducted from his sentence.

"FURTHER, accused has to pay the heirs of victims Victor and Vicente Trinidad, the following damages:

- a) P50,000.00 for each victim, as death indemnities;
- b) P1.5 [m]illion and P337,000.00 for victim Victor and Vicente Trinidad, respectively, as loss of income for 5 years;
- c) P100,000.00 for each victim, as wake and burial (including lots) expenses;
- d) P150,000.00 for each victim, as moral damages;
- e) P40,000.00 for each victim, as exemplary damages;
- and
- f) costs of litigation."

In view of the penalty imposed, this appeal was lodged directly with this Court.^[7]

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General summarizes the prosecution's version of the facts in this wise:^[8]

"Seventy-four year old Vicente Trinidad lived in Sapang Putol at San Ildefonso, Bulacan, with his wife Dolores as well as with his thirty-eight year old son Victor, and the latter's wife Lucia and three children named Christopher, Daryl and Lawrence. (pp. 2 & 4, tsn, August 4, 1993; pp. 3-5, tsn, September 30, 1993; p. 2, tsn, January 20, 1994; pp. 3-4, tsn, June 16, 1994; p. 7, tsn, July 14, 1994) Forty-year old appellant, who worked as a security guard, resided in San Juan, also at San Ildefonso, Bulacan. (p. 3, tsn, July 25, 1995; p. 3, tsn, December 14, 1995)

"Victor and appellant both claimed ownership over Lot 1990 of the Buenavista Estate located in Mataas na Parang, San Ildefonso, Bulacan. In an order issued by the Department of Agrarian Reform (Exhibit B), however, forty thousand (40,000) square meters of the lot was adjudicated in favor of Victor while only eight thousand (8,000) square meters of the lot was granted to appellant. Notwithstanding the order, appellant wanted to occupy the entire lot and thus threatened Victor and Vicente that blood will [be] shed if they continue constructing a fence around the lot. (pp. 5-6, 10, tsn, September 30, 1993)

"In the morning of May 20, 1990, at about 8:00 o'clock, Vicente and

Victor with his three children were on their way to Mataas na Parang to fence their property. Aboard an owner-type jeep, Vicente took the front seat beside Victor who was driving. Directly behind Victor was Daryl while Lawrence sat behind his grandfather. Sitting between Daryl and Lawrence was their eldest brother, Christopher, then almost five (5) years old. (pp. 5-7, tsn, August 4, 1993) Suddenly, apparently out of nowhere, two persons, one of whom was appellant, blocked their way. Victor did not have much choice but to stop the jeep. As appellant was positioned at the side of the jeep nearer the driver's seat, appellant, without fanfare, shot Victor at the left side of the body. Despite Victor's entreaties: 'huwag Gatse, huwag Gatse' (p. 10, Id.), appellant again mercilessly shot Victor while he was on his knees, this time hitting him at the left temple. Meanwhile, Vicente tried to take cover at the right side of the jeep but he, too, was shot subsequently by appellant at the chest and the head. (pp. 7, 12, Id.)

"Shocked, christopher, Daryl and Lawrence neither shouted for help nor said anything but remained at the back seat of the jeep. As appellant fled a few minutes later, however, they went closer to their father who, covered with blood, lay prostrate beside the jeep. (pp. 12-13, tsn, August 4, 1993; pp. 13-14, tsn, August 18, 1993) Shortly, onlookers arrived at the scene of the crime. Efren C. Reyes, then a councilor, was passing through in his jeep when he saw the bodies of Vicente and Victor sprawled on the ground. Seeing that Vicente was already dead and only Victor appeared to be still breathing, Efren, with the help of then Barangay Captain Bobot Caraballo, brought Victor to the San Miguel Hospital where he was declared dead on arrival. Another jeep arrived, which was driven by an unidentified person who brought Christopher and his brother home (p. 15, tsn, August 4, 1993; pp. 22-23, tsn, August 18, 1993; pp. 6-7-, tsn, October 20, 1994)."

Version of the Defense

In his Brief, appellant presents the following statement of facts:^[9]

"Vicente Trinidad and Victor Trinidad, father and son, respectively, and herein accused-appellant, had serious misunderstanding over Lot No. 1990 of the Buenavista Estate located at Mataas na Parang, San Ildefonso, Bulacan.

"Shortly prior to May 20, 1990, Vicente and Victor were confronted by accused-appellant herein ' . . WHILE THEY WERE ON THE SUBJECT LOT AND WERE TOLD THAT IF THEY CONTINUED TO CONSTRUCT THE FENCE, BLOOD WILL [BE] SHED AND ALFREDO CABANDE THREATENED THE 2 MEN AT GUNPOINT.' (Emphasis supplied, Tsn, Sept 30, 1993, Pp 4-10, Decision dated July 24, 1997, Pp 5 to 6 and Pp 32)

"On May 20, 1990, at or about 8:00 o'clock in the morning, Victor was driving an owner-type jeepney in San Ildefonso, Bulacan, going to said Lot No. 1990. He was with his father Vicente, was s[ea]ted at his right and three (3) children of Victor, one of whom is Christopher Trinidad,

born on February 28, 1985, and who at that time was barely four (4) years and nine (9) months old, more or less.

"Victor and company were later blocked by two (2) men. Victor was shot by one of the two men. Vicente who hid himself at the other side of the jeep was likewise shot. This incident resulted in the death of Victor Trinidad and Vicente Trinidad (Tsn, Pp. 3-8, August 4, 1993, Christopher Trinidad)

"On the very same day, Virgilio Cabande and Themistocles Cabande, Jr., both residing in San Juan, San Ildefonso, Bulacan, and brothers of accused-appellants herein, were invited to the Police authorities of San Ildefonso, Bulacan, relative to the death of Victor Trinidad and Vicente Trinidad. As suspects, the brothers were subjected to paraffin tests in Camp Olivas, Pampanga, which however, yielded negative results (Tsn, February 2, 1995, Pp. 2-10).

"Henceforth, the charges were shifted against accused-appellant herein."

The Trial Court's Ruling

In convicting appellant, the trial court relied on the eyewitness account of Christopher Trinidad, who was five years old when the crime was committed and who was then riding the jeepney together with the two victims, his father and paternal grandfather, Vicente. The court *a quo* also noted that there was a feud between appellant and the victims over the ownership of a parcel of land. It further observed that appellant did not surrender to the police for three years, although he knew that there was a standing warrant for his arrest. It concluded that the killing was qualified by treachery, because the victims "were totally defenseless and had no opportunity to defend themselves or retaliate when shot."

Issues

In his Brief, appellant submits the following as "ground for acquittal":^[10]

"A. The State miserably failed to prove the crimes charged against herein accused-appellant."

In discussing this argument, he invoked three "sub-topics germane to said ground":^[11]

"A Abuse of superior strength is absorbed in treachery.

"B Prosecution evidence is absolutely wanting of the qualifying circumstance of evident premeditation.

"C Similarly situated alevosia was not present and the court *a quo* erred in appreciating the same as qualifying circumstance for murder [of] both counts."

Considering that an appeal throws the criminal case wide open for review and is not limited to the issues raised by the appellant,^[12] the Court will address the following matters: (1) sufficiency of the prosecution evidence, (2) presence of qualifying circumstances and (3) damages.

This Court's Ruling

The appeal is devoid of merit. Nonetheless, after going through the records of this case, the Court resolves to modify appellant's civil liability.

First Issue: **Sufficiency of Evidence**

The conviction of appellant was based on the testimony of Christopher Trinidad, the five-year-old boy who was then seated at the back of the jeep when his father and grandfather were shot. The narration of the boy was straightforward, clear, guileless and positive. Its pertinent portions are reproduced hereunder:^[13]

"Q You stated that you were then bound to the construction of [the] fence, what if any happened on the way?

A We were blocked sir (hinarang).

Q How many persons blocked your way?

x x x x x x x x x

A Two persons, sir.

Q When the two persons blocked your way, what if any did your father do? I'm referring to your father Victor Trinidad.

A My father stopped, sir.

Q While the jeep was on the road?

A Yes sir.

Q What did the two persons who blocked your way do after your father stopped the jeep?

A My father was shot, sir.

Q Where was your Daddy when, according to you, he was shot?

A He was at the driver's seat, sir.

Q You said that your father was shot, did you recognize the person who shot your father?

A Yes sir.

Q Do you know his name?

A Yes sir.

Q Can you point to him if you will see him again?

A Yes sir.