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[G.R. No. 200942, June 16, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JORIE WAHIMAN Y RAYOS, ACCUSED-APPELLANT.

R E S O L U T I O N

DEL CASTILLO, J.:

Appellant Jorie Wahiman y Rayos (appellant) was charged with the crime of murder for the death of Jose Buensuceso (Buensuceso). During his arraignment, appellant pleaded not guilty.[1] Trial on the merits ensued.

The prosecution established that on April 2, 2003, at around 10 o'clock in the evening, Buensuceso, the manager of Stanfilco-Dole, Phils, in Malaybalay City, was on his way back to the company staff house on board his Isuzu pick-up after attending a *despedida* for one of his employees.

While he was about to enter the gate of the staff house, he was gunned down by persons riding in tandem on a black motorcycle. The guard on duty, David Azucena (Azucena), who was then opening the gate, identified one of the assailants as herein appellant.

During trial, the prosecution submitted in evidence the extrajudicial confession of appellant taken during the preliminary investigation of the case, admitting to the killing of Buensuceso.

However, when it was appellant's turn to testify, he narrated that at the time of the killing, he was at Landing Casisang, Malaybalay City attending the birthday celebration of his brother-in-law.

Ruling of the Regional Trial Court (RTC)

On February 16, 2009, the RTC rendered its Decision[2] finding appellant guilty as charged, *viz*.:

> WHEREFORE, Judgment is issued finding the accused Jorie Wahiman y Rayos guilty beyond reasonable doubt of the crime of murder and imposes upon him the penalty of Reclusion Perpetua and directing him to pay the heirs of the victim the sum of P75,000.00 as moral damages, P75,000.00 [as] civil indemnity and actual damages as follows:
>
> P59,280,000.00 lost earning capacity of the deceased;
>
> [P]25,000.00 actual damages; no receipt was presented for P220,000[;]

P1,500.00 Appearance fee; and

P50,000.00 Attorney's fee.

He shall serve his penalty in the National Penitentiary of Davao Penal [C]olony.

SO ORDERED.[3]

Ruling of the Court of Appeals (CA)

In his appeal, appellant argued that when his supposed extrajudicial confession was being taken, Atty. Michael Florentino Dumlao (Atty. Dumlao), the lawyer who supposedly assisted him, was not around. He arrived only when appellant was about to sign the extrajudicial confession. Appellant also insisted that Azucena, the prosecution's alleged eyewitness, did not actually see him shooting the victim.

Appellant's contentions were, however, disregarded by the CA.

In its Decision[4] dated October 13, 2011, the CA found no reason to depart from the trial court's findings. It held that appellant's contention that he lacked legal intervention and assistance during the taking of his extrajudicial confession was totally belied by the testimony of Atty. Dumlao that he rendered assistance to the appellant throughout the entire proceedings and carefully explained to the latter the consequences of his admission. Besides, the voluntariness of the execution of the extrajudicial confession was apparent considering that it is replete with details that only appellant would know. The appellate court brushed aside appellant's assertion of torture, the same being unsupported by medical certificate or marks of physical abuse. In any case, he never bothered to narrate how he was tortured or to identify his alleged tormentors. Moreover, the ballistic examination proved that the slugs used in killing Buensuceso were fired from the firearm earlier confiscated from appellant. The CA also found no merit in appellant's claim that Azucena did not actually see him shoot the victim. The CA opined that although Azucena did not see appellant actually shoot the victim, he nonetheless saw appellant within seconds from hearing the gunshots fleeing from the immediate vicinity of the crime scene aboard a motorcycle with a gun in hand. Based on the foregoing, the appellate court found appellant's denial and alibi undeserving of credence.

The dispositive portion of the CA's Decision reads:

WHEREFORE, premises considered, the February 16, [2009] decision rendered by Branch [8], Regional Trial Court, 9th Judicial Region, Malaybalay City, is hereby AFFIRMED *in toto*.

SO ORDERED.[5]

Hence, this appeal.

Our Ruling

We totally agree with the RTC and the CA in finding that the guilt of appellant for the crime of murder was proved beyond reasonable doubt. There is no doubt that on

April 2, 2003, at around 10 o'clock in the evening, appellant shot Buensuceso while the latter was about to enter the gate of the staff house of Stanfilco-Dole in Malaybalay City, Bukidnon. Moreover, we agree with the findings of the RTC and the CA that appellant's extrajudicial confession[6] was voluntarily and duly executed and replete with details that only appellant could supply, *viz*.:

> xxx But before proceeding in questioning you, I am informing you that under our new constitution, you have the right to the following:
>
> A. You have the right to remain silent and not answer xxx my questions; it might be that I might use your answers as evidence against you or favorable to you.
> 1. QUESTION: Do you understand your right?
>   ANSWER: Yes[,] Sir.
> 2. QUESTION: Are you going to use your right?
>   ANSWER: I would rather not[,] sir[,] because I would tell the truth as to what had happened.
>
> B. You have the right to avail [of] the services of a counsel of your choice to help you in this investigation, and if you can't afford to hire the services of a lawyer, the government will provide you with free legal services of a lawyer from the Integrated Bar of the Philippines (IBP).
> 03. QUESTION: Do you understand your right? - ANSWER: Yes[,] sir.
> 04: QUESTION: Are you going to use your right?
>   ANSWER: I have my own lawyer, he is Atty. Michael Florentino Dumlao III, we already had a talk and he made me understand xxx my rights, and he also made me understand about this investigation where I will voluntarily narrate what I x x x [know].
> 05. QUESTION: Did anybody give you money or promised to give you a reward, or did anybody intimidate you in giving this affidavit?
>   ANSWER: Nobody[,] sir.
> 06. QUESTION: Did you understand your rights that I told you?
>   ANSWER: Yes[,] sir.[7]

Appellant then proceeded to narrate that he was hired by Alex Laranjo (Laranjo) and Kid Canadilla (Canadilla), for and in behalf of a certain Alonzo who owns a quarry in San Isidro, Valencia, to kill the victim for a fee. According to appellant, Alonzo wanted the victim killed because the latter withheld the release of his collectibles from Stanfilco-Dole. Appellant then narrated how he met with Laranjo, Canadilla and Alonzo; how he received payments and instructions; how he planned the killing; and how he executed the plan. Appellant signed his extrajudicial confession, with the assistance of Arty. Dumlao, and subscribed the same before Atty. Dennis B. Caayupan at the Office of the Clerk of Court.[8]

Moreover, Atty. Dumlao testified that he ably provided legal assistance to appellant all throughout the proceedings and carefully explained to him the ramifications of his admission. He informed appellant of his rights and that anything he says may be used in evidence against him. Notwithstanding, appellant insisted on giving his

extrajudicial confession.[9]

In any event, it must be stressed that appellant's conviction was not based solely on his extrajudicial confession. The prosecution likewise presented the eyewitness account of Azucena who testified that immediately after hearing gunshots, he saw appellant about 5 meters away from the Isuzu pick-up of the victim. Appellant was riding in tandem aboard a black motorcycle and was holding a gun. The ballistic report also confirmed that the slugs found at the crime scene were fired from the firearm earlier confiscated from the appellant. Moreover, appellant was not able to establish that it was physically impossible for him to be present at the crime scene at the time of its commission.

The RTC and the CA thus properly found appellant guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. However, it must be stated that appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346 or the Act Prohibiting the Imposition of Death Penalty in the Philippines.

Anent the damages awarded, we find that modification is in order.

Regarding the award for lost earnings, the general rule is that there must be documentary proof to support indemnity for loss of earning capacity. Admittedly, there are exceptions to this rule, *viz*.:

> By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[10]

Notably, this case does not fall under any of the exceptions. The deceased victim could not be considered as a self-employed earning less than the minimum wage; neither could he be considered employed as a daily wage worker. However, we are inclined to award lost earnings considering that the deceased, as testified by his widow, was the manager of Stanfilco-Dole, Phils, in Malaybalay City and was receiving a monthly salary of P95,000.00. He was 54 years of age when gunned down by appellant. This testimony was not objected to by appellant or questioned during cross-examination or on appeal. Clearly, the existence of factual basis of the award has been satisfactorily established. However, the amount of the award for lost earnings must be modified following the formula [2/3 x 80 - age] x [gross annual income - necessary expenses equivalent to 50% of the gross annual income]. Thus: [2/3 x (80-54)] [(P95,000 x 12) - 50% (P95,000 x 12)] = P9,878,100.00.

In addition, the awards of actual damages in the amount of P25,000.00 must be deleted for lack of proof; in lieu thereof, temperate damages in the amount of P25,000.00 is awarded. The awards of civil indemnity in the amount of P75,000.00, and moral damages in the amount of P75,000.00, are in line with prevailing jurisprudence. In addition, the heirs of the victim are entitled to exemplary damages in the amount of P30,000.00. Finally, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this resolution until full payment.

WHEREFORE, the assailed October 13, 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 00830-MIN finding appellant Jorie Wahiman y Rayos guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with **MODIFICATIONS** in that appellant is not eligible for parole; the award for lost earnings is reduced to P9,878,100.00; the award of actual damages is deleted; in lieu thereof, appellant is ordered to pay the heirs of the victim P25,000.00 as temperate damages; he is likewise ordered to pay the heirs of the victim exemplary damages in the amount of P30,000.00; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this resolution until full payment.

SO ORDERED

Sereno, C. J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.*, concur.
Peralta, J., On official leave.
Leonen, J., I certify that J. Leonen left his concurring vote; see his concurring opinion. On official leave.
Jardeleza, J., No part. Prior OSG action.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 16, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 01, 2015 at 4:30 p.m.

Very truly yours,
(SGD.)
ENRIQUETA ESGUERRA-VIDAL
Clerk of Court

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[1] Records, pp. 100, 102.

[2] Id at 235-255; Regional Trial Court of Malaybalay, Branch 8; docketed as Crim. Case No. 13794-03; penned by Judge Pelagio B. Estopia.

[3] Id. at 255.

[4] CA *rollo*, pp. 82-98; docketed as CA-G.R. CR H.C. No. 00830-MIN; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida Galapate-Laguilles.

[5] Id. at 98.