

THIRD DIVISION

[G.R. No. 188323, February 21, 2011]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARLIE ABAÑO Y CAÑARES, APPELLANT.

R E S O L U T I O N

BRION, J.:

We decide, through this Resolution, the appeal filed by appellant Charlie Abaño y Cañares from the decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03060.

On October 5, 2005, appellant Charlie Abaño y Cañares was accused of murder^[1] in the Regional Trial Court (RTC), Branch 62, Naga City,^[2] under the following Information:

That on or about the 3rd day of October, 2005 at around 10:00 P.M. at Brgy. Del Socorro, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, attack, assault and hack one CESAR CABASE y SAN JUAQUIN, with a bolo causing him to sustain fatal wounds on the different parts of his body and head which caused his instantaneous death, to the damage and prejudice of his heirs as shall be proven in court.^[3]

The appellant pleaded not guilty. In the trial that followed, an eyewitness, the victim's wife Richelda Madera Cabase, testified on the details of the crime.

At about 10:00 p.m. of October 3, 2005, the victim (Cesar Cabase) was asleep in the room of their hut in Del Socorro, Minalabac, Camarines Sur, together with his youngest daughter (Criselda) and grandson. The room was illuminated by an outside kerosene lamp. While Richelda was about to join her sleeping family, the appellant suddenly barged into the room, focused a flashlight on the victim, and began hacking him with a *bolo*. Out of fear, Richelda retreated to a corner of the room while embracing her grandson. The appellant thereafter focused his flashlight on Richelda, but Criselda started crying. At that point, the appellant left.^[4]

Medico-legal findings revealed that multiple hack wounds with skull fractures caused the victim's death.^[5] The victim's family claimed to have spent P26,535.00 as funeral and burial expenses, but could only support P5,035.00 with receipts.^[6]

The appellant, interposing the defense of alibi, claimed that he was asleep at the night of the killing at the farm of Antonio Almediere at Zone 5, Del Socorro, Minalabac, about 300 meters away from the scene of the crime.^[7]

In its October 9, 2007 decision, the RTC convicted the appellant of the crime of murder mainly based on the eyewitness testimony of the victim's wife, Richelda. The trial court found her credible, consistent, and free of ill motive to testify against the appellant whom she knew well because he had previously lived with them for four years. It noted that the victim's house was illuminated by a kerosene lamp that was sufficient for purposes of identification. The RTC appreciated the qualifying circumstance of treachery because the appellant attacked the victim who was asleep and was thus totally incapable of defending himself. But the court disregarded evident premeditation as a qualifying circumstance because it was not duly established at the trial. The RTC sentenced the appellant to *reclusion perpetua*, and to pay the heirs of the victim P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 in temperate damages.^[8]

On intermediate appellate review, the CA affirmed the judgment of the RTC but deleted the award of temperate damages, finding that only P5,000.00 must be awarded as actual damages since only this amount was proven through receipts.^[9] From the CA, the case is now with us for final review.

We affirm the appellant's guilt.

We find no reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness account of the victim's wife is worthy of belief as it was a straight forward account consistent with the presented physical evidence. The witness had no reason to falsify and she was only interested in having the real killer punished; no motive affecting her credibility was ever imputed against her. On the other hand, the appellant failed to show by convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission; he was only a short 300 meters away.^[10] Treachery qualified the killing to murder as the victim was asleep at the time of the assault; the victim could not have possibly defended himself against his assailant.^[11] Since neither aggravating nor mitigating circumstances attended the commission of the felony, the lower courts properly imposed the penalty of *reclusion perpetua*.

While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to modify the civil liability of the appellant. Since the receipted expenses of the victim's family was less than P25,000.00, temperate damages should have been awarded in lieu of actual damages.^[12] With the finding of the qualifying circumstance of treachery, exemplary damages, too, of P30,000.00 should have been awarded.^[13]

WHEREFORE, the November 20, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03060 is hereby **AFFIRMED** with **MODIFICATION**. Appellant Charlie Abaño y Cañares is found guilty of murder, as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to *reclusion perpetua*. He is further ordered to pay the heirs of Cesar Cabase P50,000.00 as civil indemnity *ex delicto*, P50,000.00 as moral damages, P25,000.00 as temperate damages, and P30,000.00