

SECOND DIVISION

[G.R. No. 177753, September 25, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BENJAMIN OCAMPO, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

Benjamin Ocampo (appellant) was indicted for Murder before the Regional Trial Court (RTC) of Baguio City, alleged to have been committed as follows:

That on or about the 9th day of October, 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously stab RUBEN NGO Y TYCHINGCO with a stainless knife, thereby inflicting upon the latter: stab wound on the neck, and as a result thereof the said Ruben Ngo y Tychingco died.

That the killing was attended by the qualifying circumstance of treachery considering that the accused suddenly attacked/stabbed the victim who did not have any means to defend himself.^[1]

From the evidence for the prosecution consisting of, among other things, the testimony of eyewitnesses Mary Ann Lombay (Mary Ann) and Rosemarie Ngo, wife of Ruben Ngo (the victim), the following version of events is culled:^[2]

At around 4:30 p.m. of October 9, 2003, while the victim and his wife were buying garlic chips from Mary Ann's store at 439 Old Market Building, Baguio City, appellant suddenly surfaced, pushed himself between the spouses, stabbed the victim at the right side of his neck with a kitchen knife, and walked away.

The post-mortem examination of the victim who died two hours after the stabbing yielded the following findings:

GENERAL:

Fairly developed, fairly nourished, previously embalmed male cadaver.
Needle puncture noted at the left arm, left cubital region and left wrist.

HEAD AND NECK:

1. Incised wound, neck, measuring 10 x 4 cm, 6 cm right of the anterior midline with stitches applied.
2. Incised wound, neck, measuring 2 x .02 cm, just along the anterior midline with 4 stitches applied.
3. Incised wound, neck, measuring 13.5 x 3 cm, 6 cm left of the anterior midline.

- The right sterno-cleido-mastoid muscle are noted to be hemorrhagic.
- Incised wound noted at the trachea and esophagus.
- Hemorrhages noted on areas of external and internal jugular veins, bilateral.
- Incised wound noted at the bifurcation of the left carotid artery.

x x x x^[3]

The cause of death of the victim was determined to be "hemorrhagic shock secondary to stab wound of the neck."^[4]

Explaining the number and nature of the wounds on the victim's neck, Dr. Elizardo Daileg (Dr. Daileg) who conducted the post-mortem examination declared that the wounds along the anterior midline and at the left of the anterior midline were surgical wounds, while the wound at the right of the anterior midline was most likely a stab wound which was extended surgically for the exploration and ligation of the injured blood vessels;^[5] and that the stab wound was 10 to 12 centimeters deep, and the carotid artery and jugular veins were injured.^[6]

Dr. Daniel Reclizado, who attended to the victim when he was brought to the hospital, corroborated Dr. Daileg's testimony.^[7]

Upon the other hand, appellant, denying the accusation and interposing alibi,^[8] claimed as follows:

He was drinking with friends from 8:00 a.m. to 3:00 p.m. of October 9, 2003, after which he repaired to the Everlasting Memorial Park where his parents are buried and where he continued drinking as he was depressed over the death on October 5, 2003 of his brother. He stayed in the park until 6:30 p.m.

From the park, he went to the house of his friend Manny Guanzon (Guanzon) at Brawer Road where he slept and washed his face. He then went to a beerhouse along Magsaysay Avenue where he continued drinking until 9:00 p.m. when he checked in at the Leisure Lodge where he spent the night.

Denying having gone to the public market in the afternoon of October 9, 2003, appellant claimed that he was a victim of a frame-up, of which the Chinese are the masterminds, he having been exposing a Chinese syndicate.^[9]

By Decision of June 15, 2004, Branch 6 of the Baguio City RTC convicted appellant of Murder, disposing as follows:

WHEREFORE, the Court finds the accused Benjamin Ocampo guilty beyond reasonable doubt of the offense of Murder, defined and penalized under Article 248 of the Revised Penal Code as charged in the Information and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of the deceased Ruben Ngo the sum of P50,000.00 as civil indemnity for his death; P235,682.78 as actual damages incurred in connection with his death, P671,760.00 as unearned income; and P300,000.00 as moral damages for the mental anguish and pain suffered by his heirs as a result of his death; all indemnifications being without subsidiary imprisonment in case of insolvency, and to pay the costs.

The accused Benjamin Ocampo, being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.^[10] (Underscoring supplied)

Before the Court of Appeals to which appellant challenged the trial court's decision, he faulted the trial court as follows:

I

x x x IN FINDING [THAT] THE ACCUSED-APPELLANT WAS POSITIVELY IDENTIFIED BY THE PROSECUTION WITNESSES AS THE ASSAILANT.

II

GRANTING ARGUENDO THAT THE ACCUSED-APPELLANT STABBED RUBEN NGO, THE COURT A QUO ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.^[11]

By Decision^[12] of February 13, 2007, the Court of Appeals affirmed the conviction of appellant but modified his civil liability in light of the following observations:

We reduce the award of actual damages from P235,682.78 to P69,681.70. x x x [O]nly substantiated and proven expenses or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized. Based on the record, We cannot consider some of the receipts submitted by the prosecution for it was not shown that they were expended in relation to the death or funeral of the victim. The list submitted by Rosemarie Ngo with respect to the expenses incurred in the transfer of the body of the victim and the food served during the wake and burial is self-serving and cannot be considered competent proof. The court can only award actual damages if supported by receipts. However, current jurisprudence grants the award of P25,000.00 as temperate damages when it appears that the heirs of the victim had suffered pecuniary losses but the amount thereof

cannot be proved with certainty.

Likewise, the award of moral damages should be reduced from P300,000.00 to P50,000.00 in line with the prevailing jurisprudence. Moral damages are not intended to enrich the victim's heirs but rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings.

With respect to the award of P671,760.00 by way of loss of earning capacity, We hereby increase it to P671,999.97. As testified to by Rosemarie Ngo, the victim was receiving a net monthly income of P6,000.00 as a dried fish dealer. His annual income, computed at the rate of P6,000.00 per month multiplied by twelve (12) months is P72,000.00. From this amount will be deducted his necessary and incidental expenses estimated at fifty percent (50%) thereof, leaving a balance of P36,000.00. As the victim was fifty-two (52) years old at the time of his death, his life expectancy of eighteen point sixty seven (18.67) years is derived using this formula: $2/3 \times [80 - (\text{age of victim at the time of death})]$. Multiplying the balance of P36,000.00 by his life expectancy of 18.67 years, We arrive at P671.999.97 as his loss of earning capacity.

In addition to the civil indemnity and damages awarded by the trial court, exemplary damages in the amount of P25,000.00 must be awarded given the presence of treachery which qualified the killing to murder. Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages may be imposed only when the crime was committed with one or more aggravating circumstances. The term aggravating circumstances as used therein should be construed in its generic sense since it did not specify otherwise.^[13] (Underscoring supplied)

Thus the Court of Appeals disposed:

WHEREFORE, premises considered, the Decision dated June 15, 2004 rendered by the Regional Trial Court of Baguio City, Branch 6 in Criminal Case No. 22124-R, finding him guilty of the crime of murder is hereby **AFFIRMED WITH MODIFICATON**. The award of loss of earning capacity is **increased** to P671,999.97. The award of actual and moral damages is **reduced** to P69,681.70 and P50,000.00, respectively. The accused-appellant is **further ordered to pay the heirs of the victim Ruben Ngo P25,000.00 as exemplary damages and P25,000.00 as temperate damages.** (Emphasis and underscoring supplied)

SO ORDERED.^[14]

Before this Court at which appellant filed a Notice of Appeal,^[15] he and the Solicitor General adopted and repleaded the arguments they raised in the briefs they respectively filed before the Court of Appeals.^[16]

Appellant questions his identification by Mary Ann as the perpetrator of the crime,

arguing that Mary Ann failed to point to him when the policeman showed her photographs of many possible suspects, but that when shown his photograph the following day, she identified him as the culprit. He thus posits that the power of suggestion might have influenced her to point to him as the culprit.^[17]

When an accused challenges his identification by witnesses, he in effect attacks their credibility.^[18] Appellate courts will not generally disturb the assessment by the trial court of the credibility of witnesses whose testimonies it has heard and their deportment and manner of testifying it has observed.^[19]

In crediting the testimony of eyewitness Mary Ann, the appellate court observed:

x x x Mary Ann Lomboy was unable to identify accused appellant-from several pictures shown to her by the policemen precisely because **accused-appellant was not in any of those photographs**. When shown a lone photograph of the accused-appellant, Mary Ann Lomboy positively identified him as Ruben Ngo's assailant because she knew and remembered him to be the assailant. **Her identification was based solely on her recollection as an eyewitness** and it cannot be said that she was influenced by the policemen to wrongly accuse the accused-appellant. There is no showing that the prosecution witnesses were ill-motivated to testify against him.^[20] (Emphasis and underscoring supplied)

Appellant has not, however, refuted the foregoing observation of the appellate court.

Mary Ann's answer to the question of the trial court when it was eliciting from her the basis of her identification of appellant as the culprit should put the issue to rest.

x x x x

Court: Just one question from the court because the counsel keeps on repeating that the picture was the basis for your identifying the accused. What is actually your basis for identifying the accused as the assailant? Was it the fact that you saw the stabbing or was it the picture shown to you?

[MARY ANN]

A: **He is the one I saw** when he stabbed the victim.

Q: So your basis is what you actually saw in the stabbing, **not the picture itself?**

A: Yes, Your Honor.^[21]

x x x x (Emphasis and underscoring supplied)