

SPECIAL SEVENTEENTH DIVISION

[CA-G.R. CR NO. 34664, June 19, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RENATO JAVIER Y ITABLE @ "HAPON", ACCUSED-APPELLANT.**

D E C I S I O N

BATO, JR., J.:

This is an appeal from the Judgment^[1] dated September 5, 2011 of the Regional Trial Court of Manila, Branch 17, in Criminal Case No. 94-139864, the dispositive portion of which reads:

"WHEREFORE, for the death of Rey Ismael Ayo y Demetrio, this Court finds accused RENATO JAVIER y ITABLE @ 'Hapon' GUILTY beyond reasonable doubt of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code.

Considering the provisions of the Indeterminate Sentence Law and where no aggravating nor mitigating circumstance was proven, this Court imposes upon accused RENATO JAVIER y ITABLE @ 'Hapon' an indeterminate penalty of TEN (10) YEARS of prision mayor in its medium period as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period as maximum.

Consistent with prevailing jurisprudence which awards civil indemnity to the heirs of the deceased-victim without need of any evidence other than the fact of the commission of the crime, accused RENATO JAVIER y ITABLE @ 'Hapon' is directed to pay the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity to the surviving heirs of the deceased-victim.

Also, moral damages in the amount of FIFTY THOUSAND PESOS (P50,000.00) is awarded to the heirs of the deceased-victim. It is too obvious to detail at this instance the anguish, suffering and emotional pain caused by the death of the deceased-victim to his family. The father's compunction is too deep, when the life of his son was suddenly snatched away, depriving him and his other son the financial assistance and support that would have been given by the deceased-victim.

Lastly, the total amount of THIRTY TWO THOUSAND FOUR HUNDRED EIGHTY SIX PESOS (P32,486.00) as actual damages for the medical treatment and wake and funeral expenses of the deceased-victim is hereby awarded to his surviving heirs.

With costs against the accused.

SO ORDERED."^[2] [Citations omitted]

The factual antecedents: Renato Javier y Itable a.k.a. *Hapon*^[3] [herein accused-appellant] was charged before the Regional Trial Court [Branch 17, Manila; hereafter court *a quo*], with the crime of *Homicide* for the death of Rey Ismael Ayo y Demetrio [Rey Ismael] in the Information dated November 9, 1994, the accusatory portion of which states:

“That on or about November 5, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one REY ISMAEL AYO y DEMETRIO, by then and there stabbing the latter with a bladed weapon on the different parts of his body, thereby inflicting upon the said Rey Ismael Ayo y Demetrio stab wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW.”

Accused-appellant posted a cash bond in the amount of P10,000.00 for his provisional liberty.^[4] Upon arraignment, accused-appellant pleaded “not guilty” to the charge.^[5] Trial on the merits ensued.

During the trial, the prosecution presented the following witnesses, namely: Renato Ayo, Ernesto Ayo, Benito Bartolo, Joey Almenario, and Dr. Manuel Lagonera. The prosecution's testimonial evidence was summarized by the court *a quo*, as follows:

“x x at around 11:00 in the evening of November 5, 1994, prosecution witness Renato Ayo ['Renato'] was on his way home when he chanced upon the drinking revelry of accused and his friends at the latter's patio in Blumentritt Street, Manila. He then overheard someone holler, '*Balut, Balut!*' followed by jeering. While he paused and asked the accused why he was being heckled, accused simply shrugged and replied, '*Sumisigaw lang ako ng balut, ah!*' [*I was just calling for a balut vendor*']. Accused thereafter shoved Renato as his two other companions loomed from behind.

Renato decided to just leave and head for home. Back home, in a narrow alley, Renato's brother, Rey Ismael ['Rey Ismael'], was also having a drinking spree with his friends, among them Benito Bartolo ['Benito']. Renato related to Rey Ismael what just transpired. Rey Ismael determined to go to the place of the accused and tagged Renato along. Once they met the accused and his drinking companions, Rey Ismael decided, '*Pare, hindi mo ba kilala itong utol ko?*' [*Do you not know my brother?*'].

It was then that accused pulled out his *balisong* [fan knife] and stabbed Rey Ismael in the chest. This was seen by another passer-by Joey Almenario.

The moment Benito followed and reached the street corner where the confrontation was made, he immediately saw Rey Ismael sprawled on the ground. Accused towered over a wounded Rey Ismael while holding a fan knife and was about to strike again. It was at this instance that Benito

attempted to block off the attack but instead, accused hit him on his left forearm. Benito staggered and also fell on the pavement. By this time, Rey Ismael's drinking companions joined in. A rumble soon erupted, accompanied by stoning. Later, accused and his companions were seen dashing towards accused's house.

Since an agitated Renato evinced that Rey Ismael was bloodied and wounded, Benito helped in carrying the victim to a tricycle. The victim's brother then rushed him to the hospital. The victim, however, soon expired.”^[6] [Citations omitted]

Dr. Manuel Lagonera conducted an autopsy on the body of Rey Ismael and found the following injuries: (1) lacerated wound; (2) diagonal linear abrasion on the left anterior lumbar region; (3) penetrating stab wound on the left anterior thorax piercing the pericardium and lacerating the right ventricle; (4) penetrating stab wound on the left antero-lateral thorax piercing the lower segment of the upper lobe of the left lung; and (5) stab wound on the right anterior thigh.^[7] Dr. Lagonera testified that among the injuries sustained by Rey Ismael, it was the penetrating stab wound on the left anterior thorax (depicted as wound 3 in the human sketch) which was the most fatal as it injured the right side of his heart.^[8]

The prosecution also formally offered^[9] the following pieces of documentary evidence, *viz.*: Sworn Statements of Renato Ayo and Benito Bartolo,^[10] Death Certificate,^[11] Certification of Identification of Dead Body,^[12] Autopsy Report and the corresponding human sketch,^[13] and receipts for medical and funeral services in the aggregate amount of P33,500.00.^[14]

For his part, the accused-appellant denied the accusations against him. He testified that he was drinking with his visitors Frederick Villarin, Joel Mangalindal, Agnes and Buboy when Renato Ayo passed by. Joel shouted “*balut, balut!*” and Renato Ayo took offense and asked if Joel was referring to him. Renato Ayo hurriedly left. After a while, Renato Ayo came back with Rey Ismael, Federico dela Cruz, Pablo Nera and Benito Bartolo. Rey Ismael confronted him about the incident and suddenly hit him at his left eyebrow and “slapped” him at the gate. He ran inside his house and Joel and Frederick followed suit. He immediately phoned Arleen Augero to call the police.^[15] He insisted that it was Joel Mangalindal who stabbed Rey Ismael.^[16] The policemen arrived and arrested him. The defense also presented Arlene Augero as its witness.

On March 5, 2001, the defense verbally offered its evidence.^[17] On even date, the court *a quo* issued an Order^[18] requiring the parties to submit their respective memoranda and the stenographic reporters to submit their pertinent transcripts. It was discovered that the Transcript of Stenographic Notes [TSN] of the hearings held on June 5, 1995 (direct examination of Renato Ayo), July 11, 1995 (cross-examination of Renato Ayo) and January 28, 1997 (testimony of Arlene Augero) were not in the records of the case.^[19] It appears that the TSN dated January 28, 1997 (testimony of Arlene Augero) was transcribed by Court Stenographer Emily Peralta who already passed away.^[20] Thus, a clarificatory hearing was scheduled on October 2, 2009 but was postponed for several settings until the final schedule on September 30, 2010. Due to the impossibility of producing the missing TSN, the

court *a quo* issued an Order^[21] on September 30, 2010 giving accused-appellant's counsel a fifteen-day period "to file the necessary motion to determine what action to undertake on the consequences of such missing transcript of stenographic notes."^[22]

Considering that the accused-appellant's counsel failed to take the necessary action to retake or reconstitute the testimonies of Arlene Augero and Renato Ayo and to file a memorandum of authorities, the court *a quo* scheduled the promulgation of judgment on August 25, 2011.^[23] The defense filed its motion for reconsideration which was denied by the court *a quo* in the Order^[24] dated August 31, 2011.

On September 5, 2011, the court *a quo* rendered the assailed Judgment^[25] and the accused-appellant filed his Notice of Appeal^[26] which was granted on September 22, 2011.^[27] The accused-appellant posted an appeal bond in the amount of P40,000.00.^[28] Subsequently, the court *a quo* was informed that a compilation of the TSN dated June 5, 1995 and July 11, 1995 was found by the clerk in charge of criminal cases, prompting the court to schedule a hearing to formally notify the parties of this fact.^[29] Thereafter, in the Order^[30] dated January 12, 2012, the court *a quo* ordered that the entire records of the case be elevated to this court for the appeal proceedings.

In his brief, the accused-appellant raised the following assignment of errors:

"A. THE LOWER COURT ERRED IN RENDERING A DECISION WITHOUT EXPRESSING THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.

B. THE LOWER COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT."^[31]

The accused-appellant argued that the prosecution failed to establish his guilt by proof beyond reasonable doubt. He argued that the court *a quo* erred in considering the sworn statement of Renato Ayo as part of the *res gestae* since it was given four (4) hours after the stabbing incident and because it was apparent therefrom that he is uncertain as to who was the assailant. He assailed Renato Ayo's credibility and claimed that his statements should be taken with caution because he is the brother of the victim. Likewise, he assailed the testimony of prosecution witness Joey Almenario because of his bias towards the prosecution. Further, the accused-appellant insisted that the assailed judgment should be reversed since the court *a quo* disregarded the sworn statements of Federico dela Cruz and Nemie Agra and more importantly, because it committed a constitutional transgression when it rendered the same based on an incomplete set of facts.

We deny the appeal.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In doing so, the prosecution must rest its case on its own merits and cannot merely rely on the weakness of the defense.^[32] Apropos, for the charge of homicide to prosper, the prosecution must establish the following elements beyond reasonable doubt, *viz.*: (1) that a person was killed; (2) that the accused killed that

person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.^[33]

In the case at bar, the charge of homicide was duly established by the prosecution beyond reasonable doubt. It was sufficiently proven that the victim died due to the stab wounds he sustained, the most fatal of which is the penetrating stab wound on the left anterior thorax (depicted as wound 3 in the human sketch) as it injured the right side of his heart.^[34] The prosecution was also able to establish that the killing is not murder, parricide or infanticide. Moreover, the accused-appellant's intent to kill may be deduced from the fact that death resulted from his unlawful act.^[35]

Anent the identity of the assailants, Joey Almenario and Renato Ayo positively identified the accused-appellant as the one who stabbed Rey Ismael in the chest. Joey Almenario, who was a mere passer-by at the time of the incident, identified the accused-appellant in open court and categorically testified that he "saw Hapon stabbed Rey Ayo on the chest."^[36] Renato Ayo also identified the accused-appellant in open court and testified that "it is Renato Javier who stabbed my brother."^[37] Upon inquiry from the court, he also stated that the accused-appellant stabbed Rey Ismael on the chest.^[38] However, considering that the TSN of Renato Ayo (dated June 5, 1995 and July 11, 1995) was unavailable at the time that the court *a quo* rendered its judgment, it relied upon the sworn statement of Renato Ayo the pertinent portion of which reads:

"T: Sino naman itong taong sumaksak dito sa kapatid mong si Rey Ismael?

S: Tatlo po sila sir na nagtulong-tulong na sumaksak sa kapatid kong si Rey Ismael, iyung isa po ay iyung kalugar namin na si @HAPON at iyung dalawa po ay hindi ko alam ang pangalan dahil nuon ko lang nakita iyung mga mukha nila sa lugar namin.

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T: Ano ba mismo ang ginawa ni @Hapon dito kay Rey Ismael?

S: Siya ang unang nakita kong sumaksak sa kapatid kong si Rey Ismael.

T: Ilang beses sinaksak ni Hapon itong si Rey Ismael?

S: Ang nakita ko lang sir ay dito sa gitna ng dibdib sir.

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T: Nasaan ka ba nang maganap itong pagsaksak kay Rey Ismael?

S: Magkasama ho kami ni Rey Ismael nuon at kinakausap namin si Hapon tungkol sa pangungursunada niya sa akin."^[39]

Contrary to accused-appellant's protestations, this sworn statement was properly admitted in evidence by the court *a quo* as part of *res gestae*. *Res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the