Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G. R. No. 193839**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
JAVIER CAÑAVERAS, Accused-Appellant.	Promulgated: NOV 27 2013

x - x

DECISION

SERENO, *CJ:*

This is an appeal from the Decision[1] of the Court of Appeals (CA) affirming the Partial Decision[2] of the Regional Trial Court of San Jose, Camarines Sur, Branch 30 (RTC), finding appellant guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

At about 8:30 p.m. on 30 November 1993, appellant, together with three unidentified persons, was drinking liquor in the house of Oriel Conmigo (Oriel) in *Barangay* San Isidro, Sagnay, Camarines Sur.[3] Claro Sales (Claro) arrived and asked the men if "Judas," referring to a person named Gregorio Carable, was there.[4] Oriel answered that Judas was not.[5] A short while later, Claro came back and again asked if Judas was in the house. This time, appellant and his companions answered that they were, in fact,

[1] *Rollo*, pp. 2-16. The Decision dated 21 June 2010 of the Court of Appeals (CA) Eleventh Division in CA-G.R. CR-H.C. No. 02532 was penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring.
[2] CA *rollo*, pp. 17-29; in Criminal Case No. T-1358 dated 12 September 2006.
[3] *Rollo*, p. 4.
[4] CA *rollo*, p. 19.
[5] Id.

Judas. Claro then left, but the three unidentified persons followed him outside.[6]

On the road outside, the unidentified persons repeatedly punched Claro.[7] Just as he was about to escape, appellant went out of the house and struck him on the head with a *grande* beer bottle.[8] Claro was able to take only five more steps and then collapsed.[9] Matea Pielago (Matea), who was nearby, trained her flashlight on the face of the assailant, enabling her to recognize appellant – despite the brownout – as the one who had struck Claro.[10] She shouted for help when she saw Claro bleeding.[11]

Teresita Tria (Teresita), a neighbor of Oriel, saw appellant and the unidentified persons go back to Oriel's house.[12] She heard one of them say, "You should have shoot [sic] him."[13]

Alvin Camu (Alvin), who heard the sound of the beer bottle as it struck something, went to Oriel's house, where he thought the sound came from.[14] Oriel informed him that appellant had struck Claro on the head.[15] Alvin even saw appellant in Oriel's house going out through the kitchen door.[16] Alvin then went to the road, where he saw broken bottles and Claro lying face down in the canal,[17] already dead. He then left to report the matter to the police.[18]

Dr. Roger Atanacio (Dr. Atanacio), municipal health officer, examined the body of Claro the following day and found contusions and massive hematoma on the left side of the victim's neck, forehead, and left lower back.[19] Dr. Atanacio pronounced the cause of death as "cardio-respiratory arrest, cervical cord, compression due to contusion with massive hematoma neck,"[20] explaining that the center of cardio-respiration is located at the base of the neck.[21] Trauma on that part may affect normal respiration and cardiovascular activity, which was what happened in this case and actually caused Claro's death.[22]

---

[6] Id.
[7] *Rollo*, p. 4.
[8] Id.
[9] Id.
[10] CA *rollo*, p. 19.
[11] Id. at 19.
[12] Records, p. 129.
[13] Id.
[14] Id. at 205-206.
[15] Id. at 206.
[16] Id.
[17] Id.
[18] Id. at 207.
[19] *Rollo*, p. 5.
[20] Id.
[21] Records, p. 120.
[22] Id.

An Information dated 7 February 1994 was filed before the RTC charging appellant and the three unidentified persons with the crime of murder qualified by treachery, evident premeditation, and abuse of superior strength.[23] A warrant of arrest[24] for appellant was issued on 24 February 1994, but he was able to elude the authorities for almost 10 years and was arrested only on 3 October 2003.[25]

Appellant was arraigned on 11 November 2003. During pre-trial, he stipulated that if the name Javier Cañaveras was to be mentioned during the course of the trial, it would refer to him; that he was at *Barangay* San Isidro, Sagnay, Camarines Sur, on 30 November 1993; and that he was admitting the existence of the autopsy report and Certificate of Death of Claro.[26]

In his defense, appellant testified that on 30 November 1993, he went to the house of Oriel at San Isidro, Sagnay, Camarines Sur for the *fiesta*.[27] Oriel was the cousin of his wife and godfather of his son.[28] There was a brownout when appellant arrived at around 7:00 p.m.[29] He saw six persons, more or less, drinking liquor at the annex of the house.[30] At the dining area, he was served food by Oriel and was later invited to join the people at the annex to drink liquor.[31] He saw that only three other persons, to whom he was introduced by Oriel, were left.[32] The three men sat at one end of the table, while he and Oriel were at the other.[33]

While drinking, he heard a person outside shouting that Judas must come out.[34] The second time this person shouted, one of the three men at the other end of the table answered that Judas was there, and the three then proceeded to go outside.[35] He and Oriel remained at the annex, and they heard some arguing and chasing outside.[36] Oriel got up and tried to look, but came back saying that he could not clearly see because it was dark.[37] The two of them continued drinking until the liquor ran out.[38] Appellant went home with Ramil Ecleo, who corroborated this statement.[39] The defense also presented police blotter entries concerning the death of Claro. These entries showed that only a spot investigation had been conducted on the incident.[40]

---

[23] Id. at 19.
[24] Id. at 23.
[25] Id. at 60.
[26] Id at 73 and 77.
[27] Id. at 424.
[28] Id.
[29] Id. at 425.
[30] Id.
[31] Id. at 425-426.
[32] Id. at 426-427.
[33] Id. at 427.
[34] Id. at 428.
[35] Id. at 429.
[36] Id.
[37] Id at 429-430.
[38] Id. at 430.
[39] Id. at 392-395.
[40] Id. at 366-370.

Also, appellant was never identified or mentioned as the assailant or suspect in the police blotter entries.[41]

In the course of appellant's testimony, the prosecution presented two more Informations for murder against him: one for the murder of Jose Espiritu, Jr. on 20 July 1986 in Tigaon, Camarines Sur,[42] and the other for the murder of Ludem Sumayang on 29 September 2002 in San Jose, Puerto Princesa.[43]

RULING OF THE RTC

On 25 September 2006, the RTC promulgated a Partial Decision[44] finding appellant guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with the inherent accessories provided by law.[45] Appellant was also ordered to pay Claro's heirs the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as temperate damages.

With the appreciation of the qualifying circumstances of treachery and taking advantage of superior strength, the RTC found that all the elements of murder were present: a) a person was killed; b) the accused killed that person; c) the killing was attended by a qualifying aggravating circumstance; and d) the killing was neither parricide nor infanticide.[46]

On appeal to the CA, appellant argued that the RTC erred in finding him guilty beyond reasonable doubt of the crime of murder.[47] Furthermore, even assuming that he committed the act complained of, it was error to appreciate the qualifying circumstances. Thus, he could only be found guilty of the crime of homicide.

Appellant pointed to alleged inconsistencies in the testimonies of Matea and Teresita. While Teresita testified that three persons including appellant went after Claro, Matea specified that the three unidentified persons went after the victim and appellant only followed later on.[48] According to appellant, such inconsistency went into the very question of his involvement.[49]

---

[41] Id. at 486.
[42] Id. at 482.
[43] Id. at 478.
[44] Id. at 503-515. The case was archived insofar as the three unidentified persons (John Doe, Peter Doe and Richard Doe) were concerned, subject to its reactivation as soon as they are identified and the court acquires jurisdiction over their persons.
[45] Id. at 514.
[46] Id. at 511.
[47] CA *rollo*, pp. 84-99.
[48] Id. at 90.
[49] Id.

Also, appellant pointed out that there was a brownout during the incident, making it highly unlikely for the witnesses to have allegedly seen him commit the crime. According to him, the claim that Matea trained her flashlight on his face, enabling her to identify him, was not in accord with the common experience of persons witnessing a deplorable crime.[50] Knowing that he had been identified, appellant could have killed her as well.

It was also argued that there were inconsistencies between the testimonies of the witnesses and the findings of Dr. Atanacio. Teresita and Matea both testified that they saw blood coming out of the head of Claro after he was struck with a beer bottle. On the other hand, the medical findings showed that there were no lacerations on his body; thus, there could not have been any bleeding.[51]

In their testimonies, Oriel and Alvin admitted not having seen the actual incident. Thus, it was contended that their testimonies could not have been the basis for appellant's conviction.[52] Even Dr. Atanacio's findings should not have been given credence, because he admitted that he did not open Claro's body. Thus, his report should be properly denominated as a necropsy, and not an autopsy, report.[53]

Finally, appellant argued that the RTC erred in appreciating treachery and taking advantage of superior strength as qualifying circumstances. In the Partial Decision, no specific act pointing to the presence of treachery was ever identified.[54] Neither was it shown that appellant and his companions took advantage of their combined strength to consummate the killing of Claro. Granting that the four of them indeed attacked the victim, mere superiority in number is not enough for a finding of superior strength.[55]

Thus, appellant prayed that he be acquitted or, in the alternative, that he be convicted only of the crime of homicide.[56]

RULING OF THE CA

On 21 June 2010, the CA rendered a Decision[57] affirming *in toto* that of the RTC. The CA ruled that the alleged inconsistency regarding the moment when appellant went out of the house referred only to a collateral matter and did not deviate from the fact that he had been identified as the assailant.[58] The brownout did not negate the positive identification of appellant, since Teresita testified that her house and that of Oriel were lit by

---

[50] Id. at 91.
[51] Id. at 92.
[52] Id. at 93.
[53] Id.
[54] Id. at 95.
[55] Id. at 97.
[56] Id. at 98.
[57] Id. at 176-190.
[58] Id. at 187.

kerosene lamps. That Matea boldly shone her flashlight on appellant's face did not make her any less credible as a witness.[59] On the contrary, it only showed her presence of mind and courage in the face of a startling and frightful experience.

On the lack of blood on the body of Claro, the CA noted with approval the argument of the Office of the Solicitor General (OSG). The beer bottle that was used to strike him still contained beer; and with the improvised lighting sources coupled with the sight of a seemingly dead body, the liquid could have easily been mistaken for blood.[60]

According to the CA, the RTC was correct in appreciating treachery. When appellant struck Claro, the latter was already in a helpless state, being in no position to defend himself.[61]

Hence, this appeal, with the parties adopting their respective arguments in their briefs filed before the CA.

ISSUES

1. Whether it was proven beyond reasonable doubt that appellant had killed Claro; and

2. Whether treachery or taking advantage of superior strength attended the commission of the crime.

OUR RULING

We partially grant the appeal.

We affirm the findings of the RTC and the CA that appellant indeed struck Claro with a beer bottle, leading to the victim's untimely death. Taken together, the testimonies of the prosecution witnesses clearly point to appellant as the assailant.

First, contrary to the contention of appellant that the three unidentified persons were not his companions, Oriel positively declared having received appellant together with the three other persons at his home. Furthermore, Oriel testified that after Claro had asked about "Judas" for the second time, appellant and the three others went after Claro outside.

Second, Matea saw appellant hit Claro on the head with a beer bottle after the three unidentified persons had finished punching the victim. We dismiss the improper imputations on Matea's credibility based on the

---

[59] Id.
[60] Id. at 189.
[61] Id. at 187.

argument that it is not in accord with common human experience for one to shine a light on the face of a person who has just committed a crime. The CA was correct in holding that her actuation meant nothing more than that she exhibited courage and presence of mind, knowing that she might be able to help, as indeed she did, in bringing the perpetrators to justice.

Third, Teresita heard one of appellant's companions say, "You should have shoot [sic] him" while they were going back to Oriel's house. Alvin even saw appellant at Oriel's house after Oriel revealed that appellant had struck Claro.

These declarations of the witnesses show a complete picture of what happened before, during, and after the attack on Claro by appellant. We take note that Oriel is a relative by affinity and close friend of appellant. Despite some effort on his part to "hide some material facts," as noted by the RTC,[62] he still provided enough evidence pointing to appellant as the assailant.

No stock can be placed in the theory that the witnesses did not see appellant because the police blotters written immediately after the incident did not mention him in any way. Police Officer 1 Dave John de Quiroz, who identified the police blotter entries, admitted that the result of a spot investigation is usually written not in the blotters but on a separate sheet.[63] According to him, the result of an investigation is the complaint against the suspect.[64] While it is usually the police who prepare the complaint, they would not have a copy if it was prepared by a lawyer.[65]

In this case, the complaint and the affidavits of the witnesses were executed with the assistance of a private lawyer. Appellant cannot rely on the police blotters as a comprehensive record of the investigation conducted by the police. While the blotters were silent as to his involvement in the crime, the complaint and the affidavits of the witnesses named him as the perpetrator.

However, while we entertain no doubt that appellant killed Claro, we find that treachery was improperly appreciated by the CA.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to the offender arising from the defense that the offended party might make.[66] Treachery is appreciated as a qualifying circumstance when the following elements are shown: a) the malefactor employed means, method, or manner of execution affording the person attacked no opportunity for self-

---

[62] Records, p. 513.
[63] Id. at 370.
[64] Id. at 371.
[65] Id.
[66] REVISED PENAL CODE, Art. 14(16).

defense or retaliation; and b) the means, method, or manner of execution was deliberately or consciously adopted by the offender.

Treachery involves not only the swiftness, surprise, or suddenness of an attack upon an unsuspecting victim,[67] rendering the victim defenseless. It should also be shown that the mode of attack has knowingly been intended to accomplish the wicked intent.[68]

Thus, the second element is the subjective aspect of treachery.[69] It means that the accused must have made some preparation to kill the deceased in a manner that would insure the execution of the crime or render it impossible or hard for the person attacked to resort to self-defense or retaliation. The mode of attack, therefore, must have been planned by the offender and must not have sprung from an unexpected turn of events.[70]

We have had occasion to rule that treachery is not present when the killing is not premeditated,[71] or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim,[72] or when the killing is done at the spur of the moment.[73]

In this case, there was no time for appellant and his companions to plan and agree to deliberately adopt a particular means to kill Claro. The first query of Claro was regarded as innocent enough and was given no attention. It was the second query that was considered impertinent, and witnesses testified that appellant and his companions went after Claro immediately after it was uttered. Even the choice of weapon, a beer bottle readily available and within grabbing range at the table as appellant followed outside, shows that the intent to harm came about spontaneously.

We also find that the RTC erred in appreciating the qualifying circumstance of taking advantage of superior strength.

Superiority in number does not necessarily amount to the qualifying circumstance of taking advantage of superior strength.[74] It must be shown that the aggressors combined forces in order to secure advantage from their superiority in strength.[75] When appreciating this qualifying circumstance, it must be proven that the accused simultaneously assaulted the deceased.[76]

---

[67] *People v. Recepcion*, 440 Phil. 227 (2002).
[68] Id.
[69] *People v. Abut*, 449 Phil. 522 (2003).
[70] *People v. Santillana*, 367 Phil. 373 (1999).
[71] *People v. Teriapil*, G.R. No. 191361, 2 March 2011, 644 SCRA 491.
[72] *People v. Tigle*, 465 Phil. 368 (2004).
[73] *People v. Badajos*, 464 Phil. 762 (2004).
[74] *People v. Aliben*, 446 Phil. 349 (2003).
[75] Id.
[76] Id.

Indeed, when assailants attack a victim alternately, they cannot be said to have taken advantage of their superior strength.[77]

In this case, the unidentified companions of appellant punched Claro first. He was already about to escape when he was struck by appellant on the head with a beer bottle. Thus, the attack mounted by the unidentified persons had already ceased when appellant took over. Also, the fact that Claro would have been able to escape showed that the initial attack was not that overwhelming, considering that there were three of them attacking. Clearly, there was no blatant disparity in strength between Claro, on the one hand, and appellant and his companions on the other.

In the light of the foregoing, the crime committed was homicide, not murder. Under Article 249 of the Revised Penal Code, the penalty imposed for the crime of homicide is *reclusion temporal*. Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period.

Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum. As to the award of damages to Claro's heirs, we find that the award granted by the RTC is in keeping with prevailing jurisprudence on homicide.[78]

WHEREFORE, the appeal is **PARTIALLY GRANTED**. We find appellant **GUILTY** of the crime of **HOMICIDE**. He is hereby **SENTENCED** to suffer the penalty of imprisonment for 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum and **ORDERED** to pay the heirs of **Claro Sales** the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as temperate damages, at the legal rate of 6% per annum from the finality of this Decision until these damages are fully paid.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

---

[77] *People v. CAFGU Baltar, Jr.*, 401 Phil. 1 (2000).
[78] *Pron v. People*, G.R. No. 199017, 10 April 2013; *Zalameda v. People*, G.R. No. 203259, 7 January 2013; *People v. Concillado*, G.R. No. 181204, 28 November 2011, 661 SCRA 363.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice