



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **27 July 2020** which reads as follows:*

“**G.R. No. 238172** (*People of the Philippines v. Romeo Pescador*) – Assailed in this appeal is the September 19, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR No. 37967 which affirmed with modification the July 1, 2015 Decision² of the Regional Trial Court (RTC) of Ilocos Sur, Branch 72 finding accused-appellant Romeo Pescador (Romeo) guilty beyond reasonable doubt of the crime of Murder.

Romeo and his brother, Rodrigo Pescador (Rodrigo), were charged with Murder in an Information³ that reads:

That on or about the 30th day of April, 2010, in the municipality of San Emilio, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually helping one another with abuse of superior strength and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and hack one Antonio Divina, thereby inflicting upon the latter hacking wounds on his body, which wounds necessarily produced the death of said Antonio Divina.

Contrary to law.

Romeo alone stood trial; his brother and co-accused Rodrigo remains at-large. Upon being arraigned, Romeo entered a plea of not guilty.⁴ After the termination of the pre-trial, trial on the merits ensued.⁵

¹ *Rollo*, pp. 2-20; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Ramon R. Garcia and Edwin D. Sorongon.

² *CA rollo*, pp. 41-60; penned by Judge Sixto D. Diompoc.

³ Records, p. 1.

⁴ *Id.* at 25.

⁵ *Id.* at 31.

Version of the prosecution:

The prosecution erected its case based primarily on the eyewitness account of Martin Howard Divina (Martin). Culled from the Decision of the CA, the version of the prosecution is as follows:

On 30 April 2010 at around 2 o'clock in the afternoon, Antonio Divina (Antonio) and Rodrigo Pescador (Rodrigo), the caretaker of Antonio's cow, got into a heated argument when the former asked the latter why his cow is skinny. Antonio and Rodrigo x x x started tugging at the rope tied to the cow [then] Antonio drew a bolo and hacked Rodrigo, hitting his face. Antonio then tried to hack Rodrigo for the second time but Rodrigo was able to parry the assault, resulting in Antonio losing his grip on the bolo. Antonio then ran away and was chased by Rodrigo, who was now in possession of the bolo. While the chase ensued between Rodrigo and Antonio, Romeo Pescador (Romeo), the appellant, came out of his house, and chased Antonio, also with a bolo.

Romeo eventually caught up with Antonio and hacked him on the head and on the neck. Antonio died shortly after the incident.⁶

Version of the defense:

Meanwhile, the trial court summarized the theory of the defense in this wise:

The defense presented accused Romeo Pescador who denied the accusations leveled against him. According to the herein accused at around 2:00 o'clock in the afternoon of April 30, 2010, he, together with his three (3) children, namely: Rocky, Raymond and Reggie, all surnamed Pescador, were at the mountain of Batewaweng, San Emilio, Ilocos Sur, gathering woods. He came to know that he is one of the accused in connection with the death of Antonio Divina in 2013. His co-accused Rodrigo Pescador, his brother and neighbor at Banucal, Lidlidda, Ilocos Sur left in 2012, after the incident but he [does] not know his whereabouts when he went home to Quezon.⁷

Ruling of the Regional Trial Court:

On July 1, 2015, the RTC rendered its Decision finding Romeo guilty of Murder. The trial court lent full credence to the testimony of Martin who was only ten (10) years old at the time of the incident and barely meters away from where the hacking incident occurred. The RTC found Martin's testimony to be candid, categorical and straightforward.⁸ There was also no showing that he was moved by any ill motive as to impute such a serious crime against Romeo. Moreover, his account, especially as to the wounds sustained by the victim, was corroborated by the medical report.⁹

⁶ *Rollo*, pp. 2-3.

⁷ *CA rollo*, p. 44.

⁸ *Id.* at 56.

⁹ *Id.*

In addition, the trial court found that Romeo and Rodrigo conspired with each other in killing the victim. It held that conspiracy can be inferred “[f]rom the circumstances surrounding the commission of the crime, to the mode or manner in which the crime was committed, and from the facts done in pursuance of a common unlawful purpose, the joint result of their acts, that is the violent death of the late Antonio Divina.”¹⁰

Anent the qualifying circumstance of abuse of superior strength, the RTC opined that it attended the commission of the crime, *viz.*:

In the instant case, this Court, viewed in the light of the foregoing legal precepts and considering the evidence adduced, testimonial and documentary, is of the considered view that there was an abuse of superior strength attending the commission of the crime. That the late Antonio Divina was, at the time of his violent death, 67 years old, unarmed and then running for his life, as he was being chased first by accused Rodrigo Pescador, then joined by accused Romeo Pescador, both of them, were in their early forty’s and each armed with a bolo. When accused Romeo Pescador [caught] up with the victim, the former hacked the latter several times and without risk to himself in any manner or mode whatsoever that he (victim) may have taken to defend himself or retaliate since the victim was already struck and helpless.¹¹

The trial court did not lend credence to Romeo’s alibi for being inherently weak and self-serving.

The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, premises considered, judgment is rendered finding accused Romeo Pescador GUILTY beyond reasonable doubt of the crime of Murder, as charged, and sentencing him to suffer the penalty of seventeen (17) years, four (4) months and (1) day, of reclusion temporal, as minimum, to twenty (20) years, of reclusion temporal, as maximum; and ordering him to pay the heirs of the late Antonio Dasalla Divina, as follows: (1) P50,000.00 as death indemnity; (2) P100,000.00 as reimbursement for the expenses incurred during the wake, burial and other related expenses; (3) P50,000.00 as and for moral damages; [4] P25,000.00 as and for exemplary damages; and costs of this suit.

X X X X

SO ORDERED.¹²

Ruling of the Court of Appeals:

The CA sustained the factual findings of the RTC. It held that the trial court properly lent credence to the testimony of Martin.¹³ The appellate court ruled that:

¹⁰ Id. at 57.

¹¹ Id.

¹² Id. at 59-60.

¹³ *Rollo*, pp. 6, 16.

“It is apparent from the testimony of Martin that he witnessed the entire incident, from the time that Antonio arrived and he and Rodrigo started arguing, and then chased each other with a bolo, up to the time when Romeo emerged from his house to aid his brother, up until the time that Romeo delivered the fatal blows that resulted in the death of Antonio.

x x x x

More importantly, the testimony of Martin is supported by the findings of Dr. Daciego whose report pointed to two (2) wounds, on the right occipito-parietal and the right temporo-parietal region, as those sustained by the deceased due to the hacking incident. x x x¹⁴

Without discussing whether the killing was attended by the qualifying circumstance of abuse of superior strength, the CA proceeded to rule that Romeo was guilty of Murder, thus:

WHEREFORE, the appeal is hereby DENIED. The Decision dated 1 July 2015 of Branch 72, Regional Trial Court of Narvacan, Ilocos Sur in Criminal Case No. 3403-N is AFFIRMED with MODIFICATION as to the penalty of imprisonment imposed, which shall be *reclusion perpetua*, and to the damages awarded, which shall be:

- a. One Hundred Thousand Pesos (P100,000.00) – Civil Indemnity
- b. One Hundred Thousand Pesos (P100,000.00) – Moral Damages
- c. One Hundred Thousand Pesos (P100,000.00) – Exemplary Damages
- d. One Hundred Thousand Pesos (P100,000.00) by way of reimbursement for actual expenses incurred by the heirs during the wake and burial of the deceased shall likewise be paid, as stipulated, during the Pre-Trial.

The foregoing amounts shall all be subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

SO ORDERED.¹⁵

Hence, this appeal.

Our Ruling

This Court entertains no doubt that Romeo stabbed Antonio Divina to death. Indeed, both the RTC and the CA properly gave credence to the eyewitness account of Martin. However, we find that the courts below erred in appreciating abuse of superior strength as having qualified the killing to murder. This Court’s pronouncement in the recent case of *People v. Reyes*¹⁶ is instructive, viz.:

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken

¹⁴ Id. at 15-16.

¹⁵ Id. at 19-20.

¹⁶ G.R. No. 227013, June 17, 2019.

advantage of to facilitate the commission of the crime. Evidence must show that the aggressor/s consciously sought the advantage, or their deliberate intent to use it.

No such evidence obtains in this case. Abuse of superior strength cannot be inferred, as the trial court erroneously did, simply from the fact that Jun was outnumbered four to one. Mere superiority in numbers is not indicative of the presence of abuse of superior strength. Neither can the Court consider as evidence thereof the fact alone that appellants and their co-accused were each armed either with broomstick handles, plastic chair, or knife. As shown, there is no evidence that appellants and their companions planned the attack or purposely sought the advantage of superior strength by arming themselves to put the victim in such notorious disadvantage to ensure the commission of the crime.

The same ruling applies here. Records show that the RTC erected its finding of abuse of superior strength on the mere fact that the victim was already 67 years old while Romeo and Rodrigo were in their 40's and that the victim was outnumbered two to one. However, there is paucity of evidence that Romeo and Rodrigo purposely or consciously sought to take advantage of their superior strength relative to the victim's. As testified upon by Martin, the initial protagonists were only the victim and Rodrigo and that it was the victim who actually first drew his bolo. Rodrigo was actually unarmed. It was only after their scuffle that Rodrigo was able to wrest possession of the bolo from the victim. Also, Romeo joined the fray already midway during the chase. There is no showing that both Rodrigo and Romeo consciously planned the attack on the victim. Significantly, when Romeo was delivering the stabbing thrusts at the victim, Martin testified that Rodrigo was merely looking at them and did not join Romeo in also stabbing the victim.

We reproduce below the relevant testimony of Martin:

[PROS. CANOSA] Aside from Rodrigo, Antonio, [yourself] and your companions in playing basketball, were there other people near the place?

[MARTIN] None, sir.

Q. You said Antonio arrived and x x x [fed] his cow, what transpired after that?

A. Antonio Divina and Rodrigo Pescador talked, sir.

Q. Did you hear the subject of their conversation?

A. [I heard portions of their conversation], sir.

Q. What did you hear?

A. Why is it the cow of Antonio is like this.

Q. What do you mean like this?

A. It is skinny, sir.

x x x x

Q. After [talking] with each other what transpired next?

A. They pulled the rope against each other, sir.

- Q. What rope was that that they are pulling [against] each other?
A. Of the cow, sir.

x x x x

- Q. x x x [W]hat transpired next?
A. Antonio Divina drew a bolo, sir.

- Q. What did he do with the bolo?
A. He hacked Rodrigo Pescador, sir.

- Q. Did he hit Rodrigo?
A. Yes, sir.

- Q. What part of his body was hit?
A. His face, sir.

x x x x

- Q. Was he able to hack Rodrigo Pescador for the second time?
A. No more, sir.

- Q. Why?
A. Rodrigo Pescador was able to parry the second hack of Antonio Divina, sir.

x x x x

- Q. You said that Rodrigo was able to parry the second assault of Antonio, what transpired next?
A. Antonio Divina [lost possession] of the bolo, sir.

- Q. What did Antonio Divina do next when he [lost possession] of his bolo?
A. Antonio Divina ran, sir.

- Q. What did Rodrigo do when Antonio Divina ran?
A. Rodrigo Pescador ran after Antonio Divina, sir.

- Q. What happened to the bolo left by Antonio?
A. It was taken by Rodrigo Pescador, sir.

- Q. What did Rodrigo do with the bolo of Antonio that he picked?
A. He took it, sir.

- Q. So it was Rodrigo who was chasing Antonio?
A. Yes, sir.

- Q. Aside from Rodrigo, were there other people chasing Antonio?

x x x x

- A. Yes, sir.

- Q. Whom are you referring to?
A. Romeo Pescador, sir.

- Q. Where did Romeo Pescador come from?
A. At his house, sir.

Q. When you say Romeo also chased Antonio, how did he chase Antonio?
A. Romeo chased Antonio and suddenly hacked Antonio, sir.

Q. What did Romeo use in hacking Antonio?
A. Also a bolo, sir.

Q. When he was chasing, when Romeo was chasing Antonio, was he already armed with a bolo?
A. Yes, sir.

x x x x

Q. While Romeo was hacking Antonio, what was Rodrigo doing?
A. Rodrigo was just looking.

THE COURT

Q: In short while Romeo was hacking Antonio, Rodrigo was just looking at them?

A. Yes, Your Honor.¹⁷

Clearly, the foregoing showed that there was no conscious effort on the part of Romeo and Rodrigo to purposely take advantage of their superior strength to facilitate the commission of the crime. What transpired was brought about by or at a spur of the moment. Abuse of superior strength therefore was not present and did not qualify the killing to murder. In fine, the crime committed by Romeo was only homicide.

Article 249 of the Revised Penal Code defines Homicide, to wit:

Article 249. Homicide. - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

Applying the Indeterminate Sentence Law, the minimum term of Romeo's sentence should be taken from *prision mayor* in any of its periods. There being no aggravating or mitigating circumstance, the proper imposable penalty should be eight (8) years and one (1) day of *prision mayor* medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum.

*People v. Jugueta*¹⁸ teaches that for the crime of homicide, the heirs of the victim are entitled to the following monetary awards: civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00. In this case, since no aggravating circumstance was proved during trial, no exemplary damages may

¹⁷ TSN, February 25, 2014, pp. 5-9.

¹⁸ 783 Phil 806 (2016).

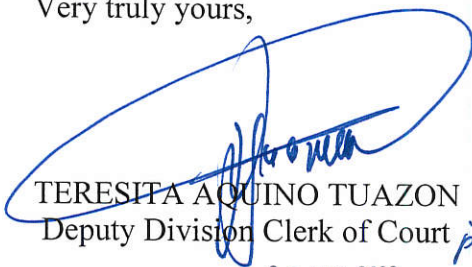
be awarded.¹⁹ As regards actual damages, it is settled that the same may be awarded only if proved or supported by actual receipts. In this case, actual damages in the amount of ₱100,000.00 was awarded based only on the stipulation of the parties. This is not allowed. There being no proof of actual damages, temperate damages in the amount of ₱50,000.00 may be awarded. In addition, interest at the rate of six percent (6%) per *annum* may be imposed on all damages awarded from finality of this Resolution until fully paid.²⁰

ACCORDINGLY, the assailed September 19, 2017 Decision of the Court of Appeals in CA-G.R. CR No. 37967 is **MODIFIED**. Accused-appellant Romeo Pescador is found guilty of **HOMICIDE**. He is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum.

He is further required to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED.”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court p 8/5

05 AUG 2020

¹⁹ Id. at 831.

²⁰ *People v. Albino*, G.R. No. 229928, July 22, 2019.

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 72
Narvacan, 2704 Ilocos Sur
(RTC CR No. 3403-N)

THE DIRECTOR (reg)
Bureau of Corrections
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*with copy of the CA decision dated 19 September 2017
Please notify the Court of any change in your address.
GR238172. 07/27/2020(165)URES