



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 10, 2020 which reads as follows:

“G.R. No. 212149 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. FORTUNATO MENGULLO, accused-appellant). – This appeal assails the Decision¹ dated August 30, 2013 whereby the Court of Appeals (CA)-Cebu in CA-G.R. CR. No. 01541 which affirmed with modification the April 8, 2010 Decision² of the Regional Trial Court (RTC) of Borongan, Eastern Samar, Branch 2, in Criminal Case No. 10252, finding herein Fortunato Mengullo (accused-appellant) guilty beyond reasonable doubt of the crime of murder.

Accused-appellant was charged with murder in an Information dated November 20, 1991 which reads:

That on August 18, 1991, at around 1:30 o'clock early in the morning at the Eastern Samar State College Compound, Barangay Maypangdan, Borongan, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with evident premeditation and treachery and without justifiable cause did, then and there willfully, unlawfully and feloniously attacked, assaulted, stabbed and wounded JOSHUA P. BALETOS³ with the use of sharp bladed weapon (Depang), which the accused provided himself for the purpose, thereby inflicting injuries upon the latter, which injuries caused the death of the victim, and that by reason of the death of Joshua P. Baletos, his heirs incurred actual and moral damages which may be awarded to them under the Civil Code of the Philippines.

CONTRARY TO LAW.”⁴

¹ *Rollo*, pp. 4-15; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap.

² *CA rollo*, pp. 46-54; penned by Presiding Judge Leandro C. Catalo.

³ Also “Balitos” in the records.

⁴ *CA rollo*, p. 46.

According to the prosecution, on August 18, 1991 at around 1:30 in the morning, the victim, Joshua P. Baletos (Baletos) was on his way home inside the compound of the Eastern Samar State College (ESSC) when he was allegedly stabbed by the accused-appellant. Baletos, while crying for help, reached the cottage of Rodrigo Aserit (Aserit) a teacher from ESSC, who found the former bleeding and was with Marvin Roncales (Roncales).⁵ When Aserit asked Baletos what happened to him, it was Roncales who informed him that Baletos was stabbed by Otoy-Otoy,⁶ the accused-appellant. Aserit went to the cottage of the School President to look for a transportation in order to bring Baletos to the nearest hospital. However, when the latter was brought in to Eastern Samar Provincial Hospital where he underwent surgery for the injury he sustained, he eventually expired due to massive blood loss as the single stab wound he sustained caused “hypovolemia shock” that led to his death by “cardio respiratory arrest”.⁷

The incident was witnessed by Esteban Baldago (Baldago) who was then at the cottage of his niece inside the ESSC compound.⁸ According to Baldago, it was around midnight when he heard girls shouting outside thus, he opened the window to check.⁹ It was then when he saw Baletos from a distance of about five meters, requesting permission to leave.¹⁰ When Baletos was already on his way, Baldago saw accused-appellant suddenly approached the former from his left, placed a hand on the former’s shoulder, and stabbed him with his left hand.¹¹ Baletos was hit on the left portion of his body below the breast area which thus caused him to fall on the ground. Accused-appellant then ran away from the place of incident.¹²

For his part, accused-appellant denied the accusation against him and interposed the defense of alibi. According to accused-appellant, he was with Baletos on the night of August 17, 1991 as they were having a drinking spree with their other classmates from around 7:30 up to past 11:00 in the evening.¹³ After which, they all parted ways and went to their respective homes.¹⁴ When accused-appellant arrived at home, he immediately went to sleep until he was awakened around 6:00 in the

⁵ Id. at 47.

⁶ Id.

⁷ Id. at 48.

⁸ Id. at 47.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id. at 48.

¹⁴ Id.

morning the following day by the guard who was investigating on the stabbing incident.¹⁵

After weighing the parties' respective arguments and evidence, the court *a quo* rendered a Decision finding accused-appellant guilty beyond reasonable doubt of the crime of murder. It found that the element of treachery was present in the case as the accused-appellant suddenly attacked the victim without affording him any means to defend himself. According to the court *a quo*, when accused-appellant placed his hand on the victim's shoulder and used his other hand to stab the latter despite lack of provocation, clearly deprived the victim of any chance to defend himself thus, ensuring the commission of the crime without risk to the aggressor.¹⁶ This, as found by the court *a quo*, is enough to establish the presence of the element of treachery and convict the accused-appellant for the crime of murder. The *fallo* of the Decision reads:

W H E R E F O R E, in view of the foregoing considerations, judgment is hereby rendered finding accused Fortunato Mengullo guilty beyond reasonable doubt of Murder and he is sentenced to suffer a penalty of imprisonment ranging from 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 ordered to pay the heirs of the victim Fifty Thousand (Php50,000.00) pesos civil indemnity.

The bail posted by the accused for his temporary liberty is hereby cancelled pursuant to Section 22, Rule 114 of the Revised Rules of Criminal Procedure.

No costs.

SO ORDERED.¹⁷

As stated at the outset, the CA, on appeal, affirmed the Decision of the court *a quo* finding accused-appellant guilty of murder. However, it modified the penalty and amount of indemnities imposed by the court *a quo*. The CA decreed:

WHEREFORE, the appeal is DENIED. The Decision dated April 8, 2010 of the Regional Trial Court, 8th Judicial Region, Branch 2, Borongan, Eastern Samar in Crim Case No. 10252, is AFFIRMED with MODIFICATION, in that the penalty of imprisonment of reclusion perpetua is imposed on accused-appellant. Accused-

¹⁵ Id.

¹⁶ Id. at 53.

¹⁷ Id. at 54.

appellant is ordered to pay P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as temperate damages and P30,000.00 as exemplary damages. Interest at the rate of 6% per annum on the civil indemnity and moral, temperate and exemplary damages from August 18, 1991 up to the finality of this Decision, and interest at 12% per annum on said damages from the date of finality of this Decision until fully paid shall likewise be paid by accused-appellant to the heirs of the victim.

Costs against accused-appellant.

SO ORDERED.¹⁸

In this appeal, accused-appellant reiterates his stance that he is not guilty of the crime charged. He also faults the court *a quo* for giving credit to the testimony of Baldago who, according to accused-appellant, acted unusual from what could have been a normal human reaction when the latter chose to keep silent during the entire investigation instead of immediately reporting the stabbing incident he allegedly witnessed. Accused-appellant likewise argues that the court *a quo* erred when it denied him the benefits under Republic Act (R.A.) No. 9344, or the Juvenile Justice and Welfare Act of 2006, as he was only 16 years old at the time of the commission of the offense.

The appeal has merit in part.

We first take the issue of application of R.A. No. 9344.

The legislative intent of R.A. No. 9344 was to apply to heinous crimes the automatic suspension of sentence of a child in conflict with the law. Section 38 of the law provides:

Section 38. *Automatic Suspension of Sentence.* - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided, however,* that suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate

¹⁸ *Rollo*, p. 15.

disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law.

Likewise, Section 40 of the same law provides that suspension of sentence applies even if the child in conflict with the law already reached the age of 18 or more at the time of the judgment of conviction was rendered. Such suspension is only until the minor reaches the maximum of age of 21, to wit:

Section 40. *Return of the Child in Conflict with the Law to Court.* - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If the said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

In this case, the RTC did not consider the application of R.A. No. 9344 saying that the benefits of a suspended sentence can no longer be availed of by the accused-appellant because he has already long reached the age of majority. True enough, accused-appellant was born in 1975 hence, he was 16 years old at the time of the commission of the crime in 1991, and 35 years of age at the time when the court *a quo* rendered its Decision in 2010.

However, let it be emphasized that in the case of *People v. Sarcia*,¹⁹ the Court has ruled that R.A. No. 9344 allows retroactive application to those who have been convicted and are serving sentence at the time of its effectivity. This is clear in Section 68 of R.A. No. 9344.

Section 68. *Children Who Have Been Convicted and are Serving Sentence.* - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be

¹⁹ 615 Phil 97, 128 (2009).

immediately released if they are so qualified under this Act or other applicable law. (underscoring supplied)

Clearly, in applying the provisions of R.A. No. 9344, the age at the time of the promulgation of the judgment of conviction is not material. Instead, it is the age when the offender committed the offense which should be taken into consideration.

Ergo, as suspension of sentence is no longer applicable to the accused-appellant as he has already long reached the maximum age required by the law, he, however, may be confined in an agricultural camp or any training facility in accordance with Section 51 of R.A. No. 9344, in furtherance of the legislative intent of the law. Section 51 of R.A. No. 9344 states:

Section 51. *Confinement of Convicted Children in Agricultural Camps and other Training Facilities.* - A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

Thusly, following the pronouncement in the case of *Sarcia*,²⁰ the case shall be remanded to the court of origin to effect appellant's confinement based on Section 51 of R.A. No. 9344.

However, the Court agrees with the court *a quo* and the CA in ruling that the prosecution correctly established the accused-appellant's guilt for killing Baletos. They were also correct in giving full weight and credence to the prosecution witness' testimony and positive identification of the accused-appellant as the one who suddenly approached Baletos and stabbed him at his left side of his body thus, making accused-appellant alibi unworthy of credit.

Indeed, every person reacts differently in a given situation. What matters is that the witness was able to give a truthful and straight-forward testimony of what transcribed during the night of the incident and that he was able to positively identify the accused-appellant as the assailant. The fact that the witness does not even personally know the accused-appellant also shows that Baldago had no any ill feelings or motive against the accused-appellant that could have pushed him to falsely testify against the latter in court. Likewise, accused-appellant

²⁰ Id.

himself admitted that he was with the victim at the time of the incident which thus makes his alibi weak and unworthy of credit.

It was ruled countless times that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the disposition of the case.²¹ This is principally because trial courts have a unique opportunity to assess and observe the witnesses firsthand and note their demeanor, conduct and attitude during examination.²²

Likewise, the method employed by the accused-appellant in order to ensure the consummation of the crime could not go unnoticed. Indeed, there was treachery when accused-appellant suddenly placed his hand on the victim's shoulder, almost like in a friendly manner, and then stabbed the latter with his other hand. This act clearly rendered the victim clueless and unprepared for what was to come which in this case, his demise. It should be recalled that both the accused-appellant and the victim came from a drinking spree that night hence, there was no reason for the victim to interpret the accused-appellant's sudden appearance and placing of hand on his shoulder as any act of aggression.

Indeed, treachery has long been defined by the Court, especially as to its character as a qualifying circumstance for murder.²³ It is a circumstance that must be proven as indubitably as the crime itself and constitutes two elements: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) that said means of execution were deliberately or consciously adopted.²⁴

The foregoing finding notwithstanding, however, the Court increases the award of exemplary damages to ₱75,000.00 and the temperate damages to ₱50,000.00, in line with prevailing jurisprudence.²⁵

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR. No. 01541 is **AFFIRMED** with

²¹ See *People v. Chang*, 382 Phil. 669, 672 (2000).

²² See *People v. Banzuela*, 723 Phil. 797, 815 (2013).

²³ *People v. Aquino*, 396 Phil 303, 307 (2000).

²⁴ *Id.*

²⁵ *People v. Jugueta*, 783 Phil. 806 (2016).

MODIFICATION. Accused-appellant **FORTUNATO MENGULLO** is ordered to pay the heirs of the victim ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

The case against accused-appellant **FORTUNATO MENGULLO** shall be **REMANDED** to the trial court for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.” ZALAMEDA, J., on official leave.

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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