



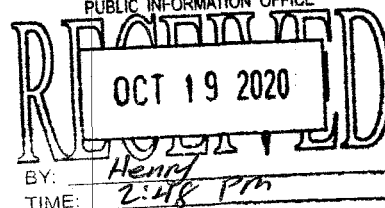
Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 29, 2020**, which reads as follows:*

“G.R. No. 233324 (People of the Philippines, Plaintiff-Appellee, v. PO1 Jamil Abdullah y Turi, Accused-Appellant). – This appeal¹ assails the Decision² dated 11 May 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01492-MIN. The CA affirmed with modifications the Decision³ dated 23 October 2015 of Branch 16, Regional Trial Court (RTC) of Zamboanga City in Criminal Case No. 20571, finding accused-appellant PO1 Jamil Abdullah y Turi (accused-appellant), guilty beyond reasonable doubt of murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

Antecedents

Accused-appellant was indicted for murder in an Information, the accusatory portion of which states:

That on or about April 25, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, being then an active member of the Philippine National Police (PNP), with the rank of Police Officer I, and assigned at the Ayala Police Station, this City, as such, armed with a Beretta 9mm pistol, by means of treachery and with intent to kill, did then and there willfully, unlawfully and feloniously, suddenly and without any warning, assault, attack and shoot several times with the use of said weapon that he was then armed with, at the person of DOLRIECH CARROZ y CAMPASAS, also an active member of the Philippine National Police (PNP) with the rank of Senior Police Officer IV and likewise assigned at the said Ayala

¹ *Rollo*, pp. 31-33.

² *Id.* at pp. 3-30; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo A. Camello and Ruben Reynaldo G. Roxas of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

³ *CA rollo*, pp. 49-58; penned by Presiding Judge Catherine C. Fabian.

Police Station, thus employing means, manner and form which tended directly and specially to ensure its execution without any danger to the person of the accused and as a result of which attack, the said SPO4 DOLRIECH CARROZ y CAMPASAS sustained multiple gunshot wounds on the different fatal parts of his body which directly caused his instantaneous death, to the damage and prejudice of the heirs of said victim.

That the commission of the above-stated offense has been attended by the following aggravating circumstances, to wit:

1. Disregard of the respect due the offended party on account of his rank, and;
2. Use of an unlicensed firearm.

CONTRARY TO LAW.⁴

Upon arraignment, accused-appellant pleaded, "not guilty."⁵ After pre-trial,⁶ trial on the merits ensued.

Version of the Prosecution

On 25 April 2004, around 8:15 a.m., P/Supt. Agustin F. Pros (P/S Pros), station commander of Ayala Police Station, heard a burst of gun fire while he was inside his office. He went outside to check the incident and saw, at about one (1) to three (3) meters away, the body of SPO4 Dolriech C. Carroz (SPO4 Carroz) lying prostrate on the ground and noticed that the latter's issued firearm was still in his holster. Accused-appellant was also there, about one (1) to two (2) meters away from the body of SPO4 Carroz, pointing his 9mm pistol towards SPO4 Carroz. Accused-appellant peacefully surrendered when the other police officers arrived. P/S Pros took the 9mm pistol from the hands of accused-appellant and the latter into custody.⁷

Based on the medico-legal report,⁸ SPO4 Carroz was shot eight (8) times, causing four (4) fatal wounds and his death.⁹

⁴ Records, pp. 1-2.

⁵ *Id.* at 87.

⁶ *Id.* at 89-91.

⁷ *Rollo*, pp. 5-6.

⁸ *Id.* at 6.

⁹ *Id.*

Version of the Defense

Accused-appellant raised the defense of insanity claiming that in 2000, he had trouble sleeping because he kept seeing a red-eyed, black, hairy person. He confided his woes to his mother, Halima Abdullah (Halima), who took him to a "quack doctor" for treatment.¹⁰ When accused-appellant was admitted for training at the PNP, he said he was again attacked by this black, hairy person several times, but was not able to report the presence of the creature.¹¹ Nashra Abdullah (Nashra), accused-appellant's sister observed that three (3) days before the shooting incident, her brother began behaving strangely and was mentioning a big man with red eyes and hair on his face. After the shooting incident, Nashra visited her brother at the detention cell and saw him just staring at the ceiling, with such demeanor lasting for three (3) days.¹²

On 25 April 2004, accused-appellant went to work even when he was not in good condition and arrived thereat at 8:00 a.m. in his full uniform with his service firearm. Not noticing any police officer around, he entered the Ayala Police Station through the main door and went directly to the kitchen. Suddenly, he was attacked by the black, hirsute guy hitting his chest. He was able to pull out his gun and shoot the creature. He then became unconscious.¹³

Accused-appellant was brought to Dr. Lolina Bajin (Dr. Bajin), a certified clinical psychologist, for assessment sometime in August 2004, June 2006, and 2008. Per her initial evaluation in August 2004, or four (4) months after the shooting incident, she found accused-appellant suffering from personality disorder, passive-aggressive type in pre-psychotic condition with organic brain damage. Symptoms thereof included severe depression, hallucination, and illusion. These findings were still present during her re-evaluation of accused-appellant in 2006 and 2008. She further claimed that these symptoms were possibly already present in early 2004 per her observation and interviews of his father and friend.¹⁴

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 8-9.

¹² *Id.* at 7.

¹³ *Id.* at 8-9.

¹⁴ *Id.* at 7-8.

Ruling of the RTC

In its Decision dated 23 October 2015, the RTC found accused-appellant guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of *reclusion perpetua*. It likewise ordered him to pay the heirs of SPO4 Carroz the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, along with P61,804.00 as actual damages and P1,227,146.60 as lost earnings.¹⁵

According to the RTC, accused-appellant failed to prove that he was insane immediately prior to or during the shooting incident. Dr. Bajin did not conclusively state that accused-appellant was insane when he committed the crime and she belatedly examined him four (4) months after the said incident. The RTC also held that other witnesses for accused-appellant testified that he was functioning normally in the morning of the incident. It also considered that accused-appellant passed all the examinations required for PNP personnel.¹⁶

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision dated 11 May 2017, the CA affirmed accused-appellant's conviction but modified the penalty in the following amounts: P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and P61,804.00 as actual damages and P1,227,146.60 as lost earnings.¹⁷ It highlighted that Dr. Bajin's testimony could not conclusively prove that accused-appellant was completely deprived of reason immediately prior to or at the time of the commission of the offense.¹⁸

Hence, this appeal seeking the reversal of accused-appellant's conviction.

Ruling of the Court

The appeal is without merit.

¹⁵ CA rollo, p. 58.

¹⁶ *Id.* at 57.

¹⁷ Rollo, p. 29.

¹⁸ *Id.* at 12-19.

Accused-appellant is charged with the crime of murder which is defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended. The prosecution was able to prove beyond reasonable doubt the elements of this crime, viz: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) that the killing is not parricide or infanticide.¹⁹ Here, the prosecution proved that SPO4 Carroz was killed by accused-appellant, who admitted firing his gun several times in the police station. P/S Pros positively identified accused-appellant as the one pointing the gun at the body of SPO4 Carroz, which was only two (2) to four (4) meters away from him.²⁰

*Treachery attended the killing of SP04
Carroz*

In the case of *People v. Solar*,²¹ the Court ruled that the Information must specify the ultimate facts related to the qualifying or aggravating circumstance alleged therein. Otherwise, the Information may be subject to a motion to quash, or a motion for bill of particulars. Thus, mere allegations of qualifying circumstances without stating ultimate facts, or without reference to pertinent portions of the resolution finding probable cause against the accused, and attaching the same to the Information, are no longer sufficient.

Here, the Information sufficiently stated that accused-appellant employed treachery in the killing of SPO4 Carroz and the aggravating circumstance thereof is supported by ultimate facts. However, despite sufficiency of the Information, the question of whether or not treachery was proven remains. The answer is in the affirmative.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify as an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the

¹⁹ *People v. Aquino*, G.R. No. 203435, 11 April 2018; 860 SCRA 64.

²⁰ *Rollo*, p. 28.

²¹ G.R. No. 225595, 6 August 2019.

unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.²²

In this case, the means employed by accused-appellant to kill SPO4 Carroz shows that the latter was not given any opportunity to defend himself or to retaliate. Accused-appellant shot SPO4 Carroz eight (8) times, four (4) of them fatal. Further, P/S Pros testified that accused-appellant was only two (2) to four (4) meters away from the victim. Notably, SPO4 Carroz was not able to put up any defense because his service firearm remained locked in his holster.²³ This shows that accused-appellant truly intended to kill the victim by shooting him close-range with multiple gun shots.

The Court likewise finds that accused-appellant consciously adopted the means or methods he employed to kill defenseless SPO4 Carroz because he pursued him to ensure his death. Accused-appellant admitted that he fired his gun at SPO4 Carroz in the kitchen of the police station. The body of SPO4 Carroz was later found lying outside the police station. This demonstrates that accused-appellant consciously pursued SPO4 Carroz from the kitchen area to the point where he lost consciousness outside the police station, shooting him multiple times, to ensure his demise. Certainly, the killing of SPO4 Carroz was attended by the qualifying circumstance of treachery.

Accused-appellant's defense of insanity is unavailing

Accused-appellant raises the defense of insanity to exempt him from criminal liability. Article 12 of the RPC provides one of the circumstances for exemption from criminal liability, namely insanity, but it is not easily available to an accused as a successful defense. Article 800 of the Civil Code presumes that every human is sane.²⁴ The moral and legal presumption under our law is that freedom and intelligence constitute the normal condition of a person.²⁵ Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty thereof because of insanity. **The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or**

²² *People v. Enriquez, Jr.*, G.R. No. 238171, 19 June 2019.

²³ *Rollo*, pp. 27-28.

²⁴ *People v. Bacolot*, G.R. No. 233193, 10 October 2018, citing *People v. Isla*, G.R. No. 199875, 21 November 2012, 699 Phil. 256-272 (2012); 686 SCRA 267.

²⁵ *People v. Estrada*, G.R. No. 130487, 19 June 2000, 389 Phil. 216-243 (2000); 333 SCRA 699.

simultaneous with the commission of the offense with which he is charged.²⁶

Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will.²⁷ An accused invoking the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence because every person is presumed sane.²⁸

Accused-appellant failed to prove his defense of insanity.

The defense presented Dr. Bajin. However, as correctly found by both the RTC and the CA, she was not certain whether accused-appellant was indeed insane immediately preceding or simultaneous with the commission of the offense, to wit:

Q: Will you agree with me that the circumstance of killing the victim in this case, the mind, the behaviour of the accused, [and] the mental state of the accused [were] already affected by the incident? [sic]

A: Not exactly sir.

Q: Why?

A: **Because at the time he did the crime, he maybe, or he maybe not insane, we could not say the exact time of his insanity sir, it could be at the time of the killing, he was already in that state of behaviour. [sic]**

Q: I am not in that point, what I am asking you madam witness, is that, at the time when you assessed[,] when you evaluated the accused[,] he was already in his state of mind affected by the killing? [sic]

A: Not exactly, sir.

Q: You are trying to tell us that at the time you assessed him, he was still in that condition before the incident happened?

A: At the time he was submitted for assessment, he was already in that mental disorder condition, maybe he suffered [from] that since childhood.

²⁶ *Supra* at note 24.

²⁷ *People v. Haloc*, G.R. No. 227312, 05 September 2018.

²⁸ *People v. Miraña*, G.R. No. 219113, 25 April 2018, 862 SCRA 760, 767.

- Q: Since childhood?
- A: Yes, maybe he suffered [from] that kind of mental disorder since childhood.
- Q: At the time you evaluated him[,] there was already this situation that he killed and shot the victim in this case[.] [This might] this have affected his answer on your queries during your evaluation, correct?
- A: As per my evaluation[,] there was already insanity suffered by him during that time.
- Q: Yes, I am not at that point, just give the answer, don't tell me that when you evaluate[d] him, he was already in that kind of problem he ha[d] [when] he killed a person?
- A: Probably sir, there is a possibility, as a psychologist.²⁹ (Emphasis supplied)

As can be gleaned above, when continuously asked if accused-appellant was suffering from a mental disorder immediately preceding or simultaneous with the commission of the crime, Dr. Bajin gave uncertain answers with her use of the words, "maybe," "probably," "there is a possibility," or "not exactly." The Court cannot accept the findings of the witness based on mere possibility or probability. Dr. Bajin also failed to explain whether the condition of accused-appellant results in a complete absence of the power to discern or a total deprivation of freedom of the will.³⁰

To be sure, there must be a tangible and substantive proof of insanity; otherwise, it will not be appreciated. "Insanity being the exception rather than the rule in human condition, 'the moral and legal presumption is that freedom and intelligence constitute the normal condition of a person and that a felonious or criminal act (*delicto deloso*) has been done with deliberate intent, that is, with freedom, intelligence and malice' and whoever, therefore, invokes insanity as a defense has the burden of proving its existence."³¹

Worse, Dr. Bajin belatedly examined accused-appellant only in August 2004, or four (4) months after the incident. Notably, her findings did not include accused-appellant's mental disposition immediately prior to or simultaneous with the commission of the crime. In *People v. Umawid*,³² the Court ruled that a mental examination of the accused six (6) months before the latter committed the crimes, and three (3) months and four (4) months thereafter cannot prove the defense of insanity.

²⁹ *Rollo*, pp. 17-18.

³⁰ *Id.* at 17-19.

³¹ *People v. Yam-id*, 368 Phil 131-142 (1999); G.R. No. 126116, 21 June 1999, 308 SCRA 651, 656.

³² G.R. No. 208719, 09 June 2014, 725 SCRA 597, 606.

Likewise, Nashra testified that her brother, accused-appellant, was acting normally in the morning immediately prior to the incident, viz:

Q: What about your brother, he even reported for work?

A: Yes.

Q: In fact[,] he took his bath?

A: Yes.

Q: He ate his breakfast, took his bath, wore his uniform and off he went to the station. Were you able to witness this?

A: Yes.

Q: Nothing happened?

A: Yes. I noticed he took his breakfast because at that time I was asleep and I woke up I saw him taking his breakfast.

xxx

Q: **Your brother was normal that morning?**

A: **Based on my observation.**

Q: **Based on your observation, he was what?**

A: **He was in good condition.**³³ (Emphasis in the original)

Evidently, immediately prior to the shooting, accused-appellant was doing his regular routine and was behaving normally. This disputes his claim that he was completely deprived of reason immediately prior to the commission of the crime.

In the same manner, P/S Pros, the station commander, testified that immediately after the incident, accused-appellant was not completely deprived of his mental faculties. He testified as follows:

Q: So, at that time Mr. Witness, did you already see [accused-appellant] when you saw the lying body of SPO4 Carroz?

A: Yes, Your Honor.

xxx

Q: Ok. And according to you also yesterday, Mr. Witness, when [accused-appellant] saw you, he pointed his gun towards you, is that right?

A: Yes, Your Honor.

COURT:

Q: When he pointed the armalite rifle [at] you, did you ask him to surrender?

A: Yes, he surrendered the gun peacefully.

³³ Rollo, pp. 19-20.

ATTY ASDAON:

Q: And, in fact according to you, ah.. you were able to talk to him in tagalog, right Mr. Witness? Yesterday to [accused-appellant]?

A: Yes, Your Honor.

Q: And you told him "sumuko na kaw" "mag surrender na kaw," is that right?

A: Yes, Your Honor.

xxx

Q: OK. So, yesterday you testified as well as in your affidavit, you made mention that, first, [accused-appellant] was hesitant to surrender[.] [I]s that right?

A: Yes, Your Honor.

Q: What made you say he was hesitant to surrender Mr. Witness?

A: Considering that I was alone without the presence of any PNP personnel, he was hesitant, he was hesitant to surrender considering that, I (sic) am only one personnel. I was only (sic) alone in the station so, there were no other PNP personnel to assist me, in arresting the subject person.

xxx

Q: But, he did not fire or draw his firearm against you Mr. Witness, right?

A: Because he did not draw or he point his gun but, (sic) he did not fire his firearm, considering the timely arrival of the two (2) policemen on the L300 vehicle, the timely arrival of the L300 vehicle driven by SPO1 Doner Jilhaney and SPO2 Ibnosalim Asjali. So, with their timely arrival, so, that's the incident, he peacefully surrendered.³⁴

Manifestly, even immediately after the incident, accused-appellant was not completely deprived of cognition because P/S Pros was able to talk to him in Tagalog and convince him to surrender. Accused-appellant was still able to understand the situation and surrender peacefully because the backup police officers arrived. This shows that accused-appellant could still understand the situation and react with reason.

Lastly, as correctly observed by the CA, accused-appellant showed his mental competence when he passed the Licensure Examination for Teachers after finishing a Bachelor of Science Degree in Elementary Education, and he was able to pass the National Police Commission examinations, composed of different tests including mathematical, psychological, and abstract reasoning. He also was able to receive an average grade in his neuro, psychiatric, and psychological tests.³⁵

³⁴ *Id.* at 24-26.

³⁵ *Id.* at 26-27.

Verily, accused-appellant failed to substantiate his defense of insanity because he was not able to prove that he had a mental illness that completely deprived him of free will and reason immediately prior to or at the very same time of the commission of the killing.

The award of loss of earning capacity must be modified

The general rule is that there must be documentary proof to support indemnity for loss of earning capacity.³⁶ Based on the certified copy of SPO4 Carroz's payslip, We deem it proper to modify the amount of indemnity for the same awarded by the RTC and affirmed by the CA. When SPO4 Carroz died at the age of forty-three (43) in 2004, he was receiving a gross monthly salary in the amount of P23,800.00, as shown by a certified copy of his payslip.³⁷ Using the formula $[2/3 \times 80 - \text{age}] \times [\text{gross annual income} - \text{necessary expenses equivalent to } 50\% \text{ of the gross annual income}]$,³⁸ the award for loss of earning capacity must be increased from P1,227,146.60 to P3,522,876.00:

$$\begin{aligned} & [2/3 \times (80-43)] [(P23,800.00 \times 12) - 50\% (P23,800.00 \times 12)] = \\ & [2/3 \times 37] [(P285,600.00) - 50\% (P285,600.00)] = \\ & [24.67] [P142,800.00] = P3,522,876.00 \end{aligned}$$

WHEREFORE, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated 11 May 2017 of the Court of Appeals in CA-G.R. CR HC No. 01492-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant PO1 Jamil Abdullah y Turi is found **GUILTY** beyond reasonable doubt of Murder, as defined and penalized under Article 248 of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*, and is **ORDERED** to pay the heirs of victim, SPO4 Dolriech Carroz y Campasas, the amounts of: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; (c) P75,000.00 as exemplary damages; (d) P61,804.00 as actual damages; and (e) P3,522,876.00 as lost earnings, with legal interest of six percent (6%) *per annum* on all amounts due from the date of finality of this Resolution until fully paid.

³⁶ People v. Wahiman, G.R. No. 200942, 16 June 2015; 760 Phil. 368-390 (2015); 758 SCRA 366.

³⁷ Records, exhibits folder, Exh. "S."

³⁸ *Supra*, at note no. 34.

SO ORDERED.”

Very truly yours,

Mis D C Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
10/14/20

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CA G.R. CR HC No. 01492-MIN
9000 Cagayan de Oro City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 16, 7000 Zamboanga City
(Crim. Case No. 20571)

PO1 Jamil T. Abdullah
c/o The Superintendent
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