



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City
SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 April 2022** which reads as follows:*

“G.R. No. 253855 (People of the Philippines vs. Kevin N. Yguinto). – The Court **NOTES** Kevin N. Yguinto’s (accused-appellant) Manifestation¹ (Re: Supplemental Brief) dated June 18, 2021 that he would adopt his appellant’s brief filed before the Court of Appeals (CA) as supplemental brief in this case.

This is an ordinary appeal assailing the Decision² dated November 29, 2019 of the CA in CA-G.R. CR-HC No. 02684. In the said Decision, the CA affirmed with modification the conviction of herein accused-appellant for Murder under Article 248³ of Act No. 3815 or the Revised Penal Code (RPC), as amended.

The facts are as follows:

On October 13, 2013, one Bon Juvi N. Bejar (Bon) suffered a blunt trauma to his head that severely fractured his skull. He was immediately rushed to the Siliman University Medical Center (SUMC) for treatment the same day.

¹ *Rollo*, pp. 45-47.

² *Id.* at 5-21. The decision was penned by Associate Justice Dorothy P. Montejo-Gonzaga, with Associate Justices Pamela Ann Abella Maxino and Alfredo D. Ampuan concurring.

³ Article 248 of the RPC, as amended by RA No. 7659, provides:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusión perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

On October 20, 2013, however, Bon expired due to complications arising from his head injury.

Investigation identified the accused-appellant as the person responsible for Bon's fatal injury. Consequently, an Information for murder was filed against him before the Regional Trial Court (RTC) of Dumaguete City. The accusatory portion of the Information reads:

That on or about the 13th day of October, 2013, in the City of Dumaguete, Philippines and within the jurisdiction of this Honorable Court, the [accused-appellant], with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, assault, and wound one [Bon], while the latter was sitting on the side of a road, with his head bowing down drunk and sleepy, by hitting him with an empty bottle of Red Horse Grande on the right side of his head suddenly and unexpectedly, while the said accused-appellant was on board a motorcycle, thereby giving the said [Bon] NO chance to defend himself to insure the execution of the act without risk to said accused-appellant out of any defense which said [Bon] might make thereby inflicting upon him the following injuries, to wit: Epidural Hematoma, Acute Subdural Hematoma, Cerebral Contusion, right temporal lobe, which injuries caused the death of said [Bon].

That the crime was committed with the qualifying circumstance of alevosia.

Contrary to Article 248, par. 5, of the Revised Penal Code, as amended.⁴

At his arraignment, the accused-appellant entered a plea of not guilty.⁵ Trial thereafter ensued.

The prosecution presented the testimonies of Roberto Gamboa (Gamboa), Raymart Pis-an (Pis-an), Dr. Krypton Kho (Dr. Kho), Milan Bejar (Milan), and Meysil Calijan (Calijan).

Gamboa and Pis-an were eyewitnesses to the crime. Together, they recounted the following version of events:⁶

1. At around 3:00 in the morning of October 13, 2013, accused-appellant and his friends were outside "*El Kamino*," a restaurant along Flores Avenue in Dumaguete City. Accused-appellant was then restless and angry because Calijan — accused-appellant's former girlfriend — left him for Bon.

⁴ *Rollo*, p. 6.

⁵ *Id.*

⁶ *Id.* at 7.

2. Thereafter, accused-appellant saw Bon sitting along Flores Avenue corner E.J. Blanco Street. At the time, Bon appeared intoxicated and sleepy.
3. At that juncture, accused-appellant picked up an empty bottle of “Red Horse Grande” and rode his motorcycle toward the direction of Bon.
4. As he sped towards Bon, accused-appellant, without any warning, hit Bon’s head with the bottle. Bon fell on the pavement.
5. Bon was then rushed to SUMC for immediate treatment.

Dr. Kho was Bon’s attending doctor at the SUMC. He confirmed that, on October 13, 2013, Bon was admitted to the intensive care unit (ICU) of the SUMC due to the latter’s head injury. Dr. Kho explained that Bon’s head injury consists of a fractured skull and a laceration of the vessels inside the skull that bled, created a large blood clot and compressed Bon’s brain.⁷ He therefore opined that Bon’s head injury was fatal and was what ultimately caused his death on October 20, 2013.⁸

Milan, on the other hand, was the father of Bon. He testified that, as a result of Bon’s death, he suffered actual, moral, and exemplary damages. Milan also identified official receipts evidencing that he spent a total of ₱876,527.56 for the hospitalization and funeral of Bon.⁹ He also claimed that he engaged the services of counsel in connection with the current murder case for which he paid ₱40,000.00 on top of the ₱1,500.00 appearance fee per hearing.¹⁰

Calijan was the former girlfriend of the accused-appellant. She testified that, on the night of October 12, 2013, the accused-appellant told her “*Buk-an nako og botelya nang imong Bon run*” (I’m going to break a bottle on your Bon).¹¹ She also claimed that she received a text message from the accused-appellant on October 14, 2013, or a day after Bon was struck, reading: “*I am going to surrender if I am already dead but before I surrender, I have to kill Bon first.*”¹²

The defense, on the other hand, relied on the testimonies of the accused-appellant and one Jetender Cordova (Cordova).¹³

The accused-appellant raised the defense of denial. He denied having struck Bon with a bottle of Red Horse Grande, and attributed the fatal injury

⁷ CA rollo, pp. 42-43.

⁸ Id. at 43.

⁹ Id. at 43-44.

¹⁰ Id. at 44.

¹¹ Id. at 42.

¹² Id.

¹³ Id. at 44.

sustained by Bon to the latter accidentally falling unto the glass shards of the said bottle on the ground.¹⁴

Cordova corroborated the accused-appellant's story. He recalled witnessing the following events:

1. At around 2:00 in the morning of October 13, 2013, Bon was arguing with Calijan at the El Kamino. Moments later, Calijan left Bon.
2. Later, the accused-appellant, who was on board his motorcycle, passed by. Bon flagged down the accused-appellant. At this time, Bon looked drunk and was holding an empty bottle of Red Horse Grande.
3. A scuffle ensued between Bon and the accused-appellant. As the two men wrestled for the possession of the bottle, both fell to ground. Bon then appeared to have already sustained a head injury.
4. Bon was then rushed to a hospital.¹⁵

On October 27, 2017, the RTC rendered a Decision¹⁶ finding the accused-appellant guilty as charged. In finding so, the trial court gave full faith and credence to the prosecution's version and its identification of the accused-appellant as the person responsible for the fatal head injury of Bon. The RTC likewise considered three (3) aggravating circumstances against the accused-appellant — treachery, evident premeditation and the use of a motor vehicle in the commission of the crime. Accordingly, the trial court sentenced the accused-appellant to suffer *reclusion perpetua* and ordered him to pay the heirs of Bon the following:

1. ₱75,000.00 as civil indemnity;
2. ₱75,000.00 as moral damages;
3. ₱75,000.00 as exemplary damages;
4. ₱876,527.56 as actual damages;
5. ₱40,000.00 as attorney's fees;
6. Interest on the awards of civil indemnity, moral damages, exemplary damages, actual damages and attorney's fees at the rate of 6% per annum from finality of the decision until fully paid; and
7. Costs of suit.¹⁷

¹⁴ *Rollo*, p. 7.

¹⁵ *Id.* at 8.

¹⁶ *CA rollo*, pp. 39-47. The Decision was penned by Presiding Judge Leoncio R. Bancoro.

¹⁷ *Id.* at 47.

The accused-appellant appealed to the CA.

On November 29, 2019, the CA rendered a Decision¹⁸ denying the appeal of the accused-appellant. The appellate court sustained all of the findings of the RTC except for the latter's appreciation of the aggravating circumstance of evident premeditation. Ultimately, the CA affirmed the decision of the RTC subject only to the modification adding the phrase "*without eligibility for parole*" to the prison sentence of the accused-appellant.¹⁹

Hence, this appeal.

In this appeal, the accused-appellant claims that the RTC and the CA erred in giving full faith and credence to the version of the prosecution. He claims that Pis-an, Gamboa and Calijan cannot be considered as credible witnesses because certain claims in their testimonies were improbable and contrary to human experience or contradicted by physical evidence. In particular, the accused-appellant points to the following anomalies in the testimonies of Gamboa, Pis-an and Calijan:

1. Pis-an claimed that he saw the accused-appellant speed up his motorcycle towards Bon as a prelude to the former striking the latter. However, it would have been impossible for the accused-appellant to have done so in view of the multitude of people wandering in the streets because of the on-going Buglasan Festival on the day Bon was fatally injured. Hence, such claim by Pis-an is "*contrary to human experience;*"
2. Pis-an claimed that the accused-appellant had struck Bon at the back of the latter's head. However, this claim is contradicted by the findings of Dr. Kho which described Bon's injury as "*Epidural Hematoma, Acute Subdural Hematoma, Cerebral Contusion, Right Temporal Lobe;*"
3. Gamboa claimed that he was an eyewitness to Bon being struck by the accused-appellant. However, it was revealed during Gamboa's cross-examination that he had been assigned as a traffic enforcer at a McDonald's restaurant located a "*couple of kilometers*" away from the *locus criminis* on the day of the supposed crime; and
4. In her cross-examination, Calijan testified that she was *not* an eyewitness to the crime. However, that testimony contradicts her earlier claim in her affidavit where she claimed that she saw Bon fall to the ground as he was struck in the head.²⁰

¹⁸ *Rollo*, pp. 5-21.

¹⁹ *Id.* at 20.

²⁰ *See Appellant's Brief, CA rollo*, pp. 27-37.

In view of the foregoing anomalies, the accused-appellant urges the Court to consider his alternate version of events as the truth of what happened in this case.

OUR RULING

We dismiss the appeal. However, to conform with standing jurisprudence, We modify the amount of civil indemnity, moral damages and exemplary damages payable by the accused-appellant.

Credibility of Gamboa, Pis-an and Calijan

A review of the records reveals that the accused-appellant's qualms regarding the credibility of Pis-an, Gamboa and Calijan as witnesses are more apparent than real, viz:

First. Pis-an's testimony that the accused-appellant had sped up his motorcycle towards Bon cannot be considered as "*contrary to human experience.*" The accused-appellant's assertion regarding the high volume of people wandering in the streets during the time and day the crime was committed was never proven by evidence. Hence, it could not be said that it would have been impossible for the accused-appellant to have sped up his motorcycle when he struck Bon in the head.

Second. Similarly, Gamboa's assignment as a traffic enforcer at a McDonald's restaurant on the day of the crime did not render incredible Gamboa's identification of the accused-appellant. The exact distance between the McDonald's in question and the *locus criminis*, as well as the time when Gamboa's shift was supposed to start and end, were also not established in the evidence. Thus, despite his assignment as a traffic enforcer at another restaurant, the possibility that Gamboa could have been at the *locus criminis* during the commission of the crime could not entirely be excluded.

Third. Anent the other alleged inconsistencies in the testimonies of Pis-an and Calijan (*i.e.*, Pis-an's testimony that the accused-appellant had struck Bon at the back of the latter's head *whereas* the medical finding of Dr. Kho shows that Bon sustained injury at the right side of his head; and Calijan's testimony that she did not witness the crime *whereas* in her affidavit she claimed that she saw Bon fall to the ground), We agree with the CA that the same merely refers to minor inconsistencies that do not detract from the credibility of Pis-an and Calijan as witnesses. The following observations by the CA are well-taken:

Anent the [accused-appellant's] contention that the prosecution witnesses made inconsistent and improbable statements in court which

supposedly impaired their credibility, this deserves scant consideration. The Court has reviewed the relevant portions of the transcripts pointed out by the accused-appellant *i.e.*, [Calijan's] claim in her affidavit that she saw the victim [Bon] fell to the ground, but, on cross examination, she could not remember seeing [Bon]. However, the said inconsistency is on minor and insignificant details which have no bearing on the elements of the crime or of the identity of the assailant. Apparently, the conflicting statement[s] [are] mere unwitting lapses or insignificant details and do not bear such weight as to impair the credibility of the witness. They pertain to minor details and are so inconsequential.

In *People v. Dulay*, the Supreme Court held that:

A few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details do not impair their credibility. Minor inconsistencies even tend to strengthen the credibility of a witness because they discount the possibility that the testimony was rehearsed. As regards the actuations of the witnesses at the time of the incident, it is settled that there is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling, or frightful occurrence.²¹

Indeed, minor inconsistencies in the narration of facts by the witnesses do not detract from their essential credibility as long as their testimonies on the whole are coherent and intrinsically believable. Trivial inconsistencies do not rock the pedestal upon which the credibility of the witnesses rests but enhances credibility as they manifest spontaneity and lack of scheming. Jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were prefabricated and rehearsed.²²

All told, We hold that the RTC and the CA did not err in giving full weight and credence to the prosecution's version, as relayed by the prosecution witnesses. Their testimonies were unwavering, categorical and replete with details of how the accused-appellant authored the fatal head injury sustained by Bon. In the absence of any strong evidence supporting the accused-appellant's denial, We find no reason to depart from the rulings of the RTC and the CA in convicting the accused-appellant for the crime charged.

Amount of Civil Indemnity, Moral Damages and Exemplary Damages

Be that as it may, We need to modify the awards of civil indemnity, moral damages and exemplary damages in light of prevailing jurisprudence.²³

²¹ 561 Phil. 764, 770 (2007).

²² *Rollo*, pp. 15-16.

²³ See *People v. Jugueta*, 783 Phil. 806 (2016).

As it can be recalled, the RTC originally considered three (3) aggravating circumstances against the accused-appellant — treachery,²⁴ evident premeditation,²⁵ and the use of a motor vehicle in the commission of the crime.²⁶ The CA agreed with the RTC except for the latter's appreciation of the circumstance of evident premeditation. Hence, the CA implicitly held that only the circumstances of treachery and use of a motor vehicle in the commission of a crime were considered in this case. In this respect, We agree with the CA.

We need to clarify, however, how the said two (2) aggravating circumstances ought to be applied.

One of the aggravating circumstances may be applied to qualify the killing of Bon to murder.²⁷ The remaining circumstance, on the other hand, may be considered as a generic aggravating circumstance. Since the penalty of murder is *reclusion perpetua* to death — *i.e.*, consisting of two indivisible penalties — the remaining generic aggravating circumstance may then be applied in accordance with Article 63 of the RPC.²⁸ Accordingly, the death penalty *would have been* meted against the accused-appellant had it not been prohibited under Republic Act (RA) No. 9346.²⁹

Thus, in lieu of the death penalty, only the penalty of *reclusion perpetua* may be imposed against the accused-appellant pursuant to Section 2(a) of RA No. 9346.³⁰

²⁴ Under Article 14(16) of the RPC.

²⁵ Under Article 14(13) of the RPC.

²⁶ Under Article 14(20) of the RPC.

²⁷ Article 248(1) of the RPC, as amended.

²⁸ Article 63 of the RPC provides:

Article 63. *Rules for the application of indivisible penalties.* - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Emphasis supplied)

²⁹ Entitled, "*An Act Prohibiting the Imposition of the Death Penalty in the Philippines.*"

³⁰ Section 2(a) of RA No. 9346 reads:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) x x x.

That the accused-appellant's penalty had been reduced from death to *reclusion perpetua* because of RA No. 9346 is, in turn, crucial to the amount of civil indemnity, moral damages and exemplary damages that may be awarded in this case. In the seminal case of *People v. Juguetta*,³¹ We held that in cases of murder where there had been such a reduction of penalty, the amount of civil indemnity, moral damages and exemplary damages shall be set at ₱100,000.00 each.

Verily, We need to modify the amount of civil indemnity, moral damages, and exemplary damages awarded by the RTC and the CA accordingly.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The Decision dated November 29, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02684 is **AFFIRMED with MODIFICATION**.

Accordingly, accused-appellant Kevin N. Yguinto is found **GUILTY** beyond reasonable doubt of the crime of **MURDER** under Article 248 of Act No. 3815, as amended. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to **PAY** the heirs of Bon Juvi N. Bejar the following:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages;
3. ₱100,000.00 as exemplary damages;
4. ₱876,527.56 as actual damages; and
5. ₱40,000.00 as attorney's fees;

The awards of civil indemnity, moral damages, exemplary damages, actual damages, and attorney's fees shall earn interest at the rate of 6% per annum from finality of the Resolution until fully paid.

Costs against the accused-appellant.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by 3/18*

18 AUG 2022

³¹ Supra, note 19.

Resolution

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G.R. No. 253855
April 20, 2022

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 41
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(Crim. Case No. 2014-22079)

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Supreme Court, Manila

*with copy of the CA Decision dated November 29, 2019
Please notify the Court of any change in your address.
GR253855. 4/20/2022(129)URES

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