Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

RODRIGO MACASPAC *y* ISIP,
Accused-Appellant.

G.R. No. 198954

Present:

VELASCO, JR., *J.*, Chairperson
BERSAMIN,
REYES,*
LEONEN,** and
CAGUIOA,*** *JJ.*

Promulgated:

February 22, 2017

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D E C I S I O N

BERSAMIN, *J.*:

When the victim was alerted to the impending lethal attack due to the preceding heated argument between him and the accused, with the latter even uttering threats against the former, treachery cannot be appreciated as an attendant circumstance. When the resolve to commit the crime was immediately followed its execution, evident premeditation cannot be appreciated. Hence, the crime is homicide, not murder.

The Case

Rodrigo Macaspac *y* Isip (Macaspac) hereby seeks to reverse the decision promulgated on April 7, 2011,[1] whereby the Court of Appeals (CA), in CA-G.R. CR HC No. 03262, affirmed with modification the decision

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* On leave.

** In lieu of Justice Francis H. Jardeleza, who inhibited due to prior participation as the Solicitor General, per the raffle of February 20, 2017.

*** Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

[1] *Rollo*, pp. 2-14; penned by Associate Justice Ricardo R. Rosario with Associate Justice Hakim S. Abdulwahid (retired) and Associate Justice Danton Q. Bueser concurring.

rendered in Criminal Case No. C-31494 by the Regional Trial Court (RTC), Branch 129, in Caloocan City declaring him guilty beyond reasonable doubt of murder for the killing of Robert Jebulan *y* Pelaez (Jebulan).[2]

Antecedents

The information charging Macaspac with murder filed by the Office of the City Prosecutor of Caloocan City reads as follows:

> That on or about the 7th day of July 1988, at Caloocan City, Metro Manila and within the jurisdiction of the Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab with a kitchen knife on the vital part of his body one ROBERT JEBULAN Y PELAEZ, thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.
>
> Contrary to law.[3]

The case was archived for more than 15 years because Macaspac had gone into hiding and remained at large until his arrest on July 28, 2004. Upon his arraignment on August 31, 2004, he pleaded *not guilty* to the foregoing information.[4]

The Prosecution's evidence revealed that at around 8:00 in the evening of July 7, 1988, Macaspac was having drinks with Ricardo Surban, Dionisio Barcomo *alias* Boy, Jimmy Reyes, and Jebulan on Pangako Street, Bagong Barrio, Caloocan City. In the course of their drinking, an argument ensued between Macaspac and Jebulan. It became so heated that, Macaspac uttered to the group: *Hintayin n'yo ako d'yan, wawalisin ko kayo*, and then left.[5] After around three minutes Macaspac returned wielding a kitchen knife. He confronted and taunted Jebulan, saying: *Ano*? Jebulan simply replied: *Tama na.* At that point, Macaspac suddenly stabbed Jebulan on the lower right area of his chest, and ran away. Surban and the others witnessed the stabbing of Jebulan. The badly wounded Jebulan was rushed to the hospital but was pronounced dead on arrival.[6]

Macaspac initially invoked self-defense, testifying that he and Jebulan had scuffled for the possession of the knife, and that he had then stabbed Jebulan once he seized control of the knife, *viz.*:[7]

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2 CA *rollo*, pp. 21-36; penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre.
3 *Rollo*, p. 3.
4 Id.
5 Id. at 3-4.
6 Id. at 4.
7 Id. at 5.

Atty. Sanchez

Q - And it was alleged here in the information that on July 7, 1988 at around 8 o'clock in the evening, in the City of Caloocan you stabbed the victim Robert Julian (Jebulan). What can you say about this?

A - We scuffled for possession for a sharp instrument and when **I was able to grab that sharp instrument**, I was able to stab Roberto Jebulan, sir.[8]

However, Macaspac later on claimed that Jebulan had been stabbed by accident when he fell on the knife. Macaspac denied being the person with whom Jebulan had the argument, which he insisted had been between Barcomo and one Danny. According to him, he tried to pacify their argument, but his effort angered Jebulan, who drew out the knife and tried to stab him. He fortunately evaded the stab thrust of Jebulan, whom he struck with a wooden chair to defend himself. The blow caused Jebulan to fall on the knife, puncturing his chest.[9]

On February 19, 2008, the RTC found Macaspac guilty beyond reasonable doubt of murder,[10] disposing:

WHEREFORE, the Court finds that the killing of ***Robert Jebulan*** is qualified by treachery. In the absence of mitigating and aggravating circumstances, the Court hereby finds the accused ***guilty beyond reasonable doubt as charged,*** and hereby sentences him to suffer the imprisonment of ***reclusion perpertua.***

The accused is ordered to indemnify the victim in the amount of ₱50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.[11]

On appeal, the CA affirmed the conviction but modified the civil liability by imposing civil indemnity of ₱50,000.00, exemplary damages of ₱25,000.00, and temperate damages of ₱25,000.00, decreeing:

WHEREFORE, the appealed 19 February 2008 Decision of Branch 129 of the Regional Trial Court of Caloocan City is **AFFIRMED** with the **MODIFICATIONS** that appellant, aside from the moral damages awarded by the trial court in the amount of Fifty Thousand Pesos (₱50,000.00), is further **ORDERED** to pay the heirs of the victim, Robert

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8 Id. at 8, citing TSN, 24 July 2007, p. 5.
9 Id. at 5, citing TSN, 24 July 2007, pp. 8-14 and pp. 17-19.
10 CA *rollo*, pp. 21-36.
11 Id. at 35.

> Jebulan, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages and Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages.
>
> **SO ORDERED.**[12]

Macaspac is now before the Court arguing that the CA erred in affirming his conviction for murder on the ground that the Prosecution did not establish his guilt for murder beyond reasonable doubt.[13]

Ruling of the Court

It is settled that the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its personal observations during the entire proceedings, the trial court can be expected to determine whose testimonies to accept and which witnesses to believe. Accordingly, the findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight were overlooked, misapprehended, or misinterpreted as to materially affect the disposition of the case. [14]

The Court sees no misreading by the RTC and the CA of the credibility of the witnesses and the evidence of the parties. On the contrary, the CA correctly observed that inconsistencies had rendered Macaspac's testimony doubtful as to shatter his credibility.[15] In so saying, we do not shift the burden of proof to Macaspac but are only stressing that his initial invocation of self-defense, being in the nature of a forthright admission of committing the killing itself, placed on him the entire burden of proving such defense by clear and convincing evidence.

Alas, Macaspac did not discharge his burden. It is noteworthy that the CA rejected his claim of self-defense by highlighting the fact that Jebulan had not engaged in any unlawful aggression against him. Instead, the CA observed that Jebulan was already running away from the scene when Macaspac stabbed him. The CA expressed the following apt impressions of the incident based on Macaspac's own declarations in court, *viz.*:

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12 Supra note 1, at 13.
13 *Rollo*, p. 29.
14 *People v. Pili*, G.R. No. 124739, April 15, 1998, 289 SCRA 118, 131.
15 *Rollo*, p. 8.

ACP Azarcon

x x x x

Q - How could you (appellant) hit him (Jebulan) at his back when you were facing him?

A - When I picked up the chair, when I was about to hit him with the chair, **Obet turned his back to ran (*sic*) from me**, sir.

Q - **To ran (*sic*) away from you**?

A - **Yes, sir**, because he saw me, I was already holding the chair, sir. (Emphasis supplied)

Self-defense, requires three (3) elements, namely: (a) **unlawful aggression on the part of the victim**; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence.

From the above-quoted testimony of appellant, it is clear that even before he stabbed Jebulan, the latter was already running away from him. Hence, granting that Jebulan was initially the aggressor, appellant's testimony shows that said unlawful aggression already ceased when appellant stabbed him. Clearly, appellant's act of stabbing said victim would no longer be justified as an act of self-defense.[16]

Macaspac's initial claim that he and Jebulan had scuffled for the possession of the knife, and that he had stabbed Jebulan only after grabbing the knife from the latter became incompatible with his subsequent statement of only striking Jebulan with the wooden chair, causing the latter to fall on the knife. The incompatibility, let alone the implausibility of the recantation, manifested the lack of credibility of Macaspac as a witness.

Both the RTC[17] and the CA[18] concluded that Macaspac had suddenly attacked the completely unarmed and defenseless Jebulan; and that Macaspac did not thereby give Jebulan the opportunity to retaliate, or to defend himself, or to take flight, or to avoid the deadly assault.

Did the lower courts properly appreciate the attendance of *alevosia*, or treachery?

This is where we differ from the lower courts. We cannot uphold their conclusion on the attendance of treachery.

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16 Id. at 9-10.
17 Supra note 2, at 35.
18 Supra note 1, at 11.

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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.[19] Two conditions must concur in order for treachery to be appreciated, namely: *one*, 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 *two*, said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[20] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[21]

Based on the records, Macaspac and Jebulan were out drinking along with others when they had an argument that soon became heated, causing the former to leave the group and punctuating his leaving with the warning that he would be back "to sweep them," the vernacular for killing the others (*Hintayin n'yo ako d'yan, wawalisin ko kayo*). His utterance was a threat of an impending attack. Shortly thereafter, Macaspac returned to the group wielding the knife, immediately confronted and directly taunted Jebulan (*Ano*?), and quickly stabbed the latter on the chest, and then fled. The attack, even if it was sudden, did not constitute treachery. He did not mount the attack with surprise because the heated argument between him and the victim and his angry threat of going back "to sweep them" had sufficiently *forewarned* the latter of the impending lethal assault.

Nonetheless, the information also alleged the attendance of evident premeditation. We now determine if the records sufficiently established this circumstance.

The requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[22]

Macaspac's having suddenly left the group and his utterance of *Hintayin n'yo ako d'yan, wawalisin ko kayo* marked the time of his resolve

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19 Article 14, paragraph 16, *Revised Penal Code.*

20 *People v. Flores*, G.R. No. 137497, February 5, 2004, 422 SCRA 91, 97.

21 *People v. Sarabia*, G.R. No. 106102, October 29, 1999, 317 SCRA 684, 694.

22 *People v. Torpio*, G.R. No. 138984, June 4, 2004, 431 SCRA 9, 15; *People v. Delos Reyes*, G.R. No. 140680, May 28, 2004, 430 SCRA 166, 178; *People v. Factao*, G.R. No. 125966, January 13, 2004, 419 SCRA 38, 57; *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 565; *People v. Garcia*, G.R. No. 153591, February 23, 2004, 423 SCRA 583, 588; *People v. Montejo*, No. L-68857, November 21, 1988, 167 SCRA 506, 513; *People v. Diva*, G.R. No. L-22946, April 29, 1968, 23 SCRA 332, 340; *People v. Ardisa*, No. L-29351, January 23, 1974, 55 SCRA 245, 259.

to commit the crime. His returning to the group with the knife manifested his clinging to his resolve to inflict lethal harm on the others. The first and second elements of evident premeditation were thereby established. But it is the essence of this circumstance that the execution of the criminal act be preceded by cool thought and reflection upon the resolve to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[23] Was the lapse of time between the determination and execution – a matter of three minutes, based on the records – sufficient to allow him to reflect upon the consequences of his act? By quickly returning to the group with the knife, he let no appreciable time pass to allow him to reflect upon his resolve to carry out his criminal intent. It was as if the execution immediately followed the resolve to commit the crime. As such, the third requisite was absent.

Accordingly, we cannot appreciate the attendance of evident premeditation in the killing, for, as explained in *People v. Gonzales*:[24]

> x x x **The qualifying circumstance of premeditation can be satisfactorily established only if it could be proved that the defendant had ample and sufficient time to allow his conscience to overcome the determination of his will, if he had so desired, after meditation and reflection, following his plan to commit the crime.** (*United States v. Abaigar*, 2 Phil., 417; *United States v. Gil*, 13 Phil., 530.) **In other words, the qualifying circumstance of premeditation can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act.** (*United States v. Cunanan*, 37 Phil. 777.) **But when the determination to commit the crime was immediately followed by execution, the circumstance of premeditation cannot be legally considered.** (*United States v. Blanco*, 18 Phil. 206.) x x x (Bold underscoring is supplied for emphasis)

Without the Prosecution having sufficiently proved the attendance of either treachery or evident premeditation, Macaspac was guilty only of homicide for the killing of Jebulan. The penalty for homicide, based on Article 246 of the *Revised Penal Code*, is *reclusion temporal*. Under Section 1 of the *Indeterminate Sentence Law*,[25] the court, in imposing a prison

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[23] *People v. Tagana*, G.R. No. 133023, March 4, 2004, 424 SCRA 620, 634; *People v. Borbon*, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 189; *People v. Factao*, G.R. No. 125966, January 13, 2004, 419 SCRA 38, 57; Aquino, *The Revised Penal Code*, 1987 Ed., Vol. I, p. 352, *citing People v. Durante*, 53 Phil. 363 (1929); and *People v. Camo*, 91 Phil. 240 (1952).

[24] 76 Phil. 473, 479 (1946).

[25] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the *Revised Penal Code*, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. *(As amended by Act No. 4225)*

sentence for an offense punished by the *Revised Penal Code*, or its amendments, is mandated to prescribe an indeterminate sentence the *maximum term* of which shall be that which, *in view of the attending circumstances*, could be properly imposed under the rules of the *Revised Penal Code*, and the *minimum term* shall be within the range of the penalty next lower to that prescribed by the *Revised Penal Code* for the offense. In the absence of aggravating or mitigating circumstances, the imposable penalty is *reclusion temporal* in its medium period, or 14 years, eight months, and one day to 17 years and four months. This is pursuant to Article 64 of the *Revised Penal Code*.[26] It is such period that the *maximum term* of the indeterminate sentence is reckoned from. On the other hand, the minimum term of the indeterminate sentence is taken from the degree next lower to *reclusion temporal*, which is *prision mayor*. Accordingly, Macaspac shall suffer the indeterminate penalty of eight years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*.

Anent the civil liabilities, we deem a modification to be necessary to align with prevailing jurisprudence.[27] Hence, Macaspac shall pay to the heirs of Jebulan the following amounts, namely: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as temperate damages. The temperate damages are awarded because no documentary evidence of burial or funeral expenses was presented during the trial.[28] Moreover, Macaspac is liable for interest on all the items of damages at the rate of 6% *per annum* reckoned from the finality of this decision until fully paid.[29]

WHEREFORE, the Court **DECLARES** accused-appellant **RODRIGO MACASPAC *y* ISIP** guilty beyond reasonable doubt of **HOMICIDE**, and **SENTENCES** him to suffer the indeterminate penalty of **EIGHT YEARS OF *PRISION MAYOR***, as minimum, to **14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL***, as maximum; to pay to the heirs of the late Robert Jebulan: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as temperate damages, plus interest on all damages hereby awarded at the rate of 6% *per annum* from the finality of the decision until fully paid.

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[26] Article 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x

[27] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[28] Id.

[29] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

The accused shall further pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Leave)
BIENVENIDO L. REYES
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FEDERAL BUILDERS, INC.,
Petitioner,

- *versus* -

POWER FACTORS, INC.,
Respondent.

G.R. No. 211504

Present:

VELASCO, JR., *J., Chairperson,*
BERSAMIN,
REYES,
JARDELEZA, and
CAGUIOA,* *JJ.*

Promulgated:

March 8, 2017

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D E C I S I O N

BERSAMIN, *J.*:

An agreement to submit to voluntary arbitration for purposes of vesting jurisdiction over a construction dispute in the Construction Industry Arbitration Commission (CIAC) need not be contained in the construction contract, or be signed by the parties. It is enough that the agreement be in writing.

The Case

Federal Builders Inc. (Federal) appeals to reverse the decision promulgated on August 12, 2013,[1] whereby the Court of Appeals (CA) affirmed the adverse decision rendered on May 12, 2010 by the Construction Industry Arbitration Commission (CIAC) with modification of the total amount awarded.[2]

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* Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

[1] *Rollo*, pp. 32-45; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justice Rosmari D. Carandang and Associate Justice Ricardo R. Rosario.

[2] Id. at 98-128.

Antecedents

Federal was the general contractor of the Bullion Mall under a construction agreement with Bullion Investment and Development Corporation (BIDC). In 2004, Federal engaged respondent Power Factors Inc. (Power) as its subcontractor for the electric works at the Bullion Mall and the Precinct Building for ₱18,000,000.00.[3]

On February 19, 2008, Power sent a demand letter to Federal claiming the unpaid amount of ₱11,444,658.97 for work done by Power for the Bullion Mall and the Precinct Building. Federal replied that its outstanding balance under the original contract only amounted to ₱1,641,513.94, and that the demand for payment for work done by Power after June 21, 2005 should be addressed directly to BIDC.[4] Nonetheless, Power made several demands on Federal to no avail.

On October 29, 2009, Power filed a request for arbitration in the CIAC invoking the arbitration clause of the Contract of Service reading as follows:

> 15. ARBITRATION COMMITTEE – All disputes, controversies or differences, which may arise between the parties herein, out of or in relation to or in connection with this Agreement, or for breach thereof shall be settled by the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over the aforementioned disputes.[5]

On November 20, 2009, Atty. Vivencio Albano, the counsel of Federal, submitted a letter to the CIAC manifesting that Federal agreed to arbitration and sought an extension of 15 days to file its answer, which request the CIAC granted.

On December 16, 2009, Atty. Albano filed his withdrawal of appearance stating that Federal had meanwhile engaged another counsel.[6]

Federal, represented by new counsel (Domingo, Dizon, Leonardo and Rodillas Law Office), moved to dismiss the case on the ground that CIAC had no jurisdiction over the case inasmuch as the Contract of Service between Federal and Power had been a mere draft that was never finalized or signed by the parties. Federal contended that in the absence of the agreement for arbitration, the CIAC had no jurisdiction to hear and decide the case.[7]

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3 Id. at 33.
4 Id.
5 Id. at 44.
6 Id. at 34-35.
7 Id. at 35.

On February 8, 2010, the CIAC issued an order setting the case for hearing, and directing that Federal's motion to dismiss be resolved after the reception of evidence of the parties.[8]

Federal did not thereafter participate in the proceedings until the CIAC rendered the Final Award dated May 12, 2010,[9] disposing:

> In summary: Respondent Federal Builders, Inc. is hereby ordered to pay claimant Power Factors, Inc. the following sums:
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> | | |
> |---|---|
> | 1. Unpaid balance on the original contract | ₱4,276,614.75; |
> | 2. Unpaid balance on change order nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9 | 3,006,970.32; |
> | 3. Interest to May 13, 2010 | 1,686,149.94; |
> | 4. Attorney's Fees | 250,000.00; |
> | 5. Cost of Arbitration | 149,503.86; |
> | | **₱9,369,238.87** |
>
> The foregoing amount shall earn legal interest at the rate of 6% per annum from the date of this Final Award until this award becomes final and executory, Claimant shall then be entitled to 12% per annum until the entire amount is fully satisfied by Respondent.

Federal appealed the award to the CA insisting that the CIAC had no jurisdiction to hear and decide the case; and that the amounts thereby awarded to Power lacked legal and factual bases.

On August 12, 2013, the CA affirmed the CIAC's decision with modification as to the amounts due to Power,[10] *viz.*:

> **WHEREFORE**, the CIAC Final Award dated 12 May 2010 in CIAC Case No. 31-2009 is hereby **AFFIRMED** with **MODIFICATION**. As modified, FEDERAL BUILDERS, INC. is ordered to pay POWER FACTORS, INC. the following:
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> | | |
> |---|---|
> | 1. Unpaid balance on the original contract | ₱4,276,614.75; |
> | 2. Unpaid balance on change orders | 2,864,113.32; |
> | 3. Attorney's Fees | 250,000.00; |
> | 4. Cost of Arbitration | 149,503.86; |

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8 Id.
9 Supra note 2.
10 Supra note 1.

> The interest to be imposed on the net award (unpaid balance on the original contract and change order) amounting to ₱7,140,728.07 awarded to POWER FACTORS INC. shall be six (6%) per annum, reckoned from 4 July 2006 until this Decision becomes final and executory. Further, the total award due to POWER FACTORS INC. shall be subjected to an interest of twelve percent (12%) per annum computed from the time this judgment becomes final and executory, until full satisfaction.
>
> SO ORDERED.[11]

Anent jurisdiction, the CA explained that the CIAC *Revised Rules of Procedure* stated that the agreement to arbitrate need not be signed by the parties; that the consent to submit to voluntary arbitration was not necessary in view of the arbitration clause contained in the Contract of Service; and that Federal's contention that its former counsel's act of manifesting its consent to the arbitration stipulated in the draft Contract of Service did not bind it was inconsequential on the issue of jurisdiction.[12]

Concerning the amounts awarded, the CA opined that the CIAC should not have allowed the increase based on labor-cost escalation because of the absence of the agreement between the parties on such escalation and because there was no authorization in writing allowing the adjustment or increase in the cost of materials and labor.[13]

After the CA denied Federal's motion for reconsideration on February 19, 2004,[14] Federal has come to the Court on appeal.

Issue

The issues to be resolved are: (a) whether the CA erred in upholding CIAC's jurisdiction over the present case; and (b) whether the CA erred in holding that Federal was liable to pay Power the amount of ₱7,140,728.07.

Ruling of the Court

The appeal is bereft of merit.

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11 Id. at 44-45..
12 Id. at 38.
13 Id. at 42-43.
14 *Rollo*, p. 47.

1.
The parties had an effective agreement to submit to voluntary arbitration; hence, the CIAC had jurisdiction

The need to establish a proper arbitral machinery to settle disputes expeditiously was recognized by the Government in order to promote and maintain the development of the country's construction industry. With such recognition came the creation of the CIAC through Executive Order No. 1008 (E.O. No. 1008), also known as *The Construction Industry Arbitration Law.* Section 4 of E.O. No. 1008 provides:

> Sec. 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration. x** x x

Under the CIAC *Revised Rules of Procedure Governing Construction Arbitration* (CIAC *Revised Rules*), all that is required for the CIAC to acquire jurisdiction is for the parties of any construction contract to agree to submit their dispute to arbitration.[15] Also, Section 2.3 of the CIAC *Revised Rules* states that the agreement may be reflected in an arbitration clause in their contract or by subsequently agreeing to submit their dispute to voluntary arbitration. The CIAC *Revised Rules* clarifies, however, that the agreement of the parties to submit their dispute to arbitration need not be signed or be formally agreed upon in the contract because it can also be in the form of other modes of communication in writing, *viz.*:

> RULE 4 - EFFECT OF AGREEMENT TO ARBITRATE
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> SECTION 4.1. Submission to CIAC jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute **shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction**, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.
>
> 4.1.1 When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the Claimant may invoke the jurisdiction of CIAC.
>
> 4.1.2 An **arbitration agreement** or a **submission to arbitration** shall be

[15] Rule 4, *CIAC Revised Rules*; *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, G.R. Nos. 167022 & 169678, April 4, 2011, 647 SCRA 83, 97.

> in **writing**, but it **need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration. It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams, electronic mail or any other mode of communication.**

The liberal application of procedural rules as to the form by which the agreement is embodied is the objective of the CIAC *Revised Rules*. Such liberality conforms to the letter and spirit of E.O. No. 1008 itself which emphasizes that the modes of voluntary dispute resolution like arbitration are always preferred because they settle disputes in a speedy and amicable manner. They likewise help in alleviating or unclogging the judicial dockets. Verily, E.O. No. 1008 recognizes that the expeditious resolution of construction disputes will promote a healthy partnership between the Government and the private sector as well as aid in the continuous growth of the country considering that the construction industry provides employment to a large segment of the national labor force aside from its being a leading contributor to the gross national product.[16]

Worthy to note is that the jurisdiction of the CIAC is over the dispute, not over the contract between the parties.[17] Section 2.1, Rule 2 of the CIAC *Revised Rules* particularly specifies that the CIAC has original and exclusive jurisdiction over *construction disputes*, whether such *disputes arise* from or are merely *connected with* the construction contracts entered into by parties, and whether such disputes arise *before* or *after* the completion of the contracts. Accordingly, the execution of the contracts and the effect of the agreement to submit to arbitration are different matters, and the signing or non-signing of one does not necessarily affect the other. In other words, the formalities of the contract have nothing to do with the jurisdiction of the CIAC.

Federal contends that there was no mutual consent and no meeting of the minds between it and Power as to the operation and binding effect of the arbitration clause because they had rejected the draft service contract.

The contention of Federal deserves no consideration.

Under Article 1318 of the *Civil Code*, a valid contract should have the following essential elements, namely: (*a*) consent of the contracting parties; (*b*) object certain that is the subject matter of the contract; and (*c*) cause or consideration. Moreover, a contract does not need to be in writing in order to be obligatory and effective unless the law specifically requires so.

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[16] See perambulatory clauses of E.O. No. 1008.

[17] *National Irrigation Administration v. Court of Appeals*, G.R. No. 129169, November 17, 1999, 318 SCRA 255, 269.

Pursuant to Article 1356[18] and Article 1357[19] of the *Civil Code*, contracts shall be obligatory in whatever form they may have been entered into, provided that all the essential requisites for their validity are present. Indeed, there was a contract between Federal and Power even if the Contract of Service was unsigned. Such contract was obligatory and binding between them by virtue of all the essential elements for a valid contract being present.

It clearly appears that the works promised to be done by Power were already executed albeit still incomplete; that Federal paid Power ₱1,000,000.00 representing the originally proposed downpayment, and the latter accepted the payment; and that the subject of their dispute concerned only the amounts still due to Power. The records further show that Federal admitted having drafted the Contract of Services containing the following clause on submission to arbitration, to wit:

> 15. ARBITRATION COMMITTEE – All disputes, controversies or differences, which may arise between the Parties herein, out of or in relation to or in connection with this Agreement, or for breach thereof shall be settled by the Construction Industry Arbitration Commission (CIAC) which shall have original and exclusive jurisdiction over the aforementioned disputes.[20]

With the parties having no issues on the provisions or parts of the Contract of Service other than that pertaining to the downpayment that Federal was supposed to pay, Federal could not validly insist on the lack of a contract in order to defeat the jurisdiction of the CIAC. As earlier pointed out, the CIAC *Revised Rules* specifically allows any written mode of communication to show the parties' intent or agreement to submit to arbitration their present or future disputes arising from or connected with their contract.

The CIAC and the CA both found that the parties had disagreed on the amount of the downpayment. On its part, Power indicated after receiving and reviewing the draft of the Contract of Service that it wanted 30% as the downpayment. Even so, Power did not modify anything else in the draft, and returned the draft to Federal after signing it. It was Federal that did not sign the draft because it was not amenable to the amount as modified by Power. It is notable that the arbitration clause written in the draft of Federal was unchallenged by the parties until their dispute arose.

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[18] Article 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

[19] Article 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[20] *Rollo*, p. 34.

Moreover, Federal asserted the original contract to support its claim against Power. If Federal would insist that the remaining amount due to Power was only ₱1,641,513.94 based on the original contract,[21] it was really inconsistent for Federal to rely on the draft when it is beneficial to its side, and to reject its efficacy and existence just to to relieve itself from the CIAC's unfavorable decision.

The agreement contemplated in the CIAC *Revised Rules* to vest jurisdiction of the CIAC over the parties' dispute is not necessarily an arbitration clause to be contained only in a signed and finalized construction contract. The agreement could also be in a separate agreement, or any other form of written communication, as long as their intent to submit their dispute to arbitration is clear. The fact that a contract was signed by both parties has nothing to do with the jurisdiction of the CIAC, and this is the explanation why the CIAC *Revised Rules* itself expressly provides that the written communication or agreement need not be signed by the parties.

Although the agreement to submit to arbitration has been expressly required to be in writing and signed by the parties therein by Section 4[22] of Republic Act No. 876 (*Arbitration Law*),[23] the requirement is conspicuously absent from the CIAC *Revised Rules*, which even expressly allows such agreement not to be signed by the parties therein.[24] Brushing aside the obvious contractual agreement in this case warranting the submission to arbitration is surely a step backward.[25] Consistent with the policy of encouraging alternative dispute resolution methods, therefore, any doubt should be resolved in favor of arbitration.[26] In this connection, the CA correctly observed that the act of Atty. Albano in manifesting that Federal had agreed to the form of arbitration was unnecessary and inconsequential considering the recognition of the value of the Contract of Service despite its being an unsigned draft.

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[21] Id.

[22] Section 4. *Form of arbitration agreement.* – A contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy, shall be in writing and subscribed by the party sought to be charged, or by his lawful agent.

The making of a contract or submission for arbitration described in section two hereof, providing for arbitration of any controversy, shall be deemed a consent of the parties of the province or city where any of the parties resides, to enforce such contract of submission.

[23] *An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes*; June 19, 1953.

[24] Subsection 4.1.2, Rule 4 of the CIAC *Revised Rules*.

[25] *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, G.R. No. 141833, March 26, 2003, 399 SCRA 562, 569.

[26] Id. at 570.

2.
Amounts as modified by the CA are correct

We find no reversible error regarding the amounts as modified by the CA. Power did not sufficiently establish that the change or increase of the cost of materials and labor was to be separately determined and approved by both parties as provided under Article 1724 of the *Civil Code*. As such, Federal should not be held liable for the labor cost escalation.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 12, 2013; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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