



Republic of the Philippines
Supreme Court
 Manila

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 HONORABLE JUSTICE
 DIVISION
 JAN 08 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 213832

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

PERALTA,
 BERSAMIN,*
 VILLARAMA, JR., and
 REYES, JJ.

GILBERT MERCADO a.k.a.
“Bong”,
 Accused-Appellant.

Promulgated:
December 7, 2015

[Signature]

RESOLUTION

REYES, J.:

Subject of this appeal¹ is the Decision² dated November 29, 2013 of the Court of Appeals (CA) in CA-GR CR-HC No. 00941-MIN, which affirmed with modification the Decision³ dated March 28, 2011 of the Regional Trial Court (RTC) of Zamboanga City, Branch 16, in Criminal Case Nos. 18497 and 18498, convicting accused-appellant Gilbert Mercado a.k.a. “Bong” (Mercado) for two counts of Murder.

* Additional Member per Raffle dated September 10, 2014 vice Associate Justice Francis H. Jardeleza.

¹ Rollo, pp. 14-15.

² Penned by Associate Justice Renato C. Francisco, with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring; id. at 3-13.

³ Rendered by Judge Jesus C. Carbon, Jr.; CA rollo, pp. 44-62.

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Mercado was charged in separate informations with two counts of Murder for the deaths of Victor Dulap y Vargas (Victor) and Charlie Dulap y Vargas (Charlie) on October 31, 2001 in Zamboanga City, specifically:

IN CRIMINAL CASE NO. 18497

That on or about October 31, 2001, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a handgun, 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 with the use of said weapon that he was then armed with, at the person of [Victor], thereby inflicting mortal gunshot wound on the fatal part of the latter's body which directly caused his death, to the damage and prejudice of the heirs of said victim; furthermore, there being present an aggravating circumstance in that the weapon used in the commission of the crime is an unlicensed firearm.⁴

IN CRIMINAL CASE NO. 18498

That on or about October 31, 2001, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a handgun, 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 with the use of said weapon that he was then armed with, at the person of [Charlie], thereby inflicting mortal gunshot wounds on the fatal part of the latter's body which directly caused his death, to the damage and prejudice of the heirs of said victim; furthermore, there being present an aggravating circumstance in that the weapon used in the commission of the crime is an unlicensed firearm.⁵

During the arraignment, Mercado pleaded "not guilty" to both charges. After pre-trial, trial on the merits ensued.⁶

The prosecution presented several witnesses to support their cases against Mercado. Based on the witnesses' testimonies, the killings happened on the evening of October 31, 2011 at the residence of Rosario Isad y Solis (Rosario) in Gemelina Drive, San Roque, Zamboanga City. Rosario had visitors on that day because it was her daughter Restie Ann's birthday. Among those present were her neighbors Victor and Charlie, Analiza Sahibul (Analiza) with boyfriend Mercado and companions Edwin Udja and a certain "Eddie". The visitors were at the *sala*, sitting on the floor and singing while having food and alcoholic drinks.⁷

⁴ Id. at 44-45.

⁵ Id. at 45.

⁶ Id.

⁷ Id. at 46-50.

While Rosario was at the kitchen reheating more food, she heard three gunshots. She then went to the *sala* and there found Victor and Charlie; her other visitors had left. Rosario saw Charlie still holding a glass of *tuba*, while Victor's head was bowed down, like he was drunk. She saw blood on Victor, Charlie, and the floor. She shouted, "*Hay Sangre*" (Oh, blood), collapsed and lost her consciousness. She later learned that both Victor and Charlie had died.⁸ In their death certificates, it was stated that the victims died due to hemorrhage secondary to gunshot wounds.⁹

Witnesses Rosario and Analiza identified in court Mercado as the same "Bong" who was with them on October 31, 2011. Analiza further identified Mercado as the person who shot Victor and Charlie. She claimed that no fight or altercation ensued between Mercado and his victims before the shooting. Mercado also did not say anything before he fired gunshots at them.¹⁰

The victims' deaths were reported to the Sta. Maria Police Station by their sister at about 11:00 p.m. on October 31, 2001. Among the policemen who proceeded to the crime scene was Senior Police Officer 3 Fernando Gregorio, who claimed to have seen the victims with gunshot wounds on their faces. Victor had a gunshot wound on his right nostril, while Charlie had gunshot wounds on both eyeballs.¹¹ Prior to their demise, Victor and Charlie worked as carpenters. Victor was married to one Rowena and had one child, while Charlie was married to one Gigi, with whom he had two children.¹²

To refute the prosecution's claims, the defense presented two witnesses, namely Mercado and his father, Carlos Mercado y Torres.¹³ Mercado denied material points in the testimonies of the prosecution witnesses, particularly: *first*, knowing prosecution witness Analiza; *second*, being at Rosario's residence on October 31, 2001; and, *third*, shooting Victor and Charlie.¹⁴ The defense claimed that on the evening of October 31, 2001, Mercado was at his family's home in *Barangay Tetuan*,¹⁵ then to his father's home that was also within the area. By 9:00 p.m., he was back to his house, where he then slept together with his wife and four children. The following day, he worked at his father's shop in Sta. Catalina, Zamboanga City, where he painted motor vehicles. Mercado did not know

⁸ Id. at 46-47.

⁹ *Rollo*, p. 6.

¹⁰ *CA rollo*, pp. 47-50.

¹¹ Id. at 53-54.

¹² Id. at 51.

¹³ Id. at 45.

¹⁴ Id. at 54-55.

¹⁵ *Rollo*, p. 10.

of any reason why Rosario and Analiza would falsely testify against him and implicate him in the killings.¹⁶

On March 28, 2011, the RTC rendered its joint Decision,¹⁷ with dispositive portion that reads:

WHEREFORE, the Court finds accused **GILBERT MERCADO y CABUCOS GUILTY** beyond reasonable doubt, as principal, of the crimes of Murder charged in Criminal Case No. 18497 and Criminal Case No. 18498, with the aggravating circumstance in both cases of use of an unlicensed firearm, and **SENTENCES** said accused as follows:

1. In Criminal Case No. 18497 for Murder, in connection with the untimely death of **VICTOR DULAP y VARGAS**, to suffer the penalty of **RECLUSION PERPETUA** and its accessory penalties, without eligibility for parole; to pay the heirs of Victor Dulap y Vargas Php 75,000.00 as indemnity for his death; Php 75,000.00 as moral damages; Php 50,000.00 as exemplary damages; Php 30,000.00 as temperate damages in lieu of actual damages and to pay the costs; and

2. In Criminal Case No. 18498 for Murder, in connection with the untimely death of **CHARLIE DULAP y VARGAS**, to suffer the penalty of **RECLUSION PERPETUA** and its accessory penalties, without eligibility for parole; to pay the heirs of [Charlie] Dulap y Vargas Php 75,000.00 as indemnity for his death; Php 75,000.00 as moral damages; Php 50,000.00 as exemplary damages; Php 30,000.00 as temperate damages in lieu of actual damages and to pay the costs.

SO ORDERED.¹⁸

Upon appeal, the CA affirmed with modification the RTC's judgment. The CA affirmed Mercado's conviction for two counts of murder; however, it ruled that the aggravating circumstance of use of an unlicensed firearm was wrongly considered by the RTC. It explained:

The aggravating circumstance must be proved with equal certainty as the commission of the crime charged. The prosecution is burdened to prove that [Mercado] used an unlicensed firearm to perpetrate the crime of murder. Unfortunately, the prosecution failed to discharge such burden. It has offered no documents which would prove such allegation when it could have easily secured a certification from the Philippine National Police to the effect that no firearm license was issued to [Mercado] to possess and carry the gun used in the killing.¹⁹ (Citation omitted)

¹⁶ CA rollo, pp. 55-57.

¹⁷ Id. at 44-62.

¹⁸ Id. at 61-62.

¹⁹ Rollo, pp. 10-11.

Given the prosecution's failure to establish the aggravating circumstance, the CA likewise modified the amount of damages due the victims' heirs, through the deletion of the award of exemplary damages. Thus, the dispositive portion of its Decision dated November 29, 2013 reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The appealed joint Decision dated March 28, 2011 of the [RTC], Branch 16 of Zamboanga City, in Criminal Case Nos. 18497 and 18498 is hereby **AFFIRMED** with modification as to the damages awarded, such that [Mercado] is **ORDERED** to pay the heirs of Victor Dulap y Vargas, in Criminal Case No. 18497, the following: 1) Moral damages of P75,000.00; 2) Civil indemnity of P75,000.00[;] and 3) Temperate damages in the amount of P30,000.00. Moreover, he is **ORDERED** to pay the heirs of Charlie Dulap y Vargas, in Criminal Case No. 18498, the following: 1) Moral damages of P75,000.00; 2) Civil indemnity of P75,000.00[;] and 3) Temperate damages of P30,000.00.

SO ORDERED.²⁰

Hence, this appeal.

Upon review, the Court finds the appeal bereft of merit.

In challenging his conviction, Mercado's arguments delve primarily on the matter of the prosecution witnesses' account that he was responsible for the shooting of the deceased brothers, Victor and Charlie. Particularly, he maintained that the prosecution failed to prove the identity of the victims' assailant. He specifically questioned the credibility of witness Analiza and the truth of her accusations against him.

These arguments of Mercado fail to persuade the Court to rule on his acquittal. *First*, it is a settled doctrine that "factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given highest respect."²¹ The Court considers the RTC's "unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses."²² Thus, the Court "accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case."²³ Although jurisprudence cites certain exceptions to this doctrine, none of these exceptional circumstances attend the present case.²⁴

²⁰ Id. at 12-13.

²¹ *People v. Mamaruncas, et al.*, 680 Phil. 192, 211 (2012).

²² *People v. Sanchez*, 681 Phil. 631, 635 (2012).

²³ *Kummer v. People*, G.R. No. 174461, September 11, 2013, 705 SCRA 490, 500.

²⁴ *See Lazaro, et al. v. Agustin, et al.*, 632 Phil. 310, 322 (2010).

In addition to the foregoing, jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.²⁵ It bears stressing that the defense failed to present any possible reason for Analiza, Rosario, and the other prosecution witnesses to wrongly implicate Mercado in the crimes. The prosecution's case against Mercado was not even weakened by the mere fact that he was the lone accused sitting on the prisoners' bench at the time he was identified by prosecution witnesses inside the courtroom during hearings. The prosecution witnesses sufficiently explained in court how they came to know of Mercado, and their degree of familiarity with him, especially Analiza who was his girlfriend.²⁶

Given the credibility of the prosecution witnesses and their testimonies, as against the denial and *alibi* presented by the defense, there is no reason for the Court to reverse the conviction of Mercado. His denial and the *alibi* that he was at some other place at the time the shootings happened failed to sufficiently support his plea for an acquittal. Jurisprudence holds that for *alibi* to prosper, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses.²⁷ The defense failed in this regard, as only the testimony of Mercado's father was presented to substantiate his claim. More importantly, the Court has emphasized in a line of cases that the appreciation of a claim of *alibi* shall be guided by the following parameters:

For the defense of alibi to prosper, "the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime" during its commission. "Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed."²⁸ (Citations omitted)

Such physical impossibility was not established in this case, given the RTC's finding that *Barangay Tetuan*, where Mercado claimed to be at when the killings happened on the evening of October 31, 2001, was a mere seven kilometers away from *Barangay San Roque*. As the Court ruled in *People v. Adallom*,²⁹ "denial and alibi are self-serving

²⁵ *People v. Dadao*, G.R. No. 201860, January 22, 2014, 714 SCRA 524, 535.

²⁶ *CA rollo*, pp. 47-48.

²⁷ *People v. Jacinto*, 661 Phil. 224, 246 (2011).

²⁸ *People of the Philippines v. Virgilio Amora y Viscarra*, G.R. No. 190322, November 26, 2014; See also *People v. Jumawan*, G.R. No. 187495, April 21, 2014, 722 SCRA 108, 169; *People v. Ramos*, G.R. No. 190340, July 24, 2013, 702 SCRA 204, 217.

²⁹ 683 Phil. 618 (2012).

negative evidence; they cannot prevail over the spontaneous, positive, and credible testimonies of the prosecution witnesses who pointed to and identified the accused-appellant as the malefactor.”³⁰

As to the penalties imposed and damages awarded, the CA correctly affirmed the pronouncement that Mercado was ineligible for parole, and in deleting the award of exemplary damages. Section 3 of Republic Act No. 9346³¹ provides that “[p]erson convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.” Exemplary damages, on the other hand, may be granted under Article 2230 of the Civil Code when the crime was committed with one or more aggravating circumstance.³² Although there are instances when it may be granted despite the absence of any aggravating circumstance,³³ the circumstances attending the present case fail to warrant an award.

Several modifications, however, need to be effected on the other damages. The award of civil indemnity should be reduced from ₱75,000.00 to ₱50,000.00, consistent with prevailing jurisprudence.³⁴ Considering that no aggravating circumstance was found to attend the subject killings, the award of moral damages is also decreased to ₱50,000.00.³⁵ The amount of temperate damages is likewise reduced from ₱30,000.00 to ₱25,000.00.³⁶ Further to these, interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded, to be computed from the date of finality of judgment until full payment.³⁷

WHEREFORE, the Decision dated November 29, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 00941-MIN is **AFFIRMED** with **MODIFICATION** in that the damages that accused-appellant Gilbert Mercado is ordered to pay the heirs of Victor Dulap y Vargas are as follows: (1) civil indemnity of ₱50,000.00; (2) moral damages of ₱50,000.00; (3) temperate damages of ₱25,000.00; and (4) interest on all damages at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full payment.

³⁰ Id. at 644.

³¹ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

³² *People v. Del Castillo, et al.*, 679 Phil. 233, 258 (2012).

³³ *See People v. Alfredo*, 653 Phil. 435, 454 (2010).

³⁴ *People of the Philippines v. Randy Bañez y Baylon and Ramil Bañez y Baylon, and Felix Rufino (at large)*, G.R. No. 198057, September 21, 2015.

³⁵ *People v. Dadao*, *supra* note 25, at 541.

³⁶ *Guevarra v. People*, G.R. No. 170462, February 5, 2014, 715 SCRA 384, 397; *People v. Zulieta*, G.R. No. 192183, November 11, 2013, 709 SCRA 202, 212.

³⁷ *Guevarra v. People*, *id.* at 398; *People v. Zulieta*, *id.*

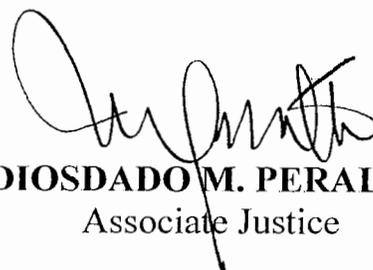
Similarly, the damages that accused-appellant Gilbert Mercado is ordered to pay the heirs of Charlie Dulap y Vargas are as follows: (1) civil indemnity of ₱50,000.00; (2) moral damages of ₱50,000.00; (3) temperate damages of ₱25,000.00; and (4) interest on all damages at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until full payment.

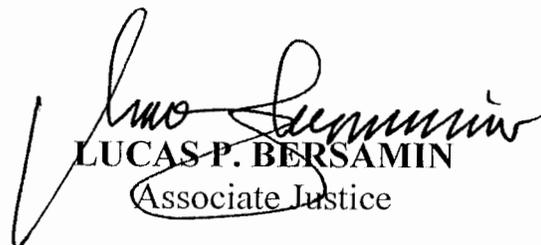
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

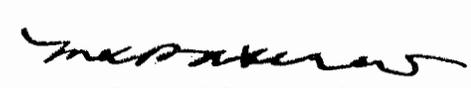
ATTESTATION

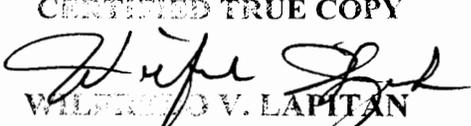
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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 Resolution 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JAN 08 2016

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