



Republic of the Philippines
Supreme Court
 Manila

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 WILFREDO V. LAPITAN
 Division Clerk of Court
 THIRD DIVISION
 DEC 04 2015

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 215319

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
 BRION,*
 PERALTA,
 VILLARAMA, JR., and
 REYES, JJ.

APOLONIO BABOR @
"JULITO",
 Accused-Appellant.

Promulgated:

October 21, 2015

X----------X

DECISION

VILLARAMA, JR., J.:

On appeal is the July 4, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 01618 convicting accused-appellant Apolonio "Julito" Babor of murder.

We state the antecedents as summarized by the CA²:

In an Information³ dated 14 April 2005, accused-appellant was charged with Murder, the accusatory portion of which reads as follows:

"That at about 10:00 o'clock in the evening of January 25, 2005 at Sitio M[o]logpolog, Barangay Nalundan, Bindoy, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, evident premeditation and treachery, and then and there willfully, unlawfully and feloniously attack, assault and hack many times one Bartolome Amahit with the use of long bolo "pinuti" with

* Designated additional Member per Special Order No. 2252 dated October 14, 2015.
¹ *Rollo*, pp. 3-14. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Marilyn B. Lagura-Yap and Jhosep Y. Lopez.
² *Id.* at 4-8.
³ *Records*, pp. 4-5.

which the accused was then armed and provided, thereby inflicting the following injuries, thus:

1. (+) hacking wound, oblique, 11 cm x 4 cm, muscle deep, proximal 3rd, posterolateral aspect, left leg.
2. Abrasion, 1 x 1 cm, medial 3rd, posterior aspect, right forearm.
3. (+) hacking wound, 4 x 2 cm, oblique, right preauricular area.
4. (+) hacking wound, 9 x 3 cm, oblique penetrating the skull bone, right temporal area.
5. (+) hacking wound, 11 x 7.5 cm, circular, exposing the brain and blood vessels, coronal area.

which injuries caused the instantaneous death of the victim.

To the damage and prejudice of the heirs of the victim Bartolome Amahit.

CONTRARY TO Article 248 of the Revised Penal Code.”

When arraigned on 27 June 2005, accused-appellant, duly assisted by counsel, pleaded “not guilty” to the crime charged. Pre-trial was then set and after the same was concluded, trial on the merits ensued with both parties presenting their respective evidence.

Version of the Prosecution

The prosecution presented Marife Babor and Dr. Leah [Brun]-Salvatierra⁴ as witnesses.

Marife Babor testified, in substance, that she is the wife of accused-appellant Apolonio “Julito” Babor. On 25 January 2005, she and her husband (accused-appellant) went to her parents’ house in Sitio M[o]logpolog, Nalundan, Bindoy, [Negros Oriental]. At about 8:00 o’clock in the evening, accused-appellant asked permission from Marife Babor that he will go to his father’s house, to which the latter consented. After the accused-appellant left, Marife went to sleep together with her parents and her six-year-old son. All of them slept in one room. At about 10[:00] o’clock in the evening, Marife was awakened by noise coming from the door. So she lighted a kerosene lamp and it was then that she saw her husband (accused-appellant) bringing a bolo. She approached him but then, the accused-appellant stooped down and hacked her left foot. Immediately thereafter, accused-appellant hacked her father, Bartolome Amahit, who was still asleep[,] hitting his head. Upon being hit, Bartolome squatted and then fell down lying. While Bartolome was lying down, accused-appellant continued hacking him[,] hitting Bartolome’s face and arm after which the accused-appellant left the house through the door. Marife knew that it was the accused-appellant who hacked her father and inflicted [a] wound on her because the accused-appellant was her husband and the place was illuminated by the kerosene lamp. Marife and her mother shouted for help but nobody came. As

⁴ Also referred to as Dr. Leah Bron Salvatiera in some parts of the records.

Marife was already wounded and her father already dead, she and her mother proceeded to Bindoy Hospital to have her wounded foot treated.

Dr. Leah [Brun-]Salvatierra, on the other hand, testified on the post-mortem examination she conducted on Bartolome Amahit's body on 26 January 2005. She said that when she conducted the examination, Bartolome Amahit's body was already in the state of rigor mortis. She reduced her findings into writing as follows:

1. (+) hacking wound, oblique, 11 cm x 4 cm, muscle deep, proximal 3rd, posterolateral aspect, left leg.
2. Abrasion, 1 x 1 cm, medial 3rd, posterior aspect, right forearm.
3. (+) hacking wound, 4 x 2 cm, oblique, right preauricular area.
4. (+) hacking wound, 9 x 3 cm, oblique penetrating the skull bone, right temporal area.
5. (+) hacking wound, 11 x 7.5 cm, circular, exposing the brain and blood vessels, coronal area.

Dr. [Brun-]Salvatierra explained that except wound number 2, which is an abrasion, all the four wounds were caused by a sharp bladed instrument like a bolo, and that wounds numbers (sic) 1, 4 and 5 are fatal. The victim died due to hemorrhagic shock secondary to multiple hacking wounds. During her cross-examination, counsel for the defense asked if it would be possible that wound number 2 may be caused by a struggle and if wounds numbers (sic) 3, 4 and 5 may be caused while the victim was standing and facing the assailant. Dr. [Brun-]Salvatierra answered in the affirmative.

Version of the Defense

Accused-appellant was presented as the lone witness for the defense. He testified that his name is Julito Babor and that the prosecution gave the wrong name (Apolonio) in filing the instant case. However, since accused-appellant admitted during the pre-trial his identity as Apolonio Babor, the Court allowed the prosecution to amend the information to reflect the other name of the [accused-appellant] also known as Julito.

Accused-appellant Apolonio a.k.a. "Julito" Babor denied killing his father-in-law and testified as to what happened on the night of 25 January 2005. According to him, he and his wife, Marife, went to the house of his parents-in-law to spend the night there as the following day they will go to Abaca to sell a carabao. At about 10:00 o'clock in the evening while they were sleeping, he woke up because somebody was trying to open the door. With that, he went near the door but then he was hacked. Upon being hit, and without waking up his wife and parents-in-law, he jumped out of the window. While he was running, somebody stoned him twice hitting his head and buttocks but he did not shout for help because he was already injured. Because it was very dark, he went inside the sugarcane field and hid until about 6:00 o'clock in the morning that he came out of the field. (sic) While walking, he met one of his uncles, who assisted him to go to Cabcaban and from there he was brought to the hospital for treatment. At the hospital, his father visited him but he was not informed of what befell his father-in-law until he was discharged and his father brought him to jail. In jail, he was informed by the police officers that his father-in-law was killed and he was the suspect.

The Ruling of the RTC

On 22 February 2013, the trial court rendered a decision⁵ convicting the accused-appellant of the crime of murder. The trial court gave weight to the testimony of Marife that it was her husband (accused-appellant) who killed her father and that the same was qualified by treachery since the victim (Bartolome Amahit) was sleeping when he was hacked by the accused-appellant. The Court noted that the accused-appellant's jealousy and ire over his father-in-law might have prompted him to commit the crime. More importantly, the [c]ourt underscored that Marife's testimony deserves consideration since she has no motive to falsely testify against her husband whom she positively identified. On the other hand, the trial court finds (sic) the accused-appellant's defense of denial as flimsy saying that if it was true that he was hacked inside the house of his parents-in-law, he could have shouted for help and not just jumped out of the window and ran inside the sugarcane field. It also finds (sic) the accused-appellant's account of the incident including how he was injured as hazy. The trial court then reminded that denial, like alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence bearing no weight in law.

The Regional Trial Court (RTC) ruled:

WHEREFORE, premises considered, accused APOLONIO A.K.A. "JULITO" BABOR is hereby found GUILTY beyond reasonable doubt of the crime of Murder and is hereby sentenced to *Reclusion Perpetua* and to indemnify the heirs of the victim the amount of P50,000.00 for the loss of the life of Bartolome Amahit and P100,000.00 as moral damages without subsidiary imprisonment in case of insolvency.

SO ORDERED.⁶

Accused-appellant appealed the RTC Decision. The CA affirmed the RTC ruling that the testimony of accused-appellant's wife was sufficient to establish the crime of murder. The CA rejected the argument of accused-appellant that the medical findings indicate that the victim Bartolome Amahit (Bartolome) was stabbed while he was standing, contrary to Marife Babor's (Marife) narration that the victim was hacked while sleeping. The CA pointed out that Dr. Brun-Salvatierra only alluded to the possibility of the victim being hacked while standing. The CA likewise disregarded the contention of accused-appellant that his guilt was not proved because his motive was not established. The CA held that motive is not an element of murder. The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated 22 February 2013 of the Regional Trial Court, Branch 45, Bais City, finding accused-appellant Apolonio Babor y Balasabas a.k.a. "Julito Babor" guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of *reclusion perpetua*, is hereby AFFIRMED with MODIFICATION in that in addition to the civil liability of P50,000.00 and moral damages of P100,000.00, the accused-appellant

⁵ Records, pp. 126-130. The Decision was penned by Executive Judge Candelario V. Gonzalez.

⁶ Id. at 130.

is hereby ordered to pay the heirs of the victim exemplary damages in the amount of P30,000.00, all of which awards shall bear interest of 6% from the finality of this decision.

SO ORDERED.⁷

Hence, this appeal.

The issue to be resolved is whether the guilt of accused-appellant was proven beyond reasonable doubt.

We rule in the affirmative.

The elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of *any* of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code, as amended; (4) the killing constitutes neither parricide nor infanticide.⁸

In this case, it was established by the testimony of Marife, accused-appellant's wife, that Bartolome was killed by accused-appellant, to wit:

[Pros. Ybañez]

Q: While at the house of your father [Bartolome] on January 25, 2005 in the evening, at 10:00 o'clock can you recall where you were then at that time?

[Marife Babor]

A: I was still in the house.

Q: Can you recall if there was any unusual incident that happened at 10:00 o'clock in the evening?

A: Yes.

Q: And, what is that unusual incident that you are referring to?

A: I was hacked by Apolonio.

Q: You mean to say, Apolonio Babor the accused in this case hacked you?

A: Yes.

x x x x

Q: After that, what happened then if any?

A: **Apolonio hacked my father.**

x x x x

Q: **When Apolonio hacked your father where was your father hit?**

⁷ Rollo, pp. 13-14.

⁸ *People v. De Castro*, G.R. No. 205316, June 29, 2015, p. 5.

- A: On the head.**
- Q: What part of the head can you please point where was that located?**
- I: Witness pointing to the top of the head.**
- Q: After your father was hit at the head what happened to your father then?
- A: After he was hit he squatted.
- Q: And, after that what happened then?
- A: He was lying down.
- Q: After he lie[d] down what did Apolonio do?**
- A: He continued delivering hacking blows towards my father.**
- Q: And, where was your father hit?**
- A: At his face.⁹ (Emphasis supplied)**

We are convinced that Marife was able to identify accused-appellant and see the incident that occurred on January 25, 2005 because the room where the killing took place was illuminated by a kerosene lamp.¹⁰ The testimony of Marife, indicating where accused-appellant hacked the victim, was consistent with the post-mortem examination results¹¹ indicative of the location of the fatal wounds numbered 3, 4 and 5 at the head and face of the victim.¹² Also, we point out that the RTC found that Marife had no motive to falsely testify against her husband.¹³ Based on the foregoing, we agree with the lower courts that the testimony of Marife was sufficient to establish that accused-appellant killed Bartolome.

With respect to the presence of treachery in the killing of Bartolome, which is a qualifying circumstance necessary for a murder conviction, paragraph 16 of Article 14 of the Revised Penal Code, as amended, defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.¹⁴ In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.¹⁵

⁹ TSN, November 29, 2006, pp. 6-8.

¹⁰ Id. at 12-15.

¹¹ Records, p. 10.

¹² Id. at 12.

¹³ Id. at 130.

¹⁴ *People v. Dolorido*, 654 Phil. 467, 476 (2011).

¹⁵ *People v. Dolorido*, id., citing *People v. Reyes*, 350 Phil. 683, 693 (1998).

In this case, accused-appellant killed the victim with a bolo at night time and while he was sleeping. Clearly, he was not in a position to defend himself. Also, it is evident that accused-appellant consciously and deliberately waited for the victim to sleep, returned to the house late at night and armed himself with a bolo to ensure the success of his atrocious act. Thus, we affirm the finding that treachery attended the killing of Bartolome.

The argument of accused-appellant that the wounds could only be inflicted while the victim was standing deserves scant consideration as Dr. Brun-Salvatierra only testified that it was possible that such wounds were inflicted while the victim was standing, to wit:

[Atty. Lajot]

Q: This wound (sic) Nos. 3, 4 and 5, would it be **possible** that the victim was standing at the time these injuries were inflicted?

x x x x

[Dr. Brun-Salvatierra]

A: Yes.¹⁶ (Emphasis supplied)

The Court has ruled that possibility is not synonymous with evidence.¹⁷ The mere possibility stated and the lack of a categorical statement that the wounds could not have possibly been inflicted while the victim was lying down as positively narrated by Marife necessarily dismantle the contention of accused-appellant.

As to the denial of accused-appellant and his explanation of the incident on January 25, 2005, we find the denial and explanation insufficient for an acquittal.

The Court has ruled that denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.¹⁸

This Court notes the observation of the RTC that if it were true that appellant was hacked by an unknown assailant in the house of his parents-in-law, he could have shouted for help and not just jumped out of the window and run towards the sugarcane field. Indeed, we find it hard to believe that he was hacked by an unknown assailant while lying next to his wife¹⁹ and yet, he did not shout for help nor warn the other people in the room nor make any noise out of fear, surprise, or his alleged efforts to escape that would have been heard by Marife or the others in the same room. We

¹⁶ TSN, June 14, 2006, pp. 9-10.

¹⁷ *People v. Sumarago*, 466 Phil. 956, 970 (2004).

¹⁸ *Avelino v. People*, G.R. No. 181444, July 17, 2013, 701 SCRA 477, 485.

¹⁹ TSN, March 4, 2009, p. 7.

further observe that accused-appellant could not even consistently narrate when he was hacked by the alleged unknown assailant as he initially testified that he was hacked while lying down.²⁰ Later on, however, he stated that he was only hacked when he went to the door because someone was trying to open it.²¹ His denial and unlikely explanation, described by the RTC as very flimsy, cannot prevail over the positive identification of accused-appellant by Marife, an eyewitness to the crime.

As to the failure to prove that accused-appellant killed Bartolome because of jealousy, the CA correctly pointed out that such failure to prove the motive of accused-appellant in killing the victim will not exonerate accused-appellant in this case.

Motive is generally held to be immaterial because it is not an element of the crime.²² Further, the Court has ruled that motive is not essential to convict when there is no doubt as to the identity of the culprit.²³

The fact that motive is not an element of the crime charged and the positive identification of accused-appellant by his wife as the author of the crime necessarily eliminate the need to establish the latter's motive in this case.

In sum, we hold that the lower courts did not commit reversible error when they found the testimony of Marife sufficient to establish that accused-appellant murdered Bartolome. Well-settled is the rule that findings of fact of the trial court and the CA are not to be disturbed on appeal and are entitled to great weight and respect.²⁴ We find no cogent reason to disturb the findings and conclusion of the RTC and CA.

As to the award of damages, we affirm the award of ₱30,000 as exemplary damages being in conformity with prevailing jurisprudence. We deem it proper, however, to adjust the award of civil indemnity and moral damages to ₱75,000 in line with recent jurisprudence involving convictions for murder.²⁵

WHEREFORE, in light of all the foregoing, the appeal is hereby **DISMISSED**. The Decision dated July 4, 2014 of the Court of Appeals in CA-G.R. CEB CR HC No. 01618 convicting accused-appellant Apolonio "Julito" Babor of Murder is **AFFIRMED** with **MODIFICATION**. Accused-appellant is sentenced to *reclusion perpetua* and ordered to pay the heirs of Bartolome Amahit the amount of ₱75,000 as civil indemnity,

²⁰ Id.

²¹ Id. at 8.

²² *Crisostomo v. Sandiganbayan*, 495 Phil. 718, 745 (2005).

²³ *People v. Pacada, Jr.*, 226 Phil. 349, 357 (1986).

²⁴ *Verdejo v. Court of Appeals*, G.R. No. 106018, December 5, 1994, 238 SCRA 781, 784.

²⁵ *People of the Philippines v. Jorie Wahiman y Rayos*, G.R. No. 200942, June 16, 2015; *People of the Philippines v. Rolly Adriano y Samson, et al.*, G.R. No. 205228, July 15, 2015.

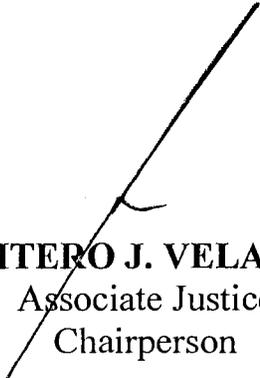
₱75,000 as moral damages and ₱30,000 as exemplary damages with interest on all damages at the rate of 6% per annum from the finality of this Decision until fully paid.

With costs against accused-appellant.

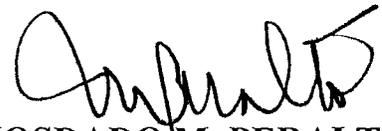
SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

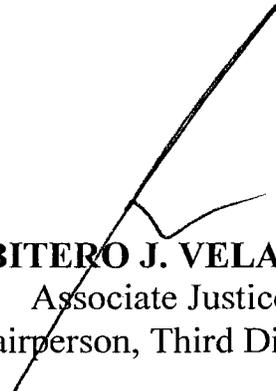

ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
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, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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

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Third Division
DEC 04 2015

