



Republic of the Philippines
Supreme Court
 Manila

UNTESTED TRUE COPY
Welford S. Lapidan
 WELFORD S. LAPIDAN
 Division Clerk of Court
 Third Division

DEC 7 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 204896

Present:

VELASCO, JR., J.
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 CAGUIOA,* JJ.

-versus-

SAMSON BERK Y BAYOGAN,
 Accused-Appellant.

Promulgated:

December 7, 2016

x-----*Welford S. Lapidan*-----x

DECISION

PEREZ, J.:

This is an appeal assailing the Decision¹ of the Court of Appeals in CA-G.R. CR-H.C. No. 04573 dated 29 June 2012 which dismissed the appeal of appellant Samson Berk y Bayogan and affirmed with modification the Decision² of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, in Criminal Case No. L-8391, which found appellant guilty beyond reasonable doubt of the crime of Murder.

Appellant and his co-accused Jeneto Serencio (Serencio) were charged before the RTC of Lingayen, Pangasinan, Branch 39 with murder as follows:

* Additional member per Raffle dated 5 December 2016.
¹ Rollo, pp. 2- 17; Penned by Associate Justice Rodil V. Zalameda with Associate Justices Rebecca De Guia- Salvador and Normandie B. Pizarro concurring.
² Records, pp. 133-143; Penned by Presiding Judge Robert P. Fangayen.

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That on or about 10:45 o'clock in the morning of December 16, 2007, in Poblacion East, Sual, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other with treachery and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, and shot **Clarita Disu** several times, inflicting upon her several gunshot wounds which [caused] her instantaneous death, to the damage and prejudice of her heirs.

Contrary to Article 248 of the Revised Penal Code in relation to RA 7659 as amended.³

During arraignment, appellant pleaded not guilty to the crime charged. Serencio remains at large. Trial on the merits thereafter ensued.

The prosecution presented eyewitnesses Marbie S. Disu (Marbie) and Loreto Inocencio (Loreto), respectively the daughter and grandson of the victim. Their testimonies established that in the morning of 16 December 2007, the victim Clarita Disu and her daughter Marbie were tending their neighbourhood variety store in Sual, Pangasinan with Loreto, when two (2) men on board a motorcycle arrived. One dismounted the vehicle and bought a cigarette from Marbie while the other stayed on the vehicle. The man who bought the cigarette suddenly pulled a gun and pointed it to Clarita and shot her four (4) times. Marbie shouted for help and ran to the fallen victim to help and embrace her. The assailant, who had been wearing a yellow t-shirt, then boarded the motorcycle and headed east. Marbie noted the motorcycle plate number as AR 3273.⁴

On 29 January 2008, police authorities invited Marbie and Loreto to the police station to identify whether the gunman had been among those whom they arrested. Of three (3) persons in the prison cell, both Marbie and Loreto pointed to appellant. Both also identified appellant in open court as the victim's assailant.⁵

Appellant asserted that he had been away on a fishing boat off Pangasinan on the date and time of the incident. He also countered that he had been arrested for alleged illegal possession of a gun. While he was in prison, Marbie came and was allegedly apprised by the police that it was appellant who had killed her mother.⁶

³ Records, p. 1.

⁴ TSN, 24 June 2008, pp. 3-7, 18-21; TSN, 15 July 2008, pp. 5-11.

⁵ Id. at 7-8; TSN, 15 July 2008, pp. 9-10.

⁶ TSN, 7 July 2009, pp. 3-12.



After trial, the RTC gave credence to the eyewitness accounts of Marbie and Loreto of appellant's liability in the killing of the victim. On 19 July 2010, the RTC rendered the assailed decision disposing as follows:

WHEREFORE, in the (sic) light of the foregoing discussions, this Court finds accused SAMSON BERK **GUILTY** beyond reasonable doubt of the crime of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, qualified by treachery. The proper impossible penalty would have been death. However, pursuant to Rep. Act No. 9346, accused is sentenced to suffer the penalty of *reclusion perpetua* without possibility of parole.

Accused is further ORDERED to pay the heirs of Clarita Disu, the amounts of (a) Php 75,000 as civil indemnity; (b) Php 75,000.00 as moral damages; (c) Php 25,000.00 as exemplary damages; and (d) Php 25,000.00 as temperate damages.

Insofar as accused JENETO SERENCIO is concerned, let the case against him be **ARCHIVED**. Let an alias warrant of arrest be issued for his immediate apprehension to be furnished to the following officers:

1. Chief of Police, PNP, Sual, Pangasinan;
2. Provincial Director, PNP, Pangasinan;
3. Regional Director, PNP, Region Office 1;
4. The NBI Director, Pangasinan;
5. The Regional Director, NBI, Regional Office 1;
6. The Director, NBI, Manila;
7. The CIDG Provincial Director, Pangasinan;
8. The Regional Director, CIDG Regional Office 1;
- 9 The National Director, CIDG, Manila; and
10. The Chief PNP, Camp Crame, Quezon City

who are all ordered to effect the immediate arrest of the above named accused and furnish this Court with their respective returns of service, the soonest.⁷

The Court of Appeals found no reason to disturb the findings of the RTC and upheld its ruling. The appellate court also found the eyewitness accounts credible, straightforward and reliable and upheld their positive identification of appellant as the perpetrator. The Court of Appeals thus disposed:

WHEREFORE, premises considered, the instant Appeal is **DENIED** and the Decision dated 19 July 2010 rendered by Branch 39, Regional Trial Court of Lingayen, Pangasinan is hereby **AFFIRMED** but **MODIFIED** to read as follows:

⁷ Id. at 141.

WHEREFORE, in light of the foregoing discussions, this Court finds accused SAMSON BERK GUILTY beyond reasonable doubt of the crime of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, qualified by treachery. There being no aggravating or mitigating circumstance, the accused is sentenced to suffer the penalty of reclusion perpetua.

Accused is further ORDERED to pay the heirs of Clarita Disu, the amounts of (a) Php 75,000 as civil indemnity; (b) Php 75,000.00 as moral damages; (c) Php 25,000.00 as exemplary damages; and (d) Php 25,000.00 as temperate damages.

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6. The Director, NBI, Manila;
7. The CIDG Provincial Director, Pangasinan;
8. The Regional Director, CIDG Regional Office 1;
9. The National Director, CIDG, Manila; and
10. The Chief PNP, Camp Crame, Quezon City

who are all ordered to effect the immediate arrest of the above named accused and furnish this Court with their respective returns of service, the soonest.⁸

Now before the Court for final review, we affirm appellant's conviction.

Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under grueling examination.⁹ The fact that the trial judge who penned the Decision was different from the one who received the evidence does not render the same erroneous. It is not necessary for a

⁸ Rollo, pp. 16-17.

⁹ *People v. Rivera*, 458 Phil. 856, 873 (2003) cited in *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227.

judgment to be valid that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision.¹⁰

That Judge Robert P. Fangayen was not the one who heard the evidence and had no opportunity to observe the demeanor of the witnesses is of no moment so long as he based his ruling on the records before him the way appellate courts review the evidence of the case raised on appeal.¹¹ Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established by the prosecution: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.¹²

Our review of the records convinces us that these elements were clearly met. The prosecution eyewitnesses positively identified appellant as the person responsible for killing the victim through valid out-of-court and in-court identifications. The Court finds no reason to disbelieve these credible and straightforward testimonies. Marbie significantly testified as follows:

ATTY. FERNANDEZ

Q: Could you tell how were you able to know the identity who shot your mother?

A: Last January 29, 2008 [I] was invited by the police authorities to identify some of those whom they arrested, sir.

Q: What particular office were you invited?

A: Police Station of Sual, sir.

Q: Were you able to go to that police station of Sual?

A: Yes, sir.

Q: Do you have any companion when you went to that police station?

A: Yes, sir, there is.

¹⁰ *Kummer v. People*, 717 Phil. 670, 680 (2013).

¹¹ *Id.*

¹² *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227 citing *People v. Sameniano*, 596 Phil. 916, 928 (2009).

- Q: Who is that?
A: Marmolito Disu and Loreto Inocencio, sir.
- Q: Upon reaching the office of Sual PNP, what happened there?
A: They showed me those persons they arrested, sir.
- Q: What else did the police tell you, if any?
A: When they showed me the person they have arrested I saw the gunman who shot my mother sir.
- Q: After seeing the gunman in the police station, what did you do?
A: I told the policemen, that is the gunman, sir.
- Q: What did the police tell you in identifying the gunman of your mother?
A: After I pointed to the gunman they told me the name of the person by the name of Samson Berk, sir.
- Q: Madam Witness, I request you to look inside the Courtroom and tell the Honorable Court if this alleged gunman is inside the Courtroom?
A: Than (sic) man, sir. (witness pointing to the accused and when asked of his name he answered, Samson Berk).¹³

The above-quoted testimony disproves appellant's assertion that Marbie had been coaxed by the police authorities to pin him down as her mother's assassin. We are also not persuaded by the appellant's defenses of denial and alibi as these cannot prevail over the eyewitnesses' positive identification of him as the perpetrator of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.¹⁴ In fine, the Court finds no error in the conviction of the appellant.

The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victim was sudden and unexpected which effectively deprived her of the chance to defend herself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

The Court affirms the penalty of *reclusion perpetua* imposed upon appellant. Under Article 243 of the Revised Penal Code, as amended, the

¹³ TSN, 24 June 2008, pp. 7-8.

¹⁴ *Malana v. People*, 573 Phil. 39, 53 (2008)

crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of civil indemnity and moral damages but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.¹⁵

Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.¹⁶

WHEREFORE, premises considered, the Decision dated 29 June 2012 of the Court of Appeals, Third Division, in CA-G.R. CR-H.C. No. 04573, finding Samson Berk y Bayogan guilty of murder in Criminal Case No. L-8391 is **AFFIRMED with MODIFICATION**. Appellant is **ORDERED** to pay the heirs of Clarita Disu as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

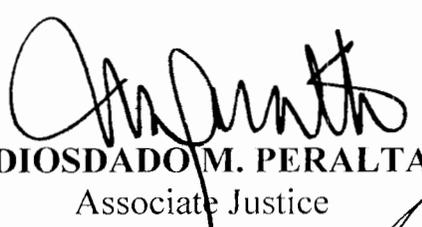
¹⁵ *People v. Jugueta*, G.R.No. 202124, 5 April 2016.

¹⁶ *People v. Vitero*, 708 Phil. 49, 65 (2013).

WE CONCUR:



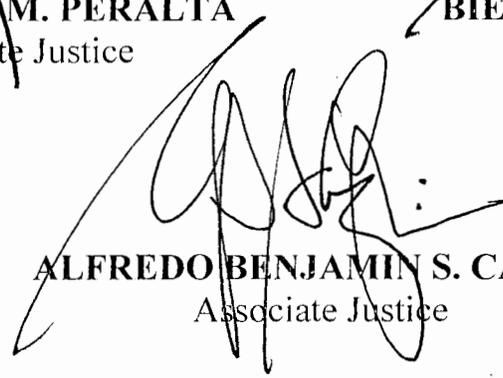
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



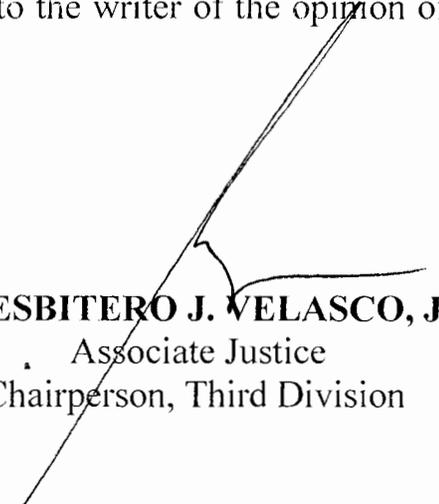
BIENVENIDO L. REYES
Associate Justice



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, Third Division

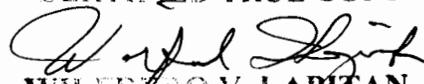
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

DEC 27 2016