

Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 213224**

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

**ROQUE DAYADAY y DAGOOC<sup>1</sup>,**  
 Accused-Appellant.

Promulgated:

**JAN 16 2017**

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**DECISION**

**CAGUIOA, J.:**

On appeal is the May 26, 2014 Decision<sup>2</sup> of the Court of Appeals (CA), Special Twenty-Third Division in CA-G.R. CR-HC No. 00887-MIN, which affirmed the Decision<sup>3</sup> dated September 27, 2010 of the Regional Trial Court (RTC) of Surallah, South Cotabato, Branch 26, in Criminal Case No. 4005-N.

**The Facts**

In an Information<sup>4</sup> filed with the RTC, accused-appellant Roque Dayaday y Dagooc (Roque) was charged with the crime of Murder, the accusatory portion of which reads:

“That on or about the 27<sup>th</sup> day of October 2005 at around 10:00 o’clock in the evening thereof, at Barangay Esperanza, Municipality of Norala, Province of South Cotabato, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, while armed with a

<sup>1</sup> Also spelled as “Dago-oc” in some parts of the records.

<sup>2</sup> *Rollo*, pp. 3-11. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

<sup>3</sup> *CA rollo*, pp. 33-43. Penned by Presiding Judge Roberto L. Ayco.

<sup>4</sup> Records, pp. 1-2.

handgun and a knife, with intent to kill, attended by treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and shoot for several times and stab one BASILIO GALLENERO, hitting and inflicting upon the latter several mortal gunshot wounds on the different parts of his body, and stab wound at the epigastric area of the victim's abdomen, which caused his death shortly thereafter."

CONTRARY TO LAW, attended by aggravating circumstance of Illegal Possession of Firearms.<sup>5</sup>

Upon arraignment, Roque pleaded not guilty to the offense charged.

Thereafter, trial on the merits ensued. The prosecution presented Alex Gallenero (Alex), the son of the victim, and Dr. Lanelita Lanaria-Amido (Dr. Amido), the Municipal Health Officer of Norala, South Cotabato, as witnesses who testified to the following facts, to wit:

On the evening of October 27, 2005 at about 10 o'clock, Alex and his father, Basilio Gallenero (Basilio), were walking home along the road in Barrio 3, Norala, South Cotabato<sup>6</sup> after attending a wedding celebration at the house of Rodolfo Dayaday,<sup>7</sup> when suddenly, Roque shot the victim in the back four (4) times, successively. Alex easily recognized Roque as the assailant because the place was well lit and he was just about ten (10) meters away from Roque when the latter fired his gun.<sup>8</sup> For fear of his life, Alex ran away from the place of incident.<sup>9</sup> He reported the incident to his uncle Petring Pinuela and to the police officers of Norala.<sup>10</sup>

The postmortem report of Dr. Amido showed that the victim suffered four (4) gunshot wounds and one (1) stab wound<sup>11</sup> and died due to cardio-pulmonary arrest, probably secondary to multiple injuries caused by the gunshot and stab wounds.<sup>12</sup>

Roque, on the other hand, through the testimonies of Reynald Dayaday (Reynald) and Dennis Blancada (Dennis), denied the accusation and interposed the defense of alibi.

Reynald, accused-appellant's brother, testified that on October 27, 2005, the night before the wedding of his niece, he was at the house of his older brother, Teodolfo Dayaday, at Barangay Esperanza (Barrio 3), Norala, South Cotabato.<sup>13</sup> He was with Roque and seven (7) other people, who were

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<sup>5</sup> Id. at 1.

<sup>6</sup> *Rollo*, p. 4.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. at 5.

<sup>12</sup> Id.

<sup>13</sup> Id.

tasked to prepare the food for the wedding celebration. They were all together in the kitchen from 5 o'clock in the evening to 3 o'clock in the morning.<sup>14</sup>

Dennis testified that he was at Barangay Esperanza, Norala, South Cotabato on October 27, 2005 because he was invited to cook in the house of Teodolfo Dayaday.<sup>15</sup> He arrived there at 12 o'clock noon but his duty started at 5 o'clock in the evening and ended at 3 o'clock in the morning the following day.<sup>16</sup> He recalled that during those times that he was cooking, Roque never left the kitchen.<sup>17</sup>

### *Ruling of the RTC*

Finding the positive testimony of Alex credible as against Roque's defense of alibi, the RTC convicted Roque of the crime of murder and sentenced him accordingly. The dispositive portion of the Decision<sup>18</sup> dated September 27, 2010 reads as follows:

WHEREFORE, premises all considered, the court finds the evidence of the prosecution sufficient to sustain it in finding the accused criminally responsible of the crime charged.

Consequently, accused Roque Dayaday y Dago-oc is hereby found guilty beyond reasonable doubt of the crime of Murder as he is charged in this case.

He is hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua.

He is further ordered to pay the heirs of his deceased victim, Basilio Gallenero, the amount of P75,000.00 as indemnity for his death; the amount of P50,000.00 as moral damages; the amount of P30,000.00 as exemplary damages and the amount of P30,000.00 as reasonable actual expenses for his wake and burial and the costs of suit.

**SO ORDERED.**<sup>19</sup>

Aggrieved, Roque appealed to the CA by a Notice of Appeal dated October 28, 2010.<sup>20</sup> Both parties accordingly filed their respective Briefs dated April 26, 2011<sup>21</sup> and November 22, 2011.<sup>22</sup>

### *Ruling of the CA*

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Supra note 3.

<sup>19</sup> Id. at 42-43.

<sup>20</sup> Records, p. 122.

<sup>21</sup> CA *rollo*, pp. 14-32.

<sup>22</sup> Id. at 53-66.



The CA concurred with the RTC's finding on Alex's credibility and dismissed the alleged inconsistencies in his testimony.<sup>23</sup> Moreover, the CA found Roque's defense of alibi very flimsy. According to the CA, while the defense witnesses claimed that Roque was cooking at the time of the commission, it was not physically impossible for Roque to be at the scene of the crime because the place where he was allegedly cooking was in the same vicinity where the crime was committed.<sup>24</sup>

The CA further ruled that while the prosecution failed to prove the aggravating circumstance of evident premeditation, treachery was very patent in the instant case, which is sufficient to qualify the crime to murder. Records showed that the victim was shot several times in the back while he was walking, which means that he was defenseless at the time of the attack; and the fact that the stab wound was located on the victim's abdomen would not preclude treachery because the victim was already vulnerable due to the gunshot wounds.<sup>25</sup>

Thus, on May 26, 2014, the CA rendered the assailed Decision<sup>26</sup> affirming Roque's conviction, the decretal portion of which reads:

**WHEREFORE**, the assailed Decision dated September 27, 2010 of the Regional Trial Court, Branch 26, Surallah, South Cotabato finding accused-appellant Roque Dayaday y Dagooc guilty beyond reasonable doubt of the crime of Murder in Criminal Case No. 4005-N is **AFFIRMED**.

**SO ORDERED.**<sup>27</sup>

Hence, this appeal.<sup>28</sup>

In the Resolution dated January 28, 2015,<sup>29</sup> this Court required the parties to file their supplemental briefs; but both parties manifested<sup>30</sup> that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.

#### *Issue*

Consequently, the only issue for the Court's consideration is whether the CA erred in affirming Roque's conviction for the crime of murder.

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<sup>23</sup> See *rollo*, p. 8.

<sup>24</sup> *Id.* at 10.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> *Supra* note 2.

<sup>27</sup> *Id.* at 10.

<sup>28</sup> *CA rollo*, pp. 79-80.

<sup>29</sup> *Rollo*, pp. 24-25.

<sup>30</sup> *Id.* at 26-27 and 33-35.



*The Court's Ruling*

In the instant appeal, Roque essentially questions the credibility of Alex and the veracity of his accusations. Roque insists that Alex is a biased witness considering his relationship with the victim. He further avers that Alex exhibited a propensity to lie when he stated in his affidavit that there were other witnesses who saw the commission of the crime, and later admitted in open court that he was the sole witness to the crime. Roque also claims that the testimony of Alex that his father had been shot four (4) times runs counter to the postmortem report of Dr. Amido, which indicates that there were seven (7) gunshot wounds.

The appeal fails.

Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.<sup>31</sup> Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case.<sup>32</sup> The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.<sup>33</sup>

In the present case, both the RTC and CA found the testimony of Alex straightforward and worthy of belief. Alex identified Roque as the one who shot his father at the back and his positive declaration was never destroyed even after cross-examination in court.<sup>34</sup>

For his part, Roque failed to identify any significant fact or circumstance which would justify the reversal of the RTC's and CA's findings on Alex's credibility.

The imputation of bias to Alex because of his relationship with the victim must necessarily fail. In *People v. Montemayor*,<sup>35</sup> the Court ruled that relationship by itself does not give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies.<sup>36</sup> The relationship of a witness to the victim would even make his testimony more credible, as it would be unnatural for a relative who is

<sup>31</sup> *People v. Nelmda*, 694 Phil. 529, 556 (2012).

<sup>32</sup> *People v. Gahi*, 727 Phil. 642, 658 (2014).

<sup>33</sup> *Id.*

<sup>34</sup> *CA rollo*, pp. 40-41.

<sup>35</sup> 452 Phil. 283 (2003).

<sup>36</sup> *Id.* at 299.



interested in vindicating the crime to charge and prosecute another person other than the real culprit.<sup>37</sup> Relatives of victims of crimes have a natural knack for remembering the faces of the attacker and they, more than anybody else, would be concerned with obtaining justice for the victim by having the felon brought to justice and meted the proper penalty.<sup>38</sup> Where there is no showing of an improper motive on the part of the prosecution's witnesses for testifying against the appellant, their relationship to the victim does not render their testimony less credible.<sup>39</sup> In this case, since there is no showing of any ill or improper motive on the part of Alex to testify against the accused, his relationship with the victim even made his testimony more credible and truthful.

Furthermore, the alleged discrepancy between Alex's testimony and the postmortem report of Dr. Amido as to the number of gunshot wounds is more imagined than real. As correctly pointed out by the CA, the postmortem report showing that there are four (4) entry gunshot wounds and three (3) exit wounds, which means that there are three (3) perforating gunshots and one (1) penetrating gunshot, coincides with Alex's declaration that his father was shot four (4) times.<sup>39-a</sup>

The Court also agrees with the CA that the inconsistency between Alex's affidavit and his testimony in open court as to whether there are other witnesses to the crime is immaterial to affect his credibility, because it does not detract from the fact that Alex saw and identified Roque as the assailant of his father.<sup>40</sup> In *People v. Yanson*,<sup>41</sup> the Court held:

x x x [T]his Court had consistently ruled that the **alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects** to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since *ex parte* affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.

x x x x

The discrepancies in [the witness]'s testimony do not damage the essential integrity of the prosecution's evidence in its material whole. Instead, **the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy [the witness]'s credibility.**<sup>42</sup>

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>39-a</sup> CA rollo, p. 74.

<sup>40</sup> See rollo, p. 8.

<sup>41</sup> 674 Phil. 169 (2011).

<sup>42</sup> Id. at 180, citing *Mercado v. People*, 615 Phil. 434, 448 (2009), further citing *Decasa v. Court of Appeals*, 554 Phil. 160 (2007).



Under Article 248<sup>43</sup> of the Revised Penal Code (RPC), murder is committed when: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances enumerated in Article 248; and (4) the killing neither constitutes parricide nor infanticide.<sup>44</sup>

All elements of the crime of murder have been established in this case beyond reasonable doubt.

Through the testimony of Alex, the eyewitness to the crime, it was established that Basilio was killed and it was Roque who had killed him. As to the presence of qualifying circumstances, the Court sustains the CA's finding that treachery attended the killing of Basilio. There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.<sup>45</sup>

Here, the evidence unequivocally shows that the attack against Basilio, which came from behind, was sudden, deliberate and unexpected. The victim was completely unaware of any threat to his life as he was merely walking home with his son. The use of a firearm showed deliberate intent to kill Basilio and the location and number of gunshot wounds rendered him defenseless and incapable of retaliation. Hence, treachery was evident in the case at bar, sufficient to qualify the crime to Murder.

### ***Penalty, Civil Indemnity and Damages***

Under Article 248 of the RPC, the penalty for murder qualified by treachery is *reclusion perpetua* to death. Considering that, apart from treachery, the aggravating circumstances of evident premeditation and illegal possession of firearms, as alleged in the Information, were not duly proven,

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<sup>43</sup> ART. 248. *Murder*. – Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusión perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

<sup>44</sup> *People v. De Castro*, G.R. No. 205316, June 29, 2015, 760 SCRA 566, 573.

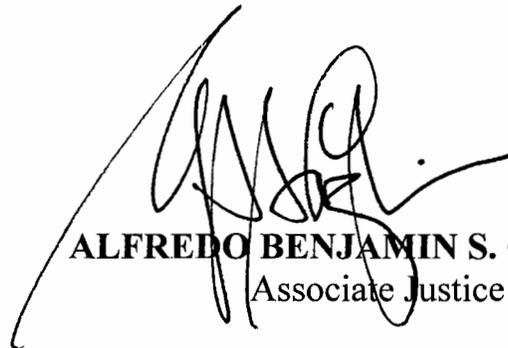
<sup>45</sup> *People v. Carpio*, 346 Phil. 703, 716-717 (1997).

the RTC correctly held that the proper imposable penalty is *reclusion perpetua*.

As to the award of damages, the Court deems it proper to modify the CA's award pursuant to the Court's recent ruling in *People v. Juguetta*.<sup>46</sup> Therefore, in addition to the amount of ₱30,000.00 as reasonable actual expenses for the wake and burial and the costs of suit, the victim's heirs are entitled to ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

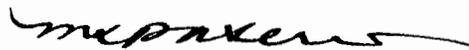
**WHEREFORE**, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit. The Decision dated May 26, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 00887-MIN, finding accused-appellant Roque Dayaday y Dagooc **GUILTY** beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED** with **MODIFICATIONS** in that the award of civil indemnity, moral damages and exemplary damages are each increased to Seventy-Five Thousand Pesos (₱75,000.00) and all monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice

<sup>46</sup> G.R. No. 202124, April 5, 2016.

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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

