

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MANNY RAMOS, ROBERTO  
SALONGA and SERVILLANO  
NACIONAL,

G.R. No. 218466

Petitioners,

- versus -

PEOPLE OF THE  
PHILIPPINES,

Respondent.

X-----X

PEOPLE OF THE  
PHILIPPINES,

G.R. No. 221425

Plaintiff-Appellee,

Present:

- versus -

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

MANNY RAMOS, ROBERTO  
SALONGA a.k.a. "JOHN,"  
"KONYONG" SALONGA and  
SERVILLANO NACIONAL @  
"INONG" @ DIONISIO  
NACIONAL,

Promulgated:

**JAN 23 2017**

Accused-Appellants.

X-----X

DECISION

PERLAS-BERNABE, J.:

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Assailed in these consolidated cases<sup>1</sup> is the Decision<sup>2</sup> dated April 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05095, which affirmed the Decision<sup>3</sup> dated December 8, 2010 of the Regional Trial Court of Burgos, Pangasinan, Branch 70 (RTC) in Criminal Case No. B-243, convicting accused-appellants Manny Ramos (Ramos), Roberto Salonga (Salonga), and Servillano Nacional (Nacional; collectively, accused-appellants) of the crime of Murder Aggravated with the Use of an Unlicensed Firearm, defined and penalized under Article 248 of the Revised Penal Code (RPC) in relation to Republic Act No. (RA) 8294.<sup>4</sup>

### The Facts

The instant cases stemmed from an Information filed before the RTC, charging accused-appellants of the aforementioned crime, the accusatory portion of which states:

That on or about January 20, 2002, in the evening, at Brgy. Cabanaetan, Municipality of Mabini, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation, taking advantage of their superior strength and at night time, armed with an unlicensed firearm, did then and there wilfully, unlawfully and feloniously shoot ROLANDO NECESITO y FABRIGAS which caused his untimely death, to the damage and prejudice of his heirs.<sup>5</sup>

The prosecution alleged that between 9:00 to 10:00 o'clock in the evening of January 20, 2002, eyewitness Reynaldo Necesito (Reynaldo) was walking towards the store of Leonida Fabrigas when he chanced upon accused-appellants having an altercation with the victim, Rolando Necesito (Rolando). From his vantage point, Reynaldo heard Ramos yell, "*Okinam patayan ka!*" (*Son of a bitch! I will kill you!*) and saw accused-appellants chase and eventually surround Rolando at an area around seven (7) meters away from where Reynaldo was hiding. Reynaldo then heard four (4) successive gunshots, making him hide under the trunk of the *duhat* tree for fear of being hit. It was on the sound of the fourth shot when Reynaldo witnessed Rolando fall face down on the ground. To ensure Rolando's

<sup>1</sup> See Petition for Review on *Certiorari* dated June 22, 2015, *rollo* (G.R. No. 218466), pp. 18-41; Notice of Appeal dated May 15, 2015, *rollo* (G.R. No. 221425), pp. 16-19.

<sup>2</sup> *Rollo* (G.R. No. 221425), pp. 2-15. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Jose C. Reyes, Jr. and Francisco P. Acosta concurring.

<sup>3</sup> CA *rollo* (G.R. No. 221425), pp. 23-42. Penned by Executive Judge Ma. Ellen M. Aguilar.

<sup>4</sup> Entitled "AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED 'CODIFYING THE LAWS OF ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION, OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES,'" approved on June 6, 1997. Note that the crime was committed prior to the enactment of RA 10591, otherwise known as the "COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT," approved on May 29, 2013.

<sup>5</sup> See CA *rollo* (G.R. No. 221425), p. 23.

demise, Ramos approached Rolando and shot him again. Thereafter, accused-appellants fled the scene.<sup>6</sup>

The next day, Rolando's body was found near the *duhat* tree, prompting police officers to conduct an investigation from which were gathered the following evidence and information: (a) a piece of bamboo was recovered three (3) meters away from Rolando's corpse; (b) Rolando purportedly had a previous misunderstanding with Ramos sometime in 1997, yet the same was settled before the barangay; and (c) Rolando allegedly had a drinking spree with his friends at the time of the incident. An autopsy was likewise conducted on Rolando's body, revealing that there were four (4) incised wounds on his left hand, a stab wound on his left chest, and five (5) gunshot wounds on his body; that based on the nature and sizes of his wounds, it was possible that the firearm used was of the same caliber; and that his injuries could not have been inflicted by a single person.<sup>7</sup>

For their respective parts, accused-appellants similarly invoked the defenses of denial and alibi. Essentially, they insisted that they were somewhere else when the incident occurred. In addition, Ramos maintained that the declarations of Reynaldo against him were motivated by a personal grudge, while Nacional claimed that the *corpus delicti* was not proven with exact certainty since the cadaver that was exhumed and examined was already in an advanced stage of decomposition, having been interred for more than a month.<sup>8</sup>

### The RTC Ruling

In a Decision<sup>9</sup> dated December 8, 2010, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole, and ordered to pay jointly and severally Rolando's heirs the amounts of ₱50,000.00 as moral damages, ₱50,000.00 as death indemnity, and ₱25,000.00 as temperate damages.<sup>10</sup>

In so ruling, the RTC gave credence to the direct, straightforward, and categorical eyewitness testimony of Reynaldo positively identifying each of the accused-appellants as co-perpetrators of the crime, further noting that Reynaldo had no ill-motive to falsely testify against them. On the other hand, it found the defense testimonies to be untenable, as they were riddled with various inconsistencies and contradictions. Further, the RTC found the presence of the circumstance of abuse of superior strength which qualified

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<sup>6</sup> *Rollo* (G.R. No. 221425), p. 3.

<sup>7</sup> *Id.* at 3-5.

<sup>8</sup> *Id.* at 6-9.

<sup>9</sup> *CA rollo* (G.R. No. 221425), pp. 23-42.

<sup>10</sup> *Id.* at 41.

the killing to Murder, considering that the accused-appellants took advantage of their combined strength and their several weapons to overcome their unarmed victim and assure the success of their felonious design. In view of the foregoing, the RTC concluded that accused-appellants “are equally guilty of the crime of Murder aggravated with the use of unlicensed firearm, there having been proven the existence of implied conspiracy between them.”<sup>11</sup>

Aggrieved, accused-appellants appealed to the CA.<sup>12</sup>

### **The CA Ruling**

In a Decision<sup>13</sup> dated April 28, 2015, the CA affirmed accused-appellants’ conviction for the crime of Murder with the Use of an Unlicensed Firearm with modification, increasing the awards of civil indemnity and moral damages to ₱75,000.00 each and imposing legal interest of six percent (6%) per annum on all monetary awards from finality of the judgment until fully paid.<sup>14</sup> It held that Reynaldo was able to positively identify accused-appellants as Rolando’s killers, given that he was only seven (7) meters away from the *situs criminis*. The CA likewise held that the accused-appellants took advantage of their combined superior strength as they even used several weapons to render the unarmed victim completely defenseless.<sup>15</sup>

Hence, the instant consolidated cases.

Dissatisfied, Nacional filed a Notice of Appeal,<sup>16</sup> (G.R. No. 221425) while Ramos and Salonga filed a petition for review on *certiorari* before the Court (G.R. No. 218466).

### **The Issues Before the Court**

The issue raised for the Court’s resolution is whether or not the CA correctly upheld accused-appellants’ conviction for the crime of Murder with the Use of an Unlicensed Firearm.

### **The Court’s Ruling**

Preliminarily, the Court notes that Nacional elevated the matter before the Court thru a Notice of Appeal<sup>17</sup> (G.R. No. 221425) filed before the CA; on the other hand, Ramos and Salonga filed a petition for review on

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<sup>11</sup> Id. at 35-41.

<sup>12</sup> See Notices of Appeal dated January 31, 2011 and January 20, 2011, CA *rollo* (G.R. No. 221425), pp. 44 and 46.

<sup>13</sup> *Rollo* (G.R. No. 221425), pp. 2-15.

<sup>14</sup> Id. at 14.

<sup>15</sup> Id. at 10-14.

<sup>16</sup> Id. at 16.

<sup>17</sup> Id. at 16.

*certiorari* before the Court (**G.R. No. 218466**).<sup>18</sup> As a general rule, appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court;<sup>19</sup> except when the CA imposed the penalty of “*reclusion perpetua*, life imprisonment or a lesser penalty,” in which case, the appeal shall be made by a mere notice of appeal filed before the CA.<sup>20</sup> In this case, Ramos and Salonga clearly availed of a wrong mode of appeal by filing a petition for review on *certiorari* before the Court, despite having been sentenced by the CA of *reclusion perpetua*. Nonetheless, in the interest of substantial justice, the Court will treat their petition as an ordinary appeal in order to resolve the substantive issue at hand with finality.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court’s decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>21</sup>

As will be explained hereunder, the accused-appellants should only be held liable for simple Murder, and not Murder with the Use of an Unlicensed Firearm.

To successfully prosecute the crime of Murder, the following elements must be established: (a) that a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (d) the killing is not parricide or infanticide.<sup>22</sup>

<sup>18</sup> *Rollo* (G.R. No. 218466), pp. 18-41.

<sup>19</sup> Section 3 (e), Rule 122 of the Revised Rules on Criminal Procedure reads:

Section 3. *How appeal taken.* –

x x x x

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

<sup>20</sup> Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure reads:

Section 13. *Certification or appeal of case to the Supreme Court.* –

x x x x

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

<sup>21</sup> See *People v. Bagamano*, G.R. No. 222658, August 17, 2016, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016.

<sup>22</sup> See *People v. Las Piñas*, G.R. No. 191723, July 23, 2014, 730 SCRA 571, 595, citing *People v. Gabrino*, 660 Phil. 485, 495 (2011).

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In the instant case, the prosecution, through the testimony of eyewitness Reynaldo, had established beyond reasonable doubt that: the accused-appellants chased, ganged up, and eventually, killed Rolando, and likewise, it was shown that they deliberately used weapons (*i.e.*, gun and bamboo stick), which rendered Rolando defenseless from their fatal attacks. Thus, such killing was attended with the qualifying circumstance of abuse of superior strength,<sup>23</sup> which perforce warrants accused-appellants' conviction for Murder.

The foregoing notwithstanding, the courts *a quo* erred in convicting accused-appellants of Murder **with the Use of an Unlicensed Firearm**.

Under Section 1 of RA 8294, “[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.” There are two (2) requisites to establish such circumstance, namely: (*a*) the existence of the subject firearm; and (*b*) the fact that the accused who owned or possessed the gun did not have the corresponding license or permit to carry it outside his residence. The *onus probandi* of establishing these elements as alleged in the Information lies with the prosecution.<sup>24</sup>

In this case, while it is undisputed that Rolando sustained five (5) gunshot wounds which led to his demise, it is unclear from the records: (*a*) whether or not the police officers were able to recover the firearm used as a murder weapon; and (*b*) assuming *arguendo* that such firearm was recovered, whether or not such firearm was licensed. The Court notes that the disquisitions of the courts *a quo* were silent regarding this matter. As the Information alleged that accused-appellants used an unlicensed firearm in killing Rolando, the prosecution was duty-bound to prove this allegation.<sup>25</sup> Having failed in this respect, the Court cannot simply appreciate the use of an unlicensed firearm as an aggravating circumstance.

In view of the foregoing, the Court hereby modifies accused-appellants' conviction to simple Murder.

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<sup>23</sup> “Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.” “The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim.” The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. “To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked.” The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties. (*Fantastico v. Malicse, Sr.*, G.R. No. 190912, January 12, 2015, 745 SCRA 123, 141-142; citations omitted)

<sup>24</sup> *People v. Castillo*, 382 Phil. 499, 507 (2000), citing *People vs. Eubra*, 340 Phil. 306 (1997).

<sup>25</sup> See *id.* at 507-508.

Under Article 248 of the RPC, as amended by RA 7659,<sup>26</sup> Murder is punishable by *reclusion perpetua* to death. There being no aggravating or mitigating circumstance present (except for abuse of superior strength which was used to qualify the killing to Murder), accused-appellants must be meted the penalty of *reclusion perpetua*. Further, to conform with existing jurisprudence, accused-appellants must be ordered to jointly and severally pay Rolando's heirs the amounts of ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with six percent (6%) legal interest per annum on all the monetary awards from the date of finality of this judgment until fully paid.<sup>27</sup>

**WHEREFORE**, the consolidated appeals are **DENIED**. The Decision dated April 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05095 is hereby **AFFIRMED** with **MODIFICATIONS** as follows: accused-appellants Manny Ramos, Roberto Salonga, and Servillano Nacional are found **GUILTY** beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, as amended, and accordingly, sentenced to suffer the penalty of *reclusion perpetua*, and ordered to jointly and severally pay Rolando Necesito's heirs the amounts of ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages with six percent (6%) legal interest per annum on all the monetary awards from the date of finality of this judgment until fully paid.

**SO ORDERED.**

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

**WE CONCUR:**

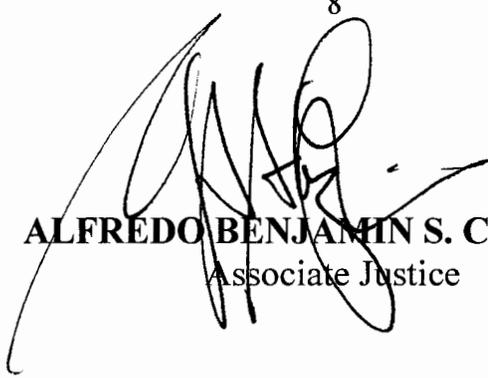
  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice  
 Chairperson

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

  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

<sup>26</sup> Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES" (December 13, 1993).

<sup>27</sup> See *People v. Jugueta*, G.R. No. 202124, April 5, 2016.



**ALFREDO BENJAMIN S. CAGUIOA**  
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