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Wilfredo V. Lapan
WILFREDO V. LAPAN
Division Clerk of Court
Third Division
AUG 29 2017



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218205

Present:

*SERENO, C.J.,
VELASCO, JR.,
Chairperson,
BERSAMIN,
REYES, and
TIJAM, JJ.

- versus -

MARCIAL D. PULGO,
Accused-Appellant.

Promulgated:

July 5, 2017

Wilfredo V. Lapan

X-----X

DECISION

TIJAM, J.:

This is an appeal from the Decision¹ dated October 28, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01494, which affirmed accused-appellant Marcial D. Pulgo's conviction for Murder as rendered by the Regional Trial Court (RTC) of Cebu City, Branch 18, in its Judgment² dated February 20, 2012 in Criminal Case No. CBU-82443.

* Designated additional Member per Raffle dated March 15, 2017 *vice* Associate Justice Francis H. Jardeleza.

¹ Penned by Associate Justice Renato C. Francisco, concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino; *rollo*, pp. 4-13.

² Penned by Presiding Judge Gilbert P. Moises.; *CA rollo*, pp. 33-38.

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The Antecedents

In an Information dated October 24, 2007, accused-appellant was charged with murder committed as follows:

That on or about the 21st day of July 2007 at about 5:00 in the afternoon, at Barangay Lorega, San Miguel, Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and stab one ROMEO S. LAMBO, with the use of a bladed weapon, hitting the latter on his abdomen, which caused his death thereafter.³

When arraigned, accused-appellant entered a plea of not guilty. After the pre-trial conference, trial on the merits ensued.

According to the prosecution, at around 5:00 p.m. on July 21, 2007, Aurelio Sindangan (Aurelio) was standing at Lorega, San Miguel, Cebu City, when his cousin, Romeo Lambo (Romeo), approached him, asking to be accompanied to a certain place. As he stood side by side with Romeo, accused-appellant suddenly pulled out a knife and stabbed Romeo on his side. Shocked by the sudden turn of events, Aurelio was not able to make any move. Romeo managed to run away but accused-appellant chased him. Aurelio himself chased accused-appellant, throwing an empty bottle at him but failing to hit him. After the incident, Aurelio went home without knowing where accused-appellant went. Summoned by a neighbor to verify whether it was her husband who had been stabbed by a certain Shalou, Romeo's wife, Rosalia Lambo, rushed outside and found Shalou standing on the street. She immediately proceeded to the hospital where her husband had been brought and where he eventually expired.⁴

Accused-appellant denied any involvement in the stabbing. He claimed that he was with his mother, Violeta Pulgo (Violeta), in Moalboal, Cebu at about 4:00 p.m. of July 21, 2007, to buy a goat from his aunt for their fiesta, and at around 5:30 p.m., he was surprised to receive a call from his brother, Rosvil Pulgo (Rosvil) in Lorega, informing him that Romeo had been stabbed and that he was the prime suspect. His *alibi* was corroborated in its material points by Violeta and Rosvil.⁵ He stayed in Moalboal for about a year before returning in Lorega to clear his name. He was, however, arrested upon reaching Lorega.⁶

³ Rollo, p. 5.

⁴ Id. at 5, 7-9; CA rollo, pp. 33-34.

⁵ Id. at 6; id. at 34-35.

⁶ CA rollo, p. 35.

Giving credence to Aurelio's testimony and positive identification of accused-appellant as the assailant, the RTC rendered its Judgment⁷ dated February 20, 2012, the dispositive portion of which reads:

WHEREFORE, on the basis of all the foregoing consideration, judgment is rendered finding accused Marcial Pulgo GUILTY of the crime of Murder by treachery penalized under Article 248⁸ of the Revised Penal Code and hereby sentences him to *reclusion perpetua* with all its accessory penalties.

He is likewise directed to pay the heirs of the victim Romeo Lambo the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages.

SO ORDERED.⁹

Dissatisfied with the RTC's Judgment, accused-appellant elevated the case to the CA.

On October 28, 2014, the CA rendered the assailed Decision¹⁰ affirming the RTC's Judgment with modification in the award of damages. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated February 20, 2012, of the Regional Trial Court, 7th Judicial Region, Branch 18, Cebu City, in Criminal Case No. CBU-82443, finding accused-appellant Marcial D. Pulgo guilty beyond reasonable doubt of the crime of Murder is **AFFIRMED with MODIFICATION** in that the heirs of Romeo Lambo are entitled to the award of **Php75,000.00** as civil indemnity, moral damages increased to **Php75,000.00**, **Php30,000.00** as exemplary damages and **Php25,000.00** as temperate damages.

⁷ Id. at 33-38.

⁸ 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 *reclusion 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.

⁹ CA rollo, p. 38.

¹⁰ Rollo, 4-13.

All damages shall be subject to interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.¹¹

The Court's Ruling

The appeal has no merit.

We sustain the RTC's assessment of the credibility of the prosecution's eyewitness, as affirmed by the CA.

It is jurisprudentially settled that when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.¹² This is so because the trial court has the unique opportunity to observe the demeanor, conduct and attitude of witnesses under grueling examination.¹³ These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe.¹⁴ 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. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.¹⁵

Under oath, eyewitness Aurelio positively and unequivocally identified accused-appellant as Romeo's assailant. As the CA found, Aurelio was candid, unambiguous and categorical in declaring that while he was with Romeo, he saw accused-appellant suddenly pull out a knife and immediately stab the victim, *viz.*:

Direct examination

x x x x

¹¹ Id. at 12-13.

¹² *People of the Philippines v. Roque Dayaday*, G.R. 213224, January 16, 2017; *People v. Angelio*, G.R. No. 197540, February 27, 2012.

¹³ *People v. Dayaday*, *supra* note 12; *People v. Diu, et al.*, G.R. No. 201449, April 3, 2013, citing *People v. Maxion*, G.R. No. 135145, July 19, 2001.

¹⁴ *People v. Diu, et al.*, *supra* note 13, citing *People v. Maxion*, *supra* note 13.

¹⁵ *People v. Dayaday*, *supra* note 12.



FISCAL MACABAYA

Q: Mr. Witness, on July 21, 2007 at around 5:00 o'clock in the afternoon, do you still recall where were you? [sic]

A: I was standing at Lorega, San Miguel, Cebu City.

Q: While standing at said place, what happened next?

A: I was approached by my cousin.

Q: What is the name of your cousin?

A: Romeo Lambo.

Q: Why did he approach you?

A: He requested me to accompany him to a certain place.

Q: What place Mr. Witness?

A: He did not mention the place, sir but he just invited me to go with him to a certain place.

Q: While with your cousin Romeo Lambo, what happened next?

A: We met Marcial Pulgo, sir.

Q: Then what happened next?

A: Marcial Pulgo pulled something and immediately stabbed.

Q: Who was the person that was stabbed by Marcial Pulgo?

A: It was Romeo Lambo.

Q: What instrument did he use in stabbing the victim?

A: Somewhat Rambo knife, sir.

Q: How did he stab the victim?

A: He just suddenly stabbed the victim, sir.

Q: Was the victim hit?

A: Yes.

Q: Which part of the body?

A: On his side, sir.

Q: Then after Marcial Pulgo stabbed the victim what happened next?

A: I did nothing, sir because the incident was so sudden.

Q: What happened to the victim?

A: After Marcial Pulgo stabbed the victim, the victim runaway [sic] and then Marcial Pulgo chased the victim and then myself chased Marcial Pulgo and throw an empty bottle and then Marcial Pulgo turned left.

Q: Why did you throw Marcial Pulgo with the bottle? [sic]

A: That was my immediate reaction in order that my cousin would not be stabbed again.

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Q: Were you able to hit Marcial Pulgo?

A: He was not hit, sir.

Q: Why?

A: He was not hit because he was able to turn left.

x x x x

Q: You mentioned that Marcial Pulgo stabbed the victim herein, if you will be able to see Marcial Pulgo will you be able to identify him?

A: Yes, sir.

Q: Kindly look around and please tell the Honorable Court if he is present in the courtroom now?

A: He is around.

Q: Can you pinpoint to this person?

A: Yes.

Q: Kindly step down from that witness stand and kindly point to him?

A: Yes.

INTERPRETER:

The Witness step [sic] down from the witness stand and approach [sic] the accused row and pointed to a person who stood up and identified himself as Marcial Pulgo.¹⁶ (Emphasis ours)

Accused-appellant, however, argues that Aurelio's testimony cannot be given credence because it allegedly suffers from a glaring inconsistency. Accused-appellant asserts that while Aurelio initially testified that he saw accused-appellant stab the right side of the victim's body, he later demonstrated, while under cross-examination, that it was the left side of the victim's body that was stabbed by accused-appellant.¹⁷

The argument is unavailing. The inconsistency cited by accused-appellant refers to a minor detail which will not impinge on the integrity of Aurelio's testimony in its material whole.¹⁸

As this Court consistently held, inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant.¹⁹ Such inconsistencies reinforce rather than weaken credibility.²⁰ What is vital is that Aurelio was unwavering and consistent in identifying accused-appellant as Romeo's assailant.²¹

¹⁶ *Rollo*, pp. 7-9.

¹⁷ *Id.* at 9; *CA rollo*, pp. 28-29.

¹⁸ *See People v. Aguila*, G.R. No. 171017, December 6, 2006.

¹⁹ *People v. Alfon*, G.R. No. 126028, March 14, 2003.

²⁰ *Id.*

²¹ *See People v. Dumayan*, G.R. No. 116280, May 21, 2001; *People v. Alfon*, supra note 19 and

Thus, in *People v. Galvez*,²² this Court held:

It may be noted that while Danilo Julia and Loreto Palad testified that Romen Castro had been stabbed on the right side of his back, the autopsy report stated that the stab wound was located at the left lumbar area of the victim. This single lapse on a minor detail cannot, however, undermine the credibility of these prosecution witnesses. Inconsistencies in the testimonies of prosecution witnesses are not an uncommon event, and acquittals have resulted in cases where the inconsistencies and self-contradictions dealt with material points as to altogether erode the witnesses' credibility. But when such inconsistencies are minor in character, not only do they not detract from the credibility of the witnesses but they in fact enhance it for they erase any suggestion of a rehearsed testimony.

x x x Their mistake concerning the location of the stab wound does not mean that they did not actually see the stabbing incident. Such mistake may be attributed more to the fickleness of human memory than to any attempt of the prosecution witnesses to perjure themselves.²³

Furthermore, there is no evidence to show any dubious or improper motive on Aurelio's part to falsely testify against accused-appellant.²⁴ It is settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.²⁵

To convict an accused for murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing neither constitutes parricide nor infanticide.²⁶

The prosecution's evidence has established beyond reasonable doubt that accused-appellant killed Romeo. Furthermore, there is no dispute that the killing constitutes neither parricide nor infanticide. And contrary to accused-appellant's contention, the killing was qualified by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party

People v. Aguila, supra note 18.

²² G.R. No. 136790, March 26, 2001.

²³ Id.

²⁴ CA rollo, p. 36.

²⁵ *People v. Aquino*, G.R. No. 201092, January 15, 2014; *People v. Dadao, et al.*, G.R. No. 201860, January 22, 2014.

²⁶ *People v. Aquino*, supra note 25.

might make. To establish treachery, two elements must concur: (1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means of attack employed.²⁷ These elements have been established in this case.

Romeo had approached Aurelio in Lorega to ask to be accompanied to a certain place, and they were standing side by side when accused-appellant approached them and suddenly pulled out a knife and stabbed Romeo. Clearly, neither Aurelio nor Romeo was aware of the impending assault from accused-appellant. Both Aurelio and Romeo were also unarmed. This made them all the more vulnerable and defenseless in the face of accused-appellant's sudden attack. In fact, having been stabbed by accused-appellant, Romeo was unable to retaliate and had to run away from accused-appellant to escape any further assault, but accused-appellant still gave chase. Aurelio also testified that because of the suddenness of accused-appellant's attack, he was unable to make any move to defend his cousin the moment the latter was stabbed.

The foregoing circumstances are manifestly indicative of the presence of the conditions under which treachery may be appreciated, *i.e.*, the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and that said means of execution was deliberately or consciously adopted.²⁸

We cannot accept accused-appellant's argument that treachery is absent because Aurelio never imputed any deceitful attack from behind.

The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies, whether the attack is frontal or from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.²⁹ In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.³⁰

The suddenness of accused-appellant's attack and the circumstances under which it was committed made it impossible for the unsuspecting Romeo to put up a defense, ensuring accused-appellant's execution of the crime without risk to himself. There is, thus, no doubt that treachery attended the killing.

²⁷ *People v. Angelio*, supra note 12; *People v. Casela*, G.R. No. 173243, March 23, 2007.

²⁸ *People v. Casela*, supra note 27.

²⁹ *People v. Alfon*, supra note 19.

³⁰ *People v. Pidoy*, G.R. No. 146696, July 3, 2003.

Our ruling in *People v. Casela*³¹ finds application, viz.:

Treachery attended the stabbing of Rain because he was unarmed and the attack on him was swift and sudden. He had no means and there was no time for him to defend himself. The prosecution was able to establish that appellant[']s attack on the victim was without any slightest provocation on the latter[']s part and that it was sudden and unexpected. This is a clear case of treachery. There being treachery, appellant[']s conviction for murder is in order.

The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor. In this case, treachery was already present when appellant and Insigne, armed each with a bolo, approached the victim and suddenly stabbed him. Rain did not have the faintest idea that he was vulnerable to an attack, considering that he was boarding his bicycle, oblivious of the sinister intent of appellant and Insigne. The fact that the victim was facing his malefactors at the time of the latter[']s attack did not erase its treacherous nature. Even if the assault were frontal, there was treachery if it was so sudden and unexpected that the victim had no time to prepare for his defense. Even more, the fact that appellant and Insigne chased the victim to inflict more stabbing blows after the latter had already been gravely wounded clearly exhibits the treacherous nature of the killing of the victim.³²

Clearly, therefore, all the elements for a conviction for murder have been shown to exist.

Against Aurelio's categorical and consistent testimony pointing to accused-appellant as Romeo's assailant, accused-appellant puts forward the defenses of *alibi* and denial. He presented the testimonies of his mother, Violeta, and his brother, Rosvil, to corroborate his claim that he was in a different place (Moalboal, Cebu) when the stabbing took place.

It is jurisprudentially settled, however, that positive identification prevails over *alibi* since the latter can easily be fabricated and is inherently unreliable.³³ We have likewise consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.³⁴

Evidently, Violeta and Rosvil cannot be considered as disinterested witnesses. Being accused-appellant's relatives, their testimonies are rendered suspect because the former's relationship to them makes it likely

³¹ Supra note 27.

³² Id.

³³ *People v. Aquino*, supra note 25; *People v. Dadao*, supra note 25.

³⁴ *People v. Aquino*, supra note 25; *People v. Baroquillo, et al.*, G.R. No. 184960, August 24, 2011.

that they would freely perjure themselves for his sake.³⁵ The defense of *alibi* may not prosper if it is established mainly by accused-appellant himself and his relatives, and not by credible persons.³⁶

Furthermore, we have held that for the defense of *alibi* to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met.³⁷

The RTC took judicial notice that Moalboal, Cebu is only three (3) hours away from Lorega, Cebu City where the crime took place.³⁸ Thus, it was not physically impossible for accused-appellant to have left for Moalboal on July 21, 2007 and to return to Lorega Street on the same day and commit the crime.

In *People v. Aquino*,³⁹ the Court held that:

Appellant failed to establish by clear and convincing evidence that it was physically impossible for him to be at San Jose Del Monte City, Bulacan when Jesus was murdered. His own testimony revealed that the distance between the *locus delicti* and Dasmariñas City, Cavite is only a four to five hour regular commute. Thus, it would not be physically impossible for him to make the round trip between those two points from dusk till dawn of September 5-6, 2002 and still have more than enough time to participate in the events surrounding the murder of Jesus.⁴⁰

In the face of Aurelio's positive identification of accused-appellant as Romeo's attacker, untainted by any ill or improper motive, accused-appellant's defense of *alibi* cannot prosper. Such positive identification also prevails over accused-appellant's unsubstantiated denial.⁴¹

Denial is an intrinsically weak defense.⁴² To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence, it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.⁴³

³⁵ *People v. Nelmida, et al.*, G.R. No. 184500, September 11, 2012.

³⁶ *Id.*

³⁷ *People v. Aquino*, supra note 25.

³⁸ CA rollo, p. 37.

³⁹ Supra note 25.

⁴⁰ *Id.*

⁴¹ *People v. Calara*, G.R. No. 197039, June 5, 2013.

⁴² *Id.*

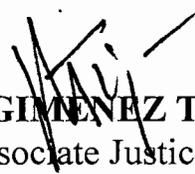
⁴³ *People v. Calara*, supra note 41; *People v. Alfon*, supra note 19.

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly affirmed the RTC's imposition of *reclusion perpetua*, the lower of the two indivisible penalties.⁴⁴

In line with prevailing jurisprudence,⁴⁵ we increase the exemplary damages awarded to Romeo's heirs from PhP 30,000 to PhP 75,000, and the temperate damages from PhP 25,000 to PhP 50,000. Furthermore, the interest imposed by the CA shall be applied to all damages as well as the civil indemnity.

WHEREFORE, the Decision dated October 28, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 01494 is hereby **AFFIRMED with the following MODIFICATIONS**: [a] exemplary damages are increased to PhP 75,000, while temperate damages are increased to PhP 50,000, and [b] the civil indemnity and all damages payable by accused-appellant are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

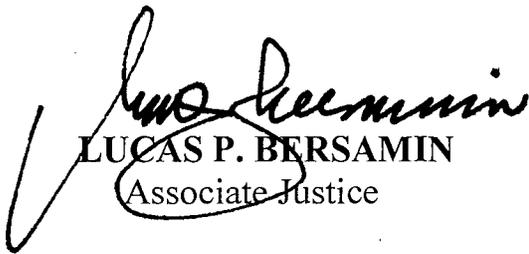
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

⁴⁴ *People v. Gunda*, G.R. No. 195525, February 5, 2014.

⁴⁵ *People v. Jugueta*, G.R. No. 202124, April 5, 2016.


LUCAS P. BERSAMIN
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

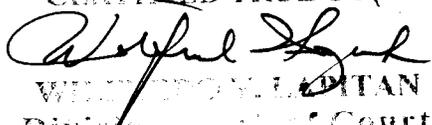
A T T E S T A T I O N

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

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the 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.

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WILFREDO L. LAPID
 Division Chairperson
 AUG 29 2017


MARIA LOURDES P. A. SERENO
 Chief Justice