



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapid*  
WILFREDO V. LAPIDAN  
Division Clerk of Court  
Third Division

AUG 08 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 207516

Present:

- versus -

VELASCO, JR., J.,  
*Chairperson,*  
BERSAMIN,  
\*DEL CASTILLO,  
REYES, and  
TIJAM, JJ.

AMBROSIO OHAYAS, ROBERTO  
OWAS, FLORENCIO RAPANA,  
CERELO BALURO, EDDIE  
YAGUNO, RUPO YAGUNO and  
JERRY YAGUNO,

Accused,

Promulgated:

June 19, 2017

AMBROSIO OHAYAS,  
Accused-Appellant.

*Wilfredo V. Lapid*

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DECISION

TIJAM, J.:

Accused-appellant Ambrosio Ohayas challenges in this appeal the August 30, 2012 Decision<sup>1</sup> promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01052, which affirmed with modification the February 9, 2009 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 29 of Toledo City, in Criminal Case No. TCS-3042, finding accused-appellant

<sup>1</sup>Designated as additional member as per Raffle dated March 15, 2017.

<sup>2</sup>Penned by Associate Justice Edgardo Delos Santos and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida Galapate-Laguilles; *rollo*, pp. 3-16.

<sup>3</sup>Penned by Judge Nancy Rivas-Palmones, CA *rollo*, pp. 68-77.

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guilty of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the heirs of the victim, the amount of PhP50,000 as civil indemnity and PhP50,000 as moral damages.

### The Antecedents

Accused-appellant was charged under the following information:

That on or about the 31<sup>st</sup> day of May 1996, at around 8:00 in the evening, at Sitio Bonbon, Barangay Poblacion, Municipality of Pinamungajan, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to kill, by means of **treachery and evident premeditation**, conspiring, confederating and mutually helping one another, **with the use of superior strength**, did then and there willfully, unlawfully and feloniously shoot one ARMANDO KYAMKO, JR., with the use of a shotgun gauge 12, hitting the right portion of the latter's body, thereby causing instantaneous death.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty.

The prosecution, in presenting its case, offered the testimonies of Sany Candelasa (Sany), Lou Managaytay (Lou), Nerissa Kyamko and Dr. Jesus P. Cerna (Dr. Cerna) and Armando Kyamko, Sr.

At around 8:00 o'clock in the evening of May 31, 1996, the 12-year old victim, Armando Kyamko, Jr. (Armando, Jr.), was with his friends, 15-year old Sany and 18-year old Lou relaxing and conversing under a kalachuchi tree along the national road in Sitio Bonbon, Pinamungajan, Cebu. Sany and Lou were seated under the tree, while Armando, Jr. was standing in front of them. The distance between them was approximately one arm's length. The place where the three lads were having a conversation was illuminated by the lights coming from the house of Sany. Aside from the three lads, there were several persons in the vicinity including the father of the victim, Armando, Sr., who was then at the opposite side of the road.

Suddenly, both Sany and Lou saw accused-appellant, Ohayas, a *balut* vendor in their place, with three other persons coming from Sitio Campo. Accused-appellant, together with his companions, walked towards the place where the three lads were conversing. Lou noticed that accused-appellant had in his hands a shotgun while his companions were carrying torches. When accused-appellant's group was only seven arms' length away from the victim's group, accused-appellant suddenly, and without any warning, shot Armando Jr. who was hit in his right abdomen. Not contented, accused-

14

appellant continued to fire at the victims who were shocked by the turn of events. Sany was hit on his right finger, while Lou, although not directly hit, nevertheless suffered injuries when the bullets ricocheted. After being hit, Armando Jr. managed to call his father for help before he fell to the ground. On the other hand, Sany and Lou ran to their respective houses to seek refuge.

Armando Jr. expired on the same night while still on board the vehicle on his way to Pinamungajan District Hospital. On the following day, an autopsy was conducted by Dr. Jesus Cerna, a medico-legal officer. After examination of the victim's cadaver, Dr. Cerna reduced his findings in Necropsy Report No. 96-N-109 which stated that the cause of death was shock secondary to shotgun (pellet) wounds on the body.

Accused-appellant fled the day after the incident and hid for three years until he was apprehended on February 6, 1999.

The defense, for its part, presented accused-appellant, Marcelina Ohayas, SPO3 Socrates Bancog (SPO3 Bancog), and Loreto Gines.

According to the accused-appellant, he was mauled at Sitio Bonbon, Pinamungajan, Cebu by a certain "Toper" prior to the shooting incident, and because of that, his cousins Eddie Yaguno, Florencio Owas, Jerry Yaguno, Roberto Owas and Cerilo Bolodo wanted to avenge him. Accused-appellant, however, prevented them from doing so.

On the day of the shooting, accused-appellant claimed that he was fishing at sea. At around 8 o'clock in the evening, he heard gunshots coming from Sitio Bonbon, Pinamungajan, Cebu. He felt afraid, so he stopped fishing and went home. On the way home, he was told by SPO3 Bancog that someone died in the shooting incident, and that accused-appellant was the one to be blamed. SPO3 Bancog further advised accused-appellant to take precautionary measures because the victim's relatives might retaliate against him. He decided to take refuge at the house of his neighbor.

Accused-appellant further claimed that he was cooking fish when SPO3 Bancog and other policemen went to his house to investigate. He was not arrested but was advised to leave the place. His house was further searched for a shotgun, but the policemen did not find any.

Accused-appellant contended that it was Eddie Yaguno who killed the victim as he was the one who owned the shotgun.



Accused-appellant further explained that he transferred to Basak, Pedro several months after the shooting incident because he could no longer afford to pay rent.

On February 9, 2009, the RTC rendered judgment, finding accused-appellant guilty as charged and was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the family of the deceased the sum of PhP50,000 as moral damages.

On August 30, 2012, the CA rendered its Decision<sup>3</sup>, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the decision of Regional Trial Court of Toledo City, Branch 29, in Criminal Case No.TCS-3042, insofar as it finds Ambrosio Ohayas guilty beyond reasonable doubt of the crime of murder and sentences him to suffer the penalty of *reclusion perpetua* is AFFIRMED, with the MODIFICATION that appellant is ORDERED to pay the heirs of Ambrosio Ohayas (*sic*) the amount of P50,000.00 as civil indemnity. The award of P50,000.00 as moral damages, is likewise AFFIRMED.

### **The Court's Ruling**

We deny the appeal.

The elements of the crime of murder are: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.<sup>4</sup> In this case, these requisites have been established by the prosecution.

Here, notwithstanding accused-appellant's attempt to highlight the inconsistencies, We find that the prosecution's witnesses were in unison in identifying accused-appellant as the person who shot Armando, Jr. Inconsistencies in the testimonies of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declarations or the veracity or the weight of their testimonies. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the accused.<sup>5</sup> It was consistently testified to that the shooting happened so quickly, and that the witnesses' instinct were to seek cover from the bullets. Certainly, at such a sudden violent incident, this Court cannot expect the witnesses to focus on each and every specific detail of the incident. As aforesaid, what is relevant

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<sup>3</sup>Supra.

<sup>4</sup>*People v. Edgar Allen Alvarez*, G.R. No. 191060, February 2, 2015.

<sup>5</sup>*Eduardo Gulmatico y Brigatay v. People*, G.R. No. 146296, October 15, 2007.

is the consistency in the testimony of the prosecution's witnesses to the effect that it was accused-appellant who shot the victim Armando, Jr.

The inconsistencies in the testimonies of the prosecution's witnesses pointed out by accused-appellant with respect to the position of Armando, Jr., Lou and Sany, the number of shots fired against the victim, the reaction of accused-appellant's companions after the shooting, how the victim fell, and the exact location of the wounds, do not detract from the overwhelming testimonies of the prosecution's witnesses that accused-appellant came rushing from Sitio Ocampo and suddenly shot the victim. These inconsistencies are minor and inconsequential which even tend to bolster, rather than weaken, the credibility of the witnesses, for they show that such testimonies were not contrived or rehearsed.<sup>6</sup>

As to the presence of treachery, We find that the prosecution sufficiently established its existence in the commission of the crime. 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 its execution, without risk to himself arising from the defense which the offended party might make.<sup>7</sup> The essence of treachery is the sudden and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.<sup>8</sup> That *alevosia* or treachery attended the killing of the victim was apparent from the suddenness of the attack. Armando, Jr., the 12-year old victim, who was merely talking to his friends, was suddenly shot by the accused-appellant. The shooting in this case was deliberate, swift and sudden, denying the victim the opportunity to protect or defend himself. He was unarmed and unaware of the harm about to happen to him.

In this case, the prosecution was able to clearly establish that: (1) Armando, Jr. was shot and killed; (2) the accused-appellant was the person who killed him; (3) Armando, Jr.'s killing was attended by the qualifying circumstance of treachery; and (4) the killing of Armando, Jr. was neither parricide nor infanticide.

In contrast to the evidence adduced by the prosecution, accused-appellant could only muster the defense of denial and alibi. Accused-appellant claims that he was fishing during the shooting incident, and that it was his cousins, his co-accused in the court *a quo*, Eddie Yaguno, Florencio Owas, Jerry Yaguno, Roberto Owas and Cerilo Bolodo, who were responsible for the victim's demise.

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<sup>6</sup>*People v. Fundador Camposano y Tiolanto*, G.R. No. 207659, April 20, 2016.

<sup>7</sup>*People v. Rosalito Caboquin y Del Rosario*, G.R. No. 137613, November 14, 2001.

<sup>8</sup>See *People v. Mariano Toyco, Sr.*, G.R. No. 138609, January 17, 2001.

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Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.<sup>9</sup>

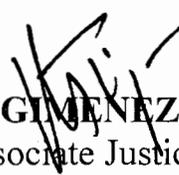
In this case, suffice it to state that the defense failed to establish that it was physically impossible for the accused-appellant to have perpetrated the offense.

This Court resolves to modify the damages awarded by the appellate court in line with the recent jurisprudence.<sup>10</sup> Accused-appellant shall pay the heirs of Armando Kyamko, Jr. PhP75,000 as civil indemnity, PhP75,000 as moral damages, and PhP75,000 as exemplary damages for the crime of murder. The Court also deems it proper to award temperate damages in the amount of PhP50,000. While the records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victim's heirs as it cannot be denied that they suffered pecuniary loss due to the crime committed.<sup>11</sup> Further, all damages awarded shall earn interest at the rate of 6% per annum from the date of the finality of this judgment until fully paid.

**WHEREFORE**, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals dated August 30, 2012 in CA-G.R. CR H.C. No. 01052 is **AFFIRMED** with **MODIFICATION** in that accused-appellant is hereby ordered to pay the heirs of the victim the amount of PhP75,000 as civil indemnity for the death of the victim; moral damages in the amount of PhP75,000, exemplary damages in the amount of PhP75,000, and PhP50,000 as temperate damages, in lieu of actual damages.

All damages awarded shall earn interest at the legal rate of 6% per annum from the finality of this judgment until fully paid.

**SO ORDERED.**

  
**NOEL GIMENEZ TIJAM**  
Associate Justice

<sup>9</sup>*People v. Alberto Anticamara y Cabillo*, G.R. No. 178771, June 8, 2011.

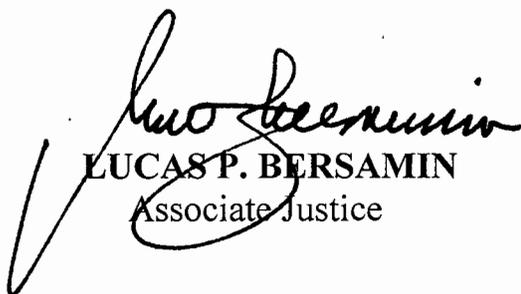
<sup>10</sup>*People v. Jugueta*, G.R. No. 202124, April 5, 2016.

<sup>11</sup>*People v. Yolando Libre*, G.R. No. 192790, August 1, 2016.

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
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

## CERTIFICATION

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.



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

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**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

AUG 08 2017