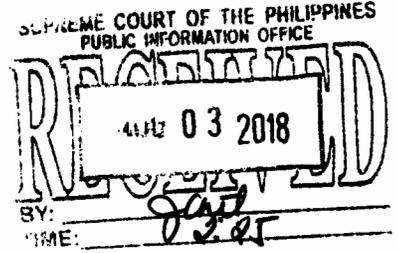




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 222337

Present:

- versus -

LEONARDO-DE CASTRO,
*Acting Chairperson,**
 DEL CASTILLO,
 MARTIRES,**
 TIJAM, and
 GESMUNDO,*** JJ

SHERNIEL UNGRIANO
ASCARRAGA a.k.a. SERGIO
ONGRIANO ASCARRAGA,
Accused-Appellant.

Promulgated:

JUL 23 2018

X-----

DECISION

DEL CASTILLO, J.:

It is a well-settled principle that the assessment of the credibility of a witness is best left to the trial court, most especially when affirmed by the Court of Appeals (CA), as the trial court had the unique opportunity to observe the witness' deportment and demeanor on the witness stand.¹

This is an appeal filed by appellant Sherniel Ungriano Ascarraga a.k.a. Sergio Ongriano Ascarraga from the January 27, 2015 Decision² of the CA in CA-G.R. CR-HC No. 04007, affirming the March 16, 2009 Decision³ of the Regional Trial Court (RTC) of Quezon City, Branch 81, in Criminal Case No. Q-03-122084, finding appellant guilty beyond reasonable doubt of murder.

* Per Special Order No. 2559 dated May 11, 2018.

** Per November 29, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

*** Per Special Order No. 2560 dated May 11, 2018.

¹ *Manalili v. Court of Appeals*, 345 Phil. 632, 649 (1997).

² *Rollo*, pp. 2-14; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion.

³ *CA rollo*, pp. 118-127; penned by Presiding Judge Ma. Theresa L. De La Torre-Yadao.

Factual Antecedents

Appellant was charged under the following Information:

That on or about the 13th day of October 2003, in Quezon City, Philippines, the said [appellant], conspiring and confederating with other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of RODRIGO BORGONIA Y MONTESINES by then and there shooting him with a gun, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said RODRIGO BORGONIA Y MONTESINES.

CONTRARY TO LAW.⁴

When arraigned, appellant pleaded not guilty to the crime charged.⁵

Version of the Prosecution

During the trial, the prosecution presented the testimonies of the victim's widow, Milagros Borgonia; the Barangay Security Development Office (BSDO) Executive Officer Lope Abendano (BSDO Abendano); Editha Dictado (Dictado); PO3 Junie Verano (PO3 Verano); and Dr. Paul Ed Ortiz (Dr. Ortiz).

The evidence of the prosecution as summarized by the CA is as follows:

[The victim] was the chief of Barangay Pansol Proper, Quezon City. On October 13, 2003, at around 7:45 in the morning, [the victim], BSDO Abendano, [the] Barangay Staff [and] x x x Tanods, some street sweepers, some nuns, and others were gathered in front of the barangay hall for the Monday morning flag raising ceremony. After the flag rites, BSDO Abendano, who was the emcee, called on [the victim] to deliver a speech. As [the victim] was walking towards BSDO Abendano at the center of the plaza, an unidentified person appeared, pointed a gun at [the victim] and fired thrice. Another unidentified man was shooting indiscriminately to disperse the crowd. The malefactors retreated waving their guns.



⁴ Records, p. 1.

⁵ Rollo, p. 4.

When the smoke cleared, BSDO Abendano approached [the victim] to check on his condition; when he felt no pulse, he declared the victim dead. Minutes later, police men, SOCO, and other city officials arrived.

BSDO Abendano, the widow of [the victim], and Dictado went to Camp Karingal to execute a sworn statement about the incident.

After around twenty (20) days, BSDO Abendano and Dictado returned to Camp Karingal to pick out the gunman at a police line-up; they both identified [appellant] as one of [the] gunmen.

Dr. Ortiz conducted an examination on the cadaver of the victim and his findings were that the victim sustained three (3) gunshot wounds – one with point of entry at the left orbital region, the second at the right preauricular region and the third at the left pectoral region; and concluded that the fatal wound was the gunshot to the head.⁶

Version of Appellant

Appellant, on the other hand, denied the accusations against him and interposed the defense of alibi. To corroborate his testimony, appellant presented as witnesses his father, Bayani Ascarraga; Allan Mamparair (Mamparair); and Damaso Tena (Tena). According to the defense, on October 13, 2003, at around 7 a.m., the appellant was with his father at their house in *Sitio Uma, Barangay Pagsangahan, Gen. Nakar, Quezon* as he was assigned to cook for the members of the *Samahan ng Katribo or Kabinsan*.⁷ On October 14, 2003, he and Mamparair left the province of Quezon and arrived in Cubao in the evening of the following day.⁸ On October 16, 2003, Mamparair accompanied appellant to a dentist.⁹ The next day, they went to Bulacan to harvest rice.¹⁰ On October 21, 2003, while on their way to Rodriguez, Rizal, they were arrested for violation of Presidential Decree No. 1866 (illegal possession of firearms) and were brought to Camp Karingal.¹¹ After posting bail, they were allowed to go home but on October 30, 2003, they were again invited to Kamp Karingal and made to stand in a police line-up.¹²

Ruling of the Regional Trial Court

On March 16, 2009, the RTC of Quezon City, Branch 81, rendered a Decision finding the appellant guilty of murder. Thus –

⁶ Id. at 4-5.

⁷ Id. at 5.

⁸ Id. at 5-6.

⁹ CA *rollo*, pp. 122-123.

¹⁰ Id.

¹¹ Id. at 101.

¹² Id. at 101-102.



WHEREFORE, the Court finds [appellant] SHERNIEL UNGRIANO ASCARRAGA a.k.a SERGIO ONGRIANO ASCARRAGA guilty beyond reasonable doubt of the crime of MURDER described and penalized under Article 248 of the Revised Penal Code as amended and is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law and to indemnify the heirs of the late Barangay Chairman Rodrigo Borgonia the amounts of ₱75,000.00 as indemnity for his death, ₱75,000.00 as actual damages and ₱50,000.00 as moral damages.

SO ORDERED.¹³

The RTC appreciated the qualifying circumstance of treachery to have attended the commission of the crime. It pointed out that the victim was shot while walking in the middle of the grounds to make some announcements. The attack was sudden and unexpected and the victim was totally unaware of the impending harm to his life.¹⁴

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On January 27, 2015, the CA rendered the assailed Decision, affirming the RTC Decision with modification, to wit:

WHEREFORE, premises considered, the Appeal is DENIED. The Decision dated March 16, 2009, issued by the Regional Trial Court, Branch 81, Quezon City, in Criminal Case No. Q-03-122084 for Murder, is AFFIRMED with modification that ₱30,000.00 as exemplary damages is also awarded, and all awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.¹⁵

Hence, appellant filed the instant appeal.

On March 7, 2016, the Court required both parties to file their respective supplementary briefs.¹⁶ Appellant filed his supplemental brief while the Office of Solicitor General opted not to file one.

¹³ Id. at 127.

¹⁴ Id. at 126.

¹⁵ *Rollo*, p. 13.

¹⁶ Id. at 21-22.

The Court's Ruling

In assailing his conviction, appellant puts in issue the credibility of witness Dictado in identifying him as the assailant. Appellant insists that witness Dictado could not have seen the face of the assailant considering that she was crawling out of the area and was wearing eyeglasses which had a prescription grade of more than 200.¹⁷ Appellant likewise questions the procedure employed by the police officers in conducting the police line-up.¹⁸ Appellant claims that the procedure employed was prone to suggestiveness as the witnesses were all in the same room when they identified him in the line-up.¹⁹ In addition, appellant points out lack of motive on his part for killing the victim.²⁰

The Court is not persuaded.

The fact that witness Dictado was wearing eyeglasses with prescription grade of more than 200 did not affect her positive identification of appellant considering that she was only more or less two arm's length away from the victim. Moreover, appellant seems to forget that witness Dictado was not the only witness who positively identified him as the assailant. Aside from witness Dictado, the prosecution also presented as witness BSDO Abendano who was the emcee during the flag ceremony. He testified that he was only an arm's length or about a meter away from the victim;²¹ that he saw appellant approach and point a gun at the victim;²² and that the gun was fired at the victim's forehead.²³ Thus, the Court finds no reason to doubt the positive identification of appellant by the prosecution's witnesses who have no ill motive to testify falsely against him. It bears stressing that "the positive identification of the [assailant], when categorical and consistent and without any [ill motive] on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial."²⁴

Appellant's attempt to discredit the police line-up must also fail. In *People v. Rivera*,²⁵ the Court explained –

Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court

¹⁷ Id. at 27-30.

¹⁸ Id. at 30-32.

¹⁹ Id.

²⁰ Id. at 32-33.

²¹ TSN, May 26, 2004, Direct Examination of Witness BSDO Lope Abendano, p. 7.

²² Id. at 6-7.

²³ Id. at 8.

²⁴ *People v. Berdin*, 462 Phil. 290, 304 (2003).

²⁵ 458 Phil. 856, 876-877.



cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanito Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the ‘inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.’

In this case, the prosecution’s eyewitnesses, witness BSDO Abendano and witness Dictado, both positively identified appellant as the assailant in open court.²⁶

Appellant’s lack of motive for killing the victim likewise has no bearing as jurisprudence consistently holds that “[m]otive is generally x x x immaterial because it is not an element of the crime [of murder].”²⁷

All told, the Court finds appellant guilty beyond reasonable doubt of murder. Both the trial court and the CA properly sentenced him to suffer the penalty of *reclusion perpetua*. The award of ₱75,000.00 as civil indemnity was also proper. The same is true with the award of actual damages in the amount of ₱75,000.00 which was duly supported by a receipt.²⁸ The CA also correctly imposed legal interest at the rate of 6% *per annum* on all damages awarded from the date of finality of judgment until fully paid.²⁹

However, in order to conform to prevailing jurisprudence, the amounts of moral damages and exemplary damages should be increased to ₱75,000.00 each.³⁰

WHEREFORE, premises considered, the appeal is **DISMISSED**. The January 27, 2015 Decision of the Court of Appeals, finding appellant Sherniel Ungriano Ascarraga a.k.a. Sergio Ongriano Ascarraga guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATION** that the amounts of moral damages and exemplary damages should be increased to ₱75,000.00 each.



²⁶ TSN, May 26, 2004, Direct Examination of witness BSDO Lope Abendano, pp. 17-18; and TSN, July 12, 2004, Direct Examination of witness Editha Dictado, pp. 4-5.

²⁷ *People v. Babor*, 772 Phil. 252, 264 (2015).

²⁸ Records, p. 228.

²⁹ *People v. Jugueta*, 783 Phil. 806, 854, 856 (2016).

³⁰ Id. at 848.

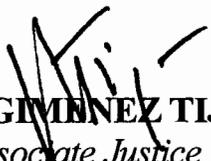
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice


ALEXANDER G. GESMUNDO
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.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.



ANTONIO T. CARPIO
Acting Chief Justice

