



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

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

**G.R. No. 219614**

Present:

- versus -

CARPIO, *Chairperson,*  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR., *and*  
LAZARO-JAVIER, *JJ.*

**PONCIANO ESPINA y  
BALASANTOS alias "JUN ESPINA  
AND JR",**

Accused-Appellant.

Promulgated:

10 JUL 2019

*HM Baltazar Padilla*

X-----X

**DECISION**

**LAZARO-JAVIER, J.:**

**The Case**

This appeal assails the Decision<sup>1</sup> dated November 17, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06178 affirming with modification the trial court's verdict of conviction<sup>2</sup> for murder against Ponciano Espina y Balasantos.

<sup>1</sup> Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Noel G. Tijam (now a retired member of the Court) and Agnes Reyes-Carpio, *CA rollo*, pp. 73-87.

<sup>2</sup> Decision dated May 10, 2013 penned by Acting Presiding Judge Aida Estrella Macapagal, *CA rollo*, pp. 37-41.

*N*

### The Proceedings Before the Trial Court

By Information<sup>3</sup> dated September 3, 2007, appellant was charged with murder for the killing of Ernando Reyes, Jr., thus:

That on or about the 26<sup>th</sup> day of May, 2005, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot one ERNANDO REYES, thereby inflicting upon the latter mortal gunshot wound on the trunk, which eventually caused his death, the said killing having been attended by the qualifying circumstances of treachery and abuse of superior strength, which qualify (sic) the killing to murder and aggravated by nighttime and use of a firearm, which is a deadly weapon, that is, all to the damage and prejudice of the heirs of ERNANDO REYES.

CONTRARY TO LAW.

On arraignment, appellant pleaded “not guilty.”<sup>4</sup> During the trial, Russel Michael and Ernando’s wife Evelyn Reyes testified for the prosecution. On the other hand, appellant alone testified for the defense.

#### *The Prosecution’s Version*

On May 26, 2005, around 8:30 in the evening, appellant Ponciano Espina, Ernando Reyes, Jr., Russel, Pio Manjares and a certain Dante were having a drinking spree inside Pio’s house in Ibayo, Tipas, Taguig City. While the drinking spree was ongoing, appellant left. When he returned, he showed his drinking companions a .45-caliber gun and asked them to hold it, which they did. He later retrieved the gun and tucked it on his waist.<sup>5</sup>

After a while, appellant pulled out the gun and pointed it close to Ernando’s chest, posing these questions “*Ano gusto? Patay buhay?*” Then right off, he shot Ernando in the upper right chest. Everyone else in the group scampered away. But shortly after, Russel came back and helped rush Ernando to the Rizal Medical Center. Ernando later died in the hospital.<sup>6</sup> His wife Evelyn Reyes and his relatives incurred funeral expenses of P25,500.00.<sup>7</sup> They sought damages of P200,000.00.<sup>8</sup>

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<sup>3</sup> Record, pp. 46-47.

<sup>4</sup> *Id.* at 49.

<sup>5</sup> TSN, November 19, 2008, pp. 18-21.

<sup>6</sup> *Id.* at 21 and 24-26.

<sup>7</sup> Record, pp. 166-167.

<sup>8</sup> TSN, February 11, 2009, pp. 10-13.

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The prosecution offered the following documentary evidence:

- Exhibit "A" - Affidavit of Evelyn Reyes<sup>9</sup>
- Exhibit "B" - Affidavit of Russel Michael<sup>10</sup>
- Exhibit "G" - Death Certificate of Ernando Reyes, Jr.<sup>11</sup>
- Exhibit "H" - San Roque Parish Receipt<sup>12</sup>

### ***The Defense's Version***

Appellant denied the charge and even denied knowing Ernando, Evelyn, Russel, or Pio.<sup>13</sup> According to him, in 2005, he resided in Las Piñas City and had never before been to Taguig City. It was only on August 27, 2006 that he started staying in his cousin's house at DC Clamp Compound, Ibayo Tipas, Taguig City.<sup>14</sup>

On September 14, 2006, he got involved in a stabbing incident in Brgy. Kalawaan, Pasig City. He surrendered to the barangay officials who turned him over to the nearest police station. He was charged with frustrated homicide. Four (4) days later, on September 18, 2006, a warrant of arrest for the present case of murder was served on him. Thus, he only learned of the murder charge in the Pasig City police station where he got detained for the frustrated homicide charge.<sup>15</sup>

On February 6, 2012, the trial court acquitted him in the frustrated homicide case.<sup>16</sup> He, however, remained under custody for the alleged murder of Ernando.

The defense offered copy of the Decision<sup>17</sup> dated February 6, 2012 of Regional Trial Court –Branch 67, Pasig City where appellant was acquitted in the frustrated homicide case.

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

Appellant was pronounced guilty of murder, qualified by treachery.<sup>18</sup> The trial court found that when appellant shot Ernando in a sudden and unexpected manner, sans any provocation from Ernando, the latter was rendered unable to retaliate or defend himself. It rejected appellant's bare

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<sup>9</sup> Record, p. 160.

<sup>10</sup> *Id.* at 161.

<sup>11</sup> *Id.* at 165.

<sup>12</sup> *Id.* at 166.

<sup>13</sup> TSN, September 11, 2012, pp. 10-12.

<sup>14</sup> CA rollo, p. 31.

<sup>15</sup> TSN, September 11, 2012, pp. 31-32.

<sup>16</sup> Record, pp. 209-212.

<sup>17</sup> *Id.*

<sup>18</sup> CA rollo, pp. 37-41.

denial and alibi in light of the prosecution's positive and categorical evidence pointing to him as the culprit,<sup>19</sup> thus:

WHEREFORE, this Court finds accused PONCIANO ESPINA Y BALASANTOS **GUILTY BEYOND REASONABLE DOUBT** of the crime of Murder and hereby sentences him to suffer the penalty of *reclusion perpetua* which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

Accused is hereby ordered to pay the heirs of Ernando Reyes the amount of P25,500.00 as actual damages; P50,000.00 as civil indemnity ex delicto, P40,000.00 as moral damages; and P20,000.00 as exemplary damages.

The City Jail Warden of Taguig City is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED.<sup>20</sup>

### **The Proceedings Before the Court of Appeals**

On appeal,<sup>21</sup> appellant faulted the trial court for convicting him of murder despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He averred: (1) the failure of a medical expert to authenticate Ernando's death certificate<sup>22</sup> rendered the same inadmissible in evidence; and (2) there was no competent proof on record to establish intent to kill.<sup>23</sup>

In response, the Office of the Solicitor General (OSG) through Senior State Solicitor Marsha C. Recon and State Solicitor Samantha P. Camitan countered: (1) appellant was positively identified as the one who slayed Ernando; and (2) treachery attended Ernando's killing.<sup>24</sup>

By Decision<sup>25</sup> dated November 17, 2014, the Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, in view of all the foregoing, the Decision appealed from finding the accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with all its accessory penalties is hereby **AFFIRMED** with

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 41.

<sup>21</sup> *Id.* at 92-93.

<sup>22</sup> Exhibit "G".

<sup>23</sup> CA *rollo*, pp. 26-35.

<sup>24</sup> *Id.* at 47-61.

<sup>25</sup> *Id.* at 73-87.

**MODIFICATIONS** in that accused-appellant shall not be eligible for parole and shall be liable to pay to the heirs of Ernando Reyes, Jr. the following: the amount of P25,500.00 as actual damages, P75,000.00 as civil damages *ex delicto*, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. He is further ordered to pay an interest of at the rate of six percent (6%) per annum on the award of civil indemnity, moral damages, and exemplary damages from the finality of judgment until fully paid.

SO ORDERED.<sup>26</sup>

The Court of Appeals ruled that the elements of murder were all present. For it was sufficiently proved that appellant fatally shot the unsuspecting victim in the chest with a .45-caliber gun while they were having a drinking spree in Pio's house at Ibayo, Tipas, Taguig. The victim was not shown to have initiated any aggression or provocation.<sup>27</sup>

### The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.<sup>28</sup> In compliance with Resolution<sup>29</sup> dated October 19, 2015, the OSG and appellant manifested<sup>30</sup> that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### Issue

Did the Court of Appeals err when it affirmed appellant's conviction for murder?

### Ruling

The appeal is devoid of merit.

There is no question that the victim Ernando Reyes, Jr. was killed. The fact of his death was duly established by his Death Certificate.<sup>31</sup> In this jurisdiction, a duly registered death certificate is considered a public document.<sup>32</sup> To be admissible in evidence, there is no need for a medical

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<sup>26</sup> *Id.* at 86.

<sup>27</sup> *Id.* at 82.

<sup>28</sup> *Id.* at 92-94.

<sup>29</sup> *Rollo*, pp. 23-24.

<sup>30</sup> *Id.* at 25-27 and 30-31.

<sup>31</sup> Exhibit "G."

<sup>32</sup> *Rule 132, Sec. 19 Rules of Court* – Classes of documents. – For the purpose of their presentation in evidence, documents are either public or private. Public documents are:



expert to authenticate or verify. Its issuance by the Office of the Civil Registry concerned is sufficient proof of the death of the person named therein.<sup>33</sup> So must it be.

Turning now to appellant's theory of lack of intent to kill, the Court keenly notes that it was not what he pleaded before the trial court and the Court of Appeals.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change his or her theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court, as these cannot be raised for the first time at such late stage.<sup>34</sup> To allow otherwise would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory.<sup>35</sup> In any event, changing postures of defense betray a guilty mind and sheer lack of credibility.

### ***Intent to kill sufficiently established***

Intent to kill, being a state of mind, is discerned by the courts only through external manifestations. In *Rivera v. People*,<sup>36</sup> We held that intent to kill must be proved by either direct or circumstantial evidence which may consist of: (1) the means used by the malefactor; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactor before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed. We have also considered as determinative factors the motive of the offender and the words he uttered at the time of inflicting the injuries on the victim.<sup>37</sup>

The factual circumstances surrounding Ernando's death clearly showed appellant's intent to kill. He left the drinking spree and shortly after, he came back and showed off his gun to his drinking companions. Then, he pointed it to Ernando posing two (2) queries: "*Ano gusto? Patay buhay?*" And right off, he shot the unarmed victim in the right chest.

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- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
  - (b) Documents acknowledge before a notary public except last wills and testaments; and
  - (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

<sup>33</sup> *Rule 132, Sec. 23 Rules of Court* – Public documents as evidence. – Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

<sup>34</sup> *Philippine Veterans Bank v. NLRC*, 631 Phil. 202, 209 (2010).

<sup>35</sup> *Maxicare PCIB CIGNA Healthcare v. Contreras, M.D.*, 702 Phil. 688, 696 (2013).

<sup>36</sup> 515 Phil. 824 (2006).

<sup>37</sup> *Fantastico v. Malicse, Sr.*, 750 Phil. 120, 132-133 (2015).

Appellant's vicious attack was unprovoked. He just shot Ernando in the right chest during the drinking spree. The Medico Legal Report<sup>38</sup> stated that Ernando sustained one (1) gunshot wound, through and through, causing laceration of his right lung, diaphragm, liver, and stomach. The cause of death was: "*Gunshot wound, trunk.*" It has been settled that if the victim died because of a deliberate act of the malefactor, intent to kill is conclusively presumed.<sup>39</sup> Verily, appellant's intent to kill Ernando was amply established on record.

This brings to fore treachery.

### ***Treachery attended the killing***

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to the offender from the offended party's act of retaliation in self-defense.<sup>40</sup> It is a circumstance that must be proven as indubitably as the crime itself.

Treachery has two (2) elements: (1) employment of means of execution which gives the person attacked no opportunity to defend or retaliate, and (2) such means of execution were deliberately or consciously adopted.<sup>41</sup> Its attendance cannot be presumed.<sup>42</sup> Evidence must be as conclusive as the fact of killing itself.<sup>43</sup> The evidence must show that the offender prepared to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or difficult for the person attacked to defend himself.<sup>44</sup>

Here, Russel positively testified that appellant and Ernando had no prior conflict or quarrel when appellant suddenly shot Ernando. Russel vividly recounted that while the drinking spree was ongoing, appellant left and returned shortly. He was already carrying a .45-caliber gun<sup>45</sup> which he showed to his drinking mates, including Ernando. After retrieving it from his drinking mates, appellant tucked it on his waist. But he instantly drew it out and pointed it to Ernando's chest asking "*Ano gusto? Patay buhay?*" And not waiting for

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<sup>38</sup> Exhibit "E."

<sup>39</sup> *Etino v. People*, G.R. No. 206632, February 14, 2018.

<sup>40</sup> Art. 14 (16), Revised Penal Code - Article 14. *Aggravating circumstances*. - The following are aggravating circumstances:

x x x

6. That the act be committed with treachery (*alevosia*) There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

x x x

<sup>41</sup> *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

<sup>42</sup> *Cirera v. People*, 739 Phil. 25, 45 (2014).

<sup>43</sup> *People v. Petalino*. G.R. No. 213222, September 24, 2018.

<sup>44</sup> *People v. Ilo*, 440 Phil. 852, 861 (2002).

<sup>45</sup> TSN, November 19, 2008, pp. 19-20.

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Ernando's response, appellant swiftly shot the unarmed victim in the chest. Ernando was left without even a bit of a chance to defend himself or run away. Undoubtedly, appellant employed means which ensured the commission of the crime without exposing himself to any risk which may come from Ernando's possible act of retaliation or defense. This is treachery.

The essence of treachery is the sudden, unexpected, and unforeseen attack on the victim, without the slightest provocation on the latter's part. The victim must not have known the peril he was exposed to at the moment of the attack.<sup>46</sup> What is decisive is the offender launched the attack without the slightest provocation from the victim, making it impossible for the latter to defend himself or retaliate.<sup>47</sup> In fine, treachery or *aleviosa* attended Ernando's killing.

As for the aggravating circumstances of nighttime and use of firearm, although alleged in the Information, these circumstances were not proved. Consequently, both the trial court and the Court of Appeals correctly ruled them out as attendant aggravating circumstances.

### ***Penalty***

Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. There being no aggravating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. In accordance with A.M. 15-08-02-SC,<sup>48</sup> the phrase "without eligibility for parole" need not be borne in the decision to qualify this penalty as imposed on appellant.

We affirm the award of P75,000.00 as civil indemnity. In accordance with prevailing jurisprudence,<sup>49</sup> however, the awards of moral and exemplary damages should be increased to P75,000.00 each. We delete the actual damages of P25,500.00.<sup>50</sup> When the amount of actual damages proved during

<sup>46</sup> *People v. Casas*, 755 Phil. 210, 221 (2015), citing *People v. Se*, 469 Phil. 763, 771-772 (2004).

<sup>47</sup> *People v. Pulgo*, G.R. No. 218205, July 5, 2017, 830 SCRA 220, 234.

<sup>48</sup> A.M. No. 15-08-02-SC - *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*:

x x x

The following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should not have been sentenced to suffer the death penalty had it not been for R.A. No. 9364.

x x x

<sup>49</sup> *People v. Jugueta*, 783 Phil. 806, 849 (2016).

<sup>50</sup> Record, pp. 166-167.

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the trial is less than the sum allowed by the Court as temperate damages, the latter sum should be awarded.<sup>51</sup> Temperate damages of P50,000.00, therefore, should be awarded in lieu of actual damages of P25,500.00.<sup>52</sup> Finally, these amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

**ACCORDINGLY**, the appeal is **DENIED**. The Decision dated November 17, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06178 is **AFFIRMED with MODIFICATION**.

Appellant **PONCIANO ESPINA y BALASANTOS** is found **GUILTY of MURDER** and sentenced to *reclusion perpetua*. He is required to pay the heirs of Ernando Reyes, Jr. civil indemnity, moral damages, and exemplary damages of P75,000.00 each; and temperate damages of P50,000.00. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

**SO ORDERED.**

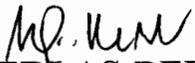


**AMY C. LAZARO-JAVIER**  
Associate Justice

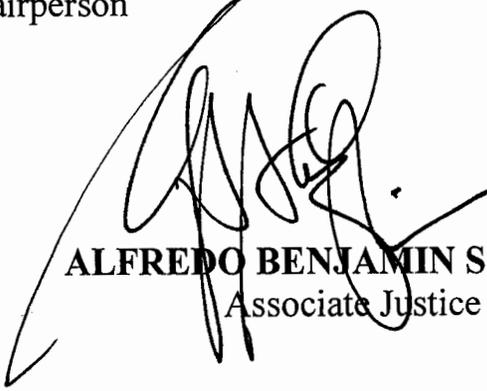
**WE CONCUR:**



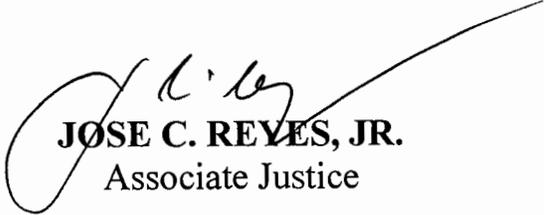
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



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



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice

<sup>51</sup> *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 498.

<sup>52</sup> Record, p. 50.

**ATTESTATION**

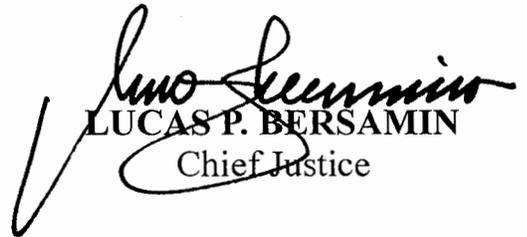
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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



**LUCAS P. BERSAMIN**  
Chief Justice