



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 239777
Plaintiff-Appellee,

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS,
GAERLAN,* JJ.

JULIAN SILVEDERIO III y Promulgated:
JAVELOSA,
Accused-Appellant. 08 JUL 2020

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DECISION

INTING, J.:

This resolves the appeal¹ filed by Julian Silvederio III y Javelosa (accused-appellant) assailing the Decision² dated January 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02344. The CA Decision affirmed the Decision³ dated July 20, 2016 of Branch 39, Regional Trial Court (RTC), Iloilo City in Criminal Case No. 12-71289 for Murder.

* Designated additional member per Special Order No. 2780 dated May 11, 2020.

¹ See Notice of Appeal dated February 19, 2018; *rollo*, pp. 21-23.

² *Id.* at 3-20; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

³ CA *rollo*, pp. 53-58; penned by Presiding Judge Victorino Oliveros Maniba, Jr.

The Antecedents

Accused-appellant was charged in an Information⁴ dated May 15, 2012, the accusatory portion of which reads:

That on or about the 10th day of May 2012, in the City of Iloilo, Philippines and within the jurisdiction of this Court, the above named accused, armed with a firearm of unknown caliber, and with intent to kill did then and there wilfully, unlawfully and feloniously shoot several times one Glenn N. Lasafin with the said firearm and with treachery employed means to weaken the defense of the victim, by suddenly shooting at the victim without provocation, and by shooting the victim again even when he was already kneeling down; thus depriving him the opportunity to defend himself, thereby inflicting upon the latter mortal wounds at the trunk and extremity which was the cause of Glenn N. Lasafin's death.

CONTRARY TO LAW.⁵

Upon his arraignment on May 30, 2012, accused-appellant interposed a plea of not guilty.⁶ Pre-trial and trial ensued.

The prosecution alleged that on May 10, 2012, Glenn N. Lasafin (victim), Jethro Bonitillo (Bonitillo), Boy, and Kid went to Aura Chillout Lounge (Aura) at Smallville for a drinking spree.⁷ While the four were drinking, the victim requested Bonitillo to accompany him to the restroom.⁸ On their way to the restroom, accused-appellant accosted them and asked the victim, "*Ano ka parakoy ka?*" ("What are you, a policeman?").⁹ Bonitillo told the victim not to mind accused-appellant.¹⁰ When they were about to enter the restroom, they heard a gunshot.¹¹ Bonitillo looked at the direction from where the gunshot came and then heard another gunshot. This time, Bonitillo saw that the victim was hit in his upper left arm.¹² While the victim was holding his upper left arm with his right hand, accused-appellant approached and shot him with

⁴ Records, pp. 1-2.

⁵ *Id.* at 1.

⁶ See Order dated May 30, 2012, *id.* at 26.

⁷ TSN, June 27, 2013, p. 24.

⁸ *Id.* at 25.

⁹ *Id.* at 26-27.

¹⁰ *Id.* at 27.

¹¹ *Id.* at 28.

¹² *Id.* at 29.

a .38 revolver. The victim fell after the third gunshot hit his left chest.¹³ He was brought to the hospital but was later declared dead.¹⁴

Leopoldo Vasquez (Vasquez) was on duty as a bouncer at Aura on May 10, 2012.¹⁵ After hearing the three gunshots, he proceeded to the scene and saw the victim lying near the door of the restroom. He also saw accused-appellant holding a .38 revolver. He confronted accused-appellant and said, "*Why did you shoot him? Just surrender to me.*"¹⁶ Accused-appellant ran away and threw the gun. Vasquez called out the security guards to help him chase accused-appellant. Vasquez and the security guards ran after accused-appellant until they reached and took hold of him at EMCOR Building.¹⁷ The police officers of Mandurriao Police Station responded.

Vasquez and the security guards looked for the .38 revolver, which was thrown to a grassy portion. Dela Cruz, the security guard at Aura, found the firearm.¹⁸

The defense interposed denial. It alleged that accused-appellant, together with Bryan, Puloy, Drope, Rabrab, Jake, May, Roy, Roy's girlfriend, and Roy's friend were at Aura at around 10:30 p.m. or 10:40 p.m. of May 9, 2012 until the early morning of May 10, 2012.¹⁹ While they were drinking, Bryan, Puloy, and Rabrab went to the restroom. When they returned to their table, Bryan informed accused-appellant that somebody from another table accosted them.²⁰ Accused-appellant told his friends not to mind it and that they were there to enjoy and not to create trouble. After a few minutes, somebody from the other table shouted and asked Bryan, "*What do you want? Are you going to fight?*" Accused-appellant stood up, faced the man from the other table, and told him that he and his friends were there to just drink and enjoy. Minutes later, someone from behind accused-appellant struck him with a bottle of Red Horse beer on the left side of his head. As a result, accused-appellant fell. His friends fought with the group from the other table. Suddenly, he heard two gunshots. As his head was hit by the beer bottle, he just crawled on the floor. Bryan, Puloy, and Jake ran towards him and helped him stand. While they were going downstairs from Aura,

¹³ *Id.* at 31-32.

¹⁴ *Id.* at 34-35.

¹⁵ TSN, November 27, 2013, p. 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 8-9.

¹⁸ *Id.* at 9-10.

¹⁹ TSN, November 25, 2013, p. 3.

²⁰ *Id.* at 4.

they heard another gunshot which caused them to run in different directions. While walking away from Aura, accused-appellant fell due to overindulgence in alcohol and the blood oozing from his head. After he fell, the bouncers and the security guards held him.²¹ Later, they boarded accused-appellant in a patrol car where a police officer told him that he was a suspect of the incident. They then brought him to the hospital for identification by the victim and the witnesses. However, Bonitillo and the victim were not able to identify him.²²

The Ruling of the RTC

On July 20, 2016, the RTC rendered its Decision²³ finding accused-appellant guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code (RPC). It ruled that the prosecution was able to prove that the killing of the victim was qualified by treachery. Thus, it sentenced accused-appellant to suffer the penalty of *reclusion perpetua* and ordered him to pay the heirs of the victim the sums of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages, and the costs of suit.

The Ruling of the CA

On January 19, 2018, the CA rendered its Decision²⁴ affirming the conviction of accused-appellant for Murder. With respect to the imposition of the penalty of *reclusion perpetua*, the CA ruled that accused-appellant shall be ineligible for parole pursuant to Republic Act No. (RA) 9346.²⁵ As to the damages, the CA modified the awards by increasing the civil indemnity to ₱100,000.00, the moral damages to ₱100,000.00, and the exemplary damages to ₱100,000.00. It also declared that all the monetary awards shall earn interest at the legal rate of 6% *per annum* from the date of the finality of its Decision until full payment.

Hence, the present appeal. Per Resolution²⁶ dated August 14, 2019, the parties manifested that they are adopting their respective appellate briefs before the CA as their supplemental briefs.

²¹ *Id.* at 5-6.

²² *Id.* at 7.

²³ CA rollo, pp. 53-58.

²⁴ Rollo, pp. 3-20.

²⁵ Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

²⁶ Rollo, pp. 41-42.

Accused-appellant raises the following grounds: (1) the prosecution failed to prove his guilt beyond reasonable doubt for the crime of Murder; and (2) the Information did not sufficiently allege the qualifying circumstance of treachery.

The Court's Ruling

The appeal has no merit.

Murder is defined and punished under Article 248 of the RPC, as amended by RA 7659,²⁷ to wit:

Article 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;
x x x x (Italics supplied.)

To successfully prosecute the crime of Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.²⁸

In this case, the above elements were established: (1) the victim, Glenn N. Lasafin, was killed; (2) accused-appellant was positively identified by Bonitilio as the one who killed the victim; (3) the victim's killing was attended by treachery, a qualifying circumstance; and (4) the killing is neither parricide nor infanticide.

As regards the appreciation of treachery, the Court affirms the RTC and the CA in finding the presence of this qualifying circumstance in the commission of the crime.

²⁷ 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," approved on December 13, 1993.

²⁸ *People v. Cirbeto*, G.R. No. 231359, February 7, 2018, 855 SCRA 234, 242, citing *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.²⁹ The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.³⁰

To properly appreciate treachery, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.³¹

The RTC and the CA correctly ruled that the prosecution was able to prove that treachery attended the killing of the victim. As found by the RTC, the victim was already hit on his upper left arm when he sat on the stairs leading to the comfort room. Without prior altercation or exchange of blows between the victim and accused-appellant, the victim was unable to defend himself and was unaware when accused-appellant shot him.³² On the other hand, accused-appellant knew fully well that the victim was already injured and in no position to defend himself. Accused-appellant made sure that his objective would be accomplished by “deliberately approaching the injured and unarmed victim and when he was already near and surely would not miss, shot [the victim] on the chest when [the victim] was almost standing up.”³³ Evidently, the form of attack employed by accused-appellant ensured the commission of the crime without risk to himself.

Accused-appellant’s contention that the Information did not sufficiently allege the qualifying circumstance of treachery fails. What is more, his reliance upon the case of *People v. Valdez, et al.*³⁴ (*Valdez*) is untenable. The informations in *Valdez* merely mentioned that the killings were qualified by treachery, among others. As such, the Court ruled that the averments of the informations to the effect that the two accused,

²⁹ Paragraph 16, Article 14, REVISED PENAL CODE.

³⁰ *People v. Albino*, G.R. No. 229928, July 22, 2019, citing *People v. Watamama*, 734 Phil. 673, 682 (2014).

³¹ *People v. Racal*, 817 Phil. 665, 677-678 (2017), citing *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

³² CA rollo, p. 57.

³³ *Id.* at 58.

³⁴ 679 Phil. 279 (2012).

Police Officer II Eduardo Valdez and Edwin Valdez, “*with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did . . . assault, attack and employ personal violence upon*” the victims “*by then and there shooting [them] with a gun, hitting [them]*” on various parts of their bodies “*which [were] the direct and immediate cause of [their] death[s]*” did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings.³⁵

Contrarily, the Court finds that the Information in the instant case adequately alleges the qualifying circumstance of treachery. As the CA aptly ruled, the Information states all the circumstances surrounding the killing of the victim—that is, accused-appellant shot him several times even when he was already kneeling down and was deprived of the opportunity to defend himself.³⁶

Even assuming that the Information in this case does not sufficiently allege treachery, accused-appellant is deemed to have waived the supposed defect. In *People v. Solar*,³⁷ the Court affirmed the ruling in *Valdez*³⁸ that “*it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done 'with treachery' or 'with abuse of superior strength' or 'with evident premeditation' without specifically describing the acts done by the accused that made any or all of such circumstances present.*” Nevertheless, the Court modified the conviction of therein accused-appellant Rolando Solar y Dumbrique from Homicide to Murder due to his failure to timely question the sufficiency of the Information, viz.:

To recall, in the present case, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando’s conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

It is for this reason that the Court modifies Rolando’s conviction for Homicide to Murder — he failed to question the

³⁵ *Id.* at 294. Italics supplied.

³⁶ *Rollo*, p. 14.

³⁷ G.R. No. 225595, August 6, 2019.

³⁸ *Supra* note 34.

sufficiency of the Information by availing any of the remedies provided under the procedural rules, namely: either by filing a motion to quash for failure of the Information to conform substantially to the prescribed form, or by filing a motion for bill of particulars. Again, he is deemed to have waived any of the waivable defects in the Information filed against him.³⁹

Similarly, accused-appellant in the instant case failed to file either a motion to quash the Information or a motion for a bill of particulars before his arraignment. Hence, he is deemed to have waived the supposed insufficiency in the allegation of treachery in the Information.

As regards Bonitillo's credibility as a witness, the Court is not persuaded by accused-appellant's averment that Bonitillo cannot be considered competent and credible and the RTC should not have relied on his testimony. The Court is likewise unconvinced that accused-appellant's identification as the perpetrator of the crime by Bonitillo was highly suspect and tainted with improbabilities.

On this score, the Court totally affirms the following findings of the CA:

Accused-appellant contends that Bonitillo could have easily identified who made the first 2 shots, because he (Bonitillo) and the victim were only four (4) steps away from the table of accused-appellant. To this Court, it is not an issue whether or not Bonitillo could have identified who fired the first 2 shots. The incredibility presented by accused-appellant is irrelevant for Bonitillo admitted that he was not able to see who fired the 2 shots because it was dark inside the disco house. Also, the charge of murder qualified by treachery against accused-appellant is based on the circumstance that accused-appellant approached and shot the victim who was already wounded and in kneeling position.

We have no reason to disturb the finding of the RTC in finding credence to the version of the prosecution. The trial court is in the best position to assess the credibility of witnesses and their testimonies for it is in the position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.

The purported inconsistency, if indeed Bonitillo saw accused-appellant throw away the firearm or he was only informed by the security guards about it, is inconsequential because Bonitillo had declared that he saw accused-appellant shot the victim. It is well-

³⁹ *People v. Solar*, *supra* note 37.

settled that discrepancies and inconsistencies in the testimony of a witness referring to minor details which do not touch the essence of the crime do not impair his credibility. The minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of a witness, as well as his positive identification of accused-appellant as the perpetrator of the crime. Bonitillo's eyewitness account on the killing is credible because it is a categorical, clear and positive assertion of a fact.⁴⁰

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There is no doubt that Bonitillo saw and identified accused-appellant who came near the victim and shot him at the chest:

Q: And do you know who was this person who fired the third shot?

A: Yes Sir, I saw his face.

Q: Who is he?

A: Julian Silvederio.

X X X X

Q: You said that you are the boyfriend of the sister of Julian Silvederio III, what did you do upon seeing him because you know each other?

A: I shouted, Noy, it's Jethro, the boyfriend of JP, that's my friend, what's our fault?⁴¹

The Court has ruled, time and again, that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.⁴² This is so because it is the trial court that has the unique opportunity to observe the demeanor of witnesses; and the trial court is in the best position to discern whether or not the witnesses are telling the truth.⁴³ Generally, the appellate courts will not overturn the trial court's findings unless it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.⁴⁴ As such, the Court finds no reason to depart from the assessment

⁴⁰ *Id.* at 14-15. Citations omitted.

⁴¹ *Id.* at 16.

⁴² *People v. Cirbeto*, *supra* note 28 at 246.

⁴³ *Id.*

⁴⁴ *People v. Agalot*, G.R. No. 220884, February 21, 2018, 856 SCRA 317, citing *People v. Gerola*, 813 Phil. 1055, 1064 (2017).

of the RTC, as affirmed by the CA, with respect to the probative value of Bonitillo's testimony in this case.

All told, the conclusion of the RTC and the CA that accused-appellant is guilty beyond reasonable doubt of Murder is affirmed. However, the Court needs to make a modification with respect to the penalty and monetary awards.

As earlier mentioned, with respect to the imposition of the penalty of *reclusion perpetua*, the CA ruled that accused-appellant shall be ineligible for parole pursuant to RA 9346. The Court finds that there is no need to add the qualification "without eligibility for parole" in this case.

Administrative Matter (A.M.) No. 15-08-02-SC⁴⁴ pertinently provides:

Parole is extended only to those convicted of divisible penalties. *Reclusion perpetua* is an indivisible penalty and carries no minimum nor maximum period. x x x With no "minimum penalty" imposable on those convicted of a crime punishable by *reclusion perpetua*, then even prior to the enactment of R.A. No. 9346, persons sentenced by final judgment to *reclusion perpetua* could not have availed of parole under the Indeterminate Sentence Law.

x x x x

II.

In these lights, 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. 9346, the qualification of "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

⁴⁴ Entitled "Guidelines for the Proper Use of the Phrase '*Without Eligibility for Parole*' in Indivisible Penalties," took effect on August 4, 2015.

To reiterate, Article 248 of the RPC, as amended by RA 7659, punishes Murder by *reclusion perpetua* to death. It is worthy to note that the RTC meted out the penalty of *reclusion perpetua*, not “death but reduced to *reclusion perpetua* pursuant to RA 9346.”

The Court finds the RTC’s imposition correct. In this case, apart from the qualifying circumstance of treachery, no ordinary mitigating or aggravating circumstances have been established. Under Article 63⁴⁵ of the RPC, one of the rules in cases where the law prescribes a penalty composed of two indivisible penalties is that “when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.” Accordingly, applying A.M. No. 15-08-02-SC, as afore-quoted, there is no more need to append the phrase “without eligibility for parole” in the penalty of *reclusion perpetua* that was imposed by the RTC.

The distinction is also crucial in the determination of the proper amount of civil indemnity and damages to be awarded. The CA in this case imposed the following amounts: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the finality of judgment until full payment. As stated in *People v. Jugueta*,⁴⁶ these amounts are imposed where the penalty is death but reduced to *reclusion perpetua* because of RA 9346. Since the penalty imposed in this case is *reclusion perpetua* only, the proper amounts are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, temperate damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim; this

⁴⁵ Article 63 of the Revised Penal Code provides:

ART. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. *When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.*

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Italics supplied.)


⁴⁶ 783 Phil. 806 (2016).

amount is imposed upon accused-appellant since no documentary evidence of burial or funeral expenses was presented in court.⁴⁷ In addition, the civil indemnity, moral damages, exemplary damages, and temperate damages payable by accused-appellant are subject to interest at the rate of 6% *per annum* from the finality of this Decision until fully paid.⁴⁸

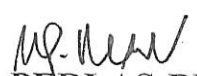
WHEREFORE, the appeal is **DENIED**. The Decision dated January 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02344 is **AFFIRMED** with **MODIFICATION**.

Accused-appellant Julian Silvederio III y Javelosa is found **GUILTY** of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the heirs of Glenn N. Lasafin the following amounts: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. All the monetary awards are subject to interest at the rate of 6% *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

⁴⁷ *Id.* at 853.


⁴⁸ *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 282 (2013).



RAMON PAUL L. HERNANDO
Associate Justice



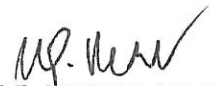
EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
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.



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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.



DIOSDADO M. PERALTA
Chief Justice

