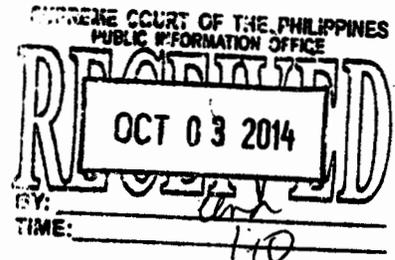




Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 9, 2014 which reads as follows:

“G.R. No. 207806 (People of the Philippines v. Arlito Cabe y Montefero, Rene Cuña y Ferrer, Noel Gabuten, Meliton Montes and Poní Gabit, accused; Arlito Cabe y Montefero, accused-appellant) . –This appeal is from the Decision¹ of the Court of Appeals (CA) affirming the Decision² of the Regional Trial Court of Caloocan City, Branch 129 (RTC), finding appellant guilty of the crime of murder.

THE INFORMATION

The x x x Asst. City Prosecutor accuses [NOEL GABUTEN, BOTOY CUÑA @ RENE CUÑA y FERRER, **ARLITO CABE y MONTEFERO**, PONI GAVIT, and MELITON MONTES] of the crime of M U R D E R, committed as follows:

That on or about the 26th day of October, 2003 in Caloocan City, MM. and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without any justifiable cause, with treachery and evident premeditation, taking advantage of superior strength and with intent to kill, did then and there willfully, unlawfully and feloniously attack and shoot with a handgun one, JASON BONAGUA Y SALCEDO, hitting the latter on his head and foot, thereby inflicting upon said victim serious physical injuries, which injuries ultimately caused the latter’s instantaneous death.

Contrary to Law.
Caloocan City, MM. June 16, 2004.³

¹ Rollo, pp. 2-13. The Decision dated 28 January 2013 issued by the Court of Appeals Fifteenth Division in CA-G.R. CR-HC No. 05161 was penned by Associate Justice Franchito N. Diamante, with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang concurring.
² CA rollo, pp. 7-41; in Criminal Case No. C-70919 dated 18 May 2011.
³ Records, p. 2.

RULING OF THE RTC

In a Decision dated 18 May 2011, the RTC found appellant guilty of the crime of murder. He was sentenced to *reclusion perpetua* and ordered to pay the heirs of Jason the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as exemplary damages.⁴

Based on eyewitness testimonies, in the afternoon of 26 October 2003, the five accused, including appellant, were all armed when they approached and surrounded Jason, who was seated in front of a store.⁵ After a few minutes, appellant shot Jason in the head, causing the latter to fall down to the ground. While already sprawled on the ground, Jason was again shot in the head by appellant and in the knee by Noel. Behind the two stood Rene, Poni and Meliton as backup.⁶ After shooting Jason, the five walked away as if nothing happened.

Trial proceeded against appellant and Rene only,⁷ while the others remained at large.⁸ The RTC found that all of the following elements of the crime of murder were proven by the prosecution: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code;⁹ and 4) that the killing was not parricide or infanticide.¹⁰ The trial court held that the qualifying circumstance of treachery attended the commission of the crime, considering that Jason had been gunned down with absolutely no provocation on his part.¹¹ While it appreciated the existence of abuse of superior strength, the RTC deemed it absorbed in treachery.¹²

⁴ CA *rollo*, pp. 40-41.

⁵ Id. at 36.

⁶ Id. at 36-37.

⁷ Id. at 37.

⁸ Id. at 41.

⁹ 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 *reclusión 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, 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 any 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.

¹⁰ CA *rollo*, p. 38.

¹¹ Id. at 38-39.

¹² Id. at 40.

The trial court ruled that the prosecution evidence failed to establish the aggravating circumstance of evident premeditation.¹³ It also acquitted Rene because the latter had acted as backup only, and there was no sufficient evidence of conspiracy.¹⁴

RULING OF THE CA

On 28 January 2013, the CA rendered a Decision affirming that of the RTC, with modification. The appellate court increased the award of civil indemnity and moral damages to ₱75,000 and the exemplary damages to ₱30,000. It also awarded actual damages to the heirs of Jason in the amount of ₱35,606.50.¹⁵

The CA agreed with the RTC that the collective recollection of the witnesses were categorical enough and warranted no other inference than that appellant was responsible for the fatal shooting of Jason.¹⁶ The appellate court also approved the finding of treachery considering that the five armed accused surrounded the unarmed Jason, affording him no opportunity to defend himself or retaliate.¹⁷ It likewise considered the aggravating circumstance of abuse of superior strength absorbed in treachery.¹⁸

Contrary to the finding of the trial court, however, the CA ruled that the concerted actions of the accused indicated the existence of conspiracy.¹⁹ Nevertheless, since the acquittal of Rene was already final, a reexamination of the merits of the acquittal would place him in double jeopardy.²⁰

ISSUE

Whether there is proof beyond reasonable doubt that appellant is guilty of the crime of murder.

OUR RULING

We answer in the affirmative.

In this appeal, appellant claims that there was no clear proof identifying him as the person who shot Jason. According to appellant, the trial court should not have relied on the testimony of Warlito, who was busy talking with someone else when the former and his companions

¹³ Id. at 39-40.

¹⁴ Id. at 40.

¹⁵ *Rollo*, p. 13.

¹⁶ Id. at 6.

¹⁷ Id. at 10.

¹⁸ Id. at 12.

¹⁹ Id. at 8-9.

²⁰ Id. at 9.

supposedly passed by.²¹ On the other hand, not much credence can be given to the testimony of Felisa, who stated that when she saw one of the armed persons poke a gun at Jason, she immediately left to seek help.²²

Appellant also assails the credibility of the eyewitnesses, particularly Warlito, because the latter was inconsistent in his testimony on which part of the body Jason was hit.²³ In his initial testimony, Warlito stated that appellant had shot Jason twice in the head. Later, Warlito testified that appellant had shot Jason in the head and the abdomen.

We find these contentions of appellant unfounded. The credibility of witnesses is best determined by the trial court, which had the direct opportunity to observe their candor and demeanor on the witness stand and to discern whether or not they were telling the truth.²⁴ The trial court gave full credence to the testimony of Warlito, and we do not find any reason now to interfere with its assessment of his credibility. In any case, the alleged inconsistency was minor. What is notable is that Warlito never wavered in his statement that it was appellant who had shot Jason.

There is no merit either in the challenge to the positive identification of appellant. While Warlito was talking with someone else when the five accused passed by, he stopped conversing when he noticed their unusual behavior, as shown in the following excerpt from his testimony:

Atty. Alejandria

x x x x

Q And during that time Mr. Witness, when the accused were talking with the victim, you were also busy talking with the baker, [weren't you]?

[Warlito Valdez]

A Yes Mam and I stopped talking when they passed by Mam.

Q Why did you stop talking Mr. Witness?

A Because when we noticed the persons who arrived, I stopped talking to the baker Mam.

Q The question is, why did you stop, did you notice an unusual behavior?

A Yes Mam.

Q What is that Mr. Witness?

A Because these 5 persons were in a hurry in going to the direction of Jason [Bonagua] Mam.²⁵

²¹ CA rollo, p. 95.

²² Id. at 96.

²³ Id. at 97.

²⁴ *People v. Español*, 598 Phil. 793 (2009); *People v. Loterono*, 440 Phil. 268 (2002).

²⁵ TSN, 10 May 2005, pp. 19-20.

Warlito clearly saw that the five accused went directly towards Jason, who was seated only three to four arm lengths away from him.²⁶ It appeared as though Jason had a brief conversation with the five before appellant shot him.²⁷ Noel also shot Jason in the right knee.²⁸

With regard to Felisa, she indeed stated that she left to look for help when she saw a gun poked at Jason. While seeking help, she heard a single gunshot coming from the front of the store.²⁹ When she ran back, she saw Jason already sprawled on the ground.³⁰ Appellant was there with his gun still trained at Jason.³¹ Felisa clearly saw Jason again shot in the head by appellant,³² then in the leg by Noel.³³

Clearly, these two eyewitnesses saw the entire incident. While Warlito testified that he did not know the names of the five accused at the time,³⁴ he was familiar with appellant, whom he regularly saw vending fish in the area.³⁵ More important, Warlito and Felisa positively identified appellant in open court as the person who had shot Jason in the head.³⁶

Courts do not require witnesses to know the name of the accused before they are accorded credibility. Indeed, “[t]he witness need not have to know the name of the accused for so long as he recognizes his face.”³⁷ The important thing is that the eyewitness account is grounded on the fact that the witness saw the accused commit the crime, and not just knew the name of the accused.³⁸

Against the positive identification by two eyewitnesses that he was the gunman who shot Jason, appellant proffers the flimsy excuse that he was just implicated in the killing because he was friends with Noel, and they grew up together.³⁹ In the same breath though, appellant disowns the association and insists that he has not always been with Noel and, in fact, does not really see him often.⁴⁰ Clearly, appellant cannot even get his own story straight.

In fine, we find no error on the part of the trial court in giving credence to the accounts of Warlito and Felisa, as these are consistent in their material points.

²⁶ TSN, 5 April 2005, pp. 6-7.

²⁷ Id. at 8-9.

²⁸ Id. at 17-18.

²⁹ TSN, 20 July 2005, p. 10.

³⁰ Id.

³¹ Id. at 14.

³² Id. at 14-15.

³³ Id. at 15.

³⁴ TSN, 5 April 2005, p. 8.

³⁵ TSN, 10 May 2005, pp. 11-12.

³⁶ TSN, 8 October 2008, pp. 8-9, 11, 18-20.

³⁷ *Guiyab v. People*, 510 Phil. 307, 314 (2005).

³⁸ Id.

³⁹ TSN, 23 June 2010, pp. 9-10.

⁴⁰ Id. at 9.

Appellant also argues that the prosecution failed to prove the presence of treachery,⁴¹ which qualified the killing to murder.

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof that tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.⁴² Two elements must concur for treachery to be considered: 1) the employment of means of execution that gives the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.⁴³

It cannot be denied that when appellant, Noel, Rene, Poni and Meliton – all armed – surrounded Jason who was unaware and unarmed, it was for no reason other than to deprive him of the chance to defend himself or to get away unscathed. That all five had guns, that they all purposely strode toward Jason and took their respective positions around him plainly show that this manner of approach had been deliberately adopted. Again, the trial court committed no error in its appreciation of the presence of treachery in the killing of Jason. The disparity in number and combined strength of the five accused also tipped the odds heavily against Jason, clearly showing abuse of superior strength. All the same, this cannot be appreciated as a separate circumstance, for it is deemed absorbed in treachery.⁴⁴

Any person found guilty of the crime of murder shall be punished by *reclusion perpetua* to death.⁴⁵ In view of the absence of any mitigating or aggravating circumstance, *reclusion perpetua* was properly imposed on appellant.⁴⁶ The CA was correct in increasing the award of civil indemnity to ₱75,000 and exemplary damages to ₱30,000⁴⁷ in addition to the award of actual damages in the amount of ₱35,606.50. However, the award of moral damages shall remain at ₱50,000.⁴⁸ These awards shall earn interest at the rate of 6% from the finality of this Resolution until fully paid.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 05161 is **AFFIRMED WITH MODIFICATION**.

⁴¹ CA rollo, pp. 98-99.

⁴² REVISED PENAL CODE, Art. 14(16).

⁴³ *People v. Yanson*, G.R. No. 179195, 3 October 2011, 658 SCRA, 385; *People v. Lacaden*, G.R. No. 187682, 25 November 2009, 605 SCRA 784; *People v. Guzman*, 542 Phil. 152 (2007).

⁴⁴ *People v. Rodas*, 558 Phil. 305 (2007); *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40; *People v. Simon*, 473 Phil. 336 (2004).

⁴⁵ REVISED PENAL CODE, Art. 248.

⁴⁶ *Id.* at Art. 63(2).

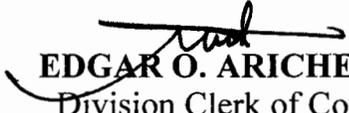
⁴⁷ *People v. Malicdem*, G.R. No. 184601, 12 November 2012, 685 SCRA 193; *People v. Laurio*, 182523, 13 September 2012, 680 SCRA 560.

⁴⁸ *Id.*

We find appellant **ARLITO CABE y MONTEFERO** guilty beyond reasonable doubt of the crime of murder. He is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* and **ORDERED** to pay the heirs of Jason Bonagua ₱35,606.50 as actual damages, ₱75,000 as civil indemnity, ₱50,000 as moral damages, and ₱30,000 as exemplary damages, plus legal interest at the rate of 6% from the finality of this Resolution until the amounts due are fully paid.

SO ORDERED. *REYES, J.*, on leave; *MENDOZA, J.*, acting member per S.O. No. 1715 dated July 1, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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