



REPUBLIC OF THE PHILIPPINES  
 SUPREME COURT  
 Manila  
 SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
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**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 February 2015** which reads as follows:*

**G.R. No. 211645: RAUL GORPIDO Y RAAGAS v. PEOPLE OF THE PHILIPPINES**

X-----X

This court resolves the Petition for Review on Certiorari assailing the Decision of the Court of Appeals Cagayan de Oro City, Twenty-First Division, affirming the Decision of Branch 35 of the Regional Trial Court of Ozamiz City. The Regional Trial Court found petitioner Raul Gorpido y Raagas (Raul) guilty beyond reasonable doubt of homicide in the Decision dated April 29, 2009, the dispositive portion of which reads:

WHEREFORE, finding accused Raul Gorpido y Raagas, guilty beyond reasonable doubt of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code, and applying the Indeterminate Sentence Law and Article 64 paragraph 3 of the same penal code, this Court hereby sentences *him to suffer the indeterminate penalty ranging from 10 years and one (1) day of Prison Mayor as minimum to 17 years Four (4) months and one (1) day of Reclusion Temporal as maximum to pay the offended party the civil liability of P50,000.00 to pay compensatory damages for wake and burial in the amount of P40,000.00, to pay P1,577.00 for medical expenses to pay the cost.*

The bail bond posted for the provisional liberty of the accused is ordered cancelled and returned to the bondsman.

SO ORDERED.<sup>1</sup> (Emphasis supplied)

The Court of Appeals affirmed the finding of guilt but modified the penalty to ten (10) years and one (1) day of prison mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum imprisonment.<sup>2</sup> Raul was also ordered to pay the heirs of the victim, Jomer Llagas (Jomer), P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P15,000.00 as temperate damages. In the Resolution dated January 28, 2014, the Court of Appeals denied Raul's Motion for Reconsideration.<sup>3</sup>

In the Information dated August 17, 2006, the City Prosecutor<sup>4</sup> of

<sup>1</sup> Rollo, p. 221. The case in the Regional Trial Court is docketed as Criminal Case No. 4458.

<sup>2</sup> Id. at 294.

<sup>3</sup> Id. at 318-323.

<sup>4</sup> Id. at 207. The City Prosecutor in charge of the case is Geronimo S. Amrave, Jr.

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Ozamiz City charged Raul with homicide for killing Jomer.<sup>5</sup>

### **Prosecution's version of events**

The prosecution presented the testimonies of the following witnesses: Dexter Surdilla (Dexter), Rolly Surdilla (Rolly), and Mercedaria Llagas (Mercedaria).<sup>6</sup>

According to Dexter, at around 8 p.m. on March 17, 2006, he, Rolly, and Jomer were on their way to a wedding reception when they ran into Raul. Seeing that Raul held a gun, the three of them ran away.<sup>7</sup> While fleeing, Jomer was shot by Raul on the chest. Rolly and Dexter saw that Jomer had fallen down.<sup>8</sup> The two sought the help of some neighbors,<sup>9</sup> but upon return, they found Jomer not moving. They rushed him to Medina Hospital where he eventually died.<sup>10</sup>

Both Dexter and Rolly testified that they were able to identify Raul due to the moonlight and the light coming from the house of Dina Saniel (Dina).<sup>11</sup> According to Jomer's mother, Mercedaria, the bad blood between Raul and Jomer began when Raul accused Jomer of stealing a 50-meter bronze wire worth around ₱10,000.00 from the Misamis Occidental Water District (MOWD) substation.<sup>12</sup>

The trial court conducted an ocular inspection. It found that the distance between Dina's house and the scene of the shooting was 35.55 meters.<sup>13</sup>

### **Defense's version of events**

Raul relied upon the defenses of denial and alibi.<sup>14</sup> He presented the testimonies of Ramil Murallon (Ramil), Leonardo Peligrino (Leonardo), Suzette Tero (Suzette), and Ruel Senodivilla (Ruel).

According to Ramil,<sup>15</sup> Jomer, Dexter, and Rolly had been suspected of stealing cable wires from the MOWD substation. This issue was settled

<sup>5</sup> Id.

<sup>6</sup> Id. at 274.

<sup>7</sup> Id.

<sup>8</sup> Id. at 275-276.

<sup>9</sup> Id. at 276. The neighbors who helped Dexter and Rolly are named Ely, Efren, Ramil, and Toto.

<sup>10</sup> Id. at 276-277.

<sup>11</sup> Id. at 277.

<sup>12</sup> Id. at 279.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 280. Ramil Murallon is the pump operator of the MOWD substation.

before the Barangay Captain<sup>16</sup> on the morning of March 17, 2006.<sup>17</sup> At around 7 p.m. of the same day, Jomer, Dexter, and Rolly came to see Ramil and challenged him to a fight for having singled them out for the cable wire theft.<sup>18</sup> Ramil called a Barangay Councilor and the Barangay Captain for help. Raul, a member of the local Civilian Volunteers Organization (CVO), came to pacify the three.<sup>19</sup> Rolly allegedly picked up a stone and challenged Raul to a fight. This drew the attention of the neighboring residents.<sup>20</sup> The parties were eventually pacified. According to Ramil, Raul left MOWD substation and went home for fear that the three would retaliate.<sup>21</sup>

According to Leonardo, Raul's neighbor, Raul never left his house and could not have been at the scene where the shooting happened.<sup>22</sup>

As for Raul, he testified that after the scuffle at the MOWD substation, he went straight home to make sure the three did not retaliate by possibly throwing stones at his home. Upon arriving, he found that Leonardo and several onlookers were already at his house.<sup>23</sup>

Later that night, Raul and the group gathered at his house were told that someone had been shot. Raul's motorcycle was allegedly borrowed so Jomer could be brought to the hospital.<sup>24</sup> The Barangay Captain, the President of CVO, and several police officers came to see Raul immediately after the incident. He surrendered voluntarily but denied having any involvement with the shooting.<sup>25</sup>

### **The Decision of the Regional Trial Court and Court of Appeals**

In the Decision dated April 29, 2009, the Regional Trial Court found Raul guilty beyond reasonable doubt of committing homicide,<sup>26</sup> with the prosecution positively establishing the identity of Raul as the perpetrator.<sup>27</sup> The trial court's ocular inspection of the scene also confirmed that the area was close enough from Dina's house to be lit and that the moonlight provided sufficient light for the witnesses of the prosecution to see the incident.<sup>28</sup>

<sup>16</sup> Id. The Barangay Captain is Efren Acapulco.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 281.

<sup>23</sup> Id. at 282.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id. at 221. The Decision was penned by Presiding Judge Salome P. Dungog of Branch 35, Regional Trial Court, Ozamiz City.

<sup>27</sup> Id.

<sup>28</sup> Id. at 218.

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The trial court further ruled that Raul's denial and alibi were insufficient to create reasonable doubt.<sup>29</sup>

In the Decision dated February 27, 2013, the Court of Appeals<sup>30</sup> affirmed the findings of the Regional Trial Court<sup>31</sup> but modified the penalty.<sup>32</sup>

WHEREFORE, the appeal is DISMISSED. The assailed April 29, 2009 Decision of the Regional Trial Court, 10<sup>th</sup> Judicial Region, Branch 35, Ozami[z] City is **AFFIRMED WITH MODIFICATION** in that the appellant Raul Gorpido y Raagas is found guilty beyond reasonable doubt of Homicide and is hereby *sentenced to suffer the indeterminate penalty of 10 years and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, and is further ordered to pay the heirs of the victim the sums of P50,000.00, as civil indemnity; P50,000.00, as moral damage; and P15,000.00, as temperate damages.*

SO ORDERED.<sup>33</sup> (Emphasis supplied)

The Court of Appeals ruled that the evidence of the prosecution established the elements of homicide. The identification of Raul as the perpetrator was possible despite the incident having occurred at night because of two things: judicial notice of the fact that on March 17, 2006, the moon was 99.6% full as per moonrise and moonset in the Manila website,<sup>34</sup> and the illumination of the area of the incident from Dina's fluorescent light was sufficient.<sup>35</sup>

It further ruled that the minor inconsistencies in the testimonies of the prosecution's witnesses referred to inconsequential matters<sup>36</sup> and, therefore, found no reason to disturb the findings of the trial court on the issue of credibility.<sup>37</sup> The defense of denial and alibi of Raul was weak compared to the evidence presented by the prosecution.<sup>38</sup>

In the Resolution dated January 28, 2014, the Court of Appeals denied Raul's Motion for Reconsideration.<sup>39</sup>

Hence, this Petition was filed.

<sup>29</sup> Id. at 220.

<sup>30</sup> Id. at 273–294. This Decision was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justice Ma. Luisa C. Quijano-Padilla and Associate Justice Marie Christine Azcarraga Jacob.

<sup>31</sup> Id. at 294.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id. at 286–287.

<sup>35</sup> Id. at 288.

<sup>36</sup> Id. at 290.

<sup>37</sup> Id. at 291.

<sup>38</sup> Id. at 293.

<sup>39</sup> Id. at 323.

### Procedural Antecedents

Petitioner received the Court of Appeals Resolution on March 10, 2014.<sup>40</sup> He filed his Motion for Extension of 15 days on March 28, 2014.

Petitioner thereafter filed his Petition for Review on Certiorari on May 12, 2014.<sup>41</sup> Together with the Petition was a Motion to Admit Petition and Payment of Docket and Other Legal Fees.<sup>42</sup> According to petitioner's counsel, he was diagnosed with Stage 4 lung cancer and had to undergo chemotherapy sessions in Zamboanga City.<sup>43</sup> The late filing was allegedly further aggravated by petitioner's difficulty in securing the money needed to defray the expenses of filing this Petition.<sup>44</sup> For these reasons, petitioner prayed that the Petition be admitted despite having been filed out of time.<sup>45</sup>

In the Resolution dated July 30, 2014, this Court required petitioner to submit a soft copy of the Motion for Extension pursuant to A.M. No. 11-9-4-SC and an Affidavit of Service of the Motion for Extension to the Court of Appeals and the Office of the Solicitor General. The Office of the Solicitor General was also required to file its Comment.

### This court's ruling

Petitioner brings forth the same arguments raised in its appeal before the Court of Appeals, all of which had been properly settled by that court. This Petition must be denied for lack of merit.

A petition for review on certiorari under Rule 45 shall only pertain to questions of law.<sup>46</sup> It is not the duty of this court to re-evaluate the evidence adduced before the lower courts.<sup>47</sup> Unless the petition clearly shows that there is grave abuse of discretion<sup>48</sup> or that the trial court misunderstood the facts or circumstances of the case,<sup>49</sup> the findings of fact of the trial court, as affirmed by the Court of Appeals, are conclusive upon this court.<sup>50</sup> Petitioner failed to show how the findings of facts of the trial court, as affirmed by the Court of Appeals, were contradictory to the evidence on record.

<sup>40</sup> Id. at 7.

<sup>41</sup> Id. at 12.

<sup>42</sup> Id. at 7-8.

<sup>43</sup> Id. at 7.

<sup>44</sup> Id.

<sup>45</sup> Id. at 8.

<sup>46</sup> RULES OF COURT, Rule 45, sec. 1.

<sup>47</sup> *Fronzarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per J. Velasco Jr., Third Division].

<sup>48</sup> See *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24 [Per J. Leonardo-De Castro, First Division].

<sup>49</sup> Id.

<sup>50</sup> *Muaje-Tuazon v. Wenphil Corp.*, 540 Phil. 516, 524 (2006) [Per J. Quisumbing, Third Division].

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On matters pertaining to a witness' credibility, it is an established rule that the findings of the trial court shall be accorded respect.<sup>51</sup> Even then, petitioner only questioned the issue on the scene being insufficiently lit by moonlight and the fluorescent light coming from Dina's house. He alleged that the distance as testified by the prosecution's witnesses was inconsistent with the distance as found by the trial court. He instead relied on his alibi of having stayed at home when the crime was committed.

Alibi is considered the weakest kind of defense, and jurisprudence has constantly emphasized that it cannot hold water in light of positive identification.<sup>52</sup> Hence, in *People v. Ramos*:<sup>53</sup>

*However, for the defense of alibi to prosper, "the accused must prove (a) that [she] was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for [her] to be at the scene of the crime" during its commission. "Physical impossibility refers to distance and the facility of access between the [crime scene] and the location of the accused when the crime was committed. [She] must demonstrate that [she] was so far away and could not have been physically present at the [crime scene] and its immediate vicinity when the crime was committed."*

....

Moreover, Marissa was positively identified by eyewitnesses to be present at the scene of the crime and to have participated in its commission. Time and again, this Court has consistently *ruled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.*<sup>54</sup>

Petitioner further argued that the inconsistencies in the testimonies presented by the prosecution should have created reasonable doubt. However, both the trial court and the Court of Appeals found the inconsistencies pertain only to minor details. This court ruled in *People v. Appegu*<sup>55</sup> that inconsistencies on non-material details do not affect the weight of a witness' testimony:

*In any case, the alleged inconsistencies refer only to minor details or collateral matters. They do not affect the veracity and weight of Alex Bunnao's testimony. Slight contradictions even serve to*

<sup>51</sup> *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700 [Per J. Velasco Jr., First Division].

<sup>52</sup> *People v. Lago*, G.R. No. 96090, March 30, 1993, 220 SCRA 578, 582 [Per J. Melo, Third Division].

<sup>53</sup> G.R. No. 190340, July 24, 2013, 702 SCRA 204 [Per J. Del Castillo, Second Division].

<sup>54</sup> *Id.* at 217-218, *citing People v. Mosquera*, 414 Phil. 740, 749 (2001) [Per J. De Leon, Jr., Second Division]; *People v. Trayco*, 612 Phil. 1140, 1161 (2009) [Per J. Brion, Second Division]; *People v. Dejillo*, G.R. No. 185005, December 10, 2012, 687 SCRA 537 [Per J. Leonardo-De Castro, First Division].

<sup>55</sup> 429 Phil. 467 (2002) [Per J. Ynares-Santiago, First Division].

*strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed nor perjured. What is important is the fact that there is a sustained consistency in relating the principal elements of the crime and the positive and categorical identification of accused-appellants as the perpetrators of the crime.*

.....

*The Court has recognized that even the most candid of witnesses commit mistakes and make confused and inconsistent statements. This is especially true with young witnesses who could be overwhelmed by the atmosphere of the courtroom. Hence, there is more reason to accord them an ample space for inaccuracy. So long as the witnesses' testimonies agree on substantial matters, the inconsequential inconsistencies and contradictions dilute neither the witnesses' credibility nor the verity of their testimonies. When the inconsistency is not an essential element of the crime, such inconsistency is insignificant and can not have any bearing on the essential fact testified to, that is, the killing of the victim.<sup>56</sup>*  
(Emphasis supplied, citation omitted)

The findings of the trial court regarding the credibility of witnesses are accorded great respect, especially if the findings are affirmed by the Court of Appeals.<sup>57</sup> This is founded on the recognition that trial courts are able to observe the demeanor of the witnesses as they testify.<sup>58</sup>

After an evaluation of the records of the case, this court resolves to deny this Petition for lack of merit.

**WHEREFORE**, this court resolves to:

- (a) **GRANT** the first Motion for Extension to file Comment on the Petition for Review on Certiorari filed by the Office of the Solicitor General for 45 days from September 25, 2014;
- (b) **NOTE** the Manifestation dated October 7, 2014 by Atty. Emmanuel C. Opay, counsel for petitioner, informing this court that he cannot comply with the Resolution dated July 30, 2014 as he has not received from Atty. Bryan G. Bantilan a copy of the Motion for Extension to file Petition and its Affidavit of Service and that Atty. Bantilan is working in Metro Manila;
- (c) **NOTE** the Comment dated November 18, 2014 by the Office of the Solicitor General on the Petition in compliance with the Resolution dated July 30, 2014; and

<sup>56</sup> Id. at 477-478.

<sup>57</sup> People v. Hernandez, 607 Phil. 617, 635 (2009) [Per J. Chico-Nazario, Third Division].

<sup>58</sup> Id.

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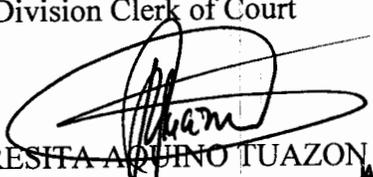
- (d) **ADOPT** the findings of fact and conclusions of law of the Court of Appeals and **AFFIRM** its Decision dated February 27, 2013 *in toto*. Petitioner Raul Gorpido y Raagas is **GUILTY** beyond reasonable doubt of homicide and is sentenced to suffer the penalty of ten (10) years and one (1) day of prision mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is further ordered to pay the heirs of the victim, Jomer Llagas, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱15,000.00 as temperate damages. Damages shall earn 6% per annum from date of finality of judgment until full payment. (*Brion, J., on leave; Velasco, Jr., J., designated acting member per S.O. No. 1910 dated January 12, 2015.*)

**SO ORDERED.**

Very truly yours,

MA. LOURDES C. PERFECTO  
Division Clerk of Court

By:

  
TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *3/20*

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 35  
Ozamiz City  
(Crim. Case No. RTC-4458)

COURT OF APPEALS (reg)  
Mindanao Station  
Cagayan de Oro City  
CA-G.R. CR No. 00709-MIN

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