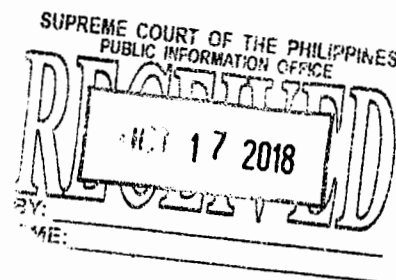




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES, **G.R. No. 213222**
 Plaintiff-Appellee,

Present:

LEONARDO-DE CASTRO, *C.J.*,
 Chairperson,
 BERSAMIN,
 DEL CASTILLO,
 *JARDELEZA, and
 TIJAM, *JJ.*

- versus -

ALBERTO PETALINO alias
“LANIT,”
 Accused-Appellant.

Promulgated:

SEP 24 2018

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DECISION

BERSAMIN, J.:

Treachery is not appreciated against the accused despite the attack being sudden and unexpected when the meeting between him and the victim was casual, and the attack was done impulsively.

The Case

We review the decision promulgated on April 24, 2014,¹ whereby the Court of Appeals (CA) affirmed the judgment rendered on January 24, 2013 by the Regional Trial Court (RTC), Branch 35, in Iloilo City finding accused-appellant Alberto Petalino *alias* “Lanit” guilty beyond reasonable doubt of the crime of murder.²

* On Wellness Leave.

¹ *Rollo*, pp. 4-14; penned by Associate Justice Ramon Paul L. Hernando, and concurred in by Associate Justice Ma. Luisa C. Quijano-Padilla and Associate Justice Marie Christine Azcarraga-Jacob.

² *CA rollo*, pp. 25-31; penned by Judge Fe Gallon-Gayanilo.

Antecedents

The accused-appellant was charged with murder through the information dated February 19, 1998, which avers:

That on or about the 30th day of November, 1997 in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused, armed with a knife, with treachery and evident premeditation, with a decided purposes (sic) to kill, did then and there willfully, unlawfully and criminally stab, hit and wound Johnny Nalangay with the said knife, which the said accused was provided at the time, thereby causing upon the latter injuries on vital parts of his body which caused his death few hours thereafter.

CONTRARY TO LAW.³

As culled from the assailed decision of the CA, the following are the antecedent facts, to wit:

Version of the Prosecution

Eyewitness Franklin Bariquit recalled that on November 30, 1997, he attended a party with his friend, a certain Carlo, in Barangay Danao, Iznart Street, Iloilo City. There, he met and befriended Johnny Nalangay, the victim in this case.

At around 1:30 in the morning, he and the victim decided to leave. They then headed towards the YMCA where they intended to get their respective rides for home. Bariquit walked behind the victim when the two passed through a narrow alley towards Iznart St. While they were walking, Bariquit saw a person, whom he later identified as accused Alberto Petalino *alias* Lanit, walking towards them from the opposite direction. When accused had passed the victim, he suddenly turned towards him, grabbed his hair and without warning, stabbed the victim in the back. The victim tried to run away, but he fell down after running a distance.

Thereafter, the accused and Bariquit confronted each other, The latter kicked the accused causing him to fall down and to drop his knife. Bariquit then ran away and proceeded to PO's Marketing which was located near the Bank of the Philippine Islands. After sensing that the accused was no longer chasing him, he went back to the alley where he last saw the victim. There, Bariquit found the victim lying on the ground, face down and bloodied all over. The victim managed to utter some words but became unconscious when he was taken to St. Paul's Hospital where he eventually died.

Jaime Nalangay, the father of the victim, testified that his son was only twenty (20) years old at the time of his untimely death. According to him, a police officer and his friend came over to their house and informed him that his son was stabbed. Thus, he went to the hospital but when he

³ *Rollo*, p. 5.

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f

arrived there, he found his son dead. Nalangay alleged that he spent Php15,000.00 for the embalming of his son's remains and another Php10,000.00 for his burial although he could not present receipts as he lost them. He also asserted that his son's death caused him so much pain which could never be quantified into monetary amount.⁴

Version of the Defense

X X X X

Accused Petalino testified in court to refute the accusations against him.

Accused narrated that on November 30, 1997 at around eleven o'clock in the evening, he was at his sister's store located in Valeria-Solis Street, Iloilo City helping his sister serve the customers. He left the store shortly later and headed home towards Valeria-Iznart Streets, Iloilo City. He entered a narrow alley along the way and met two persons. One of them, a certain Bariquit, called him "Lanit". At first, he did not reply as he did not know the two. When he was called the second time, he turned his back and accidentally bumped into another person that he later identified as the victim.

Accused apologized but the victim got angry and boxed him on his chest. Accused lost control and punched the victim back. Thereafter, the victim fell down, drew his knife and chased him. The victim then attempted to stab him but they wrestled and accused was able to get hold of the knife. Meanwhile, the victim's two other companions attempted to help. This prompted accused to run away as both were drunk. He was chased and so, he ran towards the interior portion of Valeria Street and proceeded inside his nipa hut.⁵

X X X X

Judgment of the RTC

On January 24, 2013, the RTC rendered judgment finding the accused-appellant guilty beyond reasonable doubt of murder,⁶ disposing:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding the accused, **Alberto Petalino** alias "Lanit" **GUILTY** beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided for by law. As civil liability, he is ordered to indemnify the heirs of the victim, Johnny Nalangay, ₱75,000.00 as indemnity ex-delicto, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages.

⁴ Id. at 6.

⁵ Id. at 7.

⁶ CA *rollo*, pp. 25-31.

The accused is entitled to full credit in the service of his sentence, the preventive imprisonment he has undergone pursuant Article 29 of the Revised Penal Code.

SO ORDERED. ⁷

Decision of the CA

On appeal, the accused-appellant argued that:

I.

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THAT THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY WHEN IT WAS NOT PROVEN BY THE PROSECUTION.⁸

On April 24, 2014,⁹ the CA affirmed the conviction, opining that the inconsistencies in the declaration of eyewitness Franklin Bariquit related to minor and trivial matters that did not necessarily impair his credibility; that the accused-appellant's denial of the offense did not overcome Bariquit's positive identification of him as the assailant; and that the qualifying circumstance of treachery had attended the killing of Johnny Nalangay, upgrading the killing to murder. The CA disposed thusly:

WHEREFORE, premises considered, the Decision dated January 24, 2013 of the Regional Trial Court, Branch 35 of Iloilo City in Criminal Case No. 48298 is hereby **AFFIRMED** in toto. No costs.

SO ORDERED.¹⁰

Issues

The accused-appellant seeks the reversal of his conviction by insisting that the Prosecution did not prove his guilt beyond reasonable doubt; and that the Prosecution did not prove the qualifying circumstance of treachery.

⁷ Id. at 31.

⁸ *Rollo*, p. 8.

⁹ *Supra* note 1

¹⁰ Id. at 14.

Ruling of the Court

The appeal is partly meritorious.

1.

Denial and alibi did not prevail over positive identification

We have held that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who testify categorically and consistently, and who are bereft of ill-motive towards the accused. Denial, if not substantiated by clear and convincing evidence, is a negative and self-serving defense that carries no greater evidentiary value than the declaration of a credible witness upon affirmative matters.¹¹ Indeed, we have held that denial and alibi, to be credited, must rest on strong evidence of non-culpability on the part of the accused.¹²

The accused-appellant admitted being at the crime scene, but denied stabbing the victim. He submitted that the victim had drawn a knife and run after him to stab him; and that they had then wrestled until he had gotten hold of the knife. He recalled that he had run away because the victim's two drunk companions had tried to go to latter's succor. He denied having anything to do with the stabbing of the victim, and having any idea how the victim had sustained his fatal injury.

As mentioned, the RTC gave scant consideration to the claim of the accused-appellant, and accorded full credence to Bariquit's positive and categorical identification of the accused-appellant as the assailant who had stabbed and mortally wounded the victim. The RTC's treatment of the identification by Bariquit of the accused-appellant as the assailant who had stabbed the victim was warranted. Bariquit's credibility as an eyewitness was unassailable considering that there was no showing or hint of ill-motive on his part to falsely incriminate the accused-appellant. His identification of the latter as the assailant of Nalangay, being firm and untainted by ill-motive, prevailed over the unsubstantiated denial.¹³

The accused-appellant pointed to the supposed inconsistencies and improbabilities that rendered the testimony of Bariquit on the incident undependable. According to the accused-appellant, Bariquit, although stating on direct examination that he and the victim had attended a birthday party prior to the stabbing incident, later declared on cross-examination that

¹¹ *People v. Oandasan, Jr.*, G.R. No. 194605, June 14, 2016, 793 SCRA 278, 289-290.

¹² *People v. Narido*, G.R. No. 132058, October 1, 1999, 316 SCRA 131, 149.

¹³ *People v. Oandasan, Jr.*, supra note 11, at 289.

he and the victim had been at a party that was “not really a birthday party.” The accused-appellant also pointed to the confusion on the part of Bariquit about the exact place where the party had been held.

The RTC and the CA both ruled out the challenge posed by the accused-appellant against Bariquit’s credibility. We agree with them. The inconsistencies referred to what had transpired before the crime was committed, and did not relate to material facts vital to the determination of the guilt or innocence of the accused-appellant. The inconsistencies were also too minor and trivial to have any significance in this adjudication. At best, they concerned credibility, but the adverse findings by the trial court on the credibility of witnesses and of their testimonies were entitled to great respect, even finality, unless said findings were shown to have been arbitrary, or unless facts and circumstances of weight and influence were shown to have been overlooked, misunderstood, or misapplied by the trial judge that, if properly considered or appreciated, would have affected the outcome in favour of the accused-appellant. Needless to state, such findings are now binding on the Court because the CA has affirmed them.¹⁴ We also remind that minor inconsistencies in testimony do not necessarily weaken or diminish the testimonies of witnesses who displayed consistency on material points, *i.e.*, the elements of the crime and the identity of the perpetrator.¹⁵ Instead of weakening or diminishing the testimonies, the inconsistencies should strengthen credibility because they discounted the possibility of the witnesses being rehearsed.¹⁶ It is notable that the inconsistencies ascribed to Bariquit did not detract from his declaration of having personally witnessed the stabbing of the victim by the accused-appellant.

2.

Treachery was improperly considered as attendant

Under Article 14, paragraph 16, of the *Revised Penal Code*, treachery is present when the offender commits any of the crimes against a 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 offended party might make.

For treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form

¹⁴ *Dela Cruz v. Court of Appeals*, G.R. No. 139150, July 20, 2001, 361 SCRA 636, 645.

¹⁵ *People v. Delima*, G.R. No. 222645, June 27, 2018.

¹⁶ *People v. Bagua*, G.R. No. 147943, December 12, 2002, 394 SCRA 54, 63.

of execution must be shown to be deliberated upon or consciously adopted by the offender.¹⁷ It is not sufficient for the Prosecution to show that the victim was unable to defend himself, for the Prosecution must also establish that the accused consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.¹⁸

Both the RTC and the CA concluded that the killing of Nalangay was attended by treachery. This is where we disagree with the lower courts.

To start with, the acts constituting treachery were not sufficiently averred in the information, which pertinently stated:

x x x herein accused, armed with a knife, with treachery and evident premeditation, with a decided purposes (sic) to kill, did then and there willfully, unlawfully and criminally stab, hit and wound Johnny Nalangay with the said knife, which the said accused was provided at the time, thereby causing upon the latter injuries on vital parts of his body which caused his death few hours thereafter x x x.¹⁹

It is clear from the averments to the effect that “accused, armed with a knife, with treachery and evident premeditation, with a decided [purpose] to kill.... stab, hit and wound Johnny Nalangay with the said knife... causing upon the latter injuries on vital parts of his body which caused his death” did not state that the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.²⁰

To merely state in the information that treachery was attendant is not enough because the usage of the term *treachery* was but a conclusion of law.²¹ As we pointed out in *People v. Valdez*:²²

x x x It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances

¹⁷ *People v. Delector*, G.R. No. 200026, October 4, 2017

¹⁸ *Rustia, Jr. v. People*, G.R. No. 208351, October 5, 2016, 805 SCRA 311, 320.

¹⁹ *Rollo*, p. 5.

²⁰ *People v. Valdez*, G.R. No. 175602, January 18, 2012, 663 SCRA 272, 287-288.

²¹ *People v. Dasmariñas*, G.R. No. 203986, October 4, 2017.

²² *Supra*, note 20, at 288.

constituting treachery as an attendant circumstance in murder were missing from the informations.

The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. Thus, the facts stated in the body of the information should determine the crime of which he stands charged and for which he must be tried.²³ The information must sufficiently give him knowledge of what he had allegedly committed because he was presumed innocent and unaware of the illegal acts imputed against him.

Secondly, the finding of the attendance of treachery, assuming the sufficiency of the allegations thereon in the information, should be based on clear and convincing evidence. The attendance of treachery cannot be presumed.²⁴ The same degree of proof to dispel any reasonable doubt was required before treachery could be considered either as an aggravating or qualifying circumstance.²⁵ In short, such evidence must be as conclusive as the fact of killing itself.

For treachery to be properly appreciated, the State must show not only that the victim had been unable to defend himself, but also that the accused had consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.²⁶ The fact alone that the attack mounted by the accused-appellant against the victim was sudden and unexpected, and did not afford the latter any opportunity to undertake any form or manner of defense or evasion did not necessarily justify a finding that treachery was attendant without any showing that the accused-appellant had consciously and deliberately adopted such mode of attack in order to insure the killing of the victim without any risk to himself arising from the defense that the latter could possibly adopt. That showing was not made herein. For one, the stabbing was committed when the victim was walking together with Bariquit, whose presence even indicated that the victim had not been completely helpless. Also, Bariquit's testimony indicated that the encounter between the victim and the accused-appellant had been only casual because the latter did not purposely seek out the victim. In this connection, treachery could not be appreciated despite the attack being sudden and unexpected when the meeting between the accused and the victim was casual, and the attack was done impulsively.²⁷

²³ Id.

²⁴ *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 48

²⁵ *People v. Calinawan*, G.R. No. 226145, February 13, 2017, 817 SCRA 424, 434.

²⁶ *Rustia, Jr. v. People*, supra note 18, at 320.

²⁷ *People v. Ramelo*, G.R. No. 224888, November 22, 2017.


There being no treachery, the crime committed by the accused-appellant was homicide. Under Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal*. Considering that there were no aggravating or mitigating circumstances to modify the liability, the penalty is imposed in its medium period (*i.e.*, 14 years, eight months and one day to 17 years and four months). Applying the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence is nine years of *prision mayor*, and the maximum is 14 years, eight months and one day.

To conform to *People v. Jugueta*,²⁸ the heirs of the victim are entitled to recover ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The heirs of the victim should further recover ₱50,000.00 as temperate damages (in lieu of actual damages for burial expenses). All the items of civil liability shall earn legal interest of 6% *per annum* reckoned from the finality of this decision until full satisfaction.²⁹

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 24, 2014 by the Court of Appeals subject to the following **MODIFICATIONS**, namely: (1) accused-appellant **ALBERTO PETALINO** alias "**LANIT**" is found and pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, is punished with the indeterminate sentence of nine years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum; and (2) accused-appellant **ALBERTO PETALINO** alias "**LANIT**" is **ORDERED TO PAY** to the heirs of the late Johnny Nalangay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, plus legal interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

²⁸ G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382.

²⁹ *People v. Delector*, supra, note 17.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

(On Wellness Leave)
FRANCIS H. JARDELEZA
Associate Justice

Noel Gimenez Tijam
NOEL GIMENEZ TIJAM
Associate Justice

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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice