



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC OFFICE
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 229823

Present:

BERSAMIN,* *C.J.*,
 DEL CASTILLO,
*Acting Chairperson,***
 JARDELEZA,
 GESMUNDO, *and*
 CARANDANG,* *JJ.*

- versus -

ROGER ACABO,
Accused-Appellant.

Promulgated:
FEB 27 2019

x-----

DECISION

DEL CASTILLO, J.:

On appeal is the August 30, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 02082 which affirmed with modification the June 22, 2015 Judgment² of the Regional Trial Court (RTC), Branch 32, Dumaguete City, finding Roger Acabo (appellant) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

Appellant and Pael Acabo (Pael) were charged with murder in an Information dated November 20, 2014 which reads:

That in the morning of September 19, 2014 at Sitio Talatala, Barangay Siit, Municipality of Siaton, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused ROGER ACABO and PAEL ACABO, conspiring, helping and mutually aiding one another, with treachery, evident premeditation and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot and wound ALBERTO OYHOC PALTINGCA with the use of a short firearm of

* On official leave.

** Per Special Order No. 2638 dated February 26, 2019.

¹ CA *rollo*, pp. 89-100; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap.

² Records, Vol. 1, pp. 197-213; penned by Judge Roderick A. Maxino.

an unknown caliber, with which said accused were then armed and provided, inflicting upon the said victim fatal injuries on the different parts of his body that caused his untimely death, to the damage and prejudice of his surviving heirs.

CONTRARY to Article 248 of the Revised Penal Code.³

Appellant was arraigned and pleaded not guilty while his co-accused, Pael, remained at large. Trial, thereafter, ensued.

Version of the Prosecution

Witness Josephine Enrera (Josephine) testified that at around 6:00 a.m. of September 19, 2014, while on her way uphill to *Sitio* Talatala, Siit, Siaton to sell seashells, she met Alberto Paltingca (Alberto) who was also going uphill to pasture his cow.⁴ Suddenly, two men appeared and waylaid them.⁵ Josephine recognized their assailants as appellant, who was her neighbor, and Pael.⁶ She saw appellant shoot Alberto's legs with a handgun, causing Alberto to stumble and fall backwards.⁷ Immediately thereafter, Pael pointed a gun at her and pulled the trigger but the gun did not fire, thereby providing her an opportunity to run and hide behind the bushes.⁸ She then saw appellant run after Alberto and shoot him the second time.⁹ Alberto, who was shot on his armpits, fell down and rolled downhill.¹⁰ At this time, appellant and Pael ran towards the stream and escaped.¹¹ Josephine shouted and cried for help.¹² She ran home confused and told her children about what happened.¹³ It was only in the afternoon that she was able to relay to Romeo Paltingca (Romeo), Alberto's brother, what she witnessed.¹⁴

Dr. Mitylene Besario Tan (Dr. Tan), the Municipal Health Officer of Siaton, Negros Oriental, examined the cadaver of Alberto. She testified that Alberto sustained a gunshot wound on the upper left arm penetrating the lateral side of the chest and another gunshot wound on the upper right thigh exiting below the gluteal region.¹⁵ Dr. Tan opined that the cause of Alberto's death was the gunshot wound on the upper left arm that could have hit the heart causing hypovolemic shock, secondary to massive bleeding.¹⁶

³ Id. at 2.

⁴ TSN, March 31, 2015, p. 10

⁵ Id. at 11 and 15.

⁶ Id. at 11 and 20.

⁷ Id. at 11-13 and 19.

⁸ Id. at 12-16

⁹ Id. at 13.

¹⁰ Id.

¹¹ Id.

¹² Id. at 13-14.

¹³ Id. at 14 and 17.

¹⁴ Id.

¹⁵ Id. at 4.

¹⁶ Id. at 5.

Jennifer Paltingca (Jennifer), Alberto's wife, testified that at around 11:00 a.m. of September 19, 2014, she went looking for her husband who would usually come home at 8:00 a.m. after pasturing their cow.¹⁷ She went uphill and there she saw her husband lying in a pool of blood beside the road.¹⁸ She stated that the expenses incurred for the wake and burial of Alberto was shouldered by Alberto's sister, Mary Ann Gomial (Mary Ann).¹⁹

Romeo, Alberto's brother, testified that he assisted Jennifer in calling for help when the latter saw the lifeless body of her husband.²⁰ He also narrated that Josephine went to his house at 4:00 p.m. and told him who killed Alberto.²¹ On cross-examination, Romeo stated that he heard gunshots from afar at around 7:00 a.m. before he sent his children to school.²²

The Chapel Manager of Siaton Funeral Homes, Anthony E. Elma, also testified that Alberto's sister, Mary Ann, paid the total amount of ₱33,000.00 as premiums for the funeral plan used for the burial of Alberto.²³ Mary Ann was likewise presented as witness to confirm that she paid for the funeral plan she assigned to her brother.²⁴

Version of the Defense

Appellant interposed the defense of denial and alibi, alleging that on September 19, 2014, he was working in a construction project in Tunga-Tunga, Dauin, Negros Oriental. He narrated that he was on duty the previous day, rendered overtime work until 10:00 p.m. and thereafter slept in his bunkhouse situated near the construction site.²⁵ He woke-up at around 5:00 a.m. of September 19, 2014, prepared his breakfast, washed his clothes, and waited for the alarm to signal the start of their work at 8:00 a.m.²⁶ He admitted knowing Alberto whom he met a couple of times and averred that he had no disagreement with Jennifer and Romeo.²⁷

To corroborate appellant's testimony, the defense presented Engr. Jay Te (Engr. Te), appellant's employer; Gregorio Erolon (Gregorio), the foreman in Engr. Te's construction project; Stephen Jun Titu (Stephen), the timekeeper

¹⁷ Id. at 24.

¹⁸ Id.

¹⁹ Id. at 25; TSN, April 23, 2015, p. 2.

²⁰ TSN, April 23, 2015, p. 6.

²¹ Id. at 7.

²² Id. at 8.

²³ TSN, May 27, 2015, p. 6.

²⁴ Id. at 10.

²⁵ Id. at 21-22.

²⁶ Id. at 17-20.

²⁷ Id. at 22-24.

of the construction project; and Mario Campos (Mario) and Miguel Asturias (Miguel), appellant's co-workers.

Engr. Te testified that appellant had been his employee for about 10 years and that appellant reported for work in the construction site on September 19, 2014 based on their daily time record (DTR).²⁸ Gregorio, on the other hand, testified that he monitored the attendance of the construction workers and made entries in the DTR, which entries were verified by Stephen.²⁹ Both Gregorio and Stephen stated that appellant reported for work on September 19, 2014;³⁰ however, Gregorio, on cross-examination, admitted that he did not actually see appellant report for work at 8:00 a.m. of September 19, 2014.³¹ Both also admitted that the DTR did not show the particular time a worker reports for work and that it was not signed by the workers.³² Both Mario and Miguel testified that they saw appellant in his bunkhouse near the construction site on September 19, 2014 before they reported for work at 8:00 a.m.³³

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged. It lent credence to Josephine's positive identification of the appellant as the person who killed Alberto. It appreciated the attendant aggravating circumstances of treachery and abuse of superior strength, having found that "[Alberto], as revealed by the nature, condition and location of the gunshot wounds sustained by him, proved that he was an easy prey of [appellant] x x x."³⁴ Appellant's defenses of denial and alibi were disregarded by the RTC because the evidence of the defense failed to prove that appellant reported for work at the time the crime was committed, thereby failing to show that it was impossible for him not to be at the crime scene.

The dispositive portion of the RTC's Judgment reads:

WHEREFORE, after considering all evidences, the Court finds accused ROGER ACABO, GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with accessory penalties provided by law; and the accused is also ordered to pay the heirs of the deceased victim, the following sums:



²⁸ Id. at 31.

²⁹ Id. at 40-41.

³⁰ Id. at 42-43 and 56.

³¹ Id. at 45-46.

³² Id. at 45, 49, 58, and 62.

³³ TSN, June 3, 2015, pp. 4 and 10.

³⁴ Records, p. 211.

- 1) Seventy-five Thousand Pesos (₱75,000.00) as civil indemnity *ex delicto*;
- 2) Funeral expenses in the amount of Thirty Three Thousand Pesos ₱33,000.00 (₱560.00 per month x 60 payments);
- 3) Fifty Thousand Pesos (₱50,000.00) as moral damages;
- 4) Fifty Thousand Pesos (₱50,000.00) as exemplary damages; and
- 5) Sixty Thousand Pesos (₱60,000.00) as temperate damages.³⁵

Ruling of the Court of Appeals

On appeal, the CA agreed with the RTC that appellant killed Alberto with treachery. Like the RTC, the CA gave full credence to Josephine's categorical, spontaneous, and straightforward testimony that clearly narrated the killing of Alberto and positively identified appellant as the assailant vis-à-vis appellant's weak defenses of alibi and denial. While the CA was doubtful whether the aggravating circumstance of abuse of superior strength attended the killing, it found that treachery qualified the killing to murder.

The CA, however, modified the monetary awards granted. It increased the award of moral damages from ₱50,000.00 to ₱75,000.00; decreased the amount of exemplary damages from ₱50,000.00 to ₱30,000.00; and deleted the award of temperate damages considering that the trial court had already awarded ₱33,000.00 as funeral expenses representing actual damages.

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant appeal is DENIED. The assailed 22 June 2015 Judgment of Branch 32 of the Regional Trial Court of Dumaguete City in Crim. Case No. 2015-22724 is hereby AFFIRMED with MODIFICATION. Moral damages awarded to the heirs of Alberto Paltingca is INCREASED to ₱75,000.00, while exemplary damages is DECREASED to ₱30,000.00. The award of civil indemnity *ex delicto* in the amount of ₱75,000.00 and the award of funeral expenses in the amount of ₱33,000.00 are RETAINED. The grant of temperate damages is DELETED.

The aggregate amount of the monetary awards stated herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.

SO ORDERED.³⁶



³⁵ Id. at 213.

³⁶ CA *rollo*, pp. 99-100.

Hence, appellant instituted this present appeal, arguing in his Appellant's Brief³⁷ that the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Appellant argues that the testimony of Josephine, as the alleged lone eyewitness, was unreliable, incredible and uncorroborated. Appellant finds Josephine's account of events as highly improbable, specifically her statement that immediately after Alberto was shot, she escaped and ran uphill towards the culprits' path. This, according to appellant, runs counter to human experience which dictates that a person, when confronted with a life-threatening incident, would run away from the source of threat. Next, appellant finds it absurd that the culprits did not prevent Josephine from escaping when in the first place, they also tried to shoot her. Appellant, thus, maintains that credence should be given to his alibi which was corroborated by five other witnesses.

Appellant likewise contends that the evidence of the prosecution failed to prove the attendance of the qualifying circumstances of treachery and abuse of superior strength. First, it cannot be said that Alberto was completely defenseless since he was armed with a bolo (which was tucked in his waist) at the time of the attack. Second, there was no concrete proof that there were two persons who attacked Alberto. Pael was not brought to trial and his identity was not sufficiently proven by the prosecution.

Our Ruling

After a careful review of the records of the case, we find the appeal to be devoid of merit. The Court finds no reason to reverse the CA in affirming the ruling of the RTC finding appellant guilty beyond reasonable doubt of the crime of murder.

As a rule, the trial courts' findings and conclusions on the credibility of witnesses are accorded respect because it has the first-hand opportunity to observe the demeanor of witnesses when they testify.³⁸ Absent any arbitrariness, oversight or misappropriation of facts, the Court has no reason to overturn the factual findings of the trial court,³⁹ as in this case.

We find no cogent reason to disturb the assessment of the RTC, and affirmed by the CA, that Josephine was a credible witness and that her testimony was sufficient to establish appellant's guilt beyond reasonable doubt. Based on Josephine's direct and straightforward testimony, it was established that appellant was one of the perpetrators of the crime. She gave credible testimony that in the early hours of September 19, 2014, she and

³⁷ Id. at 17-36.

³⁸ *People v. Las Piñas*, 739 Phil. 502, 517 (2014).

³⁹ *People v. Villamor*, 348 Phil. 202, 217 (1998).

Alberto were walking uphill when appellant and Pael waylaid them. Alberto was shot by appellant on his legs, causing him to stumble and fall backwards. Appellant then ran after Alberto and shot him the second time on the left arm, causing him to fall again, roll downhill and die.⁴⁰ Josephine's testimony suffers no material inconsistency as would affect its credibility. Josephine's account of the incident was, moreover, consistent with Dr. Tan's post-mortem examination results finding that Alberto suffered two gunshot wounds. It corroborated the testimony of Josephine that appellant shot Alberto twice, first on the thigh/leg and second on the upper arm.

Appellant, however, contends as contrary to human experience the testimony of Josephine that appellant and Pael did not prevent her from escaping especially since she ran uphill towards their direction.

We are not persuaded.

The Court has held that "there is no standard form of behavior when one is confronted by a shocking incident."⁴¹ In the case at bar, Josephine must have been so afraid of Pael's sudden attack on her that she just found herself running uphill towards an area where she could hide behind the bushes. She also explained that she ran unconsciously towards the assailants' path upon noticing that appellant and Pael were more interested in running after and killing Alberto. We fully concur with the following disquisition of the CA on this matter:

It could be true that Josephine, upon seeing Alberto being shot, ran uphill toward the direction of [appellant] and Pael, and at one point [appellant] or Pael could have easily caught her and killed her in order to silence her. To [appellant], Josephine's reaction [was] contrary to human experience because she even testified that Pael also tried to shoot her, but Pael's gun did not fire. We believe, however, that this imputation does not necessarily make Josephine's testimony incredible or destroy her credibility. As Josephine herself explained, when she ran uphill to hide, [appellant] and Pael were occupied with chasing Alberto downhill. x x x The fact that [appellant] or Pael did not look for Josephine after killing Alberto may not be as unnatural as [appellant] would want it to be. Notably, after [committing] a heinous crime, it [was] also x x x natural for [appellant] and Pael to flee and escape immediately. At any rate, it is settled that "witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn; different people react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." The same may be said of

⁴⁰ TSN, March 31, 2015, pp. 10-13.

⁴¹ *People v. Radomes*, 225 Phil. 480, 488 (1986).

perpetrators of a crime. They may be nervous, rash, and reckless. In this case, [appellant] and Pael chose to run and escape.⁴²

Appellant's defenses of denial and alibi must fail for being self-serving and unreliable as against the positive identification of Josephine that appellant killed Alberto. For the defense of alibi to prosper, not only must the accused prove that he was at some other place at the time of the perpetration of the crime but also that it was physically impossible for him to be at the place where the crime was committed.⁴³ Here, this requirement was not met. The trial court had taken notice that the distance between *Sitio* Talatala where the incident took place, and the construction site where appellant claimed he was at the time of the incident, could be traversed for only about 15 to 20 minutes. The distance, certainly, was not too far as to preclude appellant's presence at *Sitio* Talatala to commit the crime, and to return to the construction site in time for work at 8:00 a.m. Besides, the evidence for the defense were not corroborative of appellant's claims. Both the foreman and the timekeeper failed to show the exact time the appellant reported for work in the morning of September 19, 2014. Even the testimony of Engr. Te that appellant reported for work on that day was based only on the DTR⁴⁴ prepared and verified by the foreman and timekeeper. However, the DTR did not show the exact time appellant reported for work. The veracity and authenticity of the details entered in the DTR were also doubtful because they were not signed by the workers concerned. We also note that Mario was a neighbor and a close friend of appellant⁴⁵ while Miguel was a buddy and a co-worker.⁴⁶ As such, their testimonies deserve scant consideration because they are easily suspect and biased given their close relation to appellant.

We affirm the findings of the trial court and the CA that the killing of Alberto was attended with treachery, which qualified the crime 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 which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make.⁴⁷ To establish treachery, the prosecution must establish the concurrence of these conditions: (1) that the victim was in no position to defend himself when attacked; and (2) the offender deliberately adopted the specific manner of the attack.⁴⁸

As established by the prosecution's evidence in this case, Alberto and Josephine were walking uphill totally unaware of the impending attack upon

⁴² CA *rollo*, pp. 95-96.

⁴³ *People v. Ambatang*, G.R. No. 205855, March 29, 2017, 822 SCRA 118, 125-126.

⁴⁴ Exhibits "2" & "3", Folder of Exhibits.

⁴⁵ June 3, 2015, p. 5-7.

⁴⁶ *Id.* at 10.


⁴⁷ REVISED PENAL CODE, Article 14 (16).

⁴⁸ *People v. Pulgo*, G.R. No. 218205, July 5, 2017, 830 SCRA 220, 232-233.

their person. Suddenly, appellant and Pael waylaid them. Appellant thereafter shot Alberto who fell downhill. Appellant then fired a second shot to ensure his death. Certainly, Alberto had no opportunity to defend himself. He was unaware of the attack and was caught off guard when his assailant suddenly approached and shot him with a gun. The stealth by which the attack was carried out gave Alberto no chance to evade the same. Indeed, the unexpected assault upon the victim and the fact that the assailant did not sustain any injury evinces treachery.⁴⁹ Undoubtedly, appellant consciously adopted the mode of attacking Alberto who had no inkling of the forthcoming attack and was completely defenseless. The attack was executed in such a manner as to ensure the killing of Alberto without risk to appellant. The fact that Alberto had a bolo tucked in his waist was of no consequence. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.⁵⁰

In sum, all the elements of the crime of murder were proven: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not parricide or infanticide.⁵¹ We, therefore affirm the conviction of appellant. The trial court, thus, correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*. As regards the damages imposed, the Court finds the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, to be in order. However, the award of exemplary damages should be increased to ₱75,000.00 pursuant to prevailing jurisprudence.⁵² In addition, the award ₱33,000.00 as actual damages is deleted; in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded likewise pursuant to prevailing jurisprudence. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.⁵³

WHEREFORE, the appeal is **DISMISSED**. The assailed August 30, 2016 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 02082, finding appellant Roger Acabo **GUILTY** beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, ordering him to pay the heirs of Alberto Paltingca civil indemnity and moral damages in the amount of ₱75,000.00 each, is **AFFIRMED with MODIFICATIONS** that the amount of exemplary damages is increased to ₱75,000.00; actual damages in the amount of ₱33,000.00 is deleted; and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.



⁴⁹ *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 489.

⁵⁰ *People v. Manulit*, 649 Phil. 715, 727-728 (2010).

⁵¹ *People v. Lagman*, 685 Phil. 733, 743 (2012).

⁵² *People v. Jugueta*, 783 Phil. 806 (2016).

⁵³ *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On official leave)
LUCAS P. BERSAMIN
Chief Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

(On official leave)
ROSMARI D. CARANDANG
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.


MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

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



ANTONIO T. CARPIO
*Acting Chief Justice**

* Per Special Order No. 2637 dated February 26, 2019.