

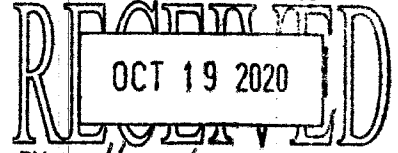


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: Henry
TIME: 2:48 PM

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:*

“G.R. No. 239136 (People of the Philippines, Plaintiff-Appellee, v. Ernesto Lomboy, Accused-Appellant). – For automatic review is the Decision¹ dated 28 February 2017 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 08063, which affirmed the Decision² dated 21 October 2015 of Branch 45, Regional Trial Court (RTC), Urdaneta City, Pangasinan, in Criminal Case No. U-9018 finding the accused-appellant Ernesto Lomboy (accused-appellant) guilty of murder.

Antecedents

Accused-appellant and his co-accused, Simplicio Lomboy a.k.a “Junior” (Simplicio), were charged with murder, as defined under Article 248 of the Revised Penal Code, for the death of Roberto Baylon (Roberto). The Information against them reads:

That on or about the 18th day of May 1996, at Barangay Yatyat, Municipality of Laoac, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating with each other, and by means of treachery and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, hack and stab Roberto Baylon with the use of a bolo and a knife, hitting and wounding the different parts of his body, which wounds being mortal directly caused the death of said victim to the damage and prejudice of his heirs.

Contrary to Article 248, Revised Penal Code.³

¹ *Rollo*, pp. 2-15; penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Fifteenth Division, Court of Appeals, Manila.

² *CA rollo*, pp. 43 to 55; penned by Presiding Judge Tita S. Obinario.

³ Records, Book I, p. 15.

Only Simplicio was initially tried because accused-appellant was reported at large. On 03 May 2001, the RTC⁴ convicted Simplicio of murder.⁵

On 24 August 2011, Guillermo Ayala, a personnel of the Iwahig Prison and Penal Farm, Puerto Princesa, surrendered accused-appellant to the Clerk of Court of the RTC.⁶ It appeared that accused-appellant had just then finished serving sentence for his conviction for homicide. The case against accused-appellant was thus revived.

Upon arraignment, accused-appellant pleaded not guilty.⁷

During trial on the merits, the prosecution manifested to adopt the testimonies of the witnesses in Simplicio's trial, specifically the testimonies of Purita Baylon (Purita), Dr. Danilo Rebugio (Dr. Rebugio) and Conchita Baylon (Conchita).⁸

Version of the Prosecution

On 19 May 1996, at around 9 o'clock in the evening, Roberto was with his younger sister, Purita, at a local fair (*peryahan*) in *Barangay Yatyat*, Laoac, Pangasinan. Purita was behind Roberto, who was playing darts.⁹ She asked Roberto for money to try the rides but before she could leave, Simplicio appeared from behind, went around her, and positioned himself at the back of the unsuspecting Roberto. Simplicio uttered "*pare,*" as he placed his hand on Roberto's left shoulder. Before the latter could respond, Simplicio stabbed him on his right shoulder. Roberto tried to run away but after negotiating a distance of only three (3) meters, accused-appellant appeared and hacked him with a *bolo*. Accused-appellant and Simplicio then took turns in stabbing and hacking Roberto until he died.¹⁰

The autopsy conducted on Roberto's body revealed that he died of hemorrhage secondary to multiple hacking and stab wounds.¹¹ He sustained six (6) hacking wounds and eight (8) stab wounds.

⁴ *Id.* at 19-36; penned by Presiding Judge Joven F. Costales.

⁵ *Id.*

⁶ *Id.* at pp. 44-50.

⁷ Records, Book II, p. 48.

⁸ Records, Book I, p. 87.

⁹ TSN dated 14 December 2000, p. 4, Records, Book II, p. 124.

¹⁰ *Id.* at 126.

¹¹ Records, Book I, p. 5.

Version of the Defense

The defense offered the lone testimony of accused-appellant. Accused-appellant claimed that on the night of 18 May 1996, he slept in his home with his mother, Lorenzana Bangayan Lomboy, in Victoria, Llanera, Nueva Ecija.¹² They were roused from sleep by Simplicio, who came from Yatyat, Laoac, Pangasinan. He told them that he killed someone.¹³ On the same day, Simplicio left for Manila, where their sibling, Rogelio Lomboy, was residing.¹⁴

Furthermore, accused-appellant claimed that he neither met Roberto Baylon,¹⁵ nor was he aware that he was impleaded in the case. He averred that he was detained at Bataan Jail from 1999 to 2003 and was brought to Iwahig Prison where he was detained from 2003 to 2011. It was there where he learned about the present case. His detention in the two (2) penal institutions was in connection with his conviction by the RTC Bataan for the crime of homicide, which he committed in 1992.¹⁶

Ruling of the RTC

The RTC¹⁷ convicted accused-appellant for murder, and imposed upon him the penalty of *reclusion perpetua*, in lieu of death, with no eligibility for parole. He was also ordered to pay the heirs of Roberto the following: Php 60,000.00 as actual damages; Php 50,000.00 as civil indemnity; Php 200,000.00 as moral damages; and costs of suit.¹⁸

The RTC found that Simplicio and accused-appellant conspired to kill Roberto. It held that accused-appellant's presence at the time of the stabbing, and their simultaneous act of assaulting Roberto, indicated their common criminal design to kill the victim.¹⁹

It also appreciated the qualifying circumstance of treachery. It found Simplicio's sudden attack from Roberto's behind, and accused-appellant's presence some three (3) meters near the point of attack, both an indication that they deliberately intended for Roberto to be defenseless against them.

¹² TSN dated 14 May 2014, p. 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 8.

¹⁷ Records, Book I, pp. 254-266.

¹⁸ *Id.* at 265-266.

¹⁹ CA *rollo*, p. 53.

The RTC opined that Roberto could have escaped the assault had accused-appellant not been there and blocked him.²⁰

The RTC also found the presence of the aggravating circumstance of abuse of superior strength. It ruled that Simplicio and accused-appellant, both armed, took advantage of their superior strength in overpowering the unarmed and defenseless victim.²¹

Ruling of the CA

The CA affirmed the RTC's conviction, with modification as to the award of damages in the amount of Php 100,000.00 as civil indemnity, Php 100,000.00 as moral damages, Php 100,000.00 as exemplary damages, and Php 50,000.00 as temperate damages. Further, the CA imposed legal interest on all damages awarded at the rate of six *percent (6%) per annum* from the date of the finality of its decision until full payment.

The CA found Purita's testimony both credible and trustworthy. It noted that she could not have been mistaken in identifying the assailants because the crime happened in the local *peryahan*, a well-illuminated area.²² Moreover, the appellate court adopted the RTC's factual and legal findings as to the presence of conspiracy and treachery. However, it ruled that the aggravating circumstance of superior strength was deemed absorbed by treachery²³

Hence, this automatic appeal.

Ruling of the Court

The appeal lacks merit.

This Court shall first discuss the sufficiency of the allegations in the Information.

²⁰ *Id.* at 52.

²¹ *Id.*

²² *Id.* at 104-106.

²³ *Id.* at 107.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.²⁴

In *People of the Philippines v. Valdez*,²⁵ this Court made a pronouncement that in criminal cases, the State must specify in the information the details of the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now specify in the information the acts and circumstances constituting the alleged attendant circumstance in the crime committed.

In this case, this Court notes that the Information merely alleged "treachery and taking advantage of superior strength"²⁶ without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied the victim an 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.²⁷

Ordinarily, the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.²⁸ Nonetheless, this Court finds the defect in the allegations of the Information insufficient to cause the downgrade of accused-appellant's conviction. What is more, accused-appellant failed to timely assert his right in the proceedings before the RTC and CA.

There are various procedural remedies available to an accused who believes that the information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.²⁹ Likewise, Rule 117 thereof allows an accused to file a motion to

²⁴ See *Reyes v. People*, G.R. No. 232678, 03 July 2019.

²⁵ 679 Phil. 279-296 (2012); G.R. No. 175602, 18 January 2012, 663 SCRA 272, 287-288.

²⁶ *Supra* at note 3.

²⁷ See *People v. Petalino*, G.R. No. 213222, 24 September 2018, 880 SCRA 505, 517-518.

²⁸ *People v. Valdez*, 679 Phil. 279-296 (2012); G.R. No. 175602, 18 January 2012, 663 SCRA 272, 289.

²⁹ *Romualdez v. Sandiganbayan*, G.R. No. 152259, 29 July 2004, 435 SCRA 371, 388.

quash a patently insufficient or defective information.³⁰ In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

In this case, it does not appear that accused-appellant raised any objection to the sufficiency of the allegations in the information at any stage of the case. Not only did accused-appellant fail to move for a bill of particulars or quash the information before his arraignment, he also participated in the trial. Obviously, it is too late in the proceedings to invalidate the information without unduly prejudicing the State, which was also deprived of the opportunity to amend the information³¹ or submit a bill of particulars in the trial court.³²

We now proceed to review the propriety of accused-appellant's conviction.

The determination of the guilt of an accused hinges on how a court appreciates evidentiary matters in relation to the requisites of an offense. Determination of guilt is, thus, a fundamentally factual issue. This court, however, is not a trier of facts. As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45.³³

After a careful reading of the records and pleadings of the instant case, this Court finds no cogent reason to deviate from the lower courts' factual findings. There is no indication that the RTC overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Moreover, the factual findings of the RTC were affirmed by the CA. Hence, this Court defers to the RTC in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.³⁴

We agree with the RTC and CA that Purita's testimony is clear and credible as to how her brother, Roberto, was hacked and stabbed by both Simplicio and accused-appellant. The inconsistencies pointed out by accused-appellant, as to the exact location of Purita during the commission of the crime, specifically whether she was beside or behind Roberto, do not

³⁰ See *People of the Philippines v. Sandiganbayan*, G.R. No. 160619, 09 September 2015, 770 SCRA 162, 175; *Los Baños v. Pedro*, 604 Phil. 215-236 (2009); G.R. No. 173588, 22 April 2009, 586 SCRA 303.

³¹ Section 4, Rule 117 of the Rules of Court.

³² *Enrile v. People of the Philippines*, 766 Phil. 75-332 (2015); G.R. No. 213455, 11 August 2015, 766 SCRA 1.

³³ *Macayan v. People*, 756 Phil. 202-229 (2015); G.R. No. 175842, 18 March 2015, 753 SCRA 445, 458.

³⁴ *People v. Racal*, 817 Phil. 665-686 (2017); G.R. No. 224886, 04 September 2017, 838 SCRA 476, 488.

diminish the veracity of her account on the killing of her brother. It does not take away from her consistent assertion and positive identification of Simplicio and accused-appellant, as the persons who stabbed and hacked Roberto. In any case, jurisprudence holds that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. In fact, such inconsistencies strengthen the credibility of the witness as these discount the possibility of being rehearsed.³⁵

It also bears to emphasize that Purita's testimony is consistent with the physical evidence. The number and location of wounds sustained by Roberto are consistent with Purita's account that Simplicio and accused-appellant stabbed and hacked Roberto. Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. It has been appropriately emphasized that we have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.³⁶ In this case, Purita's testimony bears the earmarks of truth, and thus should be deemed credible and sufficient to sustain accused-appellant's conviction for the crime charged.

In addition, this Court agrees that the manner and the circumstances, which attended Roberto's killing are consistent with treachery. Treachery, or *alevosia* qualifies the killing of a person if the attack is sudden and unexpected, and done without the slightest provocation on the part of the person being attacked.³⁷ In proving treachery, it must be shown that: (1) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and (2) that said means of execution were deliberately or consciously adopted.³⁸

In this case, it was established that Roberto, who was merely enjoying the games at the local fair, was suddenly stabbed by Simplicio. Before the latter could run, he was intercepted by accused-appellant who hacked him. Both the accused proceeded to hack and stab Roberto until he died. To this Court, accused-appellant's presence at such a strategic distance, immediately after Simplicio stabbed Roberto, was meant to ensure that the latter would not be able to escape, and that Roberto would die in their hands. Evidently, the attack was unexpected and completely rendered Roberto helpless and

³⁵ *People v. Cabilda*, G.R. No. 222964, 11 July 2018, 871 SCRA 602, 611.

³⁶ *Medina v. People*, 724 Phil. 226-239 (2014); G.R. No. 161308, 15 January 2014, 713 SCRA 311, 324.

³⁷ *People v. Dulin*, 762 Phil. 24-42 (2015); G.R. No. 171284, 29 June 2015, 760 SCRA 413, 430.

³⁸ *People v. Kalipayan*, G.R. No. 229829, 22 January 2018, 852 SCRA 311.

unprotected. Given the foregoing circumstances, and uncontroverted by contrary evidence, the only reasonable conclusion that can be made is that treachery attended the attack.

Accused-appellant's denial that he killed Roberto and his *alibi* that he was at his mother's house at the time of killing are weak explanations that will not hold water.³⁹ *Alibi* and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. *Alibi* and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.⁴⁰ In this case, the lower courts did not err in disregarding accused-appellant's defenses since he failed to present any other proof which can corroborate the same.

Likewise, even if this Court assumes that accused-appellant was indeed at his mother's house in Nueva Ecija, the defense failed to show convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene when the crime was committed. Absent such crucial evidence, this Court cannot accord merit to accused-appellant's defense.

Considering the foregoing, accused-appellant's conviction stands.

This Court, however, clarifies the penalty. The CA was correct when it considered the aggravating circumstance of abuse of superior strength absorbed by the qualifying circumstance of treachery.⁴¹ Having been absorbed by the circumstance of treachery, there is no other aggravating circumstance meriting the imposition of death. Hence, the penalty of *reclusion perpetua* is proper.

Nonetheless, this Court notes that the CA erroneously affirmed the RTC's imposition of *reclusion perpetua*, which includes the statement, "[t]he accused, however, is not eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."⁴² In accordance with A.M. 15-08-02-SC,⁴³ the phrase "without eligibility for parole" need not

³⁹ See *People v. Ambatang*, 808 Phil. 237-246 (2018); G.R. No. 205855, 29 March 2017, 822 SCRA 118, 126.

⁴⁰ *People v. Rarugal*, 701 Phil. 592-606 (2013); G.R. No. 188603, 16 January 2013, 688 SCRA 646, 653.

⁴¹ *People v. Verona*, G.R. No. 227748, 19 June 2019; *People v. Manzano, Jr.*, G.R. No. 217974, 05 March 2018, 857 SCRA 323, 354.

⁴² *Rollo*, p. 2.

⁴³ A.M. No. 15-08-02-SC — Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties:

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The following guidelines shall be observed in the imposition of penalties and in the use of the phrase

be borne in the decision to qualify the penalty imposed on accused-appellant if there is no aggravating circumstance that would warrant the imposition of death penalty. As mentioned above, the aggravating circumstance of abuse of superior strength is deemed absorbed by treachery. Hence, the portion on eligibility of parole should be deleted.

Likewise, We modify the award of damages, in accordance with prevailing jurisprudence,⁴⁴ to wit: (1) civil indemnity at Php 75,000.00; (2) moral damages at Php 75,000.00; and (3) exemplary damages at Php 75,000.00. It was also ruled in *People v. Jugueta*⁴⁵ that when no documentary evidence of burial or funeral expenses is presented in court, the amount of Php 50,000.00 as temperate damages, shall be awarded. In this case, since the prosecution did not present proof of burial or funeral expenses,⁴⁶ the CA's award of temperate damages stands. Further, these monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

WHEREFORE, the instant appeal is hereby **DISMISSED**. Accordingly, the Decision dated 28 February 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08063 is **AFFIRMED** with **MODIFICATIONS**.

Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*. The portion of the RTC Decision dated 21 October 2015, which states, "[t]he accused, however, is not eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended," is **DELETED**. He is also **ORDERED** to pay, jointly and severally with Simplicio Lomboy, the heirs of Roberto Baylon the following amounts: civil indemnity of Php 75,000.00; moral damages of Php 75,000.00; exemplary damages of Php 75,000.00, and temperate damages of Php 50,000.00.

"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. No. 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.

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⁴⁴ *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 788 SCRA 331, 348.

⁴⁵ *Id.*

⁴⁶ CA rollo, p. 49.

In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from the date of finality of this Resolution until fully paid.

SO ORDERED.”

Very truly yours,

MisPOC Batt
MISAEEL DOMINGO C. BATTUNG III
Division Clerk of Court
GFR
10/11/20

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