



A handwritten signature of the Chief Justice of the Supreme Court.

Republic of the Philippines
Supreme Court
Manila

JUL 7 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 212206

Present:

VELASCO, JR., J.,
PERALTA,
PEREZ,
REYES, and
LEONEN,* JJ.

GABBY CONCEPCION y NIMENDA
and TOTO MORALES,
Accused-Appellants,

Promulgated:

July 4, 2016

X-----X

R E S O L U T I O N

PEREZ, J.:

An Information was filed charging appellant Gabby Concepcion y Nimenda (Gabby), Leopoldo Caguring y Losa (Leopoldo), Algel Negapatan y Castro (Algel), Martin Esgana (Martin), and two John Does with the crime of murder.

The accusatory portion of the Information reads:

That on or about the 23rd day of June 2004, in Navotas, Metro Manila, and within the jurisdiction of this Honorable [Court], the above-named accused, armed with a gun and bladed weapon, acting with discernment, conspiring, confederating, and mutually helping one another, with intent to kill, treachery and evident premeditation, with cruelty, did then and there willfully, unlawfully and feloniously, attack, assault, shoot and stab one JESSIE ASIS y NAMOC, hitting the victim on the different parts of his body, thereby inflicting upon the victim serious wounds which caused his immediate death.¹

* Additional Member per Raffle dated 13 June 2016.
¹ Records, p. 1.

A handwritten signature of the Clerk of Court.

The two John Does were later identified as accused Elloy Caguring (Elloy) and appellant Toto Morales (Toto). An Amended Information² of the same tenor was filed charging the two accused with Murder. When arraigned, appellants pleaded not guilty to the charge.

Elloy remained at large.

Trial ensued.

Reggie Lacsa (Reggie) and Jessie Asis (Jessie) belonged to a group named *Siete Pares*³ while appellants were members of the group *Otso Makulit*. On 23 June 2004, at around 9:00 p.m. at Pier 5, Market 3, Navotas Fishport Complex in Navotas, Metro Manila, Reggie was cleaning Danny Ang's banca when he heard his friend Jessie shout for help. Reggie hid on top of a tolda which is about two to three arms length from the *situs criminis*. He then saw Jessie being chased by Martin, Toto and Elloy. Jessie was running towards the banca where Leopoldo, Algel and Gabby with other companions were waiting for him. Upon seeing Jessie, Leopoldo and Algel held his arms while Toto stabbed him. Thereafter, Jessie was pushed into the water. Thereat, Gabby tried to shoot Jessie but he missed. The other accused roamed around the *banca* and served as Gabby's lookout. Thereafter, they walked away.⁴

As a result, Jessie died due to hemorrhagic shock secondary to two stab wounds.⁵ The police recovered a homemade shotgun and two butcher's knives.

The defense presented Gabby and Algel who both testified that on that fateful night, they, together with Leopoldo, Martin and Toto had just attended a dance party. They left at 10:00 p.m. that same night. While they were walking along Market 3, Navotas Fishport, they were suddenly chased by a group of men armed with a bolo.⁶ They all fled and went their own separate ways. Gabby and Algel claimed that they do not know Jessie and Reggie.⁷ Leopoldo, Algel and Martin were all minors at the time of the commission of the crime.

² Id. at 29.

³ TSN, 27 January 2005, p. 11.

⁴ TSN, 13 April 2005, p. 5; TSN, 27 January 2005, p. 5-8.

⁵ Exhibit Folder, p. 10.

⁶ TSN, 2 October 2008, pp. 4-7; TSN, 24 July 2009, pp. 3-6.

⁷ TSN, 4 May 2009, pp. 4-5; TSN, 24 July 2009, p. 9.



On 4 November 2011, the Regional Trial Court (RTC) of Malabon City, Branch 169, rendered its Decision,⁸ the dispositive portion of which reads:

WHEREFORE, the foregoing considered, this [c]ourt finds the Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY, GABBY CONCEPCION y NIMENDA, and TOTO MORALES** guilty beyond reasonable doubt of crime of **MURDER**.

Accused **GABBY CONCEPCION y NIMENDA** and **TOTO MORALES** are sentenced to suffer the penalty of *Reclusion Perpetua*.

Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY**, being minors are entitled to the privileged mitigating circumstance of minority and are sentenced to suffer the penalty of six (6) years of *Prision Mayor* as minimum to fourteen (14) years eight (8) months and one (1) day of *Reclusion Temporal* as maximum.

Considering, however that accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY** were minors at the time of the commission of the crime, the Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) is directed to facilitate the confinement of the said minors in an agricultural camp or other training facilities.

The Department of Social Welfare and Development (DSWD) and the Bureau of Corrections (BUCOR) are likewise directed to make a report with respect to accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY** within ten (10) days from the time this case becomes final and executory.

Accused **LEOPOLDO CAGURING y LOSA a.k.a. POLDO, ALGEL NEGAPATAN y CASTRO, MARTIN ESGANA y LOMACANG a.k.a. MAMAY, GABBY CONCEPCION y NIMENDA** and **TOTO MORALES** are likewise directed to pay the legal heirs of the Jessie Asis y Namoc the amounts of **FIFTY THOUSAND PESOS (P50,000.00)** as civil indemnity, and **FIFTY THOUSAND PESOS (P50,000.00)** as moral damages and **TWENTY FIVE THOUSAND PESOS (P25,000.00)** as temperate damages.

Let warrant of arrest be issued against ELLOY CAGURING who remains at large up to this time. In the meantime, let this case against accused Elloy Caguring be archived subject to automatic revival upon his arrest.

⁸

CA *rollo*, pp. 19-29; Presided by Judge Emmanuel D. Laurea.

Furnish the Department of Social Welfare and Development (DSWD) and Bureau of Corrections (BUCOR) of this Decision.⁹

The trial court found that the killing was attended by treachery and that appellants conspired to kill Jessie. The trial court gave credence to the testimony of eyewitness Reggie who had no motive to falsely testify against appellants. The trial court also considered the flights of appellant Toto and accused Elloy as indicia of guilt.

Aggrieved, appellants appealed to the Court of Appeals. In their Brief,¹⁰ appellants first argue that Reggie's testimony is full of inconsistencies pertaining to the following: (1) number of stab wounds inflicted on the victim; (2) where the victim came prior to the incident; (3) the reason why Reggie was at the *situs criminis*; and (4) whether the victim was alone when the crime happened. Second, appellants stress that Reggie had the motive to falsely testify against them because he is a member of *Siete Pares*, the rival of their group *Otso Makulit*. Third, it was improbable that Reggie witnessed the entire incident because of the fact that he was hiding and the place was not well-lighted. Appellants assert that the prosecution failed to prove treachery to qualify the crime to murder. Appellants add that it was not shown that the stabbing was premeditated or that the accused made some preparations to ensure its execution.

The Court of Appeals, in its Decision¹¹ dated 7 August 2013, affirmed in full the ruling of the RTC, viz.:

ACCORDINGLY, the Decision dated November 4, 2011 is **AFFIRMED with MODIFICATION**, as follows:

- (1) the awards of civil indemnity and moral damages are increased to P75,000.00 each;
- (2) exemplary damages of P30,000[.00] are awarded.¹²

The Court of Appeals concurred with the findings of the RTC that prosecution witness Reggie witnessed the incident and positively identified appellants as the assailants. The appellate court dismissed the alleged inconsistencies in the testimony of Reggie as "more apparent than real, if not totally trivial."¹³

⁹ Id. at 28-29.

¹⁰ Id. at 50-63.

¹¹ *Rollo*, pp. 2-20; Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Ricardo R. Rosario and Rodil V. Zalameda concurring.

¹² Id. at 19.

¹³ Id. at 13.



After a painstaking review of the records, we see no reason to grant the appeal. Both lower courts correctly found appellants guilty beyond reasonable doubt of the crime of murder.

Appellants essentially assail the credibility of the lone eyewitness. Well-settled is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination.¹⁴ The Court of Appeals affirmed the trial court's finding that the lone eyewitness, Reggie, is credible.

Appellants zeroed in on the alleged inconsistencies in Reggie's testimony. This issue was succinctly addressed by the Court of Appeals when it dismissed the alleged inconsistencies in this wise:

First: Based on [Reggie's] testimony, he saw appellant [Toto] stab the victim once, albeit the autopsy report indicated two stab wounds. This can be easily explained. Because appellants and the other accused were ganging up on the victim, [Reggie] obviously cannot tell who else among the assailants, aside from appellant [Toto], also stabbed the victim. At any rate, the fact that he saw appellant Morales deliver the first blow does not mean that it was the only injury inflicted on the victim and that it was Morales alone who injured him. In any event, [Reggie's] testimony clearly shows that he was indeed at the scene of the crime and it was appellant [Toto] who he saw stabbing the victim once.

Second: Whether the victim came from his house or from Market 3 prior to the incident is absolutely irrelevant to appellants' culpability for murder. The fact is at the time the incident happened, the victim was at the *situs criminis* where the appellants' group slays him.

Third: Whatever [Reggie] was doing at the *situs criminis* at the time of the incident, again, has no bearing whatever on appellants' culpability for murder. For sure, [Reggie] saw with his two eyes appellants and their co-accused slaying the victim.

Finally, whether [Reggie] was alone or with someone else when the crime happened is also irrelevant to appellants' plea of innocence.¹⁵

Reggie was found to be at the crime scene when the crime of murder took place. The appellate court found Reggie's testimony "clear, straightforward and credible."¹⁶ While Reggie may be a member of *Siete*

¹⁴ *People v. Sevillano*, G.R. No. 200800, 9 February 2015.

¹⁵ *Rollo*, pp. 14-15.

¹⁶ *Id.* at 12.



Pares a rival group of *Otso Makulit*, we agree with the appellate court's *ratio decidendi* that this fact alone does not make Reggie a biased witness.

With respect to appellants' allegation that it was impossible for Reggie to have witnessed the whole incident, Reggie categorically stated in his direct examination that he was about two to three meters from the *situs criminis*. He was also familiar with appellants, they being his former friends.¹⁷

The attending circumstance of treachery was likewise properly appreciated. Treachery is present when the following conditions are present: (1) the employment of such means of execution that gave the one attacked no opportunity to defend oneself or to retaliate and (2) deliberate or conscious adoption of the means of execution.¹⁸ In *People v. Osianas*,¹⁹ we held there is treachery when "the means used by the accused-appellants to insure the execution of the killing of the victims, so as to afford the victims no opportunity to defend themselves was the tying of the hands of the victims."

In this case, it was correctly pointed out by the trial court that the fact that "the arms of the [victim] were held by [Leopoldo and Algel] when he was stabbed in the back by accused Toto Morales is enough to qualify the killing to murder."²⁰ Further, the Court of Appeals added that "appellants' attack and their co-accused came without warning and without the slightest provocation from the victim."²¹

Under Article 248 of the Revised Penal Code, the crime of murder is punishable by *reclusion perpetua to death* if committed with treachery. As correctly imposed by the trial court and as affirmed by the Court of Appeals, appellant must suffer the prison term of *reclusion perpetua*, the lower of the said two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.²² Appellants are not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

The awards of civil indemnity, moral damages and exemplary damages must however be increased to ₱100,000.00 each in line with

¹⁷ TSN, 27 January 2005, p. 9.

¹⁸ *Fantastico v. Malicse*, G.R. No. 190912, 12 January 2015.

¹⁹ 588 Phil. 615, 635 (2008).

²⁰ CA *rollo*, p. 23.

²¹ *Rollo*, pp. 17-18.

²² *People v. Jalbonian*, 713 Phil. 93, 106 (2013).



prevailing jurisprudence.²³ In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

WHEREFORE, the assailed 7 August 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 05451 finding appellants Gabby Concepcion y Nimenda and Toto Morales guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATIONS** that appellants are not eligible for parole; the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each; in addition all monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until fully paid.

SO ORDERED.

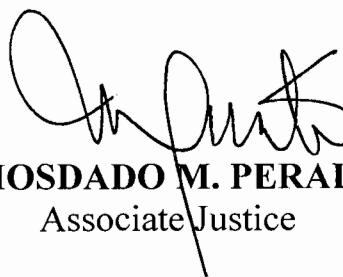


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

²³

People v. Jugueta, G.R. No. 202124, 5 April 2016.



MARVIC. M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



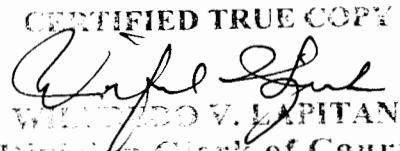
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution 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

CERTIFIED TRUE COPY

ARNOLD S. LAPITAN
Division Clerk of Court
Third Division
JUL 22 2016