



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Rafael Lopez
ROMULO V. LAPITAN
Chief Justice, Clerk of Court
Third Division

DEC 11 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206292

Present:

- versus -

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
*MARTIRES, and
GESMUNDO, JJ.

ESTRILLO ESCOBAL y
SALVACION and
MELVIN E. ABAÑO,
Accused-Appellants.

Promulgated:

October 11, 2017

Rafael Lopez

x-----x

DECISION

BERSAMIN, J.:

Mere passive presence at the scene of the crime does not implicate one who is not shown to have conspired with another in killing the victim.

The Case

Estrillo Escobal y Salvacion and Melvin E. Abaño were found and declared guilty of murder for the killing of the late SPO1 Fernando Gaabucayan, Jr. under the decision rendered on November 26, 2009 by the Regional Trial Court (RTC), Branch 21, in Cagayan de Oro City.¹ The Court of Appeals (CA) affirmed their conviction on December 20, 2011.² Hence, they appeal to the Court for exoneration.

* On official leave.
¹ CA *rollo*, pp. 25-41; penned by Presiding Judge Gil G. Bollozos.
² *Rollo*, pp. 3-23; penned by Associate Justice Abraham B. Borreta, with Associate Justice Romulo V. Borja and Associate Justice Melchor Q. C. Sadang concurring.

Antecedents

The Office of the City Prosecutor of Cagayan de Oro City charged the accused-appellants with murder through the following information, viz.:

That on April 14, 2007, at about 11:30 o' clock in the evening, more or less, at Bolonsiri, Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a 45 caliber pistol and fake (paltik) [h]omemade 38 caliber revolver magnum with M16 bullet, which they were then conveniently provided of (sic), with treachery and evident premeditation, conspiring, confederating together and mutually helping one another, did then and there attack, assault and shot (sic) one SPO1 Fernando Gaabucayan, Jr. hitting the latter (sic) different parts of his body, thereby inflicting a (sic) fatal wounds on the victim which were the direct and proximate cause of his death.

Contrary to and in violation of Article 248 of the Revised Penal Code.³

Evidence of the Prosecution

The CA summarized the evidence of the Prosecution in its assailed decision as follows:

At the trial, the prosecution presented seven (7) witnesses as evidence in chief: PO2 Leodegario Sagun, Jr., PO3 Arnold Gaabucayan, Gloria Gaabucayan (wife of deceased-victim), Major Rolando Migano, NBI Medico-Legal Officer Dr. Tammy Uy, Gerardo Tamayo, Severino Francisco and Cesar Auxtero, the eyewitness.

In the late evening of April 14, 2007, at around 11:30, eyewitness Cesario Auxtero, while tending his sari-sari store, noticed SPO1 Renato Gaabucayan (deceased-victim) went out from his house, passed by Auxtero's store and proceeded (sic) towards the direction of the city poblacion. About 10 to 20 meters away, he saw Gaabucayan meet and talk with accused-appellant Escobal. Auxtero presumed that the two were talking as he saw accused-appellant Escobal place his left hand on the right shoulder of Gaabucayan while accused-appellant Abañó was at the back of accused-appellant Escobal urinating. He can see them as the area where the three persons were at was well-lit by a street light situated about four (4) to five (5) meters away.

Seconds later, Auxtero heard three (3) gunshots which caused him to stay down. When he looked up towards the direction of the gunshots, he saw Gaabucayan lying flat on the ground face up, while accused-appellant Escobal was standing at the footside of Gaabucayan holding a

³ Records, p. 4.

nickel-plated gun pointed at the latter with accused-appellant Abaño standing beside accused-appellant Escobal facing the left shoulder of Gaabucayan in a position of pointing a gun. Auxtero saw Gaabucayan raise his hand and plead accused-appellant Escobal to stop, saying "stop it partner" (ayaw na partner). Then again, Auxtero heard at least two successive gunshots. For fear that accused-appellants Escobal and Abaño were still around, Auxtero stayed back and went only to the place of the incident when the two assailants have left and shouted for assistance. Upon coming to the aid of Gaabucayan, the latter pleaded for help and Auxtero told the latter to "hang-on" while noticing a gun on the right side of the waistline of the latter. Thereafter, Gaabucayan was carried and loaded into the motorela and brought to the Maria Reyna Hospital. In the hospital, Auxtero did not notice anymore the gun of Gaabucayan.

Later that evening, after deceased-victim was rushed to the hospital, PO2 Leodegario Sagun, Jr. went to the crime scene, along with other police officers, in order to investigate the death of SPO1 Gaabucayan. Upon arriving at the crime scene, they met eyewitness Auxtero, who voluntarily told them everything about the shooting incident he witnessed and the two (2) perpetrators involved. After getting such information, a manhunt was conducted by police operatives.

On April 15, 2007, around 9:00 in the morning, police operatives received a report from their informant that accused-appellant Escobal was a close-in security of Mr. See Hong, a well-known businessman in Cagayan de Oro City. Upon hearing this, police operatives then conducted a follow-up operation. PO2 Sagun, PO2 Nacaya and PO2 Caberte went to the house of Mr. See Hong to invite accused-appellant Escobal for questioning. At the police station, accused-appellant Escobal was asked about the shooting incident and was positively identified by eyewitness Auxtero as the perpetrator. Consequently, accused-appellant Escobal was then brought to the Cogon Police Station for booking. Thereafter, he was subjected to paraffin testing at the PNP Crime Laboratory

PO3 Arnold Gaabucayan was on duty at the Cogon Police Station on April 14, 2007. At around 11:00 in the evening, their office received a call that SPO1 Renato Gaabucayan was shot at Bolonsiri. They immediately formed a team composed of four officers and then, proceeded to the area. Thereat, eyewitness Auxtero guided them towards the scene of the crime where they saw blood, 14 empty shells and 2 slugs which were imbedded on the ground. PO3 Gaabucayan and PO3 Pagador then gathered and recorded the evidence before handing over the same to PO2 Sagun for safekeeping. Subsequently, PO2 Sagun submitted the evidence to the National Bureau of Investigation and was received by Gerardo Tamayo.

Gerardo Tamayo of the National Bureau of Investigation averred that they were able to recover a .45 caliber pistol with serial number 2240908 used as the murder weapon and a revolver from the house of Severino Francisco, a neighbor of accused-appellant Abaño. He took custody of the said handguns and submitted them for ballistic examination at the NBI Office in Cebu City. The 14 empty shells and 2 slugs which were recovered by the police officer from the crime scene and turned over to him were likewise submitted to [the] NBI Office in Cebu City for ballistic examination.

Tamayo further testified that he knew accused-appellant Escobal was found positive with the presence of gunpowder nitrate when subjected to paraffin test while accused-appellant Abaño resulted negative in the said paraffin testing. Tamayo also admitted that the hands of the deceased-victim were no longer subjected to paraffin testing as there was an indication that the latter did not fire his firearm.

Severino Francisco, security guard of the City Hall residing at Karinungan, Balulang, Cagayan de Oro City and the neighbor of accused-appellant Abaño, to whom the latter entrusted the two (2) handguns for safekeeping, one of which was the murder weapon. He was used to this kind of arrangement with accused-appellant Abaño as there were times that the key to the latter's house and even the latter's children were also entrusted to him. Sometime on April 9, 2007 accused-appellant Abaño requested him to keep an attaché case placed inside a plastic bag. Then on April 15, 2007, around 9:00 in the evening, accused-appellant Abaño then again entrusted another black bag to him. When the NBI came to his house, he gave them the two (2) bags left to him by accused-appellant Abaño. The bags were opened in his presence by NBI operatives and a .38 caliber (paltik) and M16 bullet were found inside the attaché case and a .45 caliber pistol inside the black bag. Thereafter, the NBI took the firearms with them.

Gloria Gaabucayan, wife of deceased-victim, narrated that around 9:30 pm that night, she and her daughter were accompanied by her husband to the internet cafe situated at the junction of Camaman-an Elementary School. Her husband left them there and agreed to come back for them. At around midnight, before her husband could come back, she received a call from their neighbor, Inday Generelao, informing her that her husband, SPO1 Renato Gaabucayan, was shot at Bolonsiri and was brought to Maria Reyna Hospital. She immediately rushed to the hospital and upon arriving thereat, the doctor informed her that her husband was pronounced dead on arrival (DOA), which made her collapse. After she was revived, she had to attend to some paper works and hospital bills before her husband was brought to the funeral home.

She only came to know of the name of accused-appellant Abaño after the incident but was already familiar with the latter's face as they were neighbors and the latter would always pass their house. However, she was not familiar with the other accused-appellant Abaño. She was not aware of any quarrel between her husband and accused-appellant Escobal and her husband had no threats whatsoever on his life.

The result of the post-mortem examination of Gaabucayan, conducted by Dr. Tammy Yu, showed that he had nine (9) wounds and these wounds could have been possibly caused by nine bullets or less; that based on the damage, the wounds could have been caused by a low caliber gun; and, based on the sizes of the wounds, it was quite possibly caused by a .45 caliber gun, but he cannot conclusively establish the same. Dr. Yu likewise explained why the entry wound was lower than the exit wound. It could have been possible that the assailant fired at the victim in a horizontal manner or the victim was on the verge of falling down or the body of the victim was leaning forward. It was likewise possible that when the bullet entered the body, it hit some parts or some tissues and exited on the upper arm of the deceased-victim's body.

Evidence of the Defense

The version of the Defense was narrated by the CA, to wit:

The defense offered the testimonies of accused-appellants Escobal and Carlito Abaño.

Accused-appellant Estrillo Escobal had been a personal bodyguard for seven (7) years of Mr. See Hong while accused-appellant Melvin Abaño is a security guard of Ororama Superstore since 1993.

On April 14, 2007, at around 8:00 in the evening, a friend named Arnel Calonia invited them both to his house at nearby Agora Market to a drinking session. Hours later or around 10:00 in the evening, both accused-appellants left and took a motorela heading for Cogon Market where they ate because they felt hungry. While eating, accused-appellant Escobal asked accused-appellant Abaño to accompany him to his house in Bolonsiri in order to give his salary to his wife and thereafter, they can leave together, with accused-appellant Abaño proceeding to Balulang and accused-appellant Escobal to Pueblo de Oro where his employer's house is situated. Accused-appellant Abaño acceded and both of them rode a motorela from Cogon Market to Bolonsiri. Upon reaching Bolonsiri, accused-appellant Abaño felt the need to urinate. While Abaño was urinating, they suddenly heard a voice shouting "Kinsa mo?" (Who are you?) followed by three (3) gunshots aimed towards them. Instinctively, accused-appellant Escobal grabbed Abaño to avoid being shot and while doing so, he felt Abaño's service pistol and then grabbed the pistol and fired back in defense of themselves at the direction where the shots were coming from. They did not know who the man was because it was a bit dark. When there were no more shots being fired at them, they then flagged down a passing taxi cab and proceeded towards Barangay Carmen. Upon reaching the crossing of Macanhan, accused-appellant Escobal alighted to take another taxi cab to Pueblo de Oro, while accused-appellant Abaño remained in the same taxi going to his house in Balulang.

The gun used by accused-appellant Escobal in shooting the deceased-victim in defense of themselves was a licensed .45 caliber pistol with SN 2249908 which belonged to accused-appellant Abaño as his service firearm at the time of the incident. On April 15, 2007, at 5:00 in the afternoon, he was taken by police operatives to the Maharlika Police Station. During questioning, he claimed to have been threatened by PO2 Sagun if he will not agree to undergo a paraffin test. The police operatives then brought him for paraffin testing at the crime laboratory at Camp Elisa. Thereafter, accused-appellant Escobal was fetched and brought to the NBI Office.

During the investigation, accused-appellant Escobal insisted on their claim that the shooting was in self-defense. Worse, he had been tortured and electrocuted in order to admit the crime imputed against him. He was detained inside a mini cell in the NBI Office for six (6) days with no visitors allowed to visit him.

Accused-appellant Abaño corroborated the testimony of accused-appellant Escobal in all its material points when presented in court. He testified that prior to his arrest, he was a plainclothes security guard at Ororama Megacenter since 1993 and admitted that a .45 caliber service pistol was issued to him and was licensed under his name. He also explained that he was carrying a firearm on April 14, 2007 despite COMELEC gun ban because of threats to his life and safety.

Carlito Abaño, brother of accused-appellant Abaño, testified that on April 17, 2007, while at the NBI office, he accidentally bumped into Auxtero and the latter told him that his brother was not involved in the shooting.⁴

Judgment of the RTC

On November 26, 2009,⁵ the RTC convicted Escobal and Abaño of murder, holding that they had conspired in killing the late Fernando Gaabucayan, Jr. with treachery; that Escobal had shot the victim to death despite the victim having been already rendered helpless, lying on the ground and pleading for his life; that Abaño had done nothing to prevent the shooting of the victim; and that even assuming that the victim had initially committed unlawful aggression against them, the peril he had thereby posed had already ceased by the time he had fallen to the ground from the shots fired at him.

The RTC disposed thusly:

WHEREFORE, in the light of the foregoing, this Court hereby finds accused Estrillo Escobal y Salvacion and Melvin E. Abaño guilty beyond reasonable doubt of the crime of Murder qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code of the Philippines. There being neither mitigating nor aggravating circumstance, each of the accused is sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA, and to indemnify the heirs of the deceased the sum of Php 50,000.00 ex delicto. Both accused are also ordered to pay Php 1,240,096.00 representing the lost earnings/income of the deceased which he could have earned during his tenure as policeman, if he only not met (*sic*) his death (at) the hands of the two accused.

Both accused are credited of (*sic*) the period of their preventive imprisonment.

SO ORDERED.⁶

⁴ *Rollo*, pp. 4-11.

⁵ *Supra* note 1.

⁶ *CA rollo*, p. 41.

Decision of the CA

On appeal, the accused-appellants submitted that prosecution witness Cesar Auxtero had only heard the gunshots but had not actually seen who had fired them; that the result of the ballistic examination showing that the firearm of the victim had been fired four times⁷ established unlawful aggression on the part of the victim; that the victim had thereby forced them to act in self-defense; and that the rebuttal testimony of Ruel Ramirez of his having himself fired the victim's firearm about eight meters away from the crime scene in order to express his rage over the killing of the victim contradicted the report of the investigator to the effect that he had recovered the four shells fired from the victim's firearm from the area where the victim had lain lifeless.⁸

The Office of the Solicitor General (OSG) countered that full faith should be accorded to the trial court's findings because the trial judge had observed the demeanor and conduct of the witnesses during the trial.

In its decision promulgated on December 20, 2011,⁹ the CA rejected the plea of self-defense and affirmed the conviction, observing thusly:

We sustain accused-appellant's conviction.

Insisting on the absence of treachery defense submits that the evidence adduced by the prosecution in this regard is barren of support and affirmation. In finding the presence of treachery, the court a quo relied mainly on the testimony of prosecution's eyewitness Cesario Auxtero, whose testimony the defense submits cannot and does not support nor make out treachery as the latter admitted not having seen how the initial assault began. What he saw were Gaabucayan and Escobal talking to each other and when he heard the first three (3) gunshots, he ducked and when he looked up he saw Gaabucayan lying prostrate on the ground. To the defense, Auxtero's testimony does not make him an eyewitness but an earwitness. The defense claims further that the victim was the aggressor and that accused-appellant Escobal merely acted in self-defense.

The OSG counters by saying the accused-appellants cannot claim self-defense unless unlawful aggression on the part of the victim is proved and this prosecution miserably failed to do so.

We agree with the OSG. In order to exculpate accused-appellants from criminal liability, the essential elements of self-defense must be proven by clear and convincing evidence, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of

⁷ *Rollo*, pp. 42-47.

⁸ *CA rollo*, pp. 12-23.

⁹ *Supra* note 2.

21

sufficient provocation on the part of the person resorting to self-defense. The person who invokes self-defense has the burden of proof of proving all the elements. More importantly, "to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.

Although all of the three elements must concur, unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. In other words, "there can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense."

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "pre-supposes actual, sudden, unexpected or imminent danger-not merely threatening and intimidating action." It is present "only when one attacked faces real and immediate threat to one's life."

In the instant case, accused-appellants failed to prove the existence of unlawful aggression. They want this Court to believe that the victim was the aggressor, not them. In his testimony, accused-appellant Escobal stated that while accused-appellant Abaño was urinating, the victim suddenly shouted and immediately fired at them three (3) times with a .45 caliber pistol and afterwards; the victim came closer holding a black colored pistol in one hand and white colored on the other hand and fired another two (2) shots but accused-appellant Escobal was able to evade all the shots while protecting and embracing accused-appellant Abaño. This resulted in his act of shooting down the victim using accused-appellant Abaño's pistol.

The Court is not convinced. In finding accused-appellant guilty, the court a quo found the testimonies of the prosecution witness credible, while it found the testimony of accused-appellant very self-serving, *viz*:

"x x x. The Court finds this claim incredible. Making this claim fascinating is the statement of Escobal that he was able to evade all the shots while protecting and embracing co-accused Abaño who was in kneeling position whom he (Escobal) pushed to the ground and at the same time pulling out the .45 caliber pistol of Abaño from the latter's waistline and immediately fired back fatally hitting the deceased. It should be remembered that the deceased was a veteran police officer having been in the police service for 19 years before his death. So that, it can be deduced that the deceased was already well trained with a handgun. Given the two opportunities to hit the two (2) accused at a near distance of 10 meters and 5.8 meters, the Court believes that it would be unlikely that he would miss in both chances. Moreover, the claim of Escobal that he evaded the shot would not be probable considering that he was in fact protecting Abaño from the shots embracing the latter. In short, when

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Escobal occupied himself to protect Abaño, it would be likely that he was not looking at the direction of the deceased when the latter allegedly fired two (2) successive shots. So that if his version were true, he could not have evaded the last two shots fired by deceased which were fired from a very short distance of 5.8 meters which is just roughly two arms (sic) length. Further, the deceased sustained nine (9) gunshot wounds. After the deceased was hit with the first bullet, surely he would have fall (sic) down right away so that if accused Escobal fired more random shots, the deceased would have been hit on his side or at his legs, but surely not in the front portion of his body considering that the body was already facing up after the victim fell down upon being hit. If the Court is to believe the version of Escobal, it would appear then that after the deceased was hit for the first the time, he was still able to walk and go near the accused while being continuously fired upon and fatally hit many times before falling to the ground face up, and this would explain the reason why all the entrance wounds where (sic) found at the front portion of the victim's body. Again, the Court will, reiterate its observation that this version of Escobal is incredible, unbelievable, and this happens only in the movies."

Without a doubt, accused-appellants miserably failed to clearly and convincingly prove that they acted in self-defense. More importantly, the number of gunshot wounds, nine (9) in all, inflicted and sustained by the deceased-victim coupled with the fact the accused-appellants did not sustain any injuries whatsoever, clearly disproves a plea of self-defense.

Incidentally, any discussion on the remaining elements of self-defense would be insignificant since the circumstances of "reasonable necessity of the means employed" and the "lack of sufficient provocation" on the part of one invoking legitimate self-defense both presupposes unlawful aggression.

Therefore, since no unlawful aggression was present, accused-appellants cannot successfully invoke self-defense.

On the issue of treachery, accused-appellants contend that the qualifying circumstance of treachery was not established by the prosecution since it failed to present evidence in support thereof. We find this claim of accused-appellants without basis. Treachery is evident in this case, as aptly ruled by the court a quo:

"x x x. In this case, the act of the accused in having conversation with the victim and then shot the latter, is treacherous. Treachery became even more evident when Escobal finished him off while the victim was lying helpless on the ground and pleading for his life. Anent the shells which were fired from the gun of the deceased, this was explained by the testimony of rebuttal witness Ruel Ramirez that he fired the gun of the deceased out of raged (sic) after he saw his employer, who has given him work and shelter, got shot and that it took him a long time to testify because he went into hiding to avoid the wrath of the Gaabucayans who were mad at him for firing the gun of the victim. The acts of Ramirez is

(sic) in accordance with the ordinary and common human behavior- under such circumstances. Thus, the Court finds that the element of treachery is not absent (sic). Therefore, both accused who conspired are liable for murder.”

After a careful perusal of the records of this case, this Court finds no plausible reason to question the court a quo’s assessment of the credibility of the witnesses. Truly, it is expected that the prosecution and the defense will present diametrically opposed versions of the incident. Yet the question of which witness to believe and which testimony is more believable is addressed to the sound determination of the trial court which is best equipped to make that assessment, and its actual finding are generally not disturbed on appeal.

It is well-entrenched in our jurisprudence “that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude under grilling examination.

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Finally, on the issue of conspiracy, accused-appellants essentially aver that there is no evidence that establishes conspiracy between them. Accused-appellants aver that accused-appellants could not have conspired to kill Gaabucayan especially so that both the evidence of the prosecution and the defense did not show that there was bad blood between Gaabucayan and the accused-appellants. Accused-appellants reason further that it is farfetched to say that they acted in concert with a criminal design at the moment that accused-appellant Escobal shot Gaabucayan, albeit in self-defense, because the circumstances point to and indicate that the incident was something unexpected by both the accused and Gaabucayan.

The court a quo, in finding conspiracy between the two (2) accused-appellants, opined:

“It is a hornbook doctrine that conspiracy need not be proved by direct evidence but may be inferred from the acts of the accused, before, during, and after the commission of the crime. In this case, the court finds the following, to wit: a) Abaño owns the Caliber .45 pistol used by Escobal in killing Gaabucayan; b) He accompanied Escobal at the time of the shooting; c) Abaño never made any attempt to prevent or stop Escobal from shooting Gaabucayan, even after the later was already lying helpless on the ground; d) Abaño ran away from the crime scene with Escobal after the shooting; e) Abaño got back the cal. 45 pistol after the shooting and hid it in the house of his friend; f) Abaño did not report the incident to the police or any proper government agency but instead he reported for duty the following day as if nothing had happened the night before.

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xxx. The defense would like to impress the Court that it was a usual practice of the accused that after a drinking session Abaño would accompany Escobal in going home to Bolonsiri. The Court finds this is a bare allegation considering that it is not substantiated even by a single piece of evidence, such as, the number of times they had a drinking session in a week/month after which Abaño accompanied Escobal to the latter's house or when the last time and what time did Abaño accompanied (sic) Escobal to the latter's house, and there is no other witness who was presented to corroborate this allegation.

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Evaluating the foregoing circumstances, there can be no other conclusion than that the successful perpetration of the crime was done through the concerted efforts of both accused Escobal and Abaño. While there was no proof that Abaño did in fact also shot (sic) the deceased, it is a basic rule that in conspiracy, it is not necessary to show that both accused actually shot and killed the victim. Direct proof is not essential to the establishment of the conspiracy, as it may be inferred from the acts of the accused before, during, and after the commission of the crime. This Court believes that while the killing may not be premeditated, there was spontaneous agreement and cooperation by both accused at the moment they decided to shoot the deceased. That agreement and cooperation is sufficient to create a joint criminal responsibility.

With that being said, there can be no doubt that the court a quo's finding of conspiracy was arrived after a careful evaluation of the attending chain of circumstances of this case. We find no sufficient reason to disturb the same.

Considering that the existence of conspiracy need not be proved by direct evidence, the same may be sufficiently established by the actuation of the accused, as well as the circumstances occurring prior to, during, or after the commission of the offense. Section 4 of Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with:

- (1) there is more than one circumstance;
- (2) the facts from which the inference are derived are proven;
and
- (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent.

After a careful scrutiny of the evidence presented in this case in the light of the standards set forth above, We hold that the evidence adduced by the prosecution adequately proved the guilt beyond reasonable doubt of the herein appellants. The following circumstances, when pieced together, indicate the existence of conspiracy and consistently point to their guilt:

- (1) both appellants were seen with the deceased-victim;
- (2) accused-appellant Abaño did not stop accused-appellant Escobal from continuously shooting deceased-victim despite the latter's helpless and defenseless state;
- (3) accused-appellant Abaño was seen standing near deceased-victim after accused-appellant Escobal had shot deceased-victim;
- (4) Both appellants were seen standing near deceased-victim after gunshots were fired; and;
- (5) Both appellants left the place of the incident immediately after the gunshots were fired.

In fine, the prosecution, as found by the court a quo, sufficiently established and showed beyond reasonable doubt that accused-appellant conspired and committed the crime of murder.¹⁰

The CA decreed as follows:

WHEREFORE, the appeal is **DENIED**. The RTC Decision in Criminal Case No. 2007-490 finding accused-appellants Estrillo S. Escobal and Melvin E. Abaño guilty of the crime charged is **AFFIRMED with MODIFICATION** that each of them are ordered to pay the increased amount of Php 75,000 as civil indemnity, Php 75,000 as moral damages, Php 30,000 as exemplary damages, and Php 25,000 as temperate damages to the heirs of Fernando Gaabucayan, all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.¹¹

Hence, this appeal.

Issue

The accused-appellants persist in their plea for exoneration based on self-defense, maintaining that the fact that four of the 14 empty

¹⁰ *Rollo*, pp. 12-21.

¹¹ *Id.* at 22.

shells recovered by the police from the crime scene had been fired from the firearm of the victim sufficiently established the victim's unlawful aggression against them.¹² The issue boils down to whether or not the CA correctly affirmed the conviction of the accused-appellants.¹³

Ruling of the Court

The appeal is partly meritorious.

1.

Escobal did not clearly establish his having acted in self-defense

We find no reason to deviate from the CA's factual findings and conclusions on the credibility and probative weight of Auxtero's testimony on the guilt of Escobal. The CA thereby affirmed those of the trial court. We are convinced by their common findings of the facts as well as by their determination of the credibility of the witnesses. We have to reiterate the rule that the findings of fact of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof, and its conclusions anchored on such findings are accorded high respect if not conclusive effect by the appellate courts. The reason is that the trial court is able to observe and monitor, at close range, the conduct, behavior and deportment of the witnesses as they testify.¹⁴ The rule requires stricter adherence when the factual findings are sustained by the CA.¹⁵

Escobal's submission that Auxtero only heard gunfire and did not actually see how the shooting of SPO1 Gaabucayan had started was of little consequence because Escobal, by pleading self-defense, precisely admitted shooting and killing the victim. As such, his criminal conviction for the killing should of necessity rest on his admission of the killing.¹⁶ The submission was thus irrelevant.

¹² *Rollo*, pp. 42-47.

¹³ *Id.* at 29-30 (it is noted that the parties manifested that they were not filing any supplemental briefs because they had already exhausted their arguments in the CA).

¹⁴ *People v. Aquinde*, G.R. No. 133733, August 29, 2003, 410 SCRA 162, 174; *People v. Librando*, 335 SCRA 232; *People v. Alarcon*, 335 SCRA 457.

¹⁵ *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547; *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 219-220; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 348-349; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 265-266; *People v. Santiago*, G.R. Nos. 137542-43, January 20, 2004, 420 SCRA 248, 256.

¹⁶ *People v. Suyum*, G.R. No. 137518, March 6, 2002, 378 SCRA 415, 427.

Self-defense is appreciated as a justifying circumstance only if the following requisites were present, namely: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person acting in self-defense; (2) there was reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense, or, at least, any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.¹⁷ This justifying circumstance must be established with certainty through satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the persons invoking it. It cannot be appreciated where it was uncorroborated by competent evidence, or is patently doubtful.

Unlawful aggression is the indispensable requisite. There must be a showing that the victim posed a real peril on the life or personal safety of the person defending himself, like Escobal. In *People v. Nugas*,¹⁸ the Court has discoursed on the indispensability of unlawful aggression in self-defense in the following manner:

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. **Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.**

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot. (Bold underscoring supplied for emphasis)

¹⁷ *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 297.

¹⁸ G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

Escobal's claim that SPO1 Gaabucayan had fired his gun at him and Abaño rested solely on the recovery of four spent shells that could have only come from the gun of the victim. However, the recovery of the four spent shells alone did not warrant the inference either that the victim had fired his gun or that he committed unlawful aggression. For one, Auxtero testified that he saw the victim's gun still tucked on the right side of his waistline when he went to the aid of the victim after the shooting. On his part, Gerardo Tamayo of the National Bureau of Investigation attested that the hands of the victim were not subjected to paraffin testing because there was an indication that the victim had not fired his gun. Lastly, rebuttal witness Ramirez recalled that he had taken the gun of the victim (his employer) and fired it out of rage over his killing.

Without proof of unlawful aggression on the part of SPO1 Gaabucayan by clear and convincing evidence, Escobal did not discharge his burden of proving his plea of self-defense, complete or incomplete.¹⁹ Indeed, the records show the contrary. The shooting inflicted nine frontal entry wounds on the victim, and such number of frontal gunshot wounds actually belied Escobal's having fired them in self-defense.²⁰ Moreover, Auxtero saw the victim pleading for his life but Escobal still mercilessly fired more shots to ensure his death. Accordingly, the guilt of Escobal for the fatal shooting of SPO1 Gaabucayan was established beyond reasonable doubt.

2.

The mere presence of Abaño at the scene of the crime did not establish his conspiracy with Escobal to kill the victim

We cannot uphold the conviction of Abaño on the sole basis of his having acted in conspiracy with Escobal. The records do not sustain the finding of conspiracy.

The CA and the RTC agreed that Abaño did not perform any overt act during the shooting of SPO1 Gaabucayan by Escobal. That would have already sufficed to absolve him. However, the CA concurred with the RTC's finding of conspiracy between the accused on the basis of several circumstances, namely: (1) Abaño owned the firearm used by Escobal in the killing; (2) Abaño accompanied Escobal at the time of the shooting; (3) Abaño did not attempt or prevent Escobal from shooting SPO1 Gaabucayan, even when the victim was already lying helpless on the ground; (4) Abaño and Escobal fled the crime scene together; (5) Abaño took back the firearm from Escobal after the shooting and hid it in the house of his

¹⁹ *People v. Dano*, G.R. No. 117690, September 1, 2000, 339 SCRA 515, 531; *People v. Unarce*, G.R. No. 120549, April 4, 1997, 270 SCRA 756, 764.

²⁰ *People v. Roman*, G.R. No. 198110, July 31, 2013, 703 SCRA 94, 111-112.

friend; (6) Abaño did not report the shooting to the police authority or any other proper government agency but instead reported for duty on the following day as if nothing had happened the night before.

In so concurring with the RTC, the CA completely dismissed as unsubstantiated Abaño's explanation of his frequently accompanying Escobal on his way home to Bolonsiri whenever they had drinks after work because Abaño did not demonstrate the regularity of their drinking together on a weekly or monthly basis, and did not state the last time when he had escorted Escobal home after drinking.

We cannot uphold the CA's concurrence with the RTC regarding Abaño's culpability. The circumstances listed by the lower courts did not collectively manifest any common design or concert of action on the part of Abaño with the criminal assault by Escobal. The lower courts' common observation that Abaño did not do anything to stop Escobal from shooting the victim despite the latter pleading for his life did not suffice to implicate Abaño as having acted in conspiracy with Escobal. Abaño was not thereby shown to have performed any overt act manifesting his agreement with Escobal's act of killing the victim. Instead, the records show that Abaño was still urinating at a short distance from Escobal with his back turned towards the latter when the latter started shooting at the victim. Neither should Escobal's use of Abaño's gun in the shooting manifest the latter's agreement to commit the crime without showing that Abaño had himself handed the gun to Escobal. On the contrary, Escobal insisted that he had grabbed the gun from Abaño's waistline after they had fallen to the ground to avoid the victim's shots, and had then fired back at the victim with it while shielding Abaño with his own body. Evidently, Abaño's conduct during the shooting was passive.

The circumstances listed by the lower courts, that Abaño and Escobal fled the crime scene together; that Abaño got the firearm back from Escobal after the shooting and hid it in the house of his friend; and that Abaño did not report the shooting to the police authority or any other proper government agency but instead reported for duty on the following day as if nothing had happened the night before, did not establish a conspiracy between them, or, at least, should not be taken against Abaño. For one, the undeniable fact that Abaño and Escobal had been close friends readily explained their presence together on that fateful occasion. The former's claim of innocently escorting the latter home was neither rebutted nor disproved. Also, the act of Abaño's getting the gun back from Escobal after the shooting and hiding it in the house of his friend were consistent with his being the owner or possessor of the gun. And, lastly, Abaño's non-reporting of the shooting to the police authority, while censurable, should not implicate him in a conspiracy to kill that he was not shown to have priorly known of.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it;²¹ hence, the agreement concerning the commission of the crime must be shown to precede the decision to commit it. Indeed, the acts of Abaño adverted to did not necessarily reflect his community of purpose with Escobal in the killing of the victim. The former's mere passive presence at the scene of the crime did not constitute proof of concerted action between him and Escobal.

Knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose. In this regard, we have discoursed in *Macapagal-Arroyo v. People*:²²

We also stress that the community of design to commit an offense must be a conscious one. Conspiracy transcends mere companionship, and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose. Hence, conspiracy must be established, not by conjecture, but by positive and conclusive evidence.

In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

But to be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts. In this connection, the character of the *overt act* has been explained in *People v. Lizada*:

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural

²¹ Article 8, *Revised Penal Code*.

²² G.R. No. 220598, July 19, 2016, 797 SCRA 241.

course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)²³

3.

**Escobal's killing was not shown
to be attended by treachery;
hence, he was guilty of homicide**

Nonetheless, the Prosecution did not competently establish how Escobal had mounted his deadly assault against the victim. Based on the records, Escobal and the victim had a chance encounter while the former (and his friend Abañó) were on the way to his house, and the former then fired at the victim. There was no proof adduced to disclose *how* the assault commenced. As such, the killing of the victim was not established to be attended by treachery, a circumstance whereby the accused must be shown to have adopted means, methods or forms *in the execution thereof* that "tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."²⁴

Consequently, the felony only constituted homicide. Article 249 of the *Revised Penal Code* defines homicide as the killing of a person without the

²³ Id. at 311-313; the bold underscoring is part of the original text.

²⁴ Article 14(16), *Revised Penal Code*, which provides:

x x x x

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 insure its execution, without risk to himself arising from the defense which the offended party might make.

x x x x

attendant circumstances mentioned in Article 248 of the *Revised Penal Code*,²⁵ and without the killing being parricide under Article 246 of the *Revised Penal Code*.²⁶ The penalty for homicide is *reclusion temporal*, to be imposed in its medium period (*i.e.*, 14 years, eight months and one day to 17 years and four months) because of the absence of modifying circumstances. Accordingly, the indeterminate sentence for Escobal is fixed at eight years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum.

4.

Escobal's civil liability

We affirm the grant by the RTC of ₱1,240,096.00 as indemnity for loss of earning capacity considering that the determination thereof was in full accord with the evidence and prevailing jurisprudence, and considering further that Escobal did not appeal therefrom.

Further civil liability for the death of the victim should also be awarded to conform to prevailing jurisprudence. In *People v. Jugueta*,²⁷ the Court has fixed for the heirs of the victim in homicide ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages (in lieu of actual damages for the burial of the victim's remains).

All the damages are to be recovered by the heirs of the late SPO1 Fernando Gaabucayan, Jr. plus legal interest of 6% *per annum* reckoned from the finality of the decision until full satisfaction.²⁸

WHEREFORE, the Court:

²⁵ Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

²⁶ Article 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

²⁷ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

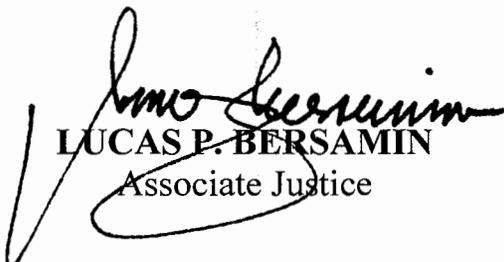
²⁸ *Id.* at 388.

(1) **ACQUITS** accused **MELVIN E. ABAÑO** of the crime charged, and **DIRECTS** his **IMMEDIATE RELEASE FROM DETENTION**, unless there are other lawful causes warranting his continuing imprisonment;

(2) **FINDS** and **PRONOUNCES** accused **ESTRILLO ESCOBAL y SALVACION** guilty of **HOMICIDE**, and **SENTENCES** him to suffer the indeterminate penalty of **EIGHT YEARS OF PRISION MAYOR, AS MINIMUM, TO 14 YEARS, EIGHT MONTHS AND ONE DAY OF RECLUSION TEMPORAL, AS MAXIMUM**;

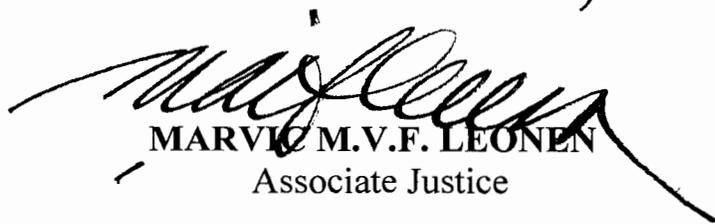
(3) **ORDERS** accused **ESTRILLO ESCOBAL y SALVACION** to pay to the heirs of the late SPO1 Fernando Gaabucayan, Jr. civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; temperate damages of ₱25,000.00; and ₱1,240,096.00 as indemnity for loss of earning capacity, all with legal interest of 6% *per annum* reckoned from the finality of the decision until full satisfaction, plus the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice

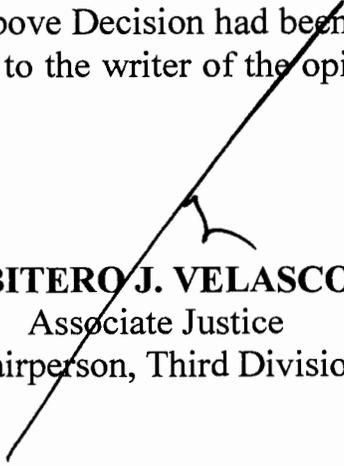

MARVIC M.V.F. LEONEN
Associate Justice

(On Official Leave)
SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

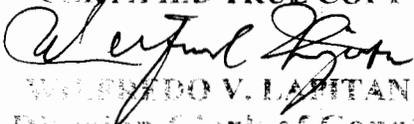
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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, 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.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WELFREDO V. LAPITAN
Division Clerk of Court
Third Division

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