



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,

OF THE

G.R. No. 197039

Plaintiff-Appellee,

Present:

BRION,* J.,
 Acting Chairperson,
 DEL CASTILLO,
 PEREZ,
 PERLAS-BERNABE, and
 LEONEN,** JJ.

-versus-

Promulgated:

ARIEL CALARA y ABALOS,
 Accused-Appellant.

JUN 05 2013

X ----- X

DECISION

PEREZ, J.:

Before us on appeal is the Decision¹ of the Court of Appeals affirming the judgment² of the Regional Trial Court, Second Judicial Region, Branch 35, Santiago City, Province of Isabela, in Criminal Case No. 35-4781 finding Ariel Calara y Abalos (appellant) guilty of the crime of murder.

Appellant was charged with murder under the following Information:

That on [or] about March 6, 2004 at Santiago City Philippines, and within the jurisdiction of this Honorable Court, the above-named accused

* Per Special Order No. 1460 dated 29 May 2013.

** Per Special Order No. 1461 dated 29 May 2013.

Penning by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Celia C. Libre-Teagogo and Michael P. Elbinias, concurring. *Rollo*, pp. 2-18.

Penning by Judge Efren M. Cacatian. Records, pp. 206-212.

did then and there, with malice aforethought and with deliberate intent to take the life of SGT FRANCISCO DULAY, willfully, unlawfully and feloniously suddenly unexpectedly, and treacherously attack the latter with a bladed weapon (colonial knife) and as a result thereof, suffered Irreversible hypovolemic shock due to an Intratoracic hemorrhage/bleeding, secondary to stabbing which caused the immediate death of said Sgt. FRANCISCO DULAY.³

The facts, as narrated by prosecution witnesses, follow.

On 6 March 2004 at around 1:00 a.m, the victim, Francisco Dulay (Francisco), was fatally stabbed at a *lugawan* along Maharlika Highway in Santiago City, Isabela, while he was about to board a tricycle.⁴ This stabbing incident was witnessed by the victim's brother, Dante Dulay (Dante) and cousin Fernando Porquillano (Fernando), who were both with him at that time. Dante narrated that he saw appellant stab Francisco at the back shoulder.⁵ Dante identified appellant as the perpetrator through the latter's distinguishing tattoo mark on his right arm. Dante also heard someone say the name "Aying" which later was identified to be appellant's nickname.⁶ During the cross-examination, Dante revealed that as Francisco was stabbed, he was simultaneously hit on the nape with a stone. He however could not identify the person who hit him, except that appellant had two (2) companions at that time. Dante felt dizzy afterwards and upon regaining his stance, he saw Francisco lying on the street. Appellant, together with his two (2) companions, immediately fled the scene.⁷ Dante denied that they had a drinking spree prior to the incident.⁸

Fernando recounted that he was seated on the tricycle after eating at a *lugawan* when he was suddenly boxed by an assailant.⁹ Fernando could not identify his assailant because the latter ran away with the person who hit Dante on the nape.¹⁰ Thereafter, he saw appellant stab Francisco.¹¹

Francisco was immediately brought to the hospital where he expired.

³ Id. at 1.
⁴ TSN, 28 March 2006, pp. 4-5.
⁵ TSN, 1 March 2005, p. 6.
⁶ Id. at 8-9.
⁷ TSN, 31 May 2005, pp. 3-9.
⁸ Id. at 21.
⁹ TSN, 15 November 2006, pp. 7-13.
¹⁰ TSN, 21 February 2007, p. 14.
¹¹ Id. at 24.

The death certificate shows that he died from irreversible *hypovolemic* shock due to an *intratoracic hemorrhage* or bleeding second degree to stabbing.¹²

Dr. Romanchito Bayang conducted an autopsy on Francisco's body. In his Post-Mortem Report, he discovered two (2) stab wounds—first, on the victim's head, which appears to be superficial;¹³ and second, at the back of the chest of the victim, which was six inches deep and fatal.¹⁴

Francisco's wife, Delia Dulay, testified on the expenses and damages incurred as a result of the death of her husband.

Appellant, on the other hand, denied killing Francisco and presented a different version of the incident. Appellant claimed that on 6 March 2004, he was accompanied by his friends, Albert Cauian, alias "Dugong" and Guiller Salvador, to the *lugawan* to court a girl. When they got to the *lugawan*, appellant saw Francisco giving him a dirty look. He left the *lugawan* but abruptly returned to buy cigarettes. He even went up to Francisco to ask for a light before he boxed the latter. A commotion ensued and appellant had a fistfight with Dante.¹⁵ Appellant saw Francisco attempt to stab him but Dugong intercepted the attack and stabbed Francisco first.¹⁶ Appellant insisted that it was Dugong who killed Francisco. Appellant went home after the incident. He initially denied being in the *lugawan* when asked by his mother, but he later on admitted his presence when pressed by his uncle, who actually saw him in the *lugawan*.¹⁷

On 12 March 2009, the trial court rendered judgment finding appellant guilty of murder. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this Court finds accused Ariel Calara y Abalos GUILTY beyond reasonable doubt of the offense of murder and hereby sentenced to suffer the penalty of imprisonment for a period of TWENTY (20) years and ONE (1) day to FORTY (40) years. The accused is likewise adjudged civilly liable and ordered to pay the heirs of the victim Sgt. Francisco Dulay the following damages:

- 1) Death indemnity Php. 50,000.00;

¹² Records, p. 9.

¹³ TSN, 5 June 2007, p. 9.

¹⁴ Id. at 13-15.

¹⁵ TSN, 27 February 2008, pp. 9-12.

¹⁶ TSN, 25 June 2008, p. 3.

¹⁷ Id. at 5-6.

- 2) Actual damages Php. 109,300.00;
- 3) Moral damages Php. 100,000.00;
- 4) Exemplary damages Php. 100,000.00; and
- 5) Loss of earning capacity Php. 3,227,360.00.¹⁸

Appellant filed an appeal before the Court of Appeals assigning in his Brief the following errors allegedly committed by the trial court:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE COURT A QUO GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III.

THE COURT A QUO GRAVELY ERRED IN AWARDING P109,300.00 ACTUAL DAMAGES, [P]100,000.00 MORAL DAMAGES, P100,000.00 EXEMPLARY DAMAGES, AND [P]3,227,360.00 LOSS OF EARNING CAPACITY.¹⁹

The Office of the Solicitor General (OSG) filed its Brief and refuted the allegations of appellant. The OSG dismissed the alleged inconsistencies as minor details which should not affect the integrity of the eyewitnesses' testimonies. The OSG defended the presence of treachery by the mere fact that Francisco was stabbed from behind. And finally, the OSG supported the award of damages, which amounts are duly supported by law and evidence.

In a Decision dated 26 November 2010, the Court of Appeals affirmed with modification the decision of the trial court. The dispositive portion reads:

WHEREFORE, premises considered, the assailed decision dated March 12, 2009 of the RTC, Branch 35, Santiago City in Criminal Case No. 35-4781 is hereby AFFIRMED with MODIFICATION in that the award of moral damages is reduced from P100,000.00 to P50,000.00 while exemplary damages is likewise reduced from P100,000.00 to P25,000.00.

¹⁸ Records, p. 212.

¹⁹ CA *rollo*, p. 35.

The loss of earning capacity is reduced to P3,220,355.00. The rest of the decision stand[s].²⁰

On 15 December 2010, appellant filed a notice of appeal. In a Resolution dated 5 September 2011, the Court directed the parties to file supplemental briefs, if they so desire. Both parties manifested that they were no longer filing their supplemental briefs.²¹

Appellant is appealing for the reversal of his conviction. He denies stabbing Francisco and instead points to a certain Dugong as the perpetrator, but in the same breadth, he harps on the absence of treachery to qualify the crime to murder.

Appellant points out several inconsistencies and incredulities in the testimonies of Dante and Fernando. Appellant notes that Dante and Fernando contradicted themselves when they initially testified that Francisco was paying the bill at the *lugawan* when he was stabbed, but later stated that Francisco was about to board the tricycle when stabbed. Appellant finds it impossible for Dante not to see the actual weapon when he testified that he saw appellant approach and stab the victim. Appellant doubts if Dante and Fernando were able to witness the whole incident when the former admitted to have been knocked out after he was hit in the nape with a stone, and the latter was only less than two (2) meters away from the location of Francisco. Appellant submits that Dante did not witness the actual stabbing because the latter could not even identify what the appellant was wearing at the time of the incident, contrary to his later testimony that he was able to take a good look at appellant before the stabbing incident.

The supposed inconsistency on what the victim was precisely doing when he was stabbed is inconsequential as it relates to a minor and peripheral detail. The paying of the bill preceded the boarding of the tricycle and that explains why Dante mentioned it in his direct testimony. As a matter of fact, Dante corrected himself when confronted with this matter and maintained that Francisco was stabbed when he was about to board the tricycle. This statement was corroborated by Fernando when he himself recounted that the victim was stabbed when he was about to ride the tricycle.

²⁰ *Rollo*, p. 17.

²¹ *Id.* at 25-31.

The failure of the witnesses to remember the weapon used in the crime, as well as the apparel worn by the assailant is insignificant. Witnesses are not expected to remember every single detail of an incident with perfect or total recall. What is vital in their testimonies is not their knowledge of the weapon used, but that they saw appellant stab the victim. As a matter of fact, the presentation of the murder weapon is not even indispensable to the prosecution of an accused.²²

The Court has held that although there may be inconsistencies in the testimonies of witnesses on minor details, they do not impair their credibility where there is consistency in relating the principal occurrence and positive identification of the assailant.²³

The purported inconsistencies aside, Dante and Fernando were steadfast in pointing to appellant as the person who stabbed Francisco. Dante was able to identify appellant by his tattoo mark and upon hearing someone call out his name at the time of the stabbing, thus:

Q. Do you know the cause of death of your brother?

A. He was stabbed to death, sir.

Q. Do you know where he was stabbed?

A. At the highway, sir, near the Market, at the *Lugawan*.

Q. Were you present when he was stabbed?

A. Yes, sir.

COURT:

Q. You were present and you saw him stabbed?

A. Yes, Your Honor.

Q. Who stabbed him?

A. Ariel, Your Honor.

Fiscal De Los Santos:

Q. Is this Ariel inside the Courtroom?

A. Yes, sir.

Q. Could you pinpoint to him?

²² *People v. Fernandez*, 434 Phil. 224, 231-232 (2002).

²³ *People v. Delos Reyes*, G.R. No. 177357, 17 October 2012, 684 SCRA 260, 276; *People v. Mamaruncas*, G.R. No. 179497, 25 January 2012, 664 SCRA 182, 194-195.

Witness: A. Witness point to a person, sitted (*sic*) on the last bench, and when asked, he identified himself as Ariel Calara.

x x x x

Q. Now, when these 3 came in suddenly, what did you do?

A. Ariel stabbed my brother, sir.

Q. Was your brother hit when he was stabbed?

A. Yes, sir.

Q. What part of his body was hit?

A. Here, sir. Witness pointing to his back shoulder.

Q. Now, immediately before Ariel Calara stabbed your brother, what is the relative position of your brother to the accused against Calara?

Witness: A. At the back, sir.

x x x x

Q. Did you see Ariel Calara approached (*sic*) your brother before he was stabbed?

A. Yes, Your Honor.

COURT: Continue Fiscal.

Fiscal De Los Santos:

Q. Now, since this incident occurred at night, then, how could you be able to recognize Ariel Calara who stabbed your brother?

A. Before my brother was stabbed, they talked to the vendors.

Q. Is there any distinguishing mark that you recognized from the person of Ariel Calara?

Witness: A. There is, sir.

Fiscal De Los Santos:

Q. And what is that mark?

A. Here, sir, there is a mark.

Interpreter: Witness pointing to his left arm and said he cannot describe.

Fiscal De Los Santos:

Q. Could you explain to us what is this mark? Is it mole or whatever?

A. A name, sir.

Q. Could you approach the accused and point to us his distinguishing mark that you are telling us?

A. Witness approached the accused and pointed to the mark on the right arm named OMMY and TATTOO like a web.

Atty. Manuel: May we spread on the records, Your Honor, that when the witness testified, he tap his left hand and when he approached the accused, Your Honor, what he identified is the right hand of the accused.

COURT:

Q. Aside from the Tattoo that you recognized, what else did you recognize about the accused?

A. I heard his named (*sic*) AYING.

Q. Did you see his face when he stabbed your brother?

A. Yes, Your Honor.

Fiscal De Los Santos:

Q. You mentioned that you heard his name. Could you tell us specifically when did you hear his name?

A. When my brother was already stabbed and they ran away. Somebody said that it was AYING.²⁴

Fernando also witnessed how Francisco was stabbed to death, thus:

Q. What were you doing if any at the time that you were boxed by this person whom you mentioned earlier?

A. I was then seated on my tricycle, Ma'am.

Q. How far were you from Francisco Dulay at that time?

A. More than one (1) meter away, Ma'am.

Q. And where was Francisco Dulay at that time, on your right side or on your left side?

Atty. Manuel: Can we make reference of time, Your Honor.

Fiscal Madrid:

Q. At the time that he was seated on his motorcycle?

A. On my left side, Ma'am.

Q. Now, what happened next, Mr. Witness, after somebody boxed you, if any?

A. There was a commotion, Ma'am.

²⁴ TSN, 1 March 2005, pp. 4-9.

- Q. And what was this commotion about, Mr. Witness, if you know?
A. They surprised us, Ma'am.
- Q. What happened to Francisco Dulay at that time, Mr. Witness, if you know?
A. He fell down to the ground, Ma'am.
- Q. Now you mentioned that Francisco Dulay was st[a]bbed, when was he st[a]bbed, Mr. Witness, during this time?
A. At that night, Ma'am.
- Q. And who st[a]bbed him, if you know?
A. A person named alias Aying, Ma'am.
- Q. Were you able to see the face of this person, Mr. Witness?
A. Yes, Ma'am.
- Q. So, if given a chance to see the face of this person again, will you be able to identify him?
A. Yes, Ma'am.
- Q. Did you come to know, Mr. Witness, of the real name of this person whom you referred to as Aying?
A. Yes, Ma'am.
- Q. And what was his real name that you came to know, Mr. Witness?
A. Ariel Calara, Ma'am.
- Q. Do you know, Mr. Witness, if this Ariel Calara alias Aying is in Court now?
A. Yes, Ma'am.

Fiscal Madrid cont.

- Q. Can you please look around and point to this person Ariel Calara alias Aying?

Court Interpreter:

Witness pointed to a person seated on the second bench when asked he identified himself as Ariel Calara.

Court. Will you stand up, you are asked.

Fiscal Madrid. May we just want to spread on the record, Your Honor, that the person pointed to and identified by the witness is the same accused in this case.²⁵

²⁵ TSN, 15 November 2006, pp. 8-11.

The prosecution witnesses' positive identification prevails over the mere denial of appellant. Denial is an intrinsically weak defense. When unsubstantiated by clear and convincing evidence, it is negative and self-serving and merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.²⁶

The courts below correctly appreciated the circumstance of treachery. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.²⁷ The *post-mortem* findings indicate that Francisco sustained a fatal wound on his back chest. The position of the fatal wound is more than clear indication that the victim was stabbed from behind leaving him in a defenseless state.

As the crime of murder has been proven beyond reasonable doubt, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* under Article 248 of the Revised Penal Code, as amended.

Other than exemplary damages, the award of other damages is in order. In conformity with the prevailing jurisprudence²⁸, the amount of exemplary damages is increased to ₱30,000.00. In addition, an interest of 6% is imposed on the damages awarded in this case as a natural and probable consequence of the acts of the accused complained of.²⁹

WHEREFORE, the appealed judgment is hereby **AFFIRMED with MODIFICATIONS**. Appellant Ariel Calara y Abalos is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of Francisco Dulay the amounts of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages, and interest on

²⁶ *People v. Laurino*, G.R. No. 199264, 24 October 2012, 684 SCRA 612, 620-621; *People v. Teñoso*, G.R. No. 188975, 5 July 2010, 623 SCRA 614, 621; *Domingo v. People*, G.R. No. 186101, 12 October 2009, 603 SCRA 488, 507-508.

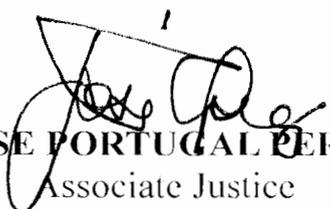
²⁷ *People v. Sally*, G.R. No. 191254, 13 October 2010, 633 SCRA 293, 305; *People v. Vallespin*, 439 Phil. 816, 824 (2002).

²⁸ *People v. Pondivida*, G.R. No. 188969, 27 February 2013; *People v. Peteluna*, G.R. No. 187048, 23 January 2013.

²⁹ *People v. Zapuiz*, G.R. No. 199713, 20 February 2013.

all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



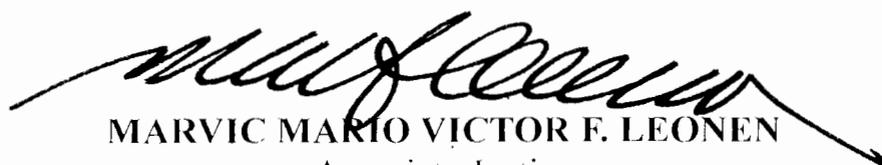
ARTURO D. BRION
Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
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.

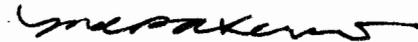


ARTURO D. BRION

Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice