



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 February 2022** which reads as follows:*

“G.R. No. 221473 (*People of the Philippines v. Elpidio Amistoso y Candelario*). — This is an appeal¹ filed by accused-appellant Elpidio Amistoso y Candelario (accused-appellant) assailing the March 31, 2015 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05370, which affirmed with modification the August 25, 2011 Decision³ of the Regional Trial Court (RTC), Branch 45 of San Jose, Occidental Mindoro, in Criminal Case No. R-6177, finding accused-appellant guilty beyond reasonable doubt of the crime of Murder.

The accusatory portion of the Information⁴ charging accused-appellant with Murder and to which he pleaded “not guilty,”⁵ alleges:

That on or about the 13th day of May, 2001, at around 8:00 o’clock in the morning, in Barangay Magsikap, Municipality of Rizal, Province of Occidental Mindoro, Philippines and within the jurisdiction of the Honorable Court, the accused being then armed with a M-14 armalite, with intent to kill, with treachery and evident premeditation, conspiring, confederating and helping one another together with 16 or more persons whose true names and identities are still unknown, did then and there willfully, unlawfully and feloniously attack, assault and shot with the said weapon one PO3 Jesus Hullana,⁶ thereby inflicting upon the latter serious wound which caused his untimely death.

WITH SPECIAL CIRCUMSTANCES (sic) OF UNLICENSED FIREARM.

¹ *Rollo*, pp. 16-19.

² *Id.* at 2-15. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Andres B. Reyes, Jr. (former Member of this Court) and Ricardo R. Rosario (now a Member of this Court).

³ *Records*, pp. 114-124. Penned by Executive Judge Jose S. Jacinto, Jr.

⁴ *Id.* at 1.

⁵ *Id.* at 20-22.

⁶ Also referred to as “Juliana” in the records.

CONTRARY TO LAW.⁷

Trial on the merits ensued.

Version of the Prosecution

The prosecution presented the testimonies of: 1) Municipal Health Officer Dr. Beth Jimenez;⁸ 2) Police Officer (PO) 3 Edgardo Dairo (PO3 Dairo);⁹ 3) PO3 Antonio Ambay (PO3 Ambay),¹⁰ and 4) Angelica Juliana (Angelica).¹¹ From their testimonies the following were culled:

On May 13, 2001, at around 7:30 a.m., members of the Philippine National Police (PNP) composed of Chief Inspector (CI) Manuel Castillo (CI Castillo), PO3 Renato Supranes (PO3 Supranes), PO3 Dairo, PO3 Ambay, and PO3 Jesus Juliana (PO3 Juliana), were headed towards the Provincial Police Command Headquarters at San Jose, Occidental Mindoro on board a “*back to back*” patrol car.¹²

When they reached the bridge near Lumintao River¹³ at Barangay Magsikap, shots coming from a forested area rained on them. PO3 Dairo then shouted “*Pre, ambush, talon!*” and he and PO3 Ambay jumped off the vehicle. They rolled towards a canal where they sought cover.¹⁴

From their spots, PO3 Dairo and PO3 Ambay fired shots towards the group of around 20 armed individuals believed to be members of the New People’s Army (NPA). They saw accused-appellant, also known as “*Ka Jovan*,” leading the group and maneuvering from one position to another. They recognized him right away since he was a former member of the Citizen Armed Forces Geographical Units (CAFGU) assigned at their police detachment sometime in 1980.¹⁵

PO3 Dairo and PO3 Ambay crawled towards their vehicle that fell into the canal and extricated their driver, PO3 Supranes. CI Castillo, though wounded, was able to get out of the vehicle and sought cover behind a tree. In the midst of the ensuing exchange of fire, they looked for PO3 Juliana but did not see him. They thought that he was merely hiding.¹⁶

The police officers, who were then 100 meters away from their assailants’ position, continued exchanging fire against accused-appellant’s group. The

⁷ Records, p. 1.

⁸ TSN, July 19, 2007.

⁹ TSN, March 25, 2008 and July 23, 2008.

¹⁰ TSN, April 28, 2009 and November 12, 2009.

¹¹ Also referred to as “Juliana” in the records.

¹² TSN, March 25, 2008, pp. 4-6.

¹³ Also referred to as “Lumintaw river” in the records.

¹⁴ TSN, March 25, 2008, pp. 6-7.

¹⁵ Id. at 7-8.

¹⁶ Id. at 8-10.

encounter lasted for about 20 minutes until CI Castillo instructed PO3 Dairo and PO3 Ambay to withdraw and report the ambush at the nearest police station. PO3 Dairo, PO3 Supranes, and CI Castillo sustained gunshot wounds while PO3 Ambay was unharmed. They left without locating PO3 Juliana.¹⁷

On their way to the police station, they met PO1 Gelena who called for reinforcements from the Provincial Police Command Headquarters. They were then brought to the hospital for treatment and learned thereat that PO3 Juliana died during the encounter.¹⁸

A post mortem examination of the body of PO3 Juliana was conducted by Dr. Jimenez, whose findings revealed that PO3 Juliana sustained a gunshot wound. The entry point was 0.3cm x 0.3 cm in the infraclavicular area while the exit wound was 2 cm x 2 cm in the paravertebral area at the left thoracic vertebral back. The same resulted to a massive hemorrhage or bleeding¹⁹ affecting his oxygen supply which led to his death. The gunshot wound could have been a long range shot of about more than two meters considering the absence of tattooing and gun powder burns.²⁰

Meanwhile, PO3 Juliana's widow, Angelica, testified that she spent around ₱100,000.00 for the wake and burial expenses of her deceased husband. However, only the amount of ₱50,000.00 for the purchase of the casket was supported by an official receipt.²¹

Version of the Defense:

The defense presented the testimonies of: 1) accused-appellant;²² 2) Klunie Amistoso (Klunie);²³ and 3) Avelino Dalisay (Dalisay).²⁴

Accused-appellant denied any participation in the ambush that took place. He alleged that on May 13, 2001, at around 9:00 a.m., he and his wife Klunie met Dalisay in a dilapidated house in the middle of a field in Barangay San Pedro, Rizal, Occidental Mindoro, which was about two kilometers away from where the ambush occurred. They had a lengthy conversation which lasted for about an hour whereby accused-appellant revealed his plan to return to the fold of the government. After the meeting, they all parted ways. He only learned that an ambush took place in Barangay Magsikap when he heard it over the radio.²⁵

Accused-appellant further maintained that he was implicated in the crime because it was known to the police forces that he was a former member of the

¹⁷ Records, p. 7.

¹⁸ Id. at 5-6.

¹⁹ Id. at 7.

²⁰ Id. at 115.

²¹ Id. at 118.

²² TSN, August 25, 2010 and September 23, 2010.

²³ TSN, September 23, 2010.

²⁴ TSN, August 24, 2010.

²⁵ Records, p. 119.

CAFGU, and later on became associated with the NPA. He clarified that while he was already an NPA member at the time of the ambush, he only became active in 2004. As such, there was no way that he was involved in the said incident. Finally, he professed that he joined the NPA as he harbored ill feelings against a certain police officer Baligat.²⁶

On the other hand, Klunie corroborated the meeting they had with Dalisay on the day of the incident. After their talk, she left alone and headed back home and passed by the ambush site. It was only in 2006 when she saw her husband again and convinced him not to return to the mountains. They left for Antique where they learned of the charges against her husband and stayed there until he decided to surrender.²⁷

As for Dalisay, he averred that he was a *barangay tanod* in Barangay Magsikap and that he personally knew accused-appellant. He corroborated accused-appellant's statement that they had a meeting whereby the former manifested his intention to cut-ties with the NPA. They parted ways after an hour and he only learned of the ambush from his wife and children when he arrived home. He went to the ambush site and learned that accused-appellant's name was not among those listed in the police blotter to have been involved in the shooting.²⁸

Ruling of the Regional Trial Court:

On August 25, 2011, the RTC rendered its Decision²⁹ disposing, to wit:

WHEREFORE, this Court finds the accused **ELPIDIO AMISTOSO y CANDELARIO, GUILTY** beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code but pursuant to the mandate of R.A. 9346 which abolished the Supreme Penalty of Death hereby **SENTENCES** him to suffer the penalty of Reclusion Perpetua. Also, this Court **ORDERS** the accused to pay the surviving spouse of the victim, the following *viz*:

1. Php 50,000.00 as Civil indemnity of ex-delicto;
2. Php 50,000.00 as Actual damages;
3. Php 50,000.00 as Moral damages;
4. Php 15,000.00 as Exemplary damages; and
5. The costs of this suit.

SO ORDERED.³⁰

The RTC found that all the elements of Murder, through treachery, were proved beyond reasonable doubt, and the alibi raised by accused-appellant was insufficient to destroy the strong case of the prosecution.

²⁶ Id.

²⁷ Id. at 120.

²⁸ Id. at 118-119.

²⁹ Id. at 114-124.

³⁰ Id. at 124.

The case was elevated to the CA *via* automatic appeal.³¹

Ruling of the Court of Appeals:

The CA denied the appeal. The dispositive portion of the March 31, 2015 Decision³² of the CA reads:

WHEREFORE, the Decision dated August 25, 2011 finding the accused-appellant guilty beyond reasonable doubt is hereby AFFIRMED with the following MODIFICATIONS, viz: the civil indemnity for the death of PO3 Jesus Juliana is increased to P75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are increased to P75,000.00 and P30,000.00 respectively.

SO ORDERED.³³

The CA sustained the guilty verdict of the RTC. It held that the treacherous method of the attack launched by accused-appellant and his cohorts proved conspiracy and his liability thereon. The CA also held that accused-appellant's bare denial was weak and unreliable. As to the award of damages, the CA increased the amount of civil and moral damages to ₱75,000.00 each, and exemplary damages to ₱30,000.00 based on then prevailing jurisprudence.³⁴

Undeterred, accused-appellant appealed his case before Us.³⁵ When required by this Court to file a supplemental brief, both parties manifested that they shall adopt their respective briefs filed before the CA.³⁶

Essentially, accused-appellant avers that the prosecution failed to establish his guilt beyond reasonable doubt as the testimony of the witnesses were hearsay and self-serving. Moreover, the prosecution was remiss in proving his actual participation in the crime and in establishing who actually shot and killed the victim.³⁷

Issue

The main issue is whether or not the guilt of the accused-appellant was proven beyond reasonable doubt.³⁸

Our Ruling

The appeal lacks merit.

³¹ See *id.* at 133.

³² *Rollo*, pp. 2-15

³³ *Id.* at 14.

³⁴ *Id.* at 7-14.

³⁵ *CA rollo*, p. 130.

³⁶ *Rollo*, pp. 33-34.

³⁷ *Id.* at 7.

³⁸ *CA rollo*, p. 52.

Murder is defined under Article 248 of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances enumerated therein. The presence of any one of the cited circumstances is sufficient to qualify a killing as murder, to wit:

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 street car or locomotive, 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. [Emphasis Ours]

After a judicious review of the records of this case, the Court is convinced that, indeed, accused-appellant is guilty of Murder qualified by treachery.

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.³⁹ Here, the collective evidence presented by the prosecution amply demonstrates how the killing was attended by treachery, *i.e.* through the surreptitious gun attack executed by accused-appellant and his comrades. The police officers as prosecution eyewitness were able to narrate what happened on that fateful day and were able to recount the individual participation of the accused-appellant.⁴⁰

We quote with approval the finding of the CA:

In this case, it has been established that the police officers while traversing on board their patrol car were fired upon by their attackers who were already positioned along the road and waited for their police car to pass by. **They were completely taken by surprise. From the testimonies of the survivor-witnesses, accused-appellant and his cohorts waited for the police car all set to spray them with bullets. The malefactors have strategically positioned themselves at the forested area (kakahuyan) of the mountains overlooking the highway, purposely to avoid detection and being hit in retaliation. They were stationed in such a way that vehicles passing by cannot notice their**

³⁹ Revised Penal Code, Art. 14 (16).

⁴⁰ Records, pp. 115-118.

presence. As narrated the survivor-witnesses, they were oblivious of their attackers until their vehicle traversing the bridged was peppered with shots coming from the forested area. They were in fact forced to jump while the car was running at a speed. Nevertheless, the accused-appellant was distinctly identified as he was leading the group and changing his positions while firing shots at the police officers.⁴¹ (Emphasis Ours)

In the recent case of *People v. Canillo*,⁴² this Court described treachery as follows:

People v. Abadies explained that “[t]he essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.” There, this Court provided the two conditions that the prosecution must establish for a killing to be qualified by treachery to murder: “(1) that at the time of the attack, the victim was not in a position to defend himself, and (2) that the offender consciously adopted the particular means, method, or form of attack employed by him.”

Cirera v. People then emphasized that the unexpectedness of an attack alone does not automatically lead to treachery, as treachery presupposes that “[t]he means adopted must have been a result of a determination to ensure success in committing the crime.”⁴³ (Emphasis Ours; Citations omitted)

Guided by the foregoing pronouncement, We hold that the slaying of PO3 Juliana was attended by treachery. At the time of the attack, he was not in a position to defend himself as he and the members of the police force were merely traversing the road on the way to their headquarters unaware of the impending attack. Accused-appellant, together with his group, deliberately concealed themselves behind the trees and strategically positioned themselves in order to carry out the ambushade without risk to themselves and ensuring the success of their plan.

Anent the issue of conspiracy, this Court holds that it was not only aptly alleged in the Information but its existence was also proved beyond reasonable doubt by the prosecution.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.⁴⁴ Oftentimes, direct proof of conspiracy is elusive. Hence, while it is true that the elements of conspiracy must be proved by proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself, this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged. It may be inferred from the conduct of the accused before, during and after the

⁴¹ *Rollo*, pp. 7-8.

⁴² G.R. No. 244051, April 28, 2021.

⁴³ *Id.*

⁴⁴ Revised Penal Code, Article 8.

commission of the crime, where such conduct reasonably shows community of criminal purpose or design.⁴⁵

In the case at bar, the ambushade itself demonstrates the concerted action and unity of purpose on the part of the accused-appellant and his group. Accused-appellant was positively and unquestionably identified as the leader of the group who treacherously attacked the law enforcers. Therefore, irrespective of whoever delivered the fatal gunshot, the accused-appellant is criminally liable under the principle in conspiracy that “the act of one is the act of all.”⁴⁶

Finally, considering the solid case of the prosecution and its witnesses’ categorical statements, the denial and *alibi* interposed by the accused-appellant, deserve scant consideration. To be believed, an *alibi* must be supported by the most convincing and unbiased evidence, as it is inherently weak and can easily be fabricated. As such, when raising *alibi*, the requirement of physical impossibility to be present thereat must be established.⁴⁷ Clearly, accused-appellant failed to meet the requirements because his testimony itself belied his *alibi*. He testified that he and his wife met with Dalisay at 9:00 a.m.⁴⁸ while the attack on the police officers happened between 7:30 to 8:00 a.m.⁴⁹ Moreover, the place where the accused-appellant had a meeting was merely two kilometers away from the place of ambush, thus could be easily traversed to enable him to be at the crime scene and leave without delay.

As to the penalty imposed and award of damages, *People v. Jugueta*⁵⁰ teaches that in the crime of Murder where the imposable penalty is *reclusion perpetua*, the nature and amount of damages that may be awarded thereon are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, among others.⁵¹

Here, considering that no other aggravating circumstance attended the killing of PO3 Juliana apart from the qualifying circumstance of treachery, the penalty of *reclusion perpetua* as the lesser penalty is warranted. Civil indemnity, moral damages, and exemplary damages, each in the amount of ₱75,000.00, must also be awarded. The award of ₱50,000.00 as actual damages is retained since the same was the amount duly supported by a receipt.

Finally, all damages awarded shall earn interest at the rate of six percent (6%) interest per *annum* from the date of finality of this Resolution until full payment.

⁴⁵ *People v. Pilpa*, G.R. No. 225336, September 5, 2018.

⁴⁶ *People v. Batulan*, G.R. No. 216936, July 29, 2019.

⁴⁷ *People v. Verona*, G.R. No. 227748, June 19, 2019.

⁴⁸ Records, p. 119.

⁴⁹ TSN, March 25, 2008, pp. 4-6.

⁵⁰ 783 Phil. 806, 827-847 (2016).

⁵¹ Id. at 848.

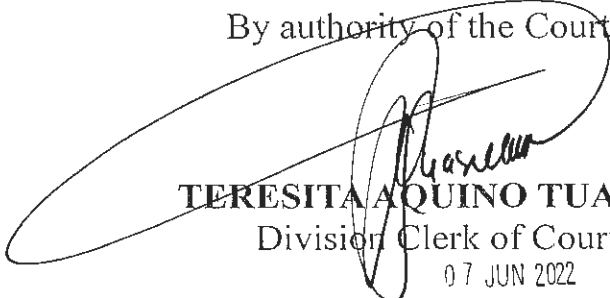
WHEREFORE, the appeal is hereby **DISMISSED**. Accused-appellant Elpidio Amistoso y Candelario is found **GUILTY** beyond reasonable doubt of the crime of Murder and sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the heirs of PO3 Jesus Juliana the following:

- 1) Civil indemnity in the amount of ₱75,000.00;
- 2) Actual damages in the amount of ₱ 50,000.00;
- 3) Moral Damages in the amount of ₱75,000.00; and
- 4) Exemplary damages in the amount of ₱75,000.00.

All damages awarded shall earn interest at the rate of six percent (6%) per *annum* from the date of finality of this Resolution until full payment.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court
 07 JUN 2022

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THE DIRECTOR (reg)
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HON. PRESIDING JUDGE (reg)
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