



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2022** which reads as follows:*

“G.R. No. 250602 (People of the Philippines v. Ronald Malagad.) – This Court resolves the appeal from the Decision¹ dated 21 November 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09390 denying the appeal of accused-appellant Ronald Malagad (accused-appellant) from the Decision² dated 16 May 2017 of Branch 104, Regional Trial Court (RTC), Quezon City, which found accused-appellant guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code (RPC), as amended by Republic Act No. (R.A.) 7659, for the killing of Orlando Francisco (Francisco).

Antecedents

Accused-appellant was charged with Murder in the Information dated 01 February 2011. The accusatory portion reads:

That on or about the 11th day of October 2010, in Quezon City, Philippines, the above-named accused, with intent to kill, with qualifying aggravating circumstances of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ORLANDO FRANCISCO Y MAKANA, by then and there stabbing him with an ice pick at the back portion of his body, and thereafter, stabbed him several times more on the chest after he fell down, thereby inflicting upon him serious and fatal stab wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of ORLANDO FRANCISCO Y MAKANA.

That the above-attendant circumstances were committed by the accused since he persistently planned the commission of the crime prior to its commission until its execution and deliberately adopting the means and methods of execution as accused planned it which was sudden and unexpected attack against the victim to ensure the commission of the crime without risk to himself from any defense which the victim might make.

¹ *Rollo*, pp. 3-10. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ramon R. Garcia and Geraldine C. Fiel-Macaraig.

² *CA rollo*, pp. 53-57. Penned by Presiding Judge Catherine P. Manodon.

1-7-21

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty. Trial on the merits ensued thereafter.

The prosecution presented Jasmine Francisco (Jasmine), Police Chief Inspector Paul Ed Ortiz (P/C Insp. Ortiz), and Ariel Ticala (Ticala) as witnesses.

Ticala recounted that on 11 October 2010, at around 9:00 in the evening, he was with his friends, Pepito and Jomar, at Leyte Street, Payatas, Quezon City. About three (3) meters away from them with the street light as illumination, they saw Francisco walking and the accused-appellant walking behind him. Suddenly, accused-appellant stabbed Francisco on his chest with an icepick several times and said, "*ano buhay ka pa?*" Frightened at what they saw, Ticala's group hurriedly went home. Thereafter, Francisco was brought to General Malvar Hospital where he was declared dead on arrival. His body was later transferred to St. Michael Funeral Parlor in Quezon City.

The autopsy conducted by P/C Insp. Ortiz on Francisco's body disclosed that the latter sustained multiple stab wounds, specifically "multiple puncture wounds at the anterior thorax (front of the chest), puncturing the mediastinal vessel and aorta with blood and blood clots amounting to 1,500 ml,"³ which caused Francisco's death. P/C Insp. Ortiz stated that based on his examination, the weapon used could have been a barbeque stick or an ice pick.

Jasmine, as Francisco's widow, testified on the employment of the victim as well as the expenses for the latter's funeral and burial.

For the defense, accused-appellant was presented as the lone witness. Accused-appellant denied the charge and averred that on the date and time of the incident, he reported to work as a garbage collector and got off from work at around 2:00 in the morning of the following day. On his way home, he saw somebody being chased by police officers. He did not run because he was innocent but was arrested for the murder of Francisco. He claimed that he does not know why Ticala, his neighbor and friend, pointed him as the assailant.

Ruling of the RTC

³ *Id.* at 54.

In the Decision dated 16 May 2017, the RTC found accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion reads:

WHEREFORE, premises considered, the Court finds the accused **RONALD MALAGAD guilty** beyond reasonable doubt of the crime of Murder defined under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua*, and to pay the victim's heirs the following amounts: P6,500.00 as burial expense; P50,000.00 as temperate damages; P75,000.00 as civil indemnity; P5,058,000.00 for loss of earning capacity; P75,000.00 as moral damages; and P30,000.00 as exemplary damages all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.⁴

The RTC found the testimony of Ticala, as corroborated by the testimony of P/C Insp. Ortiz, to be credible and sufficient to support a conviction in the absence of evidence to establish that Ticala harbored ill motive against accused-appellant. It further held that accused-appellant failed to prove that he was at his workplace at the time the crime was committed or that he could not have been physically present at the scene of the crime or its immediate vicinity at the time of its commission.

Ruling of the CA

Accused-appellant elevated the case to the CA. In the assailed Decision dated 21 November 2018, the CA denied the appeal for lack of merit.

According to the CA, the prosecution managed to establish the presence of all the elements of the crime of Murder. The CA found that the killing was attended by the qualifying circumstance of treachery based on the stealth and swiftness of the attack upon Francisco who was caught unarmed and unaware. However, evident premeditation was not appreciated for failure of the prosecution to demonstrate with certainty the time when accused-appellant Malagad conceived the crime to stab Francisco.

Hence, the present case before this Court.

Ruling of the Court

⁴ Id. at 95.

The petition lacks merit.

The elements of Murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.⁵ In this case, there is no question as to the first and the fourth elements. The remaining elements are likewise present as will be discussed hereunder.

The testimony of the witness is credible and sufficient to support a conviction

Anent the second element, the prosecution sufficiently established that accused-appellant is liable for the death of Francisco. Ticala's testimony identifying accused-appellant Malagad as the perpetrator was found credible by the RTC in the absence of proof of any ill-motive on the part of the former. In fact, accused-appellant Malagad even admitted that Ticala was his friend. On the other hand, accused-appellant merely offered alibi and denial as his defense. It is settled that denial and alibi cannot prevail over the positive identification of the eye witness.⁶ More so since accused-appellant did not provide proof of his alibi nor did he establish that it was physically impossible for him to be at the scene of the crime at the time of its commission⁷ as observed by the RTC.

Accused-appellant takes issue with the weight given to the testimony of Ticala, arguing that there were inconsistencies between the latter's testimony in open court and his *Pinagsamang Sinumpaang Salaysay*.⁸ The alleged inconsistencies, *i.e.*, the location of the initial stab and how Francisco was brought to the hospital, do not affect the credibility of Ticala's testimony. Minor inconsistencies in the testimony of a witness tend to strengthen rather than to weaken the credibility of the witness as they erase any suspicion of rehearsed testimony.⁹ What is important is that there is consistency in relating the principal occurrence and positive identification of the assailants.¹⁰ Here, Ticala's testimony was consistent in identifying accused-appellant as the perpetrator who repeatedly stabbed Francisco on the night of the incident. Further, Ticala's testimony in open court was corroborated by the medico-legal report of P/C Insp. Ortiz.

5 See *People vs. Jaurigue*, G.R. No. 232380, 04 September 2019 [Per J. Perlas-Bernabe].

6 See *People vs. Dela Cruz*, G.R. No. 227997, 16 October 2019 [Per J. Zalameda] and *People vs. Armada, Jr.*, G.R. No. 100592, 26 August 1993 [Per J. Cruz].

7 See *People vs. Malejana*, 515 Phil. 584 (2006) [Per J. Azcuna].

8 *CA rollo*, pp. 41-43.

9 *People vs. Santos*, G.R. Nos. 100225-26, 11 May 1993 [Per J. Feliciano].

10 See *People vs. Mercado*, 400 Phil. 37 (2000) [Per Curiam].

At this juncture, We emphasize the oft-repeated principle that the trial court is in the best position to determine the credibility of witnesses having the opportunity to observe them and their demeanor during the trial.¹¹ Corollary, the factual findings of the trial court are entitled to great weight, and it is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.¹² The rule finds an even more stringent application where the said findings are sustained by the CA.¹³

The qualifying circumstance of treachery was properly appreciated

Accused-appellant asseverates that treachery may not be appreciated in view of the lack of particular facts constituting the same in the Information, citing *People vs. Valdez*¹⁴ (*Valdez*).¹⁵

The Court in *Valdez* pronounced that the State must “specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.” However, the right to question this must be timely raised.¹⁶ Pursuant to the guidelines laid down in *People vs. Solar*,¹⁷ an accused who believes that an Information insufficiently avers a qualifying or aggravating circumstance may file a motion to quash or a motion for a bill of particulars prior to arraignment in order to successfully object to the said Information. Otherwise, the right to question the defective statement is deemed waived, and consequently, the same may be appreciated against him if proven during trial.¹⁸

In this case, it does not appear that accused-appellant properly and timely raised his objection as to the insufficiency of the averments of the ultimate facts in the Information. Thus, the qualifying circumstance of treachery was properly appreciated against him since the same was proven during trial.

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

11 See *Villarba vs. Court of Appeals*, G.R. No. 227777, 15 June 2020 [Per J. Leonen].

12 *People vs. Dionaldo*, G.R. No. 207949 23 July 2014 [Per J. Perlas-Bernabe].

13 *People vs. Ivero*, G.R. No. 236301, 03 November 2020 [Per CJ Peralta].

14 679 Phil. 279 (2012) [Per J. Bersamin].

15 *CA rollo*, pp. 45-48.

16 See *People vs. Bernardo*, G.R. No. 216056, 02 December 2020 [Per J. Zalameda].

17 G.R. No. 225595, 06 August 2019 [Per J. Caguioa].

18 *Id.*

to himself arising from the defense which the offended party might make.¹⁹ The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.²⁰

The Court agrees with the CA that the stealth and suddenness of the assault, without any provocation from the unarmed victim who had no opportunity to repel the aggression or defend himself, evinces treachery. The prosecution established that accused-appellant, armed with an icepick, was walking behind Francisco when the former suddenly stabbed the latter's chest. Notably, the incident happened at night and accused-appellant did not sustain any injury despite the fact that he repeatedly stabbed Francisco in the chest. The totality of the circumstances in this case is sufficient to convince that accused-appellant consciously and deliberately adopted the particular means of attack to ensure the execution of the crime without risk to himself.²¹

In *People vs. Tampon*,²² treachery was appreciated when accused, who came out from behind a cotton tree, stabbed the victim on his left breast. In *People vs. Ampo*,²³ We upheld the finding of the trial court that the elements of treachery were present where the accused therein suddenly stabbed the unsuspecting victim in the stomach as the latter approached the accused to offer him a ride. Treachery was likewise established in *People vs. Ordon*²⁴ where the accused, who lurked outside the victim's residence, suddenly stabbed the unarmed victim when the latter emerged from his house. Indeed, even a forewarned²⁵ or frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.²⁶

*Modification of civil liabilities
warranted under prevailing
jurisprudence*

Under Article 248 of the RPC, as amended, the prescribed penalty for murder is *reclusion perpetua* to death. There being no aggravating or

19 Article 14, RPC.

20 *People vs. Dela Cruz*, G.R. No. 227997, 16 October 2019 [Per J. Zalameda].

21 See *People vs. Alfon*, 447 Phil. 138 (2003) [Per J. Azcuna].

22 327 Phil. 729 (1996) [Per J. Francisco].

23 *People vs. Ampo*, G.R. No. 229938, 27 February 2019 [Per J. Peralta].

24 818 Phil. 670 (2017) [Per J. Leonen].

25 See *People vs. Malejana*, supra at note 6.

26 See *People vs. Racal*, 817 Phil. 665 (2017) [Per J. Peralta]; *People vs. Matibag*, G.R. No. 206381, 25 March 2015 [Per J. Perlas-Bernabe]; and *People vs. Adrales*, 379 Phil. 452 (2000) [Per J. Vitug].

mitigating circumstance in the commission of the offense, the penalty of *reclusion perpetua* is proper. However, modification of the civil liabilities of the accused-appellant is warranted.

Under prevailing jurisprudence,²⁷ for those crimes like murder where the penalty imposed is *reclusion perpetua*, the heirs of the victim are entitled to the award of civil indemnity, moral damages, and exemplary damages each amounting to ₱75,000.00, and temperate damages in the amount of ₱50,000.00 when no documentary evidence of burial or funeral expenses is presented in court.

Accordingly, We affirm the RTC's award of civil indemnity and moral damages while the award of exemplary damages should be increased from ₱30,000.00 to ₱75,000.00.

The award of actual damages in the form of burial expenses, however, must be deleted since the RTC already properly awarded temperate damages. Temperate and actual damages are mutually exclusive in that both may not be awarded at the same time, hence, no temperate damages may be granted if actual damages have already been granted.²⁸ It has been held that when actual damages proven by receipts during the trial amount to less than the sum allowed by the Court for temperate damages, the award of the latter is justified in lieu of actual damages of a lesser amount.²⁹ Here, Francisco's wife was able to present receipts for the burial expenses in the amount of ₱6,500.00. Thus, the award of temperate damages in the amount of ₱50,000.00, in lieu of the lesser amount of actual damages, is justified.

Finally, the RTC awarded ₱5,058,000.00 for loss of earning capacity. In determining the compensable amount of lost earnings under Article 2206³⁰ of the Civil Code, the following formula is used by the Court: Net Earning Capacity = $[2/3 \times (80 - \text{age at the time of death}) \times (\text{gross annual income} - \text{reasonable and necessary living expenses computed at 50\% of the gross earnings})]$.³¹

Here, the RTC found that Francisco was 37 years old at the time of his death and he was earning about ₱15,000.00 monthly or ₱180,000.00 a year.³²

27 *People vs. Jugueta*, G.R. No. 202124, 05 April 2016 [Per J. Peralta].

28 *People vs. Gutierrez*, 625 Phil. 471 (2010) [Per J. Nachura].

29 *People vs. Villamueva*, 456 Phil. 14 (2003) [Per J. Corona].

30 ARTICLE 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death; xxx

31 See *People vs. Moreno*, G.R. No. 191759, 02 March 2020 [Per J. Hernando].

32 *CA rollo*, p. 57.

Applying the formula above, the compensable amount is computed as follows:

$$\begin{aligned}
 \text{Net Earning Capacity} &= \frac{2}{3} [80 - \text{age at the time of death}] \times \\
 &\quad [\text{gross annual income} - \text{reasonable and} \\
 &\quad \text{necessary living expenses computed at} \\
 &\quad \text{50\% of the gross earnings}] \\
 &= \frac{2}{3} [80 - 37] \times [\text{P}180,000.00 - \\
 &\quad \text{P}90,000.00] \\
 &= \frac{2(43)}{3} \times \text{P}90,000.00 \\
 &= \text{P}2,580,000.00
 \end{aligned}$$

As such, We likewise modify the award for loss of earning capacity from P5,058,000.00 to P2,580,000.00.

WHEREFORE, the appeal is hereby **DENIED**. Accordingly, the Decision dated 21 November 2018 in CA-G.R. CR-HC No. 09390 is **AFFIRMED with MODIFICATIONS**. Accused-appellant Ronald Malagad is **GUILTY** beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code, as amended, and is sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellant is likewise liable to pay the heirs of the victim, Orlando Francisco, the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, P50,000.00 as temperate damages, and P2,580,000.00 as award for loss of earning capacity. The said monetary awards shall earn six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

The award of P6,500.00 as burial expenses is deleted.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *by 7/27*
27 JUL 2022

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HON. PRESIDING JUDGE (reg)
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Quezon City
(Criminal Case No. GL-Q-12-175963)

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*with copy of CA Decision dated 21 November 2018
Please notify the Court of any change in your address.
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4/7/21