



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 22, 2023** which reads as follows:*

“G.R. No. 258582 (*People of the Philippines v. Mark Fulgentes y Pasailo*).—This is an appeal¹ from the Decision² dated September 21, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 12797, affirming with modification the Decision³ dated December 7, 2018 and promulgated on December 19, 2018 of the Regional Trial Court (RTC) of Caloocan City, Branch 124, convicting accused-appellant Mark Fulgentes y Pasailo and several others of the crime of Murder.

The Factual Antecedents

In an Information⁴ dated July 27, 2009, accused-appellant, together with two others who were both minors at the time of the incident, were charged with the crime of Murder. The accusatory portion reads:

That on or about the 19th day of May 2009, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused and CICL [YYY]⁵ and CICL [ZZZ], acting with discernment, conspiring together and mutually helping one another, without any justifiable cause, with intent to kill, treachery, and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and struck the head [of] one NERWIN LLANTO Y PANAO, a minor, 15 years old, DOB- Sept. 21, 1993, thereby inflicting upon the latter serious physical injuries, which eventually caused his death.

Contrary to Law.⁶

¹ *Rollo*, pp. 3-5.

² *Id.* at 8-42. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Walter S. Ong.

³ *Id.* at 45-81. Penned by Presiding Judge Glenda K. Cabello-Marin.

⁴ *Records*, p. 2.

⁵ Real identity of the Child In Conflict with the Law (CICL) is withheld in accordance with Republic Act No. 9344 or the Juvenile Justice and Welfare Act of 2006, as amended, and A.M. No. 02-1-18-SC, or the Revised Rule on Children in Conflict with the Law.

⁶ *Records*, p. 2.

All the accused pleaded not guilty.⁷

Version of the Prosecution

As found by the trial court and affirmed by the appellate court, the prosecution relied mainly on the testimony of Algie Espiritu (Algie), who narrated that he was 14 years old when the incident happened on May 19, 2009.⁸ Algie recalled that at around 10:00 p.m. that day, he was lying on the edge of a pedestrian bridge to rest, located just a few meters away from his residence at No. 661 Mary Ann St., Gagalangin, Brgy. 177, Zone 16, Tondo, Manila.⁹ While he was there, accused-appellant, YYY, ZZZ, and Patrick Villarosa (Patrick) approached and invited him to go with them.¹⁰ He refused, but secretly followed the group, who were all drunk, sensing that they were up to no good.¹¹ Algie also claimed that the group got frequently involved in trouble and riots in their area.¹²

Algie tailed the group, keeping a distance of about 10 meters away from them. They continued to walk for about 15 minutes until they reached the residence of the victim, Nerwin Llanto (Nerwin).¹³ ZZZ asked a child within the vicinity to call Nerwin and after two minutes, the latter came out. Nerwin was approached by the group and suddenly, ZZZ punched the former in the face.¹⁴ Thereafter, accused-appellant struck Nerwin's head with a 2x2 piece of wood.¹⁵ Then, Patrick repeatedly punched Nerwin in the face.¹⁶ By this time, the victim was already sitting down on the ground, trying to cover his face with his arms over his head. Uncontented, YYY repeatedly kicked Nerwin.¹⁷ Nerwin was able to run towards his house and the group left.¹⁸

Algie further recounted that days after the incident, he came to know that Nerwin had died. This prompted him to go to the *barangay* authorities and report what he witnessed on that day.¹⁹

Aside from Algie, the prosecution also presented the testimony of Nelia Llanto (Nelia), Nerwin's mother. Nelia related that around noontime on May 21, 2009, her other son Norman came to her place of work and told her to go home because Nerwin was vomiting incessantly.²⁰ Nelia hurried home and as

⁷ *Rollo*, p. 10.

⁸ *Id.* at 48.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 49.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*



she arrived, she saw Nerwin vomiting and appeared to be very weak. Alarmed, Nelia brought her son to a hospital.²¹ However, Nerwin died on the evening of the same day at the age of 15.²²

P/Supt. Romeo T. Salen (P/Supt. Salen) conducted the autopsy on the body of Nerwin and made the following findings:

FINDINGS:

POSTMORTEM FINDINGS:

Fairly nourished, fairly developed, embalmed male cadaver. An embalming incision was noted at neck.

HEAD:

1. Hematoma, occipital region, measuring 7 by 6 cm, 6 cm right of the posterior midline.

There is massive subdural and subarachnoidal hemorrhages.

The rest of the visceral organs are markedly pale.

Stomach contains small amount of partially digested food particles, rice and meal.

CONCLUSION:

Cause of death is Traumatic Injuries, Head.²³

P/Supt. Salen also prepared the Certificate of Death of Nerwin, where he stated that the massive intracranial hemorrhage was secondary to hematoma.²⁴ He explained that the pressure from the outside resulted to hematoma on the inside, measuring 7x6 centimeters.²⁵ When he opened the hematoma, P/Supt. Salen found that there was fresh blood or bleeding inside, which means that the internal hemorrhage was severe, due to an injury that could have been caused by force from a hard blunt object and not by falling from a certain height because if the latter had happened, Nerwin would have sustained other injuries, which he did not.²⁶

Version of the Defense

All those charged denied the accusations against them. As for accused-appellant, he claimed that he did not know Nerwin and that on the date of the

²¹ Id.

²² Id.

²³ Id. at 51.

²⁴ Id.

²⁵ Id. at 52.

²⁶ Id.

incident, he was in Pampanga where he worked. He asserted that the last time he went home in Tondo was in 2009.²⁷

Moreover, accused-appellant contended that he only knew about the incident when his mother informed him and asked why he was being implicated in the incident. He claimed that he would go back and forth to Manila to participate in the proceedings; and that if he was guilty, he would not have done so.²⁸

Ruling of the Regional Trial Court

In its Decision dated December 7, 2018, the RTC convicted YYY, ZZZ, and accused-appellant of the crime of Murder. The dispositive portion of the decision reads:

WHEREFORE, the court finds CICL [ZZZ], MARK FULGENTES Y PASAILO AND CICL YYY **GUILTY** of the crime of murder by proof beyond reasonable doubt. Accordingly, accused Mark Fulgentes y Pasailo is hereby sentenced to suffer the penalty of *reclusion perpetua*, while CICL [ZZZ] and CICL [YYY] are hereby sentenced to suffer the the [sic] indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum term to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum term.

Further, CICL [ZZZ], Mark Fulgentes y Pasailo, and CICL [YYY] are hereby ordered to jointly and severally pay the heirs of the victim, Nerwin Llanto y Panao the following: a) the amount of Php 75,000.00 as civil indemnity; b) the amount of Php 15,500.00 as actual damages; c) the amount of Php 75,000.00 as moral damages; and d) the amount of Php 75,000.00 as exemplary damages, with interest thereon at the rate of six percent (6%) *per annum* reckoned from the finality of this Decision until fully paid.

With costs against both CICLs and accused.

SO ORDERED.²⁹

Accused-appellant appealed his conviction before the CA.

Ruling of the Court of Appeals

In its Decision dated September 21, 2020, the CA denied accused-appellant's appeal and affirmed, with modification, the RTC Decision. The dispositive portion reads:

²⁷ Id. at 55.

²⁸ Id.

²⁹ Id. at 80-81.

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 07 December 2018 of the Regional Trial Court of Caloocan City, Branch 124 in *Criminal Case No. C-82834*, finding accused CICLs [ZZZ] and [YYY], and accused-appellant Mark Fulgentes y Pasailo guilty beyond reasonable doubt of the crime of murder, imposing upon accused-appellant Mark Fulgentes y Pasailo the penalty of *reclusion perpetua*, and upon accused CICLs [ZZZ] and [YYY] the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and ordering them to pay, jointly and severally, the heirs of the victim Newin Llanto y Panao the amount of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php75,000.00 as exemplary damages is **AFFIRMED** with **MODIFICATION** in that the award of actual damages is **DELETED**, and in lieu thereof, they are ordered to pay the heirs of the victim Nerwin Llanto y Panao the amount of Php50,000.00 as temperate damages. Further, interest at the rate of 6% *per annum* is imposed on all the monetary awards from the finality of this Decision until fully paid.

SO ORDERED.³⁰

Unyielding, accused-appellant filed the present appeal.

Issue

The sole issue for resolution is whether accused-appellant is guilty of the crime of Murder.

Our Ruling

The appeal has no merit.

In his Brief,³¹ accused-appellant attacks the credibility of the prosecution's witnesses, claiming that their testimonies are full of inconsistencies. Specifically, accused-appellant highlights that Algie's in-court testimony contradicts with his sworn statement as to the description of the location, the persons who participated in the mauling, and others. Accused-appellant likewise ascribes inconsistencies on the testimonies of Nelia and P/Supt. Salen.

We are not convinced.

It is a well-settled principle that findings of fact of the trial court involving the credibility of witnesses are accorded utmost respect, considering that trial courts are accorded the opportunity of seeing first-hand the witnesses' manner of testifying and their demeanor during trial.³² Even

³⁰ Id. at 38.

³¹ CA *rollo*, pp. 47-101.

³² *People v. Lumikid*, G.R. No. 242695, June 23, 2020.

more so when the same are affirmed by the CA, in which they become conclusive upon this Court.³³

In the present case, that accused-appellant is one of those who beat Nerwin, which eventually caused the latter's death, is firmly established by an eyewitness, Algie. As jurisprudence holds, the defense of alibi crumbles in the face of positive identification.³⁴

Accused-appellant likewise attacks the appreciation of treachery. He states:

37. Here, the existence of treachery and intent to kill in the alleged acts of the accused-appellants were not sufficiently supported by proof, as required, but were founded only on circumstantial evidence.

38. The prosecution failed to convincingly prove that the alleged mauling by the accused-appellants had been deliberately adopted as a mode of attack intended to insure the assault against Nerwin, without the latter having the opportunity to defend himself. Other than the bare allegation that the accused-appellants were ganging up on him, no other evidence had been adduced to directly show that they consciously planned or predetermined the methods to insure the commission of the crime. Nor had the risk of Nerwin retaliating been eliminated during the course of the incident. The reverse is true considering that the accused-appellants were allegedly positioned near the house of Nerwin and were in fact at a disadvantaged position during the altercation.³⁵

Accused-appellant is wrong.

As correctly held by the appellate court:

To properly appreciate treachery, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself [or herself]; and (2) the accused(-appellant) consciously and deliberately adopted the particular means, methods, or forms of attack employed by him [or her]. These elements were established beyond reasonable doubt by the evidence of the prosecution.

Eyewitness Algie, who was merely three (3) meters away from where accused-appellant Mark and his co-accused CICLs mauled and hit the victim, categorically testified that accused CICL [ZZZ] asked a child to call the victim to come out; when the latter came out and approached them, CICL [ZZZ] suddenly boxed the victim on the face, immediately thereafter, accused-appellant Mark struck the back of the victim's head with a 2x2 piece of wood; and thereafter, the other co-accused repeatedly boxed and kicked the victim.

Clearly, when the victim was attacked, he was not in a position to defend himself. To stress, upon reaching the group of accused-appellants, without uttering any word, accused CICL [ZZZ] suddenly punched the victim on his

³³ *Garcia v. Court of Appeals*, 420 Phil. 25, 36-37 (2001).

³⁴ *People v. Albalate, Jr.*, 623 Phil. 437, 450 (2009).

³⁵ *CA rollo*, pp. 61-62.

face, and right after, accused-appellant Mark struck the back of the victim's head with a 2x2 piece of wood. Their acts were swiftly and unexpectedly made, affording the victim no opportunity to escape. As correctly ruled by the trial court, the victim had no inkling and was not warned of an impending attack against him, thus, he was not in a position to defend himself; the attack was executed in such a manner that the victim was rendered defenseless and unable to retaliate; all the victim could do was to raise his arms over his head and, thereafter, run to escape from his assailants; and the acts of the accused CICLs, accused-appellant Mark, and accused Patrick in gaging up on the victim are clearly indicative of a common design to assail and disable the latter.³⁶


Indeed, the elements of treachery are present in this case. The manner in which Nerwin was attacked – sudden and unexpected – shows that accused-appellants, together with his cohorts, deliberately and consciously adopted such method of attacking Nerwin to ensure proper execution. As a result, this left Nerwin in a vulnerable position, unable to defend himself. In the Court's view, these circumstances satisfy the elements of treachery.

In fine, the CA did not err in affirming the conviction of accused-appellant.

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision of the Court of Appeals dated September 21, 2020 in CA-G.R. CR-HC No. 12797 is **AFFIRMED**.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 12797)

³⁶ *Rollo*, pp. 35-36.

The Hon. Presiding Judge
Regional Trial Court, Branch 124
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(Crim. Case No. C-82834)

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