



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated March 8, 2023, which reads as follows:

“G.R. No. 245252 (*People of the Philippines v. Jojo Nuñez y Toriaga*). – Before the Court is an Appeal filed by the Jojo Nuñez y Toriaga (accused-appellant) from the Decision¹ dated September 12, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09297. The assailed Decision dismissed the appeal and affirmed albeit with modifications as to the amount of damages, the Decision² dated March 17, 2017 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 15, which found the accused-appellant guilty beyond reasonable doubt of the crime of Murder.

The antecedent facts follow.

By virtue of an Information, the accused-appellant was charged with the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended, allegedly committed as follows:

That at or about the 16th day of December 2011, in the municipality of San Miguel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a lead pipe and with intent to kill one Nicanor Lapuz, with evident premeditation, treachery and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and hit said Nicanor Lapuz with the said lead pipe. Hitting the latter on his head, thereby inflicting upon him serious physical injuries which directly caused the death of the said Nicanor Lapuz.

CONTRARY TO LAW.³

When arraigned, the accused-appellant, assisted by counsel, entered a plea of “not guilty.” After pre-trial, trial on the merits proceeded.⁴

¹ Rollo, pp. 3-15. Penned by Associate Justice Rosmari D. Carandang (former Member of the Court) with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court), Jhosep Y. Lopez (now a Member of the Court), concurring.

² CA rollo, pp. 48-52. Penned by Presiding Judge Alexander P. Tamayo.

³ Id. at 48.

⁴ Rollo, p. 4.

The evidence for the prosecution tend to establish that at around 5:00 p.m. of December 16, 2011, eyewitness Ricardo Esquivel (Esquivel) was resting at the yard of his house when the accused-appellant and the victim Nicanor Lapuz (victim) arrived. Esquivel noticed that the two were already shouting, tapping each other's stomach, and teasing one another ("*nag-aasaran*"). Moments later, the accused-appellant left; leaving Esquivel and the victim who then left together and walked towards the street.⁵

Around seven (7) minutes later, the accused-appellant returned carrying a lead pipe or "*tubo*" that is about $\frac{3}{4}$ inches in diameter, 2½ feet long, and with two (2) spike or "*sima*" on one end measuring about three (3) inches. He then yelled at the victim, "*kursunada mo ba ako talaga?*," at that moment, the accused-appellant hit the victim's head and face with the pipe causing the victim to fall to the ground. Esquivel, who was just two (2) meters away, ran and called for help. When he returned, he saw the accused-appellant fleeing and uttering the words, "*pinatay ko na*," while the victim was sprawled on the ground. People had started to converge at the scene when the barangay officials arrived. The victim was eventually brought to the hospital.⁶

Dr. Joseph Rayo, Medical Health Officer for San Miguel, Bulacan, conducted the post-mortem examination on the body of the victim. In his Medico-Legal Report, he indicated that "the victim sustained multiple injuries with six (6) hacking stab wounds on the left side, right back of the temporal area and on the back of the head, and fractured bones on the face," which caused the victim's death.⁷

The accused-appellant, for his part, denied the charges against him. He narrated that at around 4:30 p.m. of December 16, 2011 he was having a drink with his uncle in Bulwalto, San Miguel, Bulacan. He then went home to Sitio Malinao accompanied by his cousin, at around 7:00 p.m. and immediately went to sleep. Later, his brother woke him up and informed him that he was a suspect in the killing of the victim. The accused-appellant voluntarily surrendered on December 18, 2011, but denied knowing the victim.⁸

On March 17, 2017, the RTC rendered its Decision,⁹ the dispositive portion of which reads:

WHEREFORE, this court finds the accused JOJO NUÑEZ y TORIAGA **GUILTY** beyond reasonable doubt of the crime of MURDER penalized under Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of reclusion perpetua and to pay the heirs of Nicanor Lapuz the following:

⁵ Id. at 5.

⁶ Id. at 5-6.

⁷ Id. at 6, CA *rollo*, pp. 49-50.

⁸ Id., id. at 50.

⁹ CA *rollo*, pp. 48-52.

1. Php75,000.00 as civil indemnity which is mandatory without need of proof other than the commission of the crime;
2. Php50,000.00 as moral damages in favor of the heirs of the deceased victim Nicanor Lapuz;
3. Php30,000.00 as exemplary damages given the clear presence of evident premeditation; and
4. Costs of suit.

Accused is likewise ORDERED to pay legal interest on the said amounts at the rate of 6% per annum from the time of the filing of the information until the finality of the judgment and 12% per annum from finality of the judgment until fully paid.

SO ORDERED.¹⁰

The RTC found that the prosecution was able to prove all the elements of the crime of Murder with the accused-appellant as the perpetrator; and the killing qualified by evident premeditation.¹¹

The accused-appellant appealed to the CA, which dismissed the appeal in its Decision¹² dated September 12, 2018, viz.:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The assailed Decision dated March 17, 2017 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 15, finding accused-appellant guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS**. Accused-appellant is hereby ordered to pay the heirs of the victim the following amounts: P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 as exemplary damages, and P50,000 as temperate damages. Further, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of the decision until full payment.

SO ORDERED.¹³

The CA found the prosecution's evidence sufficient to establish the guilt of the accused-appellant beyond reasonable doubt for the crime of Murder. However, the CA noted that contrary to the findings of the RTC, the killing was qualified by treachery and not evident premeditation. According to the CA, the accused-appellant was positively identified by the witness for the prosecution, particularly, Esquivel, whose testimony is "consistent in all respects material to the case." This, the CA concluded, prevails over the accused-appellant's defense of denial and alibi.¹⁴

¹⁰ Id. at 52.

¹¹ Id. at 51-52.

¹² *Rollo*, pp. 3-15.

¹³ Id. at 14.

¹⁴ Id. at 7-13.

Thus, this appeal.

The parties manifested that they will no longer file their respective supplemental briefs as they have already exhaustively discussed the issues in their briefs before the CA.¹⁵

The appeal is ***not* meritorious.**

Space — The crime of Murder, as defined by Article 248 of the RPC, demands the concurrence of the following elements: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing does not constitute the crime of parricide or infanticide.¹⁶

The same article of the Code enumerates the circumstances that qualify homicide into murder,¹⁷ pertinent to this case, these include evident premeditation and treachery which are alleged in the instant information to have attended the crime.

The Court finds the existence of the foregoing elements of Murder; the killing, qualified by treachery as found by the CA and not evident premeditation as the RTC concluded. Thus, the Court sees no reason to reverse the judgment of conviction.

Notably, and as observed by the trial court, the accused-appellant's version of events is uncorroborated, a marked difference from that of the prosecution which is substantiated in its material points. Other than his testimony, the accused-appellant failed to support his claim that he was with his uncle drinking and that he went home and slept afterwards. Notably, he did not present his uncle and/or cousin to corroborate his narration. His bare and self-serving assertions cannot prevail over the eyewitness accounts of the two (2) principal witnesses of the prosecution, particularly as no false or improper motive has been imputed upon them. Alibi is one of the weakest defenses not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check or rebut. It cannot prevail over the positive identification of the accused by eyewitnesses who had no improper

¹⁵ Id. at. 32-34, 37-38.

¹⁶ *People v. Gaborne*, 791 Phil. 581, 592 (2016).

¹⁷ 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 temporal in its maximum period 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 street car or locomotive, fall of an airship, 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.

motive to testify falsely.¹⁸ As such, the RTC and the CA cannot be faulted in giving the testimonies of the prosecution witnesses full faith and credit.

Settled is the rule that the assessment of the credibility of witnesses is a task more properly within the domain of trial courts. Thus, its factual findings are accorded great weight and respect, owing to its unique opportunity to observe the witnesses' conduct, demeanor and deportment during trial. Appellate courts will not overturn the factual findings of the trial court in the absence of any showing that material facts have been overlooked that would affect the result of the case.¹⁹ This rule is even more observed, when as in this case, the CA affirmed the factual findings of the RTC.²⁰

In this case, both the RTC and the CA found the existence of the elements of murder in the eyewitness account of Esquivel. The Court hereby quotes and adopts the CA's disquisition in this respect:

[Esquivel] was a key witness to the crime. It should be noted that prior to the incident, both accused-appellant and [victim] went inside the yard of [Esquivel] and approached the latter. During that time, the two were already shouting and annoying each other, evident that they had drinks. Thereafter, accused-appellant left, [Esquivel] even walked [the victim] towards the street. It was at that instance when accused-appellant returned and hit [the victim's] head and face with a pipe. [Esquivel] was just two (2) meters away from [the victim] and accused-appellant when the beating happened. In addition, [Esquivel] personally knows accused-appellant being residents of the same barangay for a long time. It is but logical to conclude that [Esquivel] could not have been mistaken in pinpointing to accused-appellant as the perpetrator of the crime, given [Esquivel's] distance to and familiarity with accused-appellant. Likewise, [Esquivel] identified accused-appellant in open court. Even during the questioning made by the trial court, [Esquivel] was consistent and straightforward in stating that there could be no mistake on the identity of accused-appellant as the person who killed [the victim].²¹

In view of the same circumstances, the position and manner of the attack on the victim indicate the presence of treachery which qualifies the offense to murder. The accused-appellant hit the victim, without warning. To recall, at first instance, the accused-appellant was not yet armed when he and the victim were together at the yard of Esquivel. The accused-appellant left and then suddenly reappeared a few minutes thereafter armed with a pipe and then hit the victim on his head and face. Clearly, the manner of attack by the accused-appellant, that is, sudden, severe, and on the sensitive parts of the victim's body, insured the execution of the crime without any risk of defense or retaliation that the victim might make.²²

¹⁸ *People v. Ogarte*, 664 Phil. 642, 662 (2011), citing *People v. Palomar*, 343 Phil. 628, 663-664 (1997).

¹⁹ *People v. Gerola*, 813 Phil. 1055, 1064 (2017).

²⁰ *People v. Damitan*, 423 Phil. 113, 121 (2001).

²¹ *Rollo*, p. 7.

²² *Id.* at 121-122.

However, the attack cannot be said to have been attended by evident premeditation. The attendant facts reveal that there was no sufficient time that elapsed for the accused-appellant to decide to commit the crime and reflect on its consequences. “The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.”²³ In this case, while about seven (7) minutes have passed from the time the accused-appellant left from the attack, it was not shown that there was an opportunity for the accused-appellant to have a period of reflection to formulate a plan to kill the victim. In contrast, the circumstances show a continuity as to the verbal encounter between the parties and the fatal attack upon the victim.

The RTC and the CA were also correct in not appreciating the mitigating circumstance of voluntary surrender, which requires for its existence the following elements: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter’s agent; and (3) the surrender is voluntary. The essence of this mitigating circumstance is the spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.²⁴

In this case, while the accused-appellant testified that he voluntarily surrendered to the authorities, the circumstances aforementioned were not established to warrant the appreciation of this mitigating circumstance. It was unclear whether at the time the accused-appellant surrendered, efforts were already exerted for his capture. The accused-appellant’s narration also lacks the supposed details of his surrender. Thus, “voluntary surrender” cannot be appreciated as a mitigating circumstance.²⁵

Anent the penalty, there being no other aggravating circumstance aside from treachery which already qualified the offense, the imposition of the penalty of *reclusion perpetua* must be affirmed in accordance with Articles 63 and 248 and of the Revised Penal Code.²⁶ Similarly, the amount of damages and interest thereon imposed by the CA being in order, the same must be upheld.²⁷

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. Accordingly, the September 12, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09297 convicting the accused-appellant Jojo Nuñez y Toriaga of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code is hereby **AFFIRMED in toto**.

²³ *People v. Isla*, 699 Phil. 256, 270 (2012).

²⁴ *People v. Manzano, Jr.*, 827 Phil. 113, 143 (2018).

²⁵ *Id.*

²⁶ *People v. Isla*, supra at 270-271.

²⁷ *People v. Jugueta*, 783 Phil. 806 (2016).

SO ORDERED.” (Dimamapao, J., on leave.)

By authority of the Court:

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Division Clerk of Court

JB 5/11/23

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