



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated April 24, 2023, which reads as follows:

G.R. No. 260522 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ANTONIO SOLAYAO y CABALHAO @ "Mate," accused-appellant.

This is an appeal from the May 24, 2021 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03235, which affirmed the January 23, 2019 Decision² of the Regional Trial Court, Branch 33, Calbiga, Samar (RTC) in Criminal Case No. CC-2015-2008, convicting Antonio Solayao y Cabalhao (Solayao) of Murder under Article 248 of the Revised Penal Code (RPC).

The Court concurs with the findings of the RTC, as affirmed by the CA, that the prosecution was able to prove beyond reasonable doubt the elements of Murder under Article 248 of the RPC.

In a prosecution for Murder, the following elements must be established: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.³

In this case, the death of the victim Bonifacio Mondido (Mondido) is unrefuted and there is no question that the killing is neither parricide nor infanticide.

The Court agrees with the RTC and the CA's ruling that the killing was attended by treachery. Article 14 (16) of the RPC provides that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend

¹ *Rollo*, pp. 11-28. Penned by Associate Justice Roberto P. Quiroz and concurred in by Associate Justices Marilyn B. Lagura-Yap and Nancy C. Rivas-Palmones.

² *Id.* at 30-40. Penned by Judge Janet M. Cabalona.

³ *People v. Manansala*, G.R. No. 233104, September 2, 2020.

directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.”

The essence of treachery is that, the attack is deliberate and without warning, and done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.⁴

The foregoing elements are present in this case. Mondido was taking a bath in the creek when the assailants suddenly approached and then shot him, affording him no opportunity to defend himself or fight back. Without any doubt, the manner of execution was deliberately adopted by the assailants who were all armed with heavily powered firearms.⁵

The Court notes that the qualifying circumstance of treachery was not alleged with sufficient particularity in the Information in violation of the following guidelines laid down in *People v. Solar*:⁶

Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty — is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (i.e., that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.⁷ (Emphasis supplied)

However, the Court, in the same case, held that “[f]ailure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.”⁸ Thus, Solayao is deemed to have waived any defects in the Information, including the lack of particularity in the description of the aggravating circumstance of treachery, since he did not question the insufficiency of the Information filed against him through a motion to quash.⁹

⁴ *Casilac v. People*, G.R. No. 238436, February 17, 2020, 932 SCRA 320.

⁵ *Rollo*, p. 31.

⁶ G.R. No. 225595, August 6, 2019, 919 SCRA 271.

⁷ *Id.* at 314.

⁸ *Id.*

⁹ *People v. Rebato*, G.R. No. 242883, September 3, 2020.

The only remaining point of contention is whether Solayao was one of the perpetrators of the crime. He impugns the RTC and the CA's assessment of the witnesses' credibility. He claims that Rommel C. Mallo (**Mallo**) did not credibly identify him as one of Mondido's assailants considering that Mallo took refuge behind a rock during the gunfight and that it took Mallo around two minutes to point to Solayao when he was asked to identify the perpetrators of the crime in open court. He asserts that the RTC and the CA erred in not giving weight to the candid testimonies of the defense witnesses, which allegedly prove that Solayao was not at the creek during the shooting.

The Court is not persuaded.

It is axiomatic that the evaluation of the trial court of the credibility of the witness, especially when affirmed by the CA, is binding upon the Court unless it can be established that facts and circumstances have been overlooked or misinterpreted, which could materially affect the disposition of the case.¹⁰ The Court accords the highest respect to the trial court's assessment of a witness's credibility, as it was in a better position to observe the witness's demeanor while testifying.¹¹ The Court finds no reason to depart from the findings of the lower courts as to the credibility of the witnesses.

Mallo positively identified Solayao as one of the perpetrators of the crime. He categorically testified that Solayao was one of the persons who approached and shot Mondido. He also testified that during the gunfight in the creek, he saw Solayao return fire at him using an M-16 at a distance of around 20 meters.¹² The Court agrees with the CA's observation that Mallo had ample opportunity to see the faces of Mondido's assailants, including Solayao, considering that: (a) the attack occurred in broad daylight; (b) Mallo is a member of the Philippine Army and a trained combatant; and (c) the perpetrators of the crime did not cover their faces.¹³ This is supported by Mallo's testimony:

Q (Fiscal Reynante Evangelista) – Then, what did you do if any, when you saw these three armed men approaching and shooting your Buddy Bonifacio Mondido?

A (Mallo) – I hid and returned fire, Sir.

Q – You hid and what did you use in hiding?

A – I covered behind a rock.

x x x x

¹⁰ *People v. Bugna*, 829 Phil. 536 (2018).

¹¹ *Tan v. Great Harvest Enterprises, Inc.*, G.R. No. 220400, March 20, 2019, 897 SCRA 586.

¹² *Rollo*, p. 35.

¹³ *Id.* at 26-27.

Q – And while then you were returning fire with these three armed men as you mentioned, what happened next?

A – At that time, when I was returning fire, automatically, my fellow soldiers in the squad gave reinforcement.

x x x x

Q – Then, when your squadron gave reinforcement, what did you do, if any?

A – **At that time, when my team was giving reinforcement, I was able to stand for a while to give a glance to the area.**

Q – And what did you see, if any?

A – The enemies.

x x x x

Q – Of these persons that you mentioned you have seen in that incident, can you please tell us if you can recognize any of them to be within the four corners of this Honorable Court right now?

A – (The witness looked around the courtroom and after almost two minutes, pointed to a person sitting on the bench wearing an orange T-shirt (sic), and when said person pointed to, (sic) was approached by the Court Interpreter and asked his name, said person answered to the name of Antonio Solayao, Jr.)

Q – **PFC Mallo, you are sure that you have seen that person in that incident in Brgy. Magdawat, Pinabacdao, Samar on that July 11, 2014?**

A – **Yes, Sir.**

Q – If you had seen him in that incident, where was he located when the incident was happening?

A – He was located in the upper portion.

Q – Upper portion of what?

A – In the upper portion of the creek.

Q – And what was he doing then?

A – He was supporting his companions.

Q – And how was he supporting then his companions?

A – **When I returned fire, he also returned fire at me; he also fired his gun.**

Q (Judge Janet M. Cabalona) – How far was he to you when you saw him firing his gun? For example that place is where you were located, where was he located? Point to an object? (sic)

A – (Witness pointed to a distance, which is more or less eighteen to twenty meters away from where he is sitting[.])

x x x x

Q – **Mr. Witness, you mentioned three persons approached Mondido and three joined in the fire fight from the enemy side, did you say that? You saw these persons?**

A – **Yes, Your Honor...**

Q – **And you identified this Antonio Solayao. Which group was he a part of? The three or the twenty?**

A – **I saw him in the group of three.**¹⁴ (Emphasis supplied)

The Court also concurs with the lower courts' conclusion that the amount of time that it took Mallo to point to Solayao in open court when he was asked if he could identify Mondido's assailants, approximately two minutes, did not impair Mallo's credibility. On cross-examination, Mallo explained that it took him a while to recognize Solayao because he was wearing a different set of clothes, had a different hairstyle, and had a bigger build but Mallo, even on cross-examination, did not vacillate in his statement that Solayao was one of the perpetrators of the attack:

Q (Atty. Serafin Ramento IV) – Mr. Witness, when asked by the Public Prosecutor if you can identify the accused in Court, you identified Antonio Solayao, correct?

A (Mallo) – That is correct, Sir.

Q – So, you are sure that he was one of those who attacked your Buddy?

A – Yes, Sir.

Q – Then, can you tell the Honorable Court Mr. Witness, why it took you almost two minutes to identify him when he was in Court all the time?

A – **Simply because before, I could hardly identify him because of the wearing of clothes before was different, and he had a long hair.**

Q – But the features are the same?

A – **No. His feature is not anymore the same as he is bigger now.**

Q – I also notice that while you were being asked to identify any of the accused in this case, you were looking around the room as if you are unsure as to whom you are going to point to; and you are still going to insist that it is this Antonio Solayao who is one of the accused?

¹⁴ TSN, August 3, 2018, pp. 13-16.

A – **It is because of time that passed when that incident happened up to this time when I was asked to identify.**

Q – So, it is possible, Mr. Witness that because of the time passed, because this was a long time, that you are identifying a wrong person?

A – No, Sir, I will not be mistaken.¹⁵ (Emphasis supplied)

No reason therefore exists for the Court to reverse or modify the uniform rulings of the RTC and the CA that Solayao was one of Mondido's assailants considering that they were reasonably drawn from existing evidence.

Moreover, there is no reason to doubt the positive identification of Solayao by Mallo who had no ill motive to testify falsely against the former. It bears stressing that the positive identification of the accused, when categorical and consistent and without any ill motive on the part of the eyewitness, prevails over alibi and denial.¹⁶

For alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.¹⁷ Solayao miserably failed in this regard. As aptly found by the RTC, none of the defense witnesses corroborated Solayao's claim that he was in his house at the time of the incident. The defense witnesses only testified as to Solayao's whereabouts after but not during the incident.¹⁸ More importantly, Solayao's house was just in front of the dance hall which was only around 30 meters away from the creek, where Mondido was shot.¹⁹

In view of the foregoing, the Court is convinced that the prosecution proved Solayao's guilt beyond reasonable doubt.

With regard to the penalty, the RTC and the CA were correct in imposing *reclusion perpetua* pursuant to Article 248 of the RPC. The Court likewise affirms the damages imposed by the lower courts as the same is in accordance with *People v. Jugueta*.²⁰ However, the Court finds it appropriate to modify the CA Decision by imposing legal interest at the rate of six percent (6%) *per annum* on the total monetary awards from the finality of this Resolution until its full satisfaction.²¹

¹⁵ Id. at 17-18.

¹⁶ *People v. Ascarraga*, 836 Phil. 735 (2018).

¹⁷ *People v. Ronquillo*, 818 Phil. 641 (2017).

¹⁸ *Rollo*, p. 13.

¹⁹ Id. at 13 & 31.

²⁰ 783 Phil. 806 (2016).

²¹ Id.

April 24, 2023

WHEREFORE, the appeal is **DISMISSED**. The May 24, 2021 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03235 is **AFFIRMED with the MODIFICATION** that the total monetary awards shall earn legal 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:

Mis-Debat
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
San
11/16/23

Regional Special & Appealed Cases Unit
 PUBLIC ATTORNEY'S OFFICE
 3rd Floor, Taft Commercial Center
 Metro Colon, Carpark, Osmena Boulevard
 Brgy. Kalubihan, 6000 Cebu City

COURT OF APPEALS
 CA-G.R. CEB CR HC No. 03235
 6000 Cebu City

OFFICE OF THE SOLICITOR GENERAL
 134 Amorsolo Street
 1229 Legaspi Village, Makati City

The Presiding Judge
 REGIONAL TRIAL COURT
 Branch 33, Calbiga
 6715 Western Samar
 (Crim. Case No. CC-2015-2008)

The Regional Superintendent
 LEYTE REGIONAL PRISON
 Bureau of Corrections
 Brgy. Cagbolo, Abuyog
 6510 Leyte

Mr. Antonio Solayao y Cabalhao
 c/o The Superintendent
 LEYTE REGIONAL PRISON
 Bureau of Corrections
 Brgy. Cagbolo, Abuyog
 6510 Leyte

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