



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226145

Present:

CARPIO, J., *Chairperson,*
PERALTA,
MENDOZA,
PERLAS-BERNABE,* and
LEONEN, JJ.

- versus -

ROMEO D. CALINAWAN a.k.a
"MEO",
Accused-Appellant.

Promulgated:

FEB 13 2017

X ----- X

DECISION

MENDOZA, J.:

This is an appeal from the January 30, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 04593, which affirmed the July 21, 2010 Decision² of the Regional Trial Court, Branch 41, Dagupan City (RTC), in Criminal Case No. 2007-0672-D, convicting accused-appellant Romeo D. Calinawan a.k.a "Meo" (*Calinawan*) of murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

In an Information, dated October 24, 2007, Calinawan was charged with murder for killing Janice Nevado Silan (*Janice*). During his arraignment, he entered a plea of "Not Guilty." After the pre-trial was terminated, trial ensued.³

* Per Special Order No. 2416-M dated January 4, 2017.

¹ *Rollo*, pp. 2-16. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Noel G. Tijam and Mario V. Lopez, concurring.

² *CA rollo*, 57-67. Penned by Judge Emma M. Torio.

³ *Id.* at 57.

The Version of the Prosecution

At around midnight on September 26, 2007, Marigor Silan (*Marigor*), Janice's seven (7)-year old daughter, saw Calinawan stabbing her mother in their kitchen. Thereafter, Calinawan quickly fled the scene. Meanwhile, Jonathan Nevado (*Jonathan*), Janice's brother and neighbor, was awakened by shouts coming from his sister's house. He rushed to her house and saw her children crying. After bringing her children to his house, he went looking for Janice whom he saw outside a neighbor's house pleading for help. Seeing her bloodied, he carried her and asked her who stabbed her, and she answered it was Calinawan who did it. Then, Jonathan brought Janice to the hospital. When Darwin Silan, Janice's husband, arrived at the hospital, he also asked her who stabbed her and she reiterated that it was Calinawan. After three (3) days, Janice died in spite of the medical treatment at the hospital.⁴

The Version of the Defense

On September 26, 2007, Calinawan went to his mother's house in Cablong, Sta. Barbara, Pangasinan, and arrived there at around 7:30 o'clock in the evening. From 8:00 o'clock to 9:00 o'clock in the evening, he was drinking with his older brother. At around 2:00 o'clock in the morning of the following day, Calinawan was awakened by police officers asking him about the killing of Janice. He replied that he knew nothing about it, but he was still invited by the police to go with them. At the police station, Calinawan was asked if he had with him the dress worn by Janice which was soaked in blood. He presented the dress to the police but it had no bloodstain. Thereafter, he was released by the police and he went directly to his mother's house.⁵

The RTC Ruling

In its May 14, 2012 decision, the RTC convicted Calinawan for murder. The trial court noted that Marigor positively and categorically identified him as the one who stabbed her mother. It noted that she was able to identify him because of his amputated fingers. In addition, the trial court pointed out that the dying declaration of Janice to Jonathan corroborated Marigor's statement that Calinawan killed her mother. The RTC stated that his positive identification trumped his denial and alibi, which were considered as inherently weak defenses.⁶

⁴ *Rollo*, pp. 3-4.

⁵ *CA rollo*, pp. 14-15.

⁶ *Id.* at 16-21.

Further, the trial court found that the killing of Janice was attended by treachery. It stressed that the killing was carried out during nighttime when Janice was defenseless. Thus, the RTC concluded that given the circumstances surrounding the stabbing, Calinawan consciously adopted the method and form of attack to insure its execution. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Romeo Calinawan @ Meo GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, and pursuant to law, he is sentenced to suffer the penalty of RECLUSION PERPETUA, and to indemnify the legal heirs of the victim, ₱50,000.00 as actual damages, ₱100,000.00 as moral damages, and to pay the cost of suit.

SO ORDERED.⁷

Aggrieved, Calinawan appealed before the CA.

The CA Ruling

In its January 30, 2015 Decision, the CA sustained Calinawan's conviction but modified the award of damages. The appellate court agreed that the killing was attended with treachery. It noted that Calinawan was a frequent visitor of Janice; and that he took advantage of his knowledge that her husband was working at night and that she was only accompanied by her children. The CA was of the view that the sudden and unexpected attack against an unarmed victim constituted treachery.⁸

Moreover, the CA stated that Calinawan's denial and alibi could not prosper in light of the positive identification by the witness. It pointed out that Marigor's identification of him, despite his hooded jacket, was sufficient because she identified him on the basis of his physical deformity. The CA observed that he was the neighbor of the victim for a long time and so, Marigor was familiar with the former's physique - particularly his amputated fingers. It added that the dying declaration of Janice corroborated Marigor's identification of Calinawan. Thus, it disposed:

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court, Branch 41, Dagupan City, in Criminal Case No. 2007-0672-D, finding accused-appellant Romeo Calinawan @ "Meo" guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with MODIFICATION. Accused-appellant Romeo Calinawan @ "Meo" is ordered to pay the heirs of the deceased the

⁷Id. at 23.

⁸ *Rollo*, pp. 8-9.

amounts of ₱75,000.00 as civil indemnity for death, ₱75,000.00 for moral damages and ₱30,000.00 for exemplary damages as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this decision until fully paid.

SO ORDERED.⁹

Hence, this appeal.

ISSUES

I

WHETHER CALINAWAN WAS POSITIVELY IDENTIFIED AS THE ASSAILANT.

II

WHETHER THE KILLING OF JANICE WAS ATTENDED WITH TREACHERY.

Calinawan argues that Marigor's identification of him was unreliable because she admitted she never saw the face of her assailant as it was covered by a black hood and that she closed her eyes during the commotion. He claims that treachery was not established and that the trial court merely made a general assumption that the victim was defenseless because it was night time. He insists that there was no evidence to show that he consciously and deliberately adopted the means, method or form of attack.

The Court's Ruling

The Court finds that Calinawan is criminally liable for the killing of Janice.

*The defense of Denial
and Alibi fails in light of
Positive Identification*

Calinawan challenges Marigor's identification of him on the basis of her statement that she never saw the face of the assailant because the latter was wearing a hooded jacket. He fails to persuade.

⁹ Id. at 15-16.

In *People v. Caliso*,¹⁰ the Court explained that in criminal prosecution, the identity of the accused must be established with moral certainty, but this did not necessarily require that the witness must have seen the face of the accused. Thus it ruled:

xxx In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. xxx The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. **To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.**¹¹ [Emphasis supplied]

Succinctly put, it suffices that the witness recognized the accused through identifying marks which would make the latter unmistakably stand out from other individuals. In the case at bench, Marigor's family and Calinawan had been neighbors for a long time. Hence, she was very familiar with the latter's unique physical characteristics, particularly his amputated fingers. Through this distinct physical feature of Calinawan, Marigor was able to identify him in open court as the one who stabbed her mother. Thus, her identification of him was credible, even if she was not able to clearly see his face, but saw the notable feature of his hand, which set him apart from others.

*Dying Declaration;
Rule on Res Gestae*

Marigor's positive identification was further bolstered by the statement of Janice to Jonathan that it was Calinawan who stabbed her.

The courts *a quo* considered the said statement as an admissible dying declaration. For a dying declaration to be deemed an exception to the hearsay rule, the following conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time the declaration was made, the declarant was conscious of his impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the declarant is the victim.¹²

¹⁰ 675 Phil. 742 (2011).

¹¹ Id. at 756.

¹² *People v. Palanas*, G.R. No. 214453, June 17, 2015, 759 SCRA 318, 319.

In this case, the Court notes that in her affidavit, Janice said that she thought she could survive the attack. She never thought that she was dying. In fact, she was optimistic of her recovery. In view of this, there seems to be a doubt whether she was aware of her impending death.

Granting there is such doubt, Janice's statement, nevertheless, is admissible as an exception to the hearsay rule for being part of *res gestae*. In order for a statement to be considered part of *res gestae*, the following elements must concur: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statement was made before the declarant had time to contrive or devise; and (c) the statement concerns the occurrence in question and its immediately attending circumstances.¹³ All the foregoing elements are present in the case at bench.

First, the stabbing incident constituted the startling occurrence. *Second*, Janice never had the opportunity to fabricate a statement implicating Calinawan because she immediately identified him as her attacker when Jonathan saw her shortly after the assault took place. *Lastly*, the statement of Janice concerned the circumstances surrounding her stabbing.

Thus, Calinawan's denial and alibi have no leg to stand. They are inherently weak as defenses, especially when faced with the positive and credible testimony of the prosecution witnesses identifying the accused as the perpetrator of the crime.¹⁴

*Killing is Homicide only if
Not Attended by Qualifying
Circumstances*

The courts *a quo* convicted Calinawan of murder because they were of the view that the killing was qualified by treachery considering that the attack on Janice was so sudden that it rendered her defenseless.

“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.”¹⁵

¹³ *People v. Guting*, G.R. No. 205412, September 9, 2015.

¹³ *People v. Lastrillo*, G.R. No. 212631, November 7, 2016.

¹⁴ *Id.*

¹⁵ Article 14(16) of the RPC.

The following elements must be established before the existence of treachery may be appreciated: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.¹⁶ The suddenness or unexpectedness alone, however, of the attack is insufficient to support the finding of treachery.¹⁷

In *People v. Silva*,¹⁸ the Court ruled that treachery could not be presumed and must be proved by clear and convincing evidence or as conclusively as the killing itself, to wit:

The trial court reasoned that the killing was attended by treachery because the suddenness of the attack caught Leo offguard thus preventing him from putting up any defense. **We ruled in a litany of cases that treachery cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. The same degree of proof to dispel any reasonable doubt is required before treachery may be considered either as an aggravating or qualifying circumstance.** Further, treachery must be based on some positive conclusive proof and not only upon hypothetical facts or on mere suppositions or presumptions.

The trial court erred when it presumed that the killing was qualified by treachery although the record shows that the witness did not see the commencement of the assault. xxx

xxx

In her earlier testimony, Estelita explained that it was the first shot that prompted her to turn her head and it was only then that she saw Gerry Silva pointing his gun at her son who was already bloodied. These statements are fraught with possibilities.

Nagging doubts would crop up as to how the three (3) assailants started the assault considering that there was an interval of time from the moment Estelita's back was towards Leo until she heard the first shot. Before that she did not notice the presence of accused-appellants. One can argue that between the time when Estelita's back was turned from the victim after she had taken about two (2) steps away and the first shot, there was a lapse of more or less four (4) seconds. No other logical conclusion then could be drawn but that the attack was sudden and unexpected. But this is not that simple. **Where all *indicia* tend to support the conclusion that the attack was sudden and unexpected but there are no precise data on this point, treachery cannot be taken into account.** It can in no way be established from mere suppositions, drawn from the

¹⁶ *Rustia v. People*, G.R. No. 208351, October 5, 2016.

¹⁷ *People v. Vilbar*, 680 Phil.767, 785 (2012).

¹⁸ 372 Phil. 1267 (1999).

circumstances prior to the moment of the aggression, that the accused perpetrated the killing with treachery.¹⁹ [Emphases supplied]

In short, the evidence of the prosecution must be able to present the whole scenario to establish to exact manner of the killing, for treachery to be appreciated. In the case at bench, it was only Marigor who witnessed Calinawan stabbing her mother. Her testimony is as follows:

On direct examination

Prosecutor Catungal

Q: Why do you say that your mother is already in heaven?

Witness

A: She is already dead, sir.

Q: You mean your mother is already dead, do you know why she died?

A: Yes, sir.

Q: If yes, will tell the Hon. Court why she died?

A: She was stabbed, sir.

xxx

Q: Can you still recall the time whether it is day time or night when the incident took place?

A: Yes, sir.

Q: Can you please tell the Hon. Court if it is day time or night time?

A: It is night time, sir.

Q: You said that your mother was stabbed, where did you see your mother when she was stabbed?

A: In the kitchen, sir.

Q: When you said you saw your mother was stabbed in the kitchen was she alone or had someone?

A: She has companion, sir.

Q: Who is this person with her?

A: It was Meo, sir.

Q: You mean Meo again?

A: Yes, sir.

Q: Did you actually see how Meo stab your mother?

A: Yes, sir.

¹⁹ Id. at 1276.

Q: You said that you saw your mother and Meo in the kitchen, and you said you saw Meo stabbed your mother, was the kitchen room with light?

A: Yes, sir.

Q: After you saw Meo stabbed your mother, what did Meo do next, if any?

A: He ran away, sir.

xxx

On cross examination

Atty. Carpizo

Q: You said earlier Marigor that you saw Meo and your mother in the kitchen on September 26, 2007 in the midnight of said date?

A: Yes, sir.

Q: What were they doing at that time?

A: My mother was stabbed, sir.²⁰ [Emphases supplied]

Other than Marigor's first-hand account, no other witness actually saw the stabbing incident. Obviously, her narration of the events that unfolded was crucial in determining how the killing was perpetrated because she was the only one who actually saw its execution. Her testimony, however, was lacking in details; thus, it is insufficient to conclude that the killing was attended with treachery.

Absent clear and convincing evidence on how the attack was perpetrated, the conclusion that there was treachery is nothing more but an assumption. It is unfortunate that the particular means, manner or method of attack was never clearly illustrated in her testimony leaving the evidence for murder wanting.

Under Article 249²¹ of the RPC, the crime of homicide is punishable by *reclusion temporal*. Calinawan's prison sentence shall then be subject to the rules provided in the Indeterminate Sentence Law.²² Thus, the maximum term should be that which could be properly imposed in view of the attending circumstances, and the minimum should be within the range of the penalty next lower to that prescribed by the RPC.

²⁰ TSN, dated November 19, 2008, pp 2-8.

²¹ Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

²² Act No. 4103, as amended.


Here, no aggravating or mitigating circumstance can be appreciated. When there are neither aggravating nor mitigating circumstances, the penalty prescribed by law shall be imposed in its medium period.²³

The aggravating circumstance of nighttime cannot be factored in because there was no showing that Calinawan especially sought the same or took advantage of it, or that it had facilitated the commission of the crime by insuring his immunity from identification or capture.²⁴ It is noteworthy that the attack occurred in the kitchen of the house of Janice, which was sufficiently lighted, enabling Marigor to identify him as the assailant. Therefore, the sentence should be within the range of *prision mayor*, as minimum, to *reclusion temporal* in its medium period, as maximum.

Also, to conform with the prevailing jurisprudence,²⁵ the award of civil indemnity and moral damages should be decreased from ₱75,000.00 to ₱50,000.00. Absent any aggravating circumstance, the award of exemplary damages should be removed. The award of temperate damages in the amount of ₱50,000.00 is also in order.

WHEREFORE, the January 30, 2015 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 04593 is hereby **MODIFIED**, in that, accused-appellant Romeo D. Calinawan a.k.a Meo is found guilty of Homicide and sentenced 1] to suffer an indeterminate penalty of Eleven (11) Years of *prision mayor*, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of *reclusion temporal*, as maximum; and 2] to pay the heirs of Janice Nevado Silan the amounts of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as temperate damages, plus interest on all damages awarded at the rate of 6% per annum from the date of the finality of this decision until fully paid.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²³ Article 64(1) of the RPC.

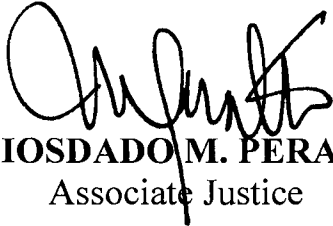
²⁴ *People v. Cortes*, 413 Phil. 386, 392 (2001).

²⁵ *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

A T T E S T A T I O N


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice