

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 241012**

**Present:**

- versus -

CARPIO, *J.*, Chairperson,  
CAGUIOA,  
REYES, J. JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, *JJ.*

**CROMWELL TORRES y PALIS,**  
Accused-Appellant.

**Promulgated:**

28 AUG 2019 *[Signature]*

X ----- X

**DECISION**

**REYES, J. JR., *J.*:**

This is an appeal from the Decision<sup>1</sup> dated February 12, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07659 which affirmed the Decision<sup>2</sup> dated April 13, 2015 of the Regional Trial Court (RTC) Branch 74 of Antipolo City in Criminal Case No. 09-38829, finding Cromwell Torres y Palis (appellant) guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

On August 18, 2009, appellant was charged with murder in an Information<sup>3</sup> which states:

<sup>1</sup> Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring; CA rollo, pp. 95-103.

<sup>2</sup> Id. at 50-64.

<sup>3</sup> Id. at 50.

That on or about the 15<sup>th</sup> day of August, 2009, in the City of Antipolo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed improvised shotgun, with intent to kill, and with the qualifying circumstance of treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and shoot one KIM KENNETH PULUMBARIT<sup>4</sup> y SANTOS while he was starting the engine of his motorcycle, thereby inflicting upon the latter multiple gunshot wounds on the trunk which directly caused his death.

#### CONTRARY TO LAW.

Upon arraignment on February 2, 2010, appellant, duly assisted by counsel *de officio*, pleaded not guilty to the crime.

During the trial, the prosecution presented witnesses Richard Gemao, Lalaine De Vera, Police Chief Inspector Dean Cabrera, medico-legal officer of the Philippine National Police (PNP), and Karen S. Palumbarit. On the other hand, the defense presented appellant as its sole witness.

#### Evidence for the Prosecution

Prosecution witness Richard Gemao (Gemao) testified that on August 15, 2009, at around 10:15 P.M., he was in front of his house in Purok II, Zone 8, Cupang, Antipolo City when he saw the victim Kim Kenneth S. Palumbarit (Palumbarit) in front of a store about ten steps away from him. Palumbarit was about to start the engine of his motorcycle when appellant, who was standing near a *guyabano* tree, walked towards the store. Appellant shifted to Palumbarit's direction, remarked "*tarantado ka!*" and thereafter shot him from behind using an improvised shotgun commonly known as "*sumpak*" loaded with ammunition. Gemao saw Palumbarit who was thrown off his motorcycle and fell to the ground. He was about to extend help to Palumbarit when he sensed that appellant was observing him. He then backed off and returned inside his house.<sup>5</sup>

Two unidentified men tried to stop appellant from further attacking Palumbarit. They uttered the words, "*tama na 'tol, patay na 'yan*" and left the scene. When Gemao went outside, he saw appellant walked away followed by a woman. Upon realizing that Palumbarit was still bleeding from the gunshot wound, he rushed to his aid and carried and boarded him in a tricycle going to the hospital where he eventually died.<sup>6</sup>

<sup>4</sup> "Palumbarit" in some parts of the records.

<sup>5</sup> CA *rollo*, p. 51.

<sup>6</sup> Id. at 53-54.

Lalaine De Vera (De Vera), meanwhile, alleged that she saw appellant shoot Palumbarit with a *sumpak* when the latter was about to board his motorcycle. She said appellant bought a cigarette from the store where Palumbarit was standing and suddenly shot him from behind. Palumbarit was even able to start the engine of his motorcycle as if nothing happened but the motorcycle eventually rolled forward causing him to fall on the ground. She was in a nipa hut which was few steps away from the store, when she saw the shooting incident.<sup>7</sup>

Police Chief Inspector Dean Cabrera (P/CI Cabrera) prepared Medico-Legal Report No. A09601 dated August 20, 2009 where he confirmed that the cause of death of Palumbarit was multiple gunshot wounds on the trunk. He verified that the point of entry of the wounds was at the right posterior axillary region or around the area behind the armpit towards the back and that there was no exit wound. P/CI Cabrera was able to recover two (2) pellets on the left and right lungs and five (5) pellets on the dorsal portion of the chest plate along the anterior abdominal wall or the front portion of the abdomen. He testified that the weapon used could be a shotgun or an improvised weapon using a shotgun shell as ammunition. He pointed out the possibility that only one gunshot was fired by the assailant considering the mechanism of the shotgun shell and the proximity of the entries.<sup>8</sup>

Karen S. Palumbarit testified as to the actual expenses incurred by her family as a result of the death of her brother: (1) ₱1,065.00 for the victim's hospitalization at Amang Rodriguez Memorial Medical Center; (2) ₱56,000.00 for the funeral; and (3) ₱21,547.50 for the burial.<sup>9</sup>

#### Evidence for the Defense

Appellant denied all the allegations hurled against him. He averred that on August 15, 2009, he heard a gunshot when he was passing by the Dimsun Compound in Purok II, Barangay Cupang, Antipolo City. He was supposed to go to his father's house in Malanday, Marikina when he heard the blast.

He recalled that on August 16, 2009, he was picked up by the police officers at his father's house. They boarded him on a white van and was brought to Rodriguez Hospital for medical examination. Inside the van, he was allegedly punched on the eye and was forced to admit involvement on the shooting incident. When he told the police officers that he did not know anything about Palumbarit, he was locked up in jail in Mayamot, Antipolo City.<sup>10</sup>

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<sup>7</sup> Id. at 53 – next page (unpaged).

<sup>8</sup> Id. at 52-53.

<sup>9</sup> Id. at 52.

<sup>10</sup> Id. at 54-55.

### Ruling of the RTC

On April 13, 2015, the RTC found appellant guilty beyond reasonable doubt of murder. The dispositive portion of the Decision reads:

**WHEREFORE**, judgment is hereby rendered finding accused CROMWELL TORRES y PALIS **GUILTY** beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code. In view of Republic Act No. 9346, accused Cromwell Torres y Palis is hereby sentenced to suffer the penalty of *reclusion perpetua*. Further, he is hereby ordered to indemnify and pay the heirs of victim Kim Kenneth Palumbarit y Santos the following:

1. Php 75,000.00 as and by way of civil indemnity;
2. Php 75,000.00 as and by way of moral damages;
3. Php 30,000.00 as and by way of exemplary damages;
4. Php 78,612.50 as and by way of actual damages.
5. 6% legal interest on the above damages from finality of this judgment until full payment.

No pronouncement as to cost.

**SO ORDERED.**<sup>11</sup>

The RTC convicted appellant with murder after finding that treachery attended the commission of the crime. It held that the prosecution clearly showed that Palumbarit was deprived of any means to ward off appellant's sudden and unexpected attack. It emphasized that despite the lack of provocation on the part of Palumbarit, appellant executed an attack that was so sudden as to ensure his safety from any defense or retaliatory act from the victim. It disregarded appellant's defense of denial and alibi as it was not properly corroborated or substantiated by clear and convincing evidence.

On June 16, 2015, appellant filed a notice of appeal.<sup>12</sup>

In his Brief, appellant assigned the following errors:

#### I

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

#### II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

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<sup>11</sup> Id. at 63.

<sup>12</sup> Id. at 14-15.

## III

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE FLAWED AND INCONSISTENT.

## IV

THE TRIAL COURT GRAVELY ERRED IN TOTALLY DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL AND ALIBI.

## V

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING TREACHERY AS QUALIFYING CIRCUMSTANCE.<sup>13</sup>

### **Ruling of the CA**

On February 12, 2018, the CA denied the appeal and affirmed appellant's conviction.

The CA declared that appellant was estopped from questioning the legality of his arrest since when he was arrested and a case was filed against him, he pleaded not guilty during the arraignment, participated in the trial and presented his evidence. It noted that appellant was deemed to have waived his right to question any irregularity in his arrest when he entered his plea. Further, the CA declared that there were inconsistencies in the testimonies of the prosecution witnesses and that the alleged lapses claimed by the defense were not vital enough to cast doubt as to the identity of appellant. It concluded that the totality of evidence for the prosecution established with moral certainty all the essential elements of the crime of murder qualified by treachery. It pointed out that the killing was made in a sudden and deliberate manner such that the victim was in a helpless position and had no opportunity to defend himself or to retaliate.

The case is now before the Court in view of the Notice of Appeal<sup>14</sup> interposed by the appellant from the CA Decision.

On October 3, 2018, the Court notified the parties that they may file their respective supplemental briefs if they so desire, within thirty (30) days from notice.<sup>15</sup>

On December 11, 2018, appellant filed a Manifestation (In lieu of a Supplemental Brief)<sup>16</sup> stating that he is adopting his Appellant's Brief dated

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<sup>13</sup> Id. at 32-33.

<sup>14</sup> Id. at 107-108.

<sup>15</sup> *Rollo*, pp. 17-18.

<sup>16</sup> Id. 33-34.

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February 11, 2016 as his supplemental brief since it had adequately discussed all the matters pertinent to his defense. On December 13, 2018, the Office of the Solicitor General filed its Manifestation praying that it be excused from filing a supplemental brief and reserving its right to file one in case appellant raises new matters and issues in his own supplemental brief. It added that all the matters and issues raised in its Appellee's Brief dated June 14, 2016 have already been extensively discussed and judiciously considered by the CA.

### **Ruling of the Court**

The appeal is bereft of merit.

Procedurally, appellant assails the legality of his arrest and insists that the manner by which he was apprehended does not fall under any of the permissible warrantless arrests pursuant to Section 5, Rule 113 of the Rules of Court.

Both the prosecution and the defense did not narrate with particularity the details of appellant's arrest. Nonetheless, the issue on the validity of the arrest has been put to rest when appellant appeared at his arraignment and, with the assistance of his counsel *de officio* Atty. Brend Virgilio S. Vergara of the Public Attorney's Office and in the presence of Public Prosecutor Gerardo Barot, entered a not guilty plea.<sup>17</sup> The Court's pronouncement in *People v. Alunday*<sup>18</sup> echoed in *Lapi v. People*<sup>19</sup> is illuminating:

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

x x x x

Appellant admitted the court's jurisdiction over his person during the pre-trial conference. He pleaded not guilty to the charge *sans* any objection

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<sup>17</sup> CA rollo, p. 50.

<sup>18</sup> 586 Phil. 120, 133 (2008).

<sup>19</sup> G.R. No. 210731, February 13, 2019

surrounding his arrest. He did not move to quash the information on the ground of lack of jurisdiction before he entered his plea. In fact, he actively participated during the trial, presented his evidence before the court and challenged the validity of his arrest only for the first time on appeal. All these taken together clearly allude that appellant has waived any irregularity, if any, attendant to his arrest. Hence, appellant is now precluded from questioning the legality of his arrest following his voluntary and unconditional submission to the jurisdiction of the court.

Substantively, appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt and anchors his plea for acquittal on the trial court's alleged erroneous appreciation of the qualifying circumstance of treachery.

Article 248 of the RPC defined and penalized the crime of murder as follows:

ART. 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 perpetua*, 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 railroad, 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 calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any 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.

The prosecution must establish with moral certainty the elements of the crime, to wit: 1) a person was killed; 2) the accused killed him; 3) the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and 4) the killing is not parricide or infanticide.<sup>20</sup>

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<sup>20</sup> *People v. Aquino*, G. R. No. 203435, April 11, 2018; Luis B. Reyes, THE REVISED PENAL CODE, CRIMINAL LAW, Book Two, p. 496 (17th ed., 2008).

The Certificate of Death<sup>21</sup> showing that victim Kim Kenneth Palumbarit died on August 15, 2009 from multiple gunshot wounds on the trunk is part of the records of the case, thereby satisfying the first element. Similarly undisputed is the fourth element since the RTC and the CA are uniform in their findings that Palumbarit's killing does not constitute parricide or infanticide.

To prove the second element, the prosecution offered the testimonies of eyewitnesses Gemao and De Vera who gave first-hand accounts of the shooting incident. At that time, Gemao was in front of his house while De Vera was staying in a nipa hut, both positioned at around ten steps away from the store where Palumbarit was standing. Gemao testified that he saw appellant coming from a nearby *guyabano* tree and headed to the store to buy a cigarette. Appellant then positioned himself behind Palumbarit who was about to start the engine of his motorcycle and, without warning, shot him at the back with a *sumpak*. De Vera corroborated Gemao's testimony and identified appellant as the malefactor. She even recalled that the wounded victim was even able to start his motorcycle but eventually lost control and fell to the ground with his vehicle.

In the light of Gemao's and De Vera's categorical and positive identification of the appellant as the one who shot Palumbarit which ultimately caused his death, the Court agrees with the trial court in giving credence and great weight to their testimonies. It is well settled that absent glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions that can be culled from the trial court's factual findings, full respect and credit are accorded to such findings insofar as matters of credibility of witnesses presented before it. The reason for this is plain: "the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial."<sup>22</sup> Clearly, the second element was met.

The existence of any of the circumstances enumerated in Article 248 is determinative of whether appellant shall be liable for murder or homicide. Appellant faults the RTC and the CA for appreciating the qualifying circumstance of treachery for failure of the prosecution to show that he consciously adopted the mode of attack to facilitate the killing without risk to himself.

For treachery to be appreciated, the prosecution bears the burden of proving that: (1) the accused employed means of execution that gave the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution was deliberate or consciously adopted.<sup>23</sup> A treacherous

<sup>21</sup> Exhibit "L" of the Prosecution, CA *rollo*, p. 9.

<sup>22</sup> *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018.

<sup>23</sup> *People v. Caliao*, G.R. No. 226392, July 23, 2018.



attack is characterized by a deliberate and unforeseen assault done in a swift and unexpected manner of execution leaving the hapless, defenseless, and unsuspecting victim no opportunity to resist or escape.<sup>24</sup>

As testified by the prosecution witnesses, the victim was about to start the engine of his motorcycle in front of a store shortly before the shooting incident. Naïve and unwary of what would befall him, he did not have the faintest idea that his aggressor was just standing near a *guyabano* tree within the area, deliberately waiting and closely monitoring him. Little did the victim know that an attack was forthcoming. Upon seeing the victim in his motorcycle, appellant cunningly proceeded to the store to buy a cigarette and, apparently, time to prepare for the execution of his evil plan. Thereafter, he walked towards the victim, stopped right at his back, cursed him, and shot him at close range in an unguarded position hitting him on his trunk. Clearly, the swiftness and suddenness of the aggression carried out by appellant deprived Palumbarit the chance to ward off the attack or run or, at the very least, mount a defense. Moreover, to ensure that it would be impossible for Palumbarit to strike back and escape death, appellant consciously chose as weapon an improvised shotgun that can fire a number of small pellets at once to attack the victim. He pulled the trigger right after he cursed Palumbarit giving the latter no time to repel the attack. He even attempted to further shoot Palumbarit until he was told that the latter was already dead. Indeed, treachery is present in the case at bar.

Finally, appellant is obviously clutching at straws in holding that there is discrepancy between the *Sinumpaang Salaysay* of Gemao and his testimony in court. Appellant stresses that Gemao's claim that he was standing near a *guyabano* tree before the shooting incident was never mentioned in his affidavit. Furthermore, he posits that the prosecution witnesses did not clarify the number of persons present when the shooting happened opening the possibility that it was not him who committed the crime.

The Court finds no discrepancy between Gemao's affidavit and testimony in court. Gemao's affidavit did not directly and significantly contradict his oral testimony. In fact, his statements in his affidavit and in court are consistent and unwavering that it was appellant who shot the victim. When called on the witness stand, Gemao merely provided the details prior to the shooting incident which were not specified in his affidavit. As held in *People v. Dayaday*:<sup>25</sup>

x x x [T]his Court has consistently ruled that the **alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects** to justify a

<sup>24</sup> *People v. Foncardas*, 466 Phil 992, 1010 (2004).

<sup>25</sup> 803 Phil 363, 372-373 (2017) citing *People v. Yanzon*, 674 Phil 169, 180 (2011).

reversal of judgment. Such discrepancies do not necessarily discredit the witness since *ex parte* affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.


In the same vein, the failure of the prosecution witnesses to establish the number of persons present when the crime was committed is a minor or trivial matter which cannot weaken their credibility. The perceived inconsistency does not go to the essential elements of the crime or to the fact of its commission. Hence, the Court finds no reason to withhold full faith and credit to the testimonies of the prosecution witnesses as to the appellant's involvement in the killing of Palumbarit.

The penalty for murder is *reclusion perpetua* to death. However, there being no mitigating and aggravating circumstances attending the commission of the crime, the lesser of the two indivisible penalties, *i.e.*, *reclusion perpetua*, shall be imposed upon appellant applying Article 63(2) of the RPC.

As to damages, the Court deems it proper to increase the award of exemplary damages to ₱75,000.00 to conform to current jurisprudence.<sup>26</sup> Civil indemnity and moral damages in the amount of ₱75,000.00 each as well as actual damages in the amount of P78,612.50 were properly awarded by the RTC and the CA.

**WHEREFORE**, the appeal is **DISMISSED**. The February 12, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 07659 is **AFFIRMED with MODIFICATION**. The exemplary damages awarded to the heirs of Kim Kenneth Palumbarit is increased to ₱75,000.00. All damages shall earn interest at the rate of 6% per annum from the finality of judgment until fully paid.

**SO ORDERED.**

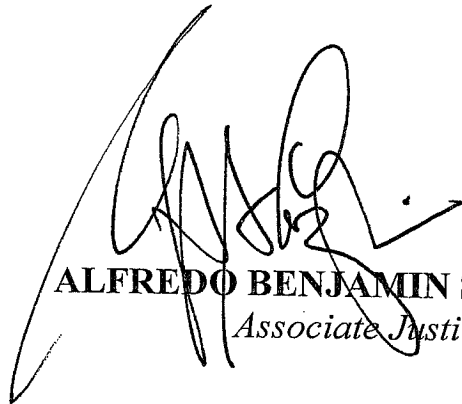
  
**JOSE C. REYES, JR.**  
*Associate Justice*

<sup>26</sup> *People v. Jugueta*, 783 Phil 806, 851 (2016).

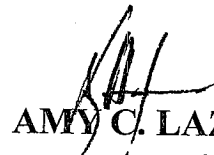
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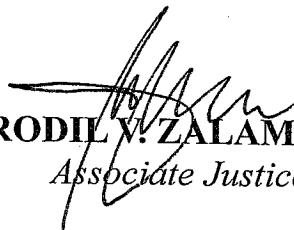
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*

**ATTESTATION**


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**  
*Senior Associate Justice*  
*Chairperson, Second Division*

**CERTIFICATION**

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.



**LUCAS P. BERSAMIN**  
*Chief Justice*

