

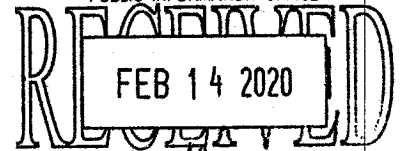


Mis PDC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

FEB 12 2020

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: *JA*
TIME: *6:58 am*

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 240231

Present:

- versus -

LEONEN, J., Chairperson
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER,** and
ZALAMEDA, JJ.

CRESENCIANO ENOJO a.k.a.
"OLPOK,"

Promulgated:

Accused-Appellant.

November 27, 2019

Mis PDC Batt

X ----- X

DECISION

ZALAMEDA, J.:

This appeal¹ assails the Decision² dated 19 December 2017 by the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02161, which affirmed with modifications the Joint Decision³ dated 16 November 2015 of Branch 31, Regional Trial Court (RTC) of Dumaguete City in Criminal Case Nos. 14617, 14900, 14902 and 14903, finding Cresenciano Enojo (accused-appellant) guilty beyond reasonable doubt for three (3) counts of murder, for the killing of three (3) children, namely: Delfred A. Cuevas, nine (9) years old; Alfred A. Cuevas, six (6) years old; and Chrocila A. Cuevas, two (2) years old; and one (1) count of frustrated murder, for the wounding of their mother, Carmen A. Cuevas.

* On leave.

** Designated as Additional Member of the Third Division per Special Order No. 2728.

¹ *Rollo*, pp. 24-26.

² *Id.* at 4-23; penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta, concurring.

³ *CA rollo*, pp. 43-96; penned by Presiding Judge Ma. Mercedita U. Sarsaba.

Antecedents

The separate Informations filed against accused-appellant read:

Criminal Case No. 14900

That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being a minor and of tender age and unarmed, did then and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack DELFRED A. CUEVAS, a 9 year old, inflicting upon the said victim the following mortal wounds x x x which caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.⁴

Criminal Case No. 14902

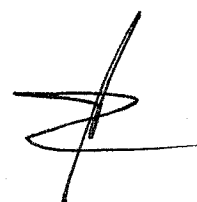
That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being [a] minor and of tender age and unarmed, did then and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack CARLFRED A. CUEVAS,⁵ a 6 year old, inflicting upon the said victim the following mortal wounds x x x which caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.⁶

⁴ *Rollo*, pp. 6-7.

⁵ *See Records*, p. 361; the RTC indicated that the name of the child should be "Alfred."

⁶ *Rollo*, pp. 7-8.



Criminal Case No. 14903

That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being [a] minor and of tender age and unarmed, did then and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack CHRESELA A. CUEVAS,⁷ a 2 year old, inflicting upon the said victim the following mortal wounds x x x [w]hich caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.⁸

Criminal Case No. 14617

That on or about November 20, 1999, at about 5:30 o'clock in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery, abuse of superior strength and disregard of the respect due the offended party on account of her sex, the victim being a woman, did then and there willfully, unlawfully and feloniously attack, assault and hack three (3) times Carmen Cuevas with the use of a bolo the accused was then armed and provided, thereby inflicting upon the victim the following injuries x x x which injuries could have caused the death of the victim, thus performing all the acts of execution which could have produced the crime of Murder, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical assistance given to said victim that prevented her death.

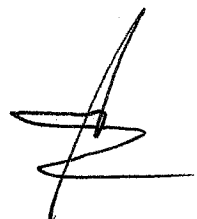
Contrary to Article 248 of the Revised Penal Code in relation to Articles 6 and 250 of the said (sic) code.⁹

When arraigned, accused-appellant pleaded not guilty to the charges. Upon termination of pre-trial, trial ensued where the prosecution and the defense presented their respective versions of the facts.

⁷ See Records, p. 361; the RTC indicated that the name of the child should be "Chrocila."

⁸ Rollo, pp. 8-9.

⁹ Id. at 9-10.



Version of the Prosecution

The prosecution presented the following as its witnesses: (1) Felix Montiil (Montiil), the victims' neighbor; (2) Carmen Cuevas (Carmen); and, (3) Dr. Clemente Hipe IV (Dr. Hipe). Montiil testified that he overheard one of the child victims, Delfred, saying he hit accused-appellant's dog with a slingshot. At that exact moment, accused-appellant was passing by, and in a fit of rage, he told Delfred, "*tirador ka rong bataa ka nga akong iro dako man ug samad sa kilid. Buk-on nya nako na imong ulo bataa ka. Bisan musugilon ka sa imong ginikanan iapil nako ug buak ang ulo.*"¹⁰ The RTC translated this to mean:

Slingshot you juvenile child, my dog has a big wound on its side, it even went home to my house. I might break your head you juvenile child. Even if you will tell your parents I will also break their heads.¹¹

Upon hearing this, Delfred rushed home. Moments later, his mother, Carmen, came looking for accused-appellant to confront him on what he told her son. However, accused-appellant emerged and hacked Carmen twice on the head and once on the back, causing the latter to fall to the ground. Accused-appellant then made his way to Carmen's house, giving Carmen the opportunity to seek Montiil's help.¹²

In her testimony, Carmen recounted how she heard her children, Alfred and Chrocila, calling out to her after she fell to the ground. She yelled for them to run to their house, but accused-appellant followed them.¹³ Carmen claimed she witnessed how accused-appellant hacked Alfred and Chrocila to death.¹⁴ As for Delfred, she maintained that her son almost escaped, but accused-appellant caught up with him and hacked him on the head twice.¹⁵

Finally, Dr. Hipe, the physician who medically examined Carmen, testified that the injuries she suffered were fatal, and should have resulted in

¹⁰ *Id.* at 11.

¹¹ Records, p. 322.

¹² *Rollo*, p. 11.

¹³ *Id.*

¹⁴ Records, p. 317.

¹⁵ *Id.*



her death, but which nevertheless did not produce it by reason of a cause independent of the will of the accused: the timely medical attention provided to Carmen.¹⁶

Version of the Defense

Accused-appellant denied having hacked to death Carmen's three (3) minor children. He narrated that while plowing his neighbor's field, he heard children crying from a distance, but the sound died down. Accused-appellant continued with his errands and chanced upon Carmen, then armed with wooden club with clothes drenched in blood. When asked what happened, Carmen angrily retorted she would break his head if he continued asking her questions. Carmen then attacked and hit him. When the attack continued, accused-appellant swung his *bolo*, accidentally hitting Carmen on the head. He was surprised for being considered the suspect in the killing of Carmen's three children.¹⁷

Ruling of the RTC

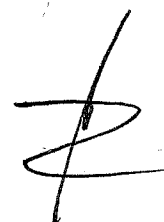
After trial, the RTC found accused-appellant guilty of three (3) counts of murder and one (1) count of frustrated murder. The dispositive portion of the RTC's Decision reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 14617, the court finds accused Cresenciano Enojo @ "Olpok" **GUILTY beyond reasonable doubt of the crime of Frustrated Murder under Article 248 as amended by R.A. 7659 of the Revised Penal Code in relation to Article 6 and 50 also of the Revised Penal Code** and hereby sentence[s] him to suffer 13 years of *cadena temporal* with the accessories of the law as well as sentence[s] him to pay temperate damages in the amount of Php25,000.00 in lieu of actual damages considering that some pecuniary loss was suffered but its amount cannot be proven with certainty during trial.

¹⁶ *Id.* at 13, TSN dated 30 January 2014.

¹⁷ *Id.* at 14.



2. Considering that deceased minor victims Delfred Cuevas, Calfred (actually Alfred) Cuevas and Chrosela (actually Chrocila) Cuevas in Criminal Case Nos. 14900, 14902, 14903, were children of tender years, and since killing a child is characterized by treachery even if the manner of the assault is not shown because of the weakness of the victim due to her tender age results in the absence of any danger to the accused, the court finds accused Cresenciano Enojo **GUILTY beyond reasonable doubt for three (3) counts of the crime of Murder under Article 248 of the Revised Penal Code as amended by RA 7559** and hereby sentences him to suffer the penalty of *reclusion perpetua* for each count.

The penalty of Death should have been imposed to the accused in Criminal Case Nos. 14900, 14902 & 14903, however, with the enactment of R.A. No. 9346 on June 24, 2006, this court has to reduce the penalty of death to *reclusion perpetua* each in all said cases. This, notwithstanding (sic), accused should not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Finally, [the] accused is further ordered to indemnify the heirs of the aforesaid three (3) children the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, Php30,000.00 as exemplary damages and Php25,000.00 as temperate damages for each child-victim, plus legal interest on all damages awarded at the rate of 6% from the date of the finality of this decision.

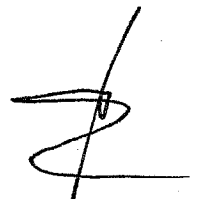
SO ORDERED.¹⁸ (Citations omitted)

The trial court found the prosecution's evidence sufficient to sustain accused-appellant's conviction of the crimes charged. After affording itself the opportunity to observe the witnesses' demeanor on the stand, the RTC found no reason to doubt their credibility. Moreover, accused-appellant's claim of self-defense failed to persuade since his version of what transpired was uncorroborated by any other witness and no medical certificate was presented to prove the alleged injuries sustained.¹⁹ The RTC, however, was convinced that Carmen only saw the killing of her son Delfred, and not Alfred and Chrocila. Nevertheless, the RTC found sufficient circumstantial evidence pointing at the conclusion that accused-appellant killed the two (2) other children as well.²⁰

¹⁸ Records, pp. 363-364.

¹⁹ *Id.* at 358-359.

²⁰ *Id.* at 361-363.



In convicting accused-appellant of the children's murder, the RTC appreciated the circumstance of treachery considering the age of the victims. As for Carmen's wounding, the trial court found abuse of superior strength and treachery to be present.²¹

Ruling of the CA

In its Decision dated 19 December 2017, the CA affirmed accused-appellant's conviction and disposed of his appeal in this manner:

WHEREFORE, in view of the foregoing, the 16 November 2015 Joint Decision rendered by the Regional Trial Court, 7th Judicial Region, Branch 31, Dumaguete City convicting accused-appellant Cresenciano Enojo, a.k.a. "Olpok" of Murder in Criminal Case Nos. 14900, 14902, and 14903 and of Frustrated Murder in Criminal Case No. 14617 is AFFIRMED, with the following MODIFICATIONS:

For the killing of the minors Delfred A. Cuevas, Alfred A. Cuevas and Chrocila A. Cuevas, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, together with all its accessory penalties, for EACH COUNT of Murder. Appellant is ordered to pay the following amounts, as his civil liability: Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and Seventy-Five Thousand Pesos (P75,000.00) as exemplary damages. Accused-appellant is likewise ordered to pay the amount of Fifty Thousand Pesos (P50,000.00) as temperate damages.

For his conviction for Frustrated Murder, appellant is sentenced to suffer the penalty of 8 years and one day of *prision mayor*, as minimum of the indeterminate penalty, to (14) years, eight (8) months and one (1) day, the medium period of *reclusion temporal*, as maximum. Appellant is likewise ordered to the following[:] to pay the amounts of Fifty Thousand Pesos (P50,000.00), as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Fifty Thousand Pesos (P50,000.00) as exemplary damages.

An interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.

SO ORDERED.²²

²¹ *Id.* at 364.

²² *Rollo*, pp. 22-23.



The CA did not find merit in accused-appellant's claim that fatal inconsistencies plague the testimonies of the prosecution witnesses. If at all, the appellate court found these inconsistencies to be trivial and inconsequential. The CA also agreed with the trial court's appreciation of the circumstance of treachery in qualifying the killing of the children to murder, and abuse of superior strength and treachery in the wounding of Carmen. The appellate court, nevertheless, ruled that abuse of superior strength was already absorbed by treachery.²³ Finally, the award of damages was modified to conform with recent jurisprudence.²⁴ Hence, this appeal.

Issues

In his appellant's brief, accused-appellant insists that abuse of superior strength and treachery were not present to qualify the crime against Carmen to frustrated murder. Also, the inconsistencies in Carmen's and Montil's recollection of the events surrounding the children's attack cast doubts on their credibility and on their identification of the accused-appellant as the assailant.

Ruling of the Court

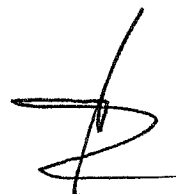
The appeal is without merit.

At the onset, We affirm accused-appellant's conviction for the murder of Delfred, Alfred, and Chrocila. Accused-appellant's defense, which centers on his challenge to the credibility of the prosecution witnesses, cannot be sustained considering that the RTC's assessment of these witnesses were affirmed by the CA. As such, these findings are now given great respect and conclusiveness. It is settled that trial courts are in the best position to decide issues of credibility of witnesses, having themselves heard and seen the witnesses and observed firsthand their demeanor and deportment and the manner of testifying under exacting examination,²⁵ making their assessment of a witness's credibility far superior to that of appellate tribunals.

²³ *Id.* at 18-19.

²⁴ *Id.* at 21-22.

²⁵ *Cruz v. People*, G.R. No. 166441, 08 October 2014, 737 SCRA 567, 580.



The CA and RTC were also correct in appreciating the qualifying circumstance of treachery. "The killing of a child is characterized by treachery even if the manner of the assault is not shown in the Information, as the weakness of the victim due to his tender age results in the absence of any danger to the accused."²⁶ Hence, the mere allegation of the victim's minority is sufficient to qualify the crime to murder.

*Treachery was not present when
accused-appellant attacked Carmen*

It is well to point out that the Information for the crime of frustrated murder committed against Carmen is insufficient for failure to allege factual averments constituting treachery.²⁷ We take this as an opportunity to remind our public prosecutors that general allegations of the existence of aggravating or qualifying circumstances in the Information are not enough. Factual averments constituting not only the offense charged, but also the circumstances that may increase the accused's liability, must be made in the Information in order to ensure that the accused is fully afforded his right to be apprised of the nature and cause of the accusation against him.²⁸ Failing in this regard would prevent the Court from appreciating the circumstances insufficiently alleged.

Even assuming the sufficiency of the Information for frustrated murder, We remain unconvinced that accused-appellant employed treachery when he attacked Carmen. "Treachery is present when the attack was carried out in a swift, deliberate, and unexpected manner, the purpose of which is to deny the victim of any opportunity to defend himself or herself. To sustain a finding of treachery, it must be shown that the offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense."²⁹

Here, Carmen was aware of accused-appellant's hostile intentions. In fact, upon learning about accused-appellant's threat, she sought to confront him. While accused-appellant's attack on Carmen was described as sudden,

²⁶ *People v. Pantoja*, G.R. No. 223114, 29 November 2017, 847 SCRA 300, 318.

²⁷ See *People v. Dasmariñas*, G.R. No. 203986, 04 October 2017, 842 SCRA 39.

²⁸ See *People v. Petalino*, G.R. No. 213222, 24 September 2018; *People v. Delector*, G.R. No. 200026, 04 October 2017, 841 SCRA 647; *People v. Mercado*, G.R. No. 218702, 17 October 2018.

²⁹ *People v. Reyes*, G.R. No. 227013, 17 June 2019.



there is no treachery when the suddenness was not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.³⁰

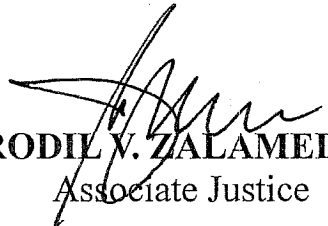
Accused-appellant's abuse of his strength over Carmen qualifies his crime to frustrated murder

We rule that abuse of superior strength is present and could be appreciated as a qualifying circumstance against accused-appellant, considering that it is no longer absorbed by the now nonexistent circumstance of treachery. In several cases, We consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.³¹ The pieces of evidence show that at the time of her attack, Carmen was unarmed and without any means to fend off accused-appellant's attacks with his *bolo*.

In this regard, the CA still correctly adjudged accused-appellant's criminal liability for the commission of the crimes of murder and frustrated murder. Resultantly, We find proper the imposition of penalty and award of damages by the CA.

WHEREFORE, the appeal is hereby **DISMISSED**. Accordingly, the assailed Decision dated 19 December 2017 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02161 is **AFFIRMED**.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

³⁰ *People v. Cañaveras*, G.R. No. 193839, 27 November 2013, 711 SCRA 1, 12.

³¹ *People v. Corpuz*, G.R. No. 215320, 28 February 2018, 856 SCRA 610, 623.

WE CONCUR:



MARVIC M.V.F. LEONEN


Associate Justice

Chairperson

(On leave)

ALEXANDER G. GESMUNDO

Associate Justice



ROSMARI D. CARANDANG

Associate Justice



AMY C. LAZARO-JAVIER

Associate Justice

ATTESTATION

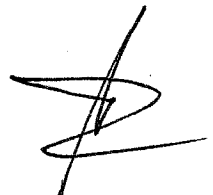
I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN

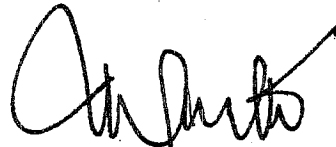
Associate Justice

Chairperson



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.



DIOSDADO M. PERALTA
Chief Justice

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Mis PDC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

FEB 12 2020

