



BY: YRA
TIME: 10:00 AM

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 20, 2019, which reads as follows:

“G.R. No. 237203 (*People of the Philippines v. Gerardo dela Peña y Valencia*) – This appeal seeks to reverse and set aside the Decision¹ dated 26 September 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06835, which affirmed with modification the Judgment² dated 12 February 2014 of Branch 38, Regional Trial Court (RTC) of Daet, Camarines Norte, finding Gerardo V. Dela Peña (accused-appellant) guilty of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

Antecedents

Accused-appellant, along with his co-accused, Armenio Dela Peña (Armenio), and five (5) unnamed suspects, were charged with murder under an Information³ dated 03 August 2001, to wit:

That on or about 11:00 in the evening of April 29, 2001 at Barangay Manlucugan, municipality of Vinzons, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation and while armed with a Cal. 45 pistol, did, then and there wilfully, unlawfully and feloniously shoot one Melchor [dela] Peña y Jordas on his left face and neck which caused his instantaneous death, to the damage of the heirs of the victim.

CONTRARY TO LAW.

¹ *Rollo*, pp. 2-12; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Normandie B. Pizarro and Marie Christine Azcarraga-Jacob.

² *CA rollo*, pp. 26-33; penned by Presiding Judge Roberto A. Escaro.

³ *Id.* at 22.

It was only in 2013 when accused-appellant was arrested. On arraignment, he entered a plea of not guilty,⁴ and trial on the merits ensued.

Version of the Prosecution

Prosecution witness Pedro Dela Peña (Pedro) testified that on 21 April 2001, he and his brothers, Melchor, Alex, and Robert, all surnamed Peña, went to Barangay Manlucugan, Vinzons, Camarines Norte, to celebrate the town *fiesta*. At around 11:00 pm, while watching the party from outside the dance hall with his barrio mates, he saw Melchor standing near a well-lit pavement about three (3) meters away. Their uncle, accused-appellant in this case, suddenly appeared on Melchor's right side, and touched Melchor's shoulder. Accused-appellant then moved to the left, took out his .45 caliber pistol, and shot Melchor on his left cheek. When Melchor fell to the ground, Armenio, now deceased, shot him on the nape using a .45 caliber pistol.⁵ Accused-appellant and Armenio were accompanied by five (5) unidentified men as their back-up.⁶

Pedro's testimony was corroborated by Alex, who also witnessed the shooting, as he was standing five (5) meters away from the incident. He testified having clearly seen the shooting because of the light coming from the electric post.⁷

Pedro and Alex alleged that Gerardo and Armenio were members of the New People's Army, who suspected Melchor of being an intelligence asset of the military, which prompted them to shoot the latter.⁸

Based on the death certificate, Melchor's cause of death was hemorrhagic shock due to gunshot wound.⁹

Version of the Defense

Emilio Abejoro, then Chief Tanod for *Barangay* Manlucugan, was assigned to secure the dance celebration. He testified that on the date and time

⁴ *Id.* at 81.

⁵ *Rollo* at 3.

⁶ *Id.* at 4.

⁷ *CA rollo* at 27.

⁸ *Id.*

⁹ *Id.* at 122.

of the incident, he was at the gate of the dance hall when he heard the gunshot. A commotion ensued and people ran away. He did not see Pedro among those present at the dance hall, and only saw him thirty (30) minutes after the incident.¹⁰

Ruling of the RTC

In a Judgment¹¹ dated 12 February 2014, the RTC found accused-appellant guilty of the crime of murder, *viz*:

WHEREFORE, the prosecution having proven beyond reasonable doubt the guilt of the accused Gerardo [dela] Peña y Valencia of the crime of Murder, he is hereby sentenced to reclusion perpetua. Likewise, he is adjudged to pay the heirs of the victim the following damages:

Moral damages	–	PhP50,000.00
Civil indemnity	–	PhP50,000.00
Temperate damages	–	PhP25,000.00
Exemplary damages	–	<u>PhP25,000.00</u>
		PhP150,000.00

SO ORDERED.¹²

Ruling of the CA

By a Decision¹³ promulgated on 26 September 2017, the CA denied the appeal and affirmed with modification¹⁴ the ruling of the RTC. The CA held that the prosecution succeeded in proving Gerardo's guilt beyond reasonable doubt. It affirmed the penalty imposed but modified the amount of damages awarded as follows: civil indemnity, moral, and exemplary damages in the amount of PhP75,000.00 each, temperate damages¹⁵ in the amount of Php50,000.00. All awards are subject to six percent (6%) interest *per annum* from date of finality of judgment until fully paid to conform with recent jurisprudence.¹⁶

¹⁰ *Id.* at 28.

¹¹ *Supra* at note 2.

¹² *CA rollo*, p 33.

¹³ *Supra* at note 1.

¹⁴ *Id.* at 11.

¹⁵ In lieu of actual damages for funeral and burial expenses; increased in view of *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 788 SCRA 331.

¹⁶ *Rollo*, page 11.

Issue

The sole issue in this case is whether or not the CA erred in affirming accused-appellant's conviction for murder under Article 248 of the RPC.

Ruling of the Court

The appeal lacks merit.

To sustain a conviction for murder, as defined and penalized under Article 248 of the RPC,¹⁷ the prosecution must establish the following elements: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.¹⁸

At the outset, it is important to note that the findings of the trial courts are given the highest degree of respect,¹⁹ and this rule becomes even more compelling when the factual findings carry the full concurrence of the CA,²⁰ as in the instant case. Such findings are final and conclusive on appeal, unless there is a demonstrable error in appreciation, or a misapprehension of the facts as to materially affect the disposition of the case.²¹

Accused-appellant, however, failed to substantiate any circumstance to warrant a review of the findings of the RTC and the CA.

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.

¹⁸ See *People v. Aquino*, G.R. No. 203435, 11 April 2018.

¹⁹ See *Planteras, Jr. v. People*, G.R. No. 238889, 03 October 2018.

²⁰ See *People v. Delector*, G.R. No. 200026, 04 October 2017.

²¹ See *People v. Macaspac*, G.R. No. 198954, 22 February 2017, 818 SCRA 417.

The CA correctly held that accused-appellant committed the crime of murder. The testimonies of the prosecution witnesses, Pedro and Alex, were detailed, consistent, candid and straightforward in stating that they saw how Melchor was shot by accused-appellant. On the other hand, accused-appellant's bare allegation that their testimonies were too incredible to be believed deserves no credit. Again, it is well-settled that the trial court's factual findings on the credibility of witnesses and their testimonies are accorded high respect, if not conclusive effect, due to the unique opportunity afforded to these courts to observe the witnesses in court and perceive their demeanor, conduct, and attitude.²²

Contrary to accused-appellant's allegation, both witnesses were able to positively identify him as the person who shot Melchor on his left cheek. In light of the witnesses' positive identification of the accused-appellant, the latter's uncorroborated defense of alibi and denial must fail. It is puzzling that accused-appellant himself did not even take the stand to deny the positive assertions of Pedro and Alex or to substantiate his defenses.²³ True, accused-appellant had the right to opt out of testifying on his own behalf. However, this leaves the Court with no choice but to disregard his already inherently weak defenses. It has been held time and again that the defense of alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove.²⁴ Likewise, a denial is inherently weak and crumbles in the light of positive declarations of eyewitnesses who testified on affirmative matters that the accused-appellant was at the scene of the crime, and was the perpetrator thereof.²⁵

It is also worth mentioning that the accused-appellant evaded arrest for more than ten (10) years. Flight is an indication of guilt. Jurisprudence tells us that the flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt may be established. A truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.²⁶

Accused-appellant points out to the testimonies of Pedro and Alex that Melchor was shot twice, once by accused-appellant on the cheek, and once by Armenio on the nape. To accused-appellant, this is inconsistent with the findings on the post-mortem report and the certificate of death.²⁷ We disagree. It is settled that a certificate of death merely establishes the fact of death and its immediate, antecedent and underlying causes, and is not meant to detail every

²² See *People v. Abat*, G.R. No. 202704, 02 April 2014, 720 SCRA 557.

²³ CA rollo, p. 103.

²⁴ *People v. Regaspi*, G.R. No. 198309, 07 September 2015, 769 SCRA 287.

²⁵ See *People v. Gabriel*, G.R. No. 213390, 15 March 2017, 820 SCRA 524.

²⁶ *People v. Medina*, G.R. No. 214473, 22 June 2016, 794 SCRA 363

²⁷ CA rollo, pp. 90-91.

injury sustained by the deceased.²⁸

Verily, the Court is convinced that the prosecution was able to establish the fact of the shooting, and the identity of the accused-appellant as the perpetrator thereof.

Anent the qualifying circumstances of evident premeditation and treachery, it is settled that in criminal cases, the State must specifically allege in the information the details of the crime, as well as the details of any circumstance aggravating the accused's liability for the crime. It is no longer sufficient to merely allege that the crime is qualified by "treachery" or "evident premeditation". The information must also contain supporting factual averments constituting the alleged attendant circumstances in the crime committed.²⁹

However, it also bears stressing that the procedural remedies available to the accused who believes that the Information is vague or defective must be availed of prior to arraignment. Section 9, Rule 116 of the Rules of Court (Rules) provides that the accused may, before arraignment, move for a bill of particulars to enable him to properly plead and prepare for trial.³⁰ Meanwhile, Rule 117 of the Rules allows an accused to file a motion to quash a patently insufficient or defective information prior to arraignment.³¹ To successfully avail of either remedy, the objection must not only be meritorious, but it must also be timely exercised.³² Here, accused-appellant did not raise his objection to the sufficiency of the allegations in the Information, thus, he is deemed to have waived the same.

The Court is not convinced that evident premeditation was established because the prosecution's evidence was limited to what transpired during the shooting. There was no evidence adduced to show that the accused-appellant had decided to kill Melchor, that he had previously planned and prepared how to commit the crime, and that sufficient time had lapsed between the decision to commit the crime and the actual commission thereof. Absent a clear and positive proof of the overt act of planning, evident premeditation cannot be appreciated to qualify the offense.³³

²⁸ See *People v. Datun*, G.R. No. 118080, 07 May 1997, 272 SCRA 380.

²⁹ *People of the Philippines v. Valdez*, G.R. No. 175602, 18 January 2012, 663 SCRA 272.

³⁰ Section 9. *Bill of particulars*. -- The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

³¹ *People of the Philippines v. Sandiganbayan*, G.R. No. 160619, 09 September 2015, 770 SCRA 162.

³² *People v. Andrade, et al.*, G.R. No. 187000, 24 November 2014, 741 SCRA 460.

³³ *People v. Agramon*, G.R. No. 212156, 20 June 2018.

As regards the qualifying circumstance of treachery, it is settled that the same must be proven by clear and convincing evidence. There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.³⁴

In the instant case, the prosecution was able to establish that the killing of Melchor was attended with the qualifying circumstance of treachery. The testimonies of the witnesses of the prosecution established that the victim was merely standing, observing the dance party, and enjoying the *fiesta* celebration, when the accused-appellant suddenly approached him unprovoked, without warning and swiftly and deliberately shot him, giving him no chance to defend himself, retaliate, or escape. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving him of any chance to defend himself and thereby ensuring its commission without risk to the aggressor.³⁵ This is clearly present in the instant case.

Indeed, the CA correctly appreciated the aggravating circumstance of treachery. Hence, the CA did not commit any reversible error in affirming the findings of the RTC that accused-appellant is guilty of the crime of murder beyond reasonable doubt.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. Accordingly, the Decision dated 26 September 2017 of the Court of Appeals in CA-G.R. CR-HC No. 06835, finding accused-appellant Gerardo V. Dela Peña guilty of the crime of Murder under Article 248 of the Revised Penal Code, is **AFFIRMED** *in toto*.

SO ORDERED." (Leonen, J., *on official business.*)

Very truly yours,

Misael D C Batt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
gmc
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³⁴ Art. 14(16), Revised Penal Code.

³⁵ *People v. Bugarin*, G.R. No. 224900, 15 March 2017.

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