



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** which reads as follows:*

**“G.R. No. 205568 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. ROLANDO MORALES RABANG a.k.a. “BUNTOT”, accused-appellant).** – This resolves an appeal from the Decision<sup>1</sup> dated April 19, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04776, which affirmed with modification the Decision<sup>2</sup> dated September 21, 2010 of the Regional Trial Court (RTC) of Pasay City, Branch 108, in Criminal Case No. 07-1742 CFM, finding accused-appellant Rolando Morales Rabang (Rabang) guilty beyond reasonable doubt of murder.

**Facts**

In an Information<sup>3</sup> filed before the RTC of Pasay City, Rabang was charged with murder, allegedly committed as follows:

That on or about the 4<sup>th</sup> day of March 2007, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with treachery, evident premeditation and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously and treacherously sho[o]t Antonio G. Cortes [(Cortes)] with a gun on the head, thereby causing the victim’s subsequent and untimely death.

Contrary to law.<sup>4</sup>

- over – twelve (12) pages ...

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<sup>1</sup> *Rollo*, pp. 2-21; penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Vicente S.E. Veloso and Angelita A. Gacutan.

<sup>2</sup> *CA rollo*, pp. 43-46; penned by Judge Maria Rosario B. Ragasa.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.*

During arraignment, Rabang pleaded “not guilty” to the crime charged. After termination of the pre-trial, a full-blown trial ensued.<sup>5</sup>

The prosecution’s evidence, as summarized by the RTC, are as follows:

“x x x at around 7:00 o’clock in the evening of March 4, 2007, witness for the prosecution Randy Miranda y Calabroso [(Calabroso)], 30 years old, single and residing at #69 C. Unida St., Baclaran, Paranaque City, testified that he was walking along Comet St., situated at Don Carlos Village, Pasay City, on his way home. While walking along Comet Street, he saw an unusual incident. He saw Rolando Rabang shot x x x Corte[s]. He was about 8 to 10 meters away from [Cortes] and [Rabang]. The place where [Rabang] shot [Cortes] was well[-]lighted by a lamppost in the area. At that time x x x Cortes was driving his tricycle near the church when suddenly x x x Rabang came out and shot x x x Cortes at the back of the head. From the way he saw it, x x x Rabang embraced x x x Cortes from the back and shot him using his right hand. Afterwhich, [sic], x x x Rabang ran away to the tracks of the LRT. On cross-examination, witness Calabroso stated that he personally knew x x x Cortes, because they were neighbors. Likewise, he also knew x x x Rabang, being a tricycle driver. That from the time he saw the victim x x x Cortes only seconds have lapsed after he saw the gunman x x x Rabang.

Second prosecution witness was Anna Castillo Cortes [(Anna)]. She is 40 years old, married, [b]usinesswoman, residing at Lot 10 Blk. 14 Don Carlos Village, Pasay City. She was on her way to a church at Cometa Street when x x x Rabang, also known as “BUNTOT” grabbed x x x Cortes by the neck and the latter was shot at close ranged [sic] at the back of the ear. Prior to the shooting, there was an altercation between accused x x x Rabang and x x x Cortes in the morning, as conveyed to her by the latter. After accused Rabang shot x x x Cortes, the former ran away towards the direction of the LRT railroad tracks. She also saw that the gun used in the shooting of Cortes was a short gun wrapped in a cloth. After x x x Cortes was shot[,] he slumped towards the handle bar of the tricycle. She then tried to lift x x x Cortes, and while lifting, the latter to her in a whisper “BINARIL AKO NI BUNTOT, SUMAKLOLO KA”. After that, she ran towards their house and summoned her nephew, Mark Vallecera. They immediately brought Cortes to San Juan De Dios Hospital where he died. She repeated that it was x x x Rabang alias BUNTOT shot x x x Cortes. She saw it very well because the area where x x x Cortes was shot was illuminated by a lamppost. On cross-examination, she told the Court that she was nervous she saw the actual killing.

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<sup>5</sup> Rollo, p. 3.

Third witness for the prosecution was Dulcesima Tendenilla. She testified that she is 34 years old, married, residing at Blk. 7 Lot 14 Don Carlos Village, Pasay City. She stated that victim x x x Cortes is her brother and he died on March 5, 2007 due to a gunshot wound [i]nfllicted by x x x Rabang. She also testified that x x x Cortes has a live-in partner named Lucia dela Cruz and they had a nine (9) year old daughter. That after the death of x x x Cortes his daughter was already in the custody of another brother. For the hospitalization cost of x x x Cortes, they spent a total of Php 261,921.91. She showed before the Court the official receipts and statement of account to support the amount marked as Exh. "C", "C-1" to "C-7" for the prosecution. They were not asking for money but they just want justice for their brother.

The fourth witness for the prosecution was Dr. Voltaire Nulod, resident of Malugay St., San Antonio Village, Makati City and Chief Medico-Legal Division, PNP Crime Laboratory, Makati City. He testified that the cause of death of victim x x x Cortes was bleeding-hemorrhage caused by a gunshot wound at the right occipital "malapit sa batok". He prepared the medico legal report and anatomical sketch of the victim. That the Medico Legal Report No. M-112-07 was marked as Exh. "E" and "E-1", and the Anatomy Sketch as Exh. "E-2".<sup>6</sup>

On the other hand, the defense evidence, as summarized by the RTC, are as follows:

The defense presented Justin Buenavides. He testified that he is 17 years old, single, with residence and postal address at Blk. 11 Lot 13 Comet St., Don Carlos Village, Pasay City; that he testified that last March 4, 2007 at around 7:00 o'clock in the evening, he was at the side of the church of Our Lady of Fatima waiting for the distribution of foods from the church. He said that he was in the company of one John John and Geelan. While at the side of the church they did not notice anything unusual. The Prosecuting Fiscal did not cross-examine the witness.

The accused testified. He stated that his name is x x x Rabang and he is 36 years old, residing at 145 Zone 16, Blk. 21 Lot 2, Narra St., Sto. Nino, Pasay City, detention prisoner at the Pasay City Jail. He testified that on March 4, 2007, at around 7:00 o'clock in the evening he was at Baclaran selling fruits, since he is a sidewalk vendor. That in selling fruits he has a cousin who is his companion. At around 10:00 o'clock in the evening, he closed his store and went home. Before his arrest, he was a tricycle driver and the tricycle is owned by his live-in partner. He can't remember that he was at Don Carlos Village on March 4, 2007, at 7:00 o'clock in the evening. That Don Carlos Village is adjacent to Barangay Sto.

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<sup>6</sup> CA rollo, pp. 43-44.

Nino to where he resides. That he cannot estimate the distance of Don Carlos Village from Baclaran because he said “wala po akong hilig maggala.”<sup>7</sup>

On September 21, 2010, the RTC rendered a Decision,<sup>8</sup> finding Rabang guilty beyond reasonable doubt of the crime of murder, *viz.*:

WHEREFORE, accused ROLANDO RABANG is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify the victim for actual damages in the amount of Php261,921.91, and Php123,100.00, respectively, representing expenses during the wake and interment.

SO ORDERED.<sup>9</sup>

The RTC found that the prosecution successfully proved beyond reasonable doubt all the elements of the crime of murder, and that Rabang was guilty thereof. RTC gave credence to the testimonies of Randy Miranda y Calabroso (Randy) and Anna Castillo Cortes (Anna) that Rabang shot and killed Cortes with practically no means of defense. According to the RTC, the witnesses' positive identification of appellant as the assailant prevail over the defense of alibi interposed by the latter.<sup>10</sup>

On appeal to the CA, appellant faulted the trial court for giving full faith and credence to the testimonies of Randy and Anna, who positively identified him as the assailant of Cortes. Appellant questioned the RTC's findings on the following grounds: (i) one of the prosecution witnesses, Anna, is a biased witness, since she is the sister-in-law of the victim Cortes; (ii) the prosecution's claim of ill-motive on the part of the Rabang was left unsubstantiated by competent evidence since Anna's claim of previous altercation between appellant and the victim was hearsay by reason of Anna's lack of personal knowledge thereof; (iii) the conflicting testimonies of Anna and Randy on whether Rabang was wearing a bonnet at the time of the incident cast doubt on the identity of Rabang as the perpetrator of the crime; and, (iv) the alleged statement Antonio that “*binaril ako ni Buntot sumaklolo ka*” does not suffice to establish his identity as the perpetrator of the crime. Appellant likewise alternatively argued that assuming that he indeed killed Cortes, the alleged previous altercation between them was inconsistent with the prosecution's claim of treachery.<sup>11</sup>

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<sup>7</sup> Id. at 44-45.

<sup>8</sup> Id. at 43-46.

<sup>9</sup> Id. at 46.

<sup>10</sup> Id.

<sup>11</sup> Id. at 34-37.

In the assailed Decision<sup>12</sup> dated April 19, 2012, the CA affirmed the Decision of the RTC with modification only as to the award of damages, *viz.*:

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED. The Decision dated September 21, 2010 of the Regional Trial Court (RTC) of Pasay City, Branch 108, finding accused-appellant Rolando M. Rabang GUILTY beyond reasonable doubt of Murder as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery and sentencing him to suffer the penalty of *Reclusion Perpetua*, is AFFIRMED with MODIFICATION as to the award of damages. Accordingly, accused-appellant Rolando M. Rabang is ordered to pay the heirs of Antonio Cortes the following sums: a) Php248,411.82 as and for actual damages; b) Php75,000.00 as and for civil indemnity; c) Php50,000.00 as and for moral damages; and d) Php30,000.00 as and for exemplary damages.

SO ORDERED.<sup>13</sup>

The cases are now elevated to the Court for automatic review. Both the appellant and the Office of the Solicitor General waived the filing of supplemental briefs. Hence, the Court is confronted with the same issues raised before the appellate court.<sup>14</sup>

### Our Ruling

We affirm the conviction of Rabang of the crime of murder.

Murder is defined and penalized under Article 248 of the Revised Penal Code, as amended, which provides:

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

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<sup>12</sup> *Rollo*, pp. 2-21.

<sup>13</sup> *Id.* at 20.

<sup>14</sup> *Id.* at 30-31; *Id.* at 37-39.

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.

In general, the elements of murder are: 1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and 4) that the killing is not parricide or infanticide.<sup>15</sup>

There appears no dispute regarding the presence of the first and fourth elements. The certificate of death<sup>16</sup> showing that Cortes died on March 5, 2007 from a gunshot wound on his head is part of the records of the case, thereby satisfying the first element. Similarly, uncontested is the fourth element that Cortes' killing does not constitute parricide or infanticide.

Thus, what is left to for this Court to belabor on are the second and third elements of the crime.

To prove that Rabang killed Cortes, the prosecution witnesses Randy and Anna gave first-hand accounts of the shooting incident, where they positively and categorically identified appellant as the one who shot Cortes. According to Randy, while he was walking along Comet Street on the night of the incident, he saw Cortes driving his tricycle near the church and suddenly, Rabang came out of hiding from a white van, embraced Cortes from the back, and then shot the victim using his right hand, which was then wrapped in a towel. Anna corroborated Randy's testimony by narrating that she was on her way to church at Comet Street when she saw Rabang grab Cortes by the neck and shoot the latter at the back of the ear. Anna further testified that after Cortes was shot, the latter slumped towards the handle bar of his tricycle and when she tried to lift him up, Cortes whispered "*binaril ako ni Buntot sumaklolo ka.*"

The RTC and CA found the eyewitnesses' accounts worthy of belief.

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<sup>15</sup> *People v. Aquino, et al.*, 829 Phil. 477, 485 (2018).

<sup>16</sup> Records, p. 73.

It is jurisprudentially settled that when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case. This is so because the trial court has the unique opportunity to observe the demeanor, conduct and attitude of witnesses under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.<sup>17</sup>

Appellant did not offer any substantial reason to warrant deviation from the above well-known rule. Thus, the Court finds no cogent reason to disturb the credence accorded by the lower courts to the prosecution's version of facts.

On this score, it behooves this Court to discuss the challenges interposed by the appellant to discredit the prosecution witnesses and their testimonies, and our reasons for rejecting them.

First, the imputation of bias to Anna because of her relationship with the victim must necessarily fail. Relationship by itself does not give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies. The relationship of a witness to the victim would even make her testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime to charge and prosecute another person other than the real culprit. Relatives of victims of crimes have a natural knack for remembering the faces of the attacker and they, more than anybody else, would be concerned with obtaining justice for the victim by having the felon brought to justice and meted the proper penalty. Where there is no showing of an improper motive on the part

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<sup>17</sup> *People v. Pulgo*, 813 Phil. 205, 212 (2017).

of the prosecution's witnesses for testifying against the appellant, their relationship to the victim does not render their testimony less credible.<sup>18</sup>

In this case, since there is no showing of any ill or improper motive on the part of Anna to testify against the accused, her relationship with the victim even made her testimony more credible and truthful. Furthermore, Anna's testimony was corroborated on its material points by the testimony of Randy, on whose part no bias nor ill motive was imputed to falsely testify against appellant.

Second, the alleged discrepancy between Anna's and Randy's testimonies relative to the description of the assailant—whether he was wearing a bonnet—is too trivial to altogether impair the credibility of the witnesses' testimonies and to cast doubt on their identification of the accused as the malefactor. It does not detract from the fact that both witnesses positively saw Rabang as the assailant of Cortes, for that even in Randy's version that appellant was wearing a bonnet, the latter was said to have taken it off immediately after shooting the victim, which enabled the witness to determine his identity, viz.:

Q When you saw the gunman he was initially wearing a bonnet?

A Yes, ma'am.

Q And then you said after he shot Antonio Corte[s], he removed his bonnet?

A Yes, ma'am.

Q And how long did it take the accused to remove his bonnet after he shot the victim?

A Right after he shot the victim, he looked around and removed his bonnet.

Q So, you are trying to impress this Honorable Court, Mr. Witness, that despite the fact that there were other people outside or within the vicinity, the alleged gunman took off his bonnet right after he shot the victim, is that correct?

A Yes, ma'am, and then he ran [a]way.<sup>19</sup>

Third, appellant's contention that the victim's statement "*binaril ako ni Buntot sumaklolo ka*" is not a reliable evidence of identification since it was not established that Rabang was also known as "Buntot" is bereft of merit. As pointed out by the CA, Anna

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<sup>18</sup> *People v. Dayaday*, 803 Phil. 363, 371-372 (2017).

<sup>19</sup> TSN dated May 25, 2009, p. 10.



testified that the person nicknamed “Buntot” and appellant Rabang are one and the same.<sup>20</sup>

Lastly on this point, that the prosecution failed to prove appellant’s motive for killing Cortes is inconsequential. Time and again, we have ruled that motive is irrelevant when the accused has been positively identified by an eyewitness.<sup>21</sup>

Proceeding from the foregoing considerations, the second element of the crime of murder was met.

Anent the third element, the existence of any of the circumstances enumerated in Article 248 is determinative of whether appellant shall be liable for murder or homicide.<sup>22</sup> In this case, the qualifying circumstance of treachery was sufficiently proven.

A treacherous 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>23</sup> Thus, 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>24</sup>

In this regard, we quote with approval the disquisition of the CA on how the presence of treachery was demonstrated in this case, viz.:

x x x 1) accused-appellant hid himself in white van and waited for the victim Cortes to arrive; 2) accused-appellant wrapped his right hand with a towel in order to conceal the gun that he was carrying; 3) accused-appellant attacked the victim in a surprise by embracing him (Cortes) from the back; and 4) accused-appellant gave victim Cortes no opportunity to defend himself and ensured that the victim will not survive by shooting him (Cortes) at the back of his head.

x x x accused-appellant's actuation, from the time he hid himself in a white van, up to the time he shot and killed the victim show that accused-appellant Rabang resolved to commit murder,

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<sup>20</sup> TSN dated March 16, 2009, p. 15.

<sup>21</sup> *People v. Gaborne*, 791 Phil. 581, 594 (2016).

<sup>22</sup> *People v. Torres*, G.R. No. 241012, August 28, 2019.

<sup>23</sup> Id.

<sup>24</sup> Id.

calculated his every move and plan[ned] the time of the attack in order to make it certain that he would be successful in killing the victim.<sup>25</sup>

Appellant, obviously clutching at straws, argues that assuming that he indeed shot Cortes, the killing was not attended by treachery. Citing the case of *People v. Antonio*,<sup>26</sup> appellant implies that since the prosecution claims that there was a prior verbal altercation between him in Cortes, the qualifying circumstance of treachery cannot be appreciated, considering that the victim is already forewarned and could have anticipated the aggression of the accused.

Rabang's reliance on *Antonio* is misplaced. In that case, the altercation between the victim and the accused immediately preceded in the attack, such that there was an unbroken sequence of events from the time of the altercation until the time that the assailant shot the victim. Thus, the Court held that the argument precluded the presence of treachery since a person who, in the heat of passion, loses his reason and self-control, cannot consciously employ a particular means, method or form of attack in the execution of the crime.<sup>27</sup>

The circumstances of this case clearly differ from the factual milieu of *Antonio*. In this case, the unbroken chain of events that lead to the shooting of Cortes did not involve any altercation, based on the account of the witnesses. Suffice it to state, the alleged prior altercation, if any, between the parties did not immediately precede the shooting incident so as to forewarn the victim of an impending aggression against him.

All told, the Court finds that the killing of Cortes is qualified by treachery, which rendered Rabang, as the perpetrator, guilty of the crime of murder.

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.<sup>28</sup>

With respect to Rabang's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the

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<sup>25</sup> *Rollo*, p. 15.

<sup>26</sup> 390 Phil. 989 (2000).

<sup>27</sup> *Id.* at 1020.

<sup>28</sup> *People v. Torres*, *supra* note 22.

imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, as in this case, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.<sup>29</sup> In conformity with the foregoing rule, the awards granted by the lower courts must, therefore, be modified. Thus, the award of moral and exemplary damages should be increased from ₱50,000.00 and ₱30,000.00, respectively, to ₱75,000.00 each. The award of ₱75,000.00, as civil indemnity, and ₱248,411.82, as actual damages, are sustained.

Finally, an interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded from the time of finality of this Resolution until fully paid.<sup>30</sup>

**WHEREFORE**, the appeal is **DENIED**. The Decision dated April 19, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04776 is **AFFIRMED with MODIFICATION**. The moral and exemplary damages awarded to the heirs of Antonio G. Cortes are increased to ₱75,000.00 each. All damages shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *8/21/20*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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<sup>29</sup> *People v. Jugueta*, 783 Phil. 806, 840 (2016).

<sup>30</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013).



The Solicitor General  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 04776)

The Hon. Presiding Judge  
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1300 Pasay City  
(Crim. Case No. 07-1742-CFM)

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