



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 238120

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

- versus -

RICO DELA PEÑA,*
Accused-Appellant.

Promulgated:

12 FEB 2020

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DECISION

INTING, J.:

Treachery attends the killing where the accused attacks the victim while the latter is asleep and unable to defend himself. Absolutely, a sleeping victim is not in a position to defend himself, take flight or otherwise avoid the assault, thus ensuring that the crime is successfully executed without any risk to the attacker.¹

* Referred to as De La Peña in some parts of the rollo.

¹ *People v. Caritativo*, 451 Phil. 741, 769 (2003).

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The Court is now asked to decide on Appeal² the Decision³ dated October 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02163, which affirmed the Judgment⁴ dated October 28, 2015 of Branch 45, Regional Trial Court (RTC), Bais City, in Criminal Case No. 11-94-MY, finding Rico Dela Peña (accused-appellant) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The case arose from an Information⁵ charging accused-appellant with the crime of Murder committed as follows:

That on or about 5:30 o'clock in the afternoon of December 14, 2006, at Barangay Samak, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, without any just motive, with treachery, and with intent to kill his brother in law, OLIPIO GOMEZ AMAHIT, assault, attack, and stab said Olipio Gomez Amahit with a "*pinuti*", thereby inflicting upon him multiple stab wounds on his body, which directly caused the death of said Olipio Gomez Amahit, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery, and aggravated by relationship under Article 15 of the RPC, the accused being the brother in law of the victim.⁶

The antecedents as culled from the CA Decision and records of the case are summarized as follows:

Ernie D. Amahit (Ernie), son of the victim Olipio G. Amahit (Olipio), testified that in the afternoon of December 14, 2006, he went to their *nipa* hut after tending to their carabaos. When he was a few meters away, he saw accused-appellant enter the *nipa* hut where his father was sleeping. Olipio was lying face down when accused-appellant stabbed him at the back with a *bolo* locally known as "*pinuti*." He heard his father shout for help while he watched accused-appellant stab the former several times. Accused-appellant then threatened to kill Ernie prompting him to run towards home to tell his mother about the incident.⁷

² See Notice of Appeal dated November 21, 2017, *rollo*, pp. 17-19.

³ *Id.* at 4-16; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

⁴ *CA rollo*, pp. 25-29; penned by Presiding Judge Candelario V. Gonzales.

⁵ Records, p. 1.

⁶ *Id.*

⁷ *Rollo*, p. 5.

For his part, accused-appellant alleged that at around 5:30 p.m. of December 14, 2006, while he was walking on the road on his way home, Olipio called and motioned him to come near him. Olipio then told accused-appellant about the banana plants that were uprooted. Accused-appellant inquired as to the reason for Olipio's action, but the latter simply told him not to get angry otherwise he would kill him. When accused-appellant answered "no," Olipio pulled out his *bolo* and thrust it towards him. They wrestled for the *bolo* and when accused-appellant got hold of it, he stabbed Olipio. He narrated that Olipio was first hit in the stomach but when they continued to grapple with each other, he continued to stab the latter. Thereafter, accused-appellant went to the house of his cousin.⁸

On October 28, 2015, the RTC rendered a Judgment⁹ finding accused-appellant guilty of Murder. It decreed:

WHEREFORE, premises considered, the prosecution having ably proven the guilt of accused RICO DE LA PEÑA for the crime of MURDER beyond reasonable doubt, he is hereby sentenced to RECLUSION PERPETUA with the accessory penalties of the law, and is ordered to pay the heirs of the victim the sum of P20,000.00 as actual damages, and P50,000.00 as death indemnity.

SO PROMULGATED IN OPEN COURT this 28th day of October, 2015 at Bais City, Philippines.¹⁰

The RTC gave credence to the testimony of Ernie who actually saw appellant stab his father with a *pinuti* several times at his back while the latter was sleeping lying face down on the floor. According to the RTC, it is an act of treachery to the highest form when one attacks a person who was sleeping. It gives no chance to the victim to defend himself thereby ensuring the evil motive of killing the victim.¹¹

On appeal, the CA affirmed the conviction by the RTC:

WHEREFORE, the 28 October 2015 Decision of the Regional Trial Court (RTC), Branch 45, Bais City in Criminal Case No. 11-94-MY finding accused-appellant RICO DE LA PEÑA, guilty of Murder is AFFIRMED. With respect to the penalty of *reclusion perpetua* imposed upon him, accused-appellant shall be ineligible for parole

⁸ *Id.* at 5-6.

⁹ *CA rollo*, pp. 25-29.

¹⁰ *Id.* at 29.

¹¹ *Id.* at 28.

pursuant to RA No. 9346. The accused-appellant is ordered to pay the heirs of the victim, P100,000.00 as civil indemnity, P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% per *annum* from the date of the finality of this Decision until fully paid.

With costs against accused-appellant.

SO ORDERED.¹²

The CA concluded that the physical evidence presented including the location of the stab wounds contradict accused-appellant's claim that Olipio was the unlawful aggressor. The depth and seriousness of the wounds suffered by the victim prove that the stabbing blows were not inflicted by accused-appellant as a matter of defense but more to be taken as acts of aggression towards Olipio.¹³

Hence, this appeal.

After a careful review of the records of the case and the issues submitted by the parties, the Court finds that the CA committed no error in concluding that accused-appellant is indeed guilty of the crime of Murder. The issues and matters before the Court are the same issues raised in the CA, there being no supplemental briefs filed. They were sufficiently addressed and correctly ruled upon by the CA.

First, it has been held that when the issue involves matters like credibility of witnesses, the calibration of their testimonies as well as the assessment of the probative weight thereof, findings of the trial court and its conclusions anchored on said findings are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to closely monitor the demeanor of witnesses during the trial and is in the best position to discern whether they are telling the truth.¹⁴ There being no showing that the RTC misconstrued or misapprehended any relevant fact in this case, the Court gives full respect to its findings and conclusion, which were sustained on appeal by the CA, supporting accused-appellant's conviction for Murder.

¹² *Rollo*, pp. 15-16.

¹³ *Id.* at 11.

¹⁴ See *People v. Sota*, G.R. No. 203121, November 29, 2017, 847 SCRA 113, 127-128, citing *People v. Dayaday*, 803 SCRA 363, 370-371.

Second, credence is accorded to the testimony of Ernie, who positively identified accused-appellant as the one who stabbed his father. The alleged inconsistency between Ernie's affidavit and his testimony in open court does not affect his credibility as it does not detract from the fact that he saw and identified accused-appellant as the assailant of his father. Verily, 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.¹⁵

Third, by invoking the justifying circumstance of self-defense, accused-appellant thus admits committing the acts constituting the crime for which he was charged and the burden of proof is on him to establish, by clear and convincing proof, that (1) there was unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel it; and (3) the lack of sufficient provocation on the part of the person defending himself.¹⁶

The prosecution's material witness, Ernie, clearly described how accused-appellant stabbed his father to death. He recalled:

PROS. YBANEZ:

x x x x

Q: While approaching the said nipa hut was there any unusual incident that you observe or witness?

A: Yes.

Q: What is that unusual incident?

A: He stabbed my father.

Q: **When you say he stabbed your father, who stabbed your father?**

A: **Referring to Rico.**

Q: **May we know the family name of this Rico?**

A: **Dela Peña.**

Q: Is he inside this courtroom?

A: Yes.

Q: Can you please point to him.

¹⁵ See *Ocampo v. People*, G.R. No. 242911, March 11, 2019 citing *People vs. Yanson*, 674 Phil. 169, 180 (2011).

¹⁶ See *People v. Vega*, G.R. No. 216018, March 27, 2019.

A: (Witness pointing to a person who when asked of his name answered Rico Dela Peña).

Q: How far were you when you see this Rico Dela Peña stabbed you, father?

A: Just near.

x x x x

Q: And, when this Rico Dela Peña stabbed your father where was your father situated and what was he doing?

A: My father was asleep during that time.

Q: Where was he sleeping?

A: Inside the nipa hut.

Q: And, what was the position of your father while he was sleeping?

A: He was lying face down.

x x x x

Q: Can you recall how many times this Rico Dela Peña stabbed your father?

A: Many times.

x x x x

Q: And, what weapon did Rico Dela Peña use in stabbing your father?

A: A long bolo locally known as "*pinuti*".

Q: The first time that your father was stabbed by Rico [,] what happened to your father?

A: My father shouted.

Q: And, can you remember what was the shout of your father?

A: He shouted for help.

Q: And, what did you do after seeing that your father was stabbed by Rico?

A: I was just watching.

Q: You said a while ago that your father was stabbed by Rico many times. After that what happened if any?

A: He said that he will include us.

Q: After hearing this, what did you do?

A: We ran away.¹⁷ (Emphasis supplied.)

This narration was corroborated by the result of the Post-Mortem Examination¹⁸ showing that Olipio sustained several wounds on his back, to wit:

| Location | Findings |
|--|--|
| Right upper chest. | Five inches long, diagonal anterior ribs open to four inches long, heart and other internal organs can be seen through the wound. |
| Along anterior axillary line or three inches below the nipple. | Two inches long, vertical, deep and penetrating. |
| Anterior side of the right forearm. | Cutting up to subcutaneous tissue. |
| Below right scapula. | Five inches long with one inch abrasion tail, widely gaping, width about two inches, posterior ribs open to two inches long, deep and penetrating. |
| Above left iliac crest along posterior axillary line. | Four inches long, vertical, deep, large intestine partly herniated. |
| V-shaped wound on the posterior side of left thumb. | Cutting tissue up to muscles. |
| One inch below shoulder blade. | Four inches long, deep, reaching muscles. |
| Along right posterior axillary line. | One inch long, superficial. |
| Posterior side of Right forearm. | Horizontal, two inches long, reaching muscles and tendon. |
| Posterior side of hand. | $\frac{3}{4}$ inch long diagonal, cutting up to subcutaneous tissue. |

¹⁷ TSN, May 5, 2014, pp. 4-6.

¹⁸ Records, p. 8.

The nature, character, location and extent of these wounds belie accused-appellant's claim that Olipio attacked him with a *bolo*; and it was in self-defense that after wresting the *bolo* from the victim, accused-appellant used it against the latter. The appearances of the wounds on the victim's heart, his internal organs and large intestine contradict accused-appellant's defense that he had only hit Olipio twice in the stomach and that after the second blow, both of them fell and rolled on the ground which caused the wounds at the back.¹⁹

Assuming that Olipio was the aggressor, it is nevertheless apparent that at the time he was killed, the danger to accused-appellant had already ceased. Notably, even after taking full control of the *bolo*, he attacked the victim several times and stabbed him to death. Settled is the rule that when the unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed.²⁰

Both the RTC and the CA properly ruled that treachery qualified the killing to murder.

In *People v. Clariño*,²¹ the Court discussed that the lower court correctly appreciated the circumstance of treachery since the victim was asleep at the time of the assault.²² Accordingly, the essence of treachery is the sudden and unexpected attack by an aggressor of an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby insuring its commission without risk to the aggressor.²³

Similarly, in *People v. Caritativo*,²⁴ accused-appellant was found guilty of the crime of murder for the death of Expidito Mariano. In affirming the conviction of accused-appellant, the Court stressed that treachery attended the killing of the victim as the latter was attacked while he was asleep. A sleeping victim is not in a position to defend himself, take flight or avoid the assault, thus ensuring that the crime is successfully executed without any risk to the latter.

¹⁹ *Rollo*, p. 11.

²⁰ See *People v. Casas*, 755 Phil. 210, 220 (2015).

²¹ 414 Phil. 358, 377 (2001).

²² *Id.* citing *People v. Barquilla*, 319 Phil. 302 (1995).

²³ *Id.* at 37, citing *People v. Vermudez*, 361 Phil. 952 (1999).

²⁴ *People v. Caritativo*, *supra* note 1.

In this case, Ernie categorically stated that his father was sleeping inside the *nipa* hut when accused-appellant stabbed him using a “*pinuti*”. Olipio was lying on his stomach, with his face down, and it was in that position that he was killed by accused-appellant. Under such circumstance, there is no doubt that he was not in a position to put up any form of defense against his assailant.²⁵

Lastly, under Section 6, Rule 110 of the Rules on Criminal Procedure, the Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, as well as the place of the offense. To the Court’s mind, the Information herein complied with these conditions since the qualifying circumstance of “treachery” was specifically alleged in the Information. In fact, it bears emphasis that accused-appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him due to the insufficiency of the Information.

In *People v. Galido*,²⁶ it was held that the failure to allege the element of force and intimidation in an information for rape is not a fatal omission that would deprive the accused of the right to be informed of the nature and cause of accusation against him. While the information failed to allege this element, the complaint stated the ultimate facts which constitute the offense. Since the complaint forms part of the records and is furnished the accused, the latter may still suitably prepare his defense and answer the criminal charges hurled against him.²⁷

Furthermore, in *People v. Candaza (Candaza)*,²⁸ the Court declared that an information which lacks the essential allegations may still sustain a conviction if the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein.²⁹ Section 9 of Rule 117 of the same Rules reads:

SEC. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the

²⁵ See *People v. Abaño*, 659 Phil. 25, 29 (2011).

²⁶ 470 Phil. 345 (2004).

²⁷ *Id.* at 356-358.

²⁸ 524 Phil. 589 (2006).

²⁹ *Id.* at 599.

same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

More recently, in *People v. Solar (Solar)*,³⁰ the Court found that the accused-appellant has waived his right to question the defects in the Information filed against him. It observed that the accused-appellant did not question the supposed insufficiency of the Information through either a motion to quash or motion for bill of particulars. He also voluntarily entered his plea during the arraignment and proceeded with the trial. As such, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. Simply put, the accused-appellant is deemed to have understood the acts imputed against him by the Information and the appellate court erred in modifying his conviction in the way that it did when he had effectively waived the right to question his conviction on that ground.

In accused-appellant's case, the defense not only failed to question the sufficiency of the Information at any time during the pendency of the case before the RTC, it even allowed the prosecution to present competent evidence, proving the elements of treachery in the commission of the offense. At this point, as in *Candaza* and *Solar*, herein accused-appellant is deemed to have waived any objections against the sufficiency of the Information.³¹

As to the penalty imposed, the RTC and CA were both correct in imposing the penalty of *reclusion perpetua*, together with the accessory penalty provided by law, instead of death considering that the latter penalty has been suspended by Republic Act No. (RA) 9346. As to the award of damages, the modifications made by the CA already conform to the latest jurisprudence on the matter. *People v. Jugueta* holds:³²

In summary:

I. For those crimes like Murder, Parricide, Serious intentional Mutilation, Infanticide, and other crimes involving death of a victim where the penalty consists of indivisible penalties:

³⁰ G.R. No. 225595, August 6, 2019.

³¹ See *People v. Asilan*, 685 Phil. 633, 651 (2012), citing *supra* note 28 at 689.

³² 783 Phil. 806, 843, (2016). See also *People v. Layug*, 818 Phil. 1021 (2017).

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346:

- a. Civil indemnity - ₱100,000.00
- b. Moral damages - ₱100,000.00
- c. Exemplary damages - ₱100,000.00

Thus, when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua*, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages in view of the heinousness of the crime and to set an example.³³ In the present case, other than treachery which was used to qualify the killing, the special aggravating circumstance of relationship was specifically alleged in the information and the accused-appellant did not deny that he is the victim's brother-in-law, a relative by affinity within the second civil degree.

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision dated October 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02163 finding accused-appellant Rico Dela Peña guilty beyond reasonable doubt of the crime of Murder is hereby **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

³³ *Id.* at 843.



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

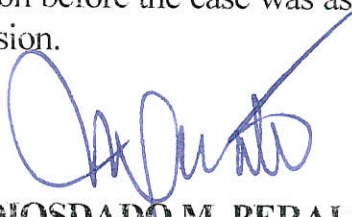
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior 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

