

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN MARCELLA, ACCUSED- APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Allan Marcella appeals[1] the November 3, 2010 Joint Decision[2] of the Regional Trial Court (RTC), Branch 59, San Carlos City, Negros Occidental, convicting him of murder in Criminal Case No. RTC-1786. The dispositive portion of the decision reads:

“WHEREFORE, in view of the foregoing the Court hereby renders judgment:

1. In Criminal Case No. RTC-1786, finding accused ALLAN MARCELLA “GUILTY” beyond reasonable doubt for the crime of Murder qualified by evident premeditation as defined and penalized under Article 248 of the Revised Penal Code and taking into consideration the presence of the aggravating circumstance of treachery and Republic Act No. 9346 which prohibits the imposition of the Death Penalty and applicable jurisprudence, hereby imposes upon him the penalty of Reclusion Perpetua without the possibility of parole and with the accessory penalties for Death.

He is likewise ordered to pay the heirs of Francisco Beatingo, Sr. the following amounts:

1.1 Seventy Five Thousand (P75,000.00) Pesos as indemnity for death.

1.2 Fifty Thousand (P50,000.00) Pesos as moral damages and

1.3 Cost of suit.

It appearing that accused Allan Marcella is a detention prisoner, he is given full credit for the period of his detention provided that he has complied with the rules and regulations of the place where he is presently detained.

In Criminal Case No. RTC-1787, finding accused ALLAN MARCELLA “NOT GUILTY” due to insufficiency of evidence.

The Jail Warden, Escalante City Jail is directed to immediately RELEASE the accused from detention only insofar as this case is concerned and unless held for some other lawful cause or causes.

Lastly, it appearing that accused Roger Pabon is still at large, let a Warrant of Arrest immediately issue against him. Let these cases be sent to the files, there to remain until he is apprehended and brought to court.

SO ORDERED.”

ANTECEDENTS

On January 20, 1999, Allan Marcella (accused-appellant) and a certain Roger Pabon were charged of Murder. The accusatory portion of the Information docketed under Criminal Case No. RTC-1786 states:

“That on or about the 28th day of November, 1995, in the Municipality of Escalante, Province of Negros

Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first above-named accused, in company of his co-accused, who is still at large, armed with guns, conspiring and confederating and helping each other, with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one FRANCISCO BEATINGO, SR., thereby inflicting a gunshot wound upon the body of the latter which caused his death.

CONTRARY TO LAW.”

The case was revived after the accused-appellant was arrested on November 3, 1998[3]. He entered a plea of “NOT GUILTY” during the arraignment on February 25, 1999[4].

Evidence for the Prosecution[5]

The prosecution presented Jessiebel Ausa, Anabella Lumacao, Dr. Elena Yap and Francisco Beatingco, Jr., whose testimonies can be summed up as follows, to wit: Jessiebel Ausa is the daughter of victim Francisco Beatingo Sr. and sister of victim Francisco Beatingco, Jr. In the evening of November 28, 1995 while she was selling softdrinks in front of the dance hall at Sitio Cagay IV, Brgy. Buenavista, Escalante, she was told by a person to go find her father as there are persons who are planning to kill him. Upon hearing that information, she immediately proceeded to the house of Evangeline Gale where she saw a group of persons surrounding her father. She then saw accused Allan Marcella shoot her father at close range using an improvised shotgun. When her father fell down, her brother Francisco Beatingo, Jr. tried to help him, but he was likewise shot by accused Roger Pabon. After the shooting incident, the two accused together with their companions fled the scene. Her father was brought to the Vicente Gustillo District Hospital where he was declared dead and her brother was brought to the Sagay Foundation Hospital, where he received medical attention. She further testified that the shooting was because of a grudge nursed by the Marcella family against her father as the latter was the one who encouraged the family of her cousin Sonny Santi to file a criminal case against Allan Marcella, who was pointed to as one who killed him. The case was eventually dismissed as a settlement was reached between the parties.

Anabella Lumacao testified that she is acquainted with accused Marcella as they live in the same barangay. On November 28, 1995 at about 7:30 that evening, she was at the fiesta celebration of Sitio Cagay IV, Brgy. Buenavista when she saw accused Marcella shoot Francisco Beatingo, Sr. at point blank range with an improvised firearm described as a water pipe. She further demonstrated that accused Marcella shot the victim on his right temple by giving the pipe a hard tap which caused it to eject bullet. After the victim was hit, he fell to the ground and his son was also shot by Roger Pabon when he tried to help his father. After the shooting, accused together with their companions ran off bringing their weapons with them. She corroborated the testimony of Jessiebel Ausa that to her knowledge, the elder and younger Marcella carried a grudge against the elder Beatingo as they were made to pay a certain sum of money to have a case filed the relatives of the Beatingos against the younger Marcella dismissed.

Dr. Elena Yap testified that: She was the Rural Health Physician of the Municipality of Escalante when the incident happened. As such, she was the one who performed the Post Mortem Examination on the victim Francisco Beatingo, Sr. She found that the deceased suffered a gunshot wound at the right parietal area of the head about two (2) inches from his ear. She also noticed powder burns around the entrance wound and burnt hair. This fact indicates to her that the shot was fired at close range. She likewise issued the Certificate of Death showing the cause of death as Hemorrhage secondary to gunshot wound.

Lastly, Francisco Beatingo, Jr. testified that: He is acquainted with accused Marcella as they live in the same barangay. In the evening of November 28, 1995, while he was attending the fiesta celebration of Sitio Cagay IV, Brgy. Buenavista, a friend approached him and told him to look for his father as there are people planning to kill him. Immediately after hearing that, he went in search of his father and found him under the house of one Evangeline Gale. Upon seeing his father, he bent down and whispered, “Father, let us go home because

there are people who are trying to kill you.” But when he was already outside and about to straighten up from his bent position, he saw five (5) persons surrounding him. He then saw accused Marcella approached his father with a “sulpak” which he used to shoot his father, hitting him in his head. When his father was hit, he fell to the ground. When he tried to go his father, he was also shot by Roger Pabon, hitting the left side of his stomach. After the shootings, the group run away. He lost consciousness and woke up at the hospital. According to him, he was first brought to the Magdalene Hospital but was transferred to the Foundation Hospital at Lopez, Sagay as the first hospital was not equipped to handle his injuries. It was at the second hospital where he was underwent an operation and was confined for twenty eight (28) days. He likewise identified a Medical Certificate issued by Dr. Roberto R. Ledesma, who was his attending physician. As to the medical expenses, he is not sure as to the total amount as it was his sister who spent for his hospital expenses. He also corroborated the testimony of his sister Jessibel Ausa and Anabella Lumacao on the bad blood between Francisco Beatingo, Sr., and Moises Marcella.

Evidence for the Defense[6]

On the other hand, the accused presented SPO1 Arthur Son, Remedios Berdensen, Eddie Alegato, SPO4 Sandy Escala and accused himself whose testimonies can be summed up as follows, to wit; SPO1 Son testified that he is the Admin PNCO of the Escalante City Police Office and as such he has custody of the Police Blotter. Pursuant to a subpoena sent him by the Court, he brought with him the Police Blotter bearing Entry No. 1788 dated November 29, 1995 0900H on page 0333 and certified true copy of the said extract which states: “Enrico Beatingo y Manlangat, 43 years old, married, former CVO resident of Sitio Cagay III, Barangay Langub, this municipality reported to this station that his father Francisco Beatingo SR., 63 years old and his brother Francisco Beatingo, Jr. were shot with the use of a handgun known as “sulpak” and .38 revolver by a certain Roger Pabon alias “Cabao” and alias “Canoy” all residents of Barangay Buenavista this Municipality on or about 382100H November 1995 at Sitio Cagay IV, Barangay Buenavista, this municipality, while the said place were having their fiesta celebration, complainant further stated that his father died 15 minutes after the incident. While his brother was rushed to the Foundation Hospital, Sagay, Negros Occidental for medical treatment. Suspect fled away after the incident. Motive-unknown-case referred to Investigation and Intel Section. Enrico Beatingo complainant and SPO12 Francisco Villar, Jr. Desk Officer”. On cross examination, said police officer likewise testified that there is another entry in the said police blotter regarding the same incident which is denominated as Entry No. 1877 dated December 15, 1995 reported by Jessibel Beatingo Ausa.

Remedios Berdensen testified that: In the evening of November 28, 1995 at about 7:00 o'clock, she was at under the house of Evangeline Gale taking shelter from rain. When she was there, she noticed a group of persons playing cara y cruz when she hear a gun fire and saw Francisco Beatingo, Sr., was hit at the right side of his head. She saw the person who shot the victim and cannot identify him as he is a stranger. She is likewise acquainted with accused Allan Marcella and stated that it was not him who shot the victim as the assailant was taller, bulkier and bigger than accused Marcella.

Eddie Alegato for his part testified that: On that particular evening, he was at the fiesta celebration and was playing caray cruz when he saw a big man approach the victim Francisco Beatingo, Sr. When he heard a shot, he and his companions all scampered away in fear. He likewise testified that he is acquainted with accused Marcella and that he is sure that it was not Marcella who shot the victim.

SPO4 Sandy Escala testified that as far as he knows there was no investigation conducted by the Escalante City PNP on the Police blotter report made by Enrico Beatingo as no investigation report, sketches and other evidences were turned over to him by the then chief of the investigation section.

Lastly, the accused testified that he is innocent of the charges filed against him. The charges against him are pure fabrications and that he even attended the wake of the victim Francisco Beatingo, Sr. as he considered him a “godfather”. He further stated that he was informed by Enrico Beatingo that his sister Jessibel Ausa

was in Manila and was not at the wake of their father. He also denies knowing prosecution witness Lumacao as she is not from their place.

On November 17, 2010, the trial court promulgated the Joint Decision convicting herein accused-appellant of Murder under Criminal Case No. RTC- 1786. Consequently, a Commitment Order[7] was issued to the Director of the National Bilibid Prisons on that date.

On this instant appeal, the accused-appellant on July 4, 2011 filed his Brief[8] with the following Assignment of Errors:

1. THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED -APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME CHARGE (sic) DESPITE THE UNREBUTTED AND UNCONTROVERTED POLICE REPORT MADE ON NOVEMBER 29, 1995 (A DAY AFTER THE INCIDENT) BY ENRICO BEATINGO, SON OF THE VICTIM FRANCISCO BEATINGO, SR., EVIDENCING AND POSITIVELY IDENTIFYING ROGER PABON ALYAS "CABAW" AS THE ONE AS THE ONE WHO SHOT FRANCISCO BEATINGO, SR..

2. THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME CHARGED, DESPITE THE UNREBUTTED AND UNCONTROVERTED TESTIMONIES OF DEFENSE WITNESSES REMEDIOS BERDENSEN, EDDIE ALIGATO AND ALLAN MARCELLA, THAT IT WAS NOT THE ACCUSED-APPELLANT WHO SHOT FRANCISCO BEATINGO, SR..

3. THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED, DESPITE THE TESTIMONY OF DR. ELENA U. YAP WHO CONDUCTED THE AUTOPSY OF THE BODY OF FRANCISCO BEATINGO, SR., THAT THE CAUSE OF DEATH OF THE VICTIM WAS DUE TO HEMORRHAGE DUE TO ONE GUNSHOT WOUND MEASURING TWO (2) CENTIMETERS AT THE RIGHT PARIETAL REGION OF THE HEAD OF THE VICTIM, CAUSED BY ONE BULLET, CLEARLY INDICATING THAT THE WOUND WAS NOT CAUSED BY A GUNSHOT FROM A HOMEMADE SHOTGUN OR "SULPAK". IT IS A FACT THAT A SHOTGUN "SULPAK" COULD INFLICT A MULTIPLE GUNSHOT WOUNDS.

4. THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE TESTIMONY OF ALLEGED PROSECUTION WITNESS JESSIEBEL BEATINGO Y AUZA, DESPITE THE UNREBUTTED AND UNCONTROVERTED TESTIMONY OF ACCUSED-APPELLANT THAT HE HAD ATTENDED THE WAKE OF FRANCISCO BEATINGO, SR. WHERE THE SON, ENRICO BEATINGO INFORMED HIM THAT HE HAD REPORTED TO THE POLICE THE SHOOTING OF HIS FATHER BY ROGER PABON ALYAS "CABAW", AND THAT JESSIEBEL BEATINGO Y AUZA WAS WAS STILL IN MANILA AT THE TIME OF THE INCIDENT.

5. THE TRIAL COURT LIKewise GRAVELY ERRED IN CONSIDERING PROSECUTION WITNESSES OF THEIR ALLEGED POSITIVE IDENTITY OF APPELLANT, WHEN AT THE TIME OF THE INCIDENT,

1) THERE WAS A HEAVY RAIN FORCING MANY PEOPLE TO TAKE SHELTER UNDER THE HOUSE EVANGELINE GALE.

2) THERE WAS A GAME OF CHANCE KNOWN AS THE "CARA Y CRUZ" BEING PLAYED UNDER THE HOUSE OF EVANGELINE GALE, WHERE MANY PEOPLE WERE SURROUNDING AND PLAYING, AND STILL MANY OTHERS WERE CLOSELY STANDING -TAKING SHELTER AS ONLOOKERS.

3) IT WAS SO DARK AND ONLY A SMALL LAMP GAVE LIGHT TO THE "CARA Y CRUZ" BEING PLAYED UNDER THE HOUSE OF EVANGELINE GALE.

WHICH FACTS MADE IT INCREDIBLE FOR THEM TO CLEARLY SEE AND POSITIVELY IDENTIFY THE ACCUSED-APPELLANT AS THE ONE WHO ALLEGEDLY SHOT AND KILLED FRANCISCO BEATINGO, SR.

On November 21, 2011, the Solicitor General filed Appellee's Brief[9].

OUR RULING

The appeal lacks merit.

The accused-appellant asserts that the trial court failed to consider that the evidence of the prosecution fell short of the quantum of evidence required to convict him, that is, proof of his guilt beyond reasonable doubt.

Murder is the crime that the accused-appellant is charged and of which he was convicted. Under Article 248 of the Revised Penal Code murder is the unlawful killing of a person, which is not parricide or infanticide. The presence of any of the circumstances in Article 248 of the Code such as treachery and evident premeditation, among others, qualify the killing into murder. The qualifying circumstances of treachery and evident premeditation happen to be alleged in the Information against the accused-appellant for murder.

Death of the victim and the perpetrator's identity must be proven beyond reasonable doubt.

Apropos of the above indictment for murder, the essential factum probans to establish the guilt of the accused-appellant is expressly laid in *People v. Edmundo Briones Aytalin*[10]. The criminal liability of appellant is clearly indicated by the definitive statements of prosecution witnesses who were able to describe with reasonable certainty the fact of the killing, as well as to identify him positively as the assailant. Their minor inconsistencies in reporting the injuries or gunshot wounds sustained by the victim were not at all essential in establishing the crime committed. Further, the Supreme Court reiterated what it held in *People v. Mario Serzo, Jr.*[11], that in a case of murder or homicide, it is enough that the death of the victim and the identity of the perpetrator be proven beyond reasonable doubt.

The accused-appellant claims that the evidence of the prosecution does not prove his identity as the assailant. This assertion is based on the following:

First, there is the police report made by Enrico Beatingo (victim's son) a day after the shooting that said that it was Roger Pabon alyas "Cabaw" who shot his father.

Second, there are the testimonies of defense witnesses- Berdensen, Aligato and accused-appellant himself that it was not he (latter) who shot the victim.

Third, there is the account of Dr. Yap who conducted the autopsy, that the cause of death was hemorrhage due to one gunshot wound at the right parietal region of the head of the victim. This allegedly indicates that the gunshot was not fired from a home-made shotgun or "Sulpak", as one shot from it could inflict multiple gunshot wounds.

Fourth, there is the assertion by the accused-appellant that when he visited the wake of the victim, he was told by Enrico that he reported to the police that Roger Pabon @ "Cabaw" was the assailant. In addition, the accused-appellant was told that the eyewitness Jessiebel Beatingo (Enrico's sister) was in Manila when the shooting occurred.

Fifth and last, the heavy rain, the many people who were gathered around the "cara y Cruz" and the small lamp providing the illumination, these are the attendant physical conditions that render as incredible, the positive identification made by prosecution witnesses of the accused-appellant as the perpetrator.

Our examination of the records of the case conveys to Us the unalterable fact that the prosecution witnesses Jessibel, Anabella and Francisco Jr., personally saw the actual shooting of Francisco Beatingo, Sr. These prosecution witnesses were situated in close proximity to the victim, under the house of Evangeline Gale. Their testimonies of the shooting, whether taken individually or collectively, demonstrate how the accused, armed with an improvised firearm described as a sulpak, shot the victim and then fled together with his companions from the locus criminis.

Francisco Beatingo, Jr., recounted to the trial court that his father was shot on that fateful night of November 28, 1995 and pointed to the accused-appellant as the one responsible in the shooting, viz:

Q "You said you know this Allan Marcella, if this Allan Marcella is in court, can you point him to us?

A Yes.

Q Please point him to us.

A (Witness pointing to the person who answered to the name Allan Marcella)

Q Could you tell this Honorable Court why do you know this Allan Marcella?

A Yes.

Q Why?

A We live in the same barrio.

x x x

Q Could you recall as to where were you on November 28, 1995 at about 7:00 in the evening?

A I was attending a fiesta.

Q Where was that fiesta?

A At Cagay IV?

x x x

Q While you were attending a fiesta in the evening of November 28, 1995 at about 7:30 o'clock, could you recall if somebody gave you a hint regarding your father, Francisco Beatingo, Sr.?

A Yes.

Q What was that?

A A friend of mine approached me and told me “Bay, look for your father because there are people planning to kill him”.

Q Now, upon hearing that information as you said, what did you do?

A I immediately look for my father.

Q In that same place of the fiesta, were you able to see your father after your were informed that somebody is planning to kill him?

A Yes, I saw him on the ground floor of the house of Evangeline Gale

Q In effect on seeing your father, what did you tell him, if any?

A I whispered to him, “Father, let us go home because there are group of persons planning to kill you.

Q What did your father, Francisco Beatingo, Sr. do x x x?

A He stood up.

Q.

And what did he do?

A.

He stood up and went out bending because the floor is very low, so you have to bend when you go inside and inside.

Q.

On your part, when your father was trying to get out from underneath the house, what did you do?

A.

I followed him.

Q.

When your father was already out of the house, what transpired, if any?

A.

(Witness was demonstrating straightening up. When he was already outside , when he was trying to straightened (sic) up he was already surrounded by people. od up and went out bending because the floor is very low, so you have to bend when you go inside and inside.

Q.

More or less, how many persons surrounded him?

A.

There were five (5).

Q.

Could you please name those five (5) persons?

A.

Allan Marcella, Moises Marcella, Roger Pabon, Tirso Sebuja and Jonathan Samblaon.

Q.

x x x after you mentioned the name Jonathan Samblaon, there was a nickname you mentioned which was not included, what was that?

A.

“One-eye”.

Q.

Now, When your father was surrounded by the five (5) persons you just mentioned, what transpired next?

A.

Allan approached my father?

Q.

When you said Allan, you are referring to the accused Allan Marcella?

A.

Yes.

x x x

Q

What is the relation of this Moises Marcella to the accused Allan Marcella?

A

Allan is the son of Moises Marcella.

Q

Now, on being surrounded by these five (5) persons, what transpired next?

A

Allan Marcella approached my father bringing a lead pipe.

Q

Do you know what was that lead pipe?

A

Yes, a “sulpak”.

Q

Could you describe to us that “sulpak”, how long was that and what was that made of?

A

Yes.

Q

Tell us, more or less how long was that “sulpak”?

A

(Witness demonstrating between two hands about a footlong with a handle).

Q

And that was what you said a “sulpak”?

A

Yes.

Q

And what did Allan Marcella do with that “sulpak”?

A

He used to shoot the head of my father.

Q

Could you describe to this Honorable Court, how was that operated to shot (sic) your father?

A

(Witness is demonstrating the left hand holding the lead pipe while the right hand was pulling the handle and pushing, pointing at the head of his father and it was at that time that it fired).

Q

Could you tell us more or less, how far was that weapon which you said from the head of your father?

A

Very near, it was touching the head of my father.

Q

Was your father hit?

A

Yes.

Q

On being hit, could you tell us what happened to your father Francisco Beatingo, Sr.

A

He fell down.

Q

While this Allan Marcella was doing this act of shooting your after with a “sulpak”, what were his companions doing, the four (4) persons surrounding him?

A

They were just there and when I approached my father to help him I was also shot at.

x x x

Q

By whom?

A

Roger Pabon

x x x

Q

After your father and yourself were shot what else transpired, if any?

A

After I was hit, they ran away.[12]

Corroborating the above- quoted testimony of Francisco Beatingo, Jr., are the testimonies of two other prosecution witnesses, Jessiebel Ausa and Anabella Lumacao. Both gave substantial accounts of what they saw, thus, validating the positive identification made by Francisco Beatingo, Jr. of the accused-appellant. Portions of the testimony of Jessiebel Ausa are quoted below:

Q Mrs. Ausa, do you know the accused Allan Marcella?

A Yes, sir.

Q If he is in Court, can you point him out for us?

x x x

A There. (Witness pointing to the person who when asked by his name answered that he is Allan Marcella.)

Q Why do you know Allan Marcella, the accused in this case?

We lived in one barangay.

x x x

Q Could you recall as to where were you on November 28, 1995 at about 7:30 o'clock in the evening?

A I was at the fiesta.

Q What is the name of the place where you said you went to a fiesta?

x x x

Q While you were at the place of Sitio Cagay, Brgy. Buenavista , Escalante, Negros Occidental, on the evening of November 28, 1995, could you recall of any person that invited your attention to go to your father, Francisco

Beatingo, Sr.?

A There was a person who told me to go to my father because there were persons planning to kill my father.

Q Upon being informed of that information, what did you do?

A I loooked for my father.

Q Where did you proceed?

A I went to a place where there was a group of persons.

Q Specifically, what place?

A Near the house of Evangeline Gale.

Q And what did you see?

A I saw that Allan Marcella and his group surrounding my father and my brother.

Q You said that you saw Allan Marcella and his group surrounding your father and your brother. Can you tell us who were those persons surrounding together with Allan Marcella?

A Allan Marcella, Moises Marcella, Roger Pabon, Tirso Sebua and Jonathan alias “one-Eye”.

x x x

Q Now, what transpired after you saw your father and your brother being surrounded by these persons you mentioned?

A Allan Marcella shot my father.

Q Could you tell what was the weapon used by Allan Marcella to shoot your father?

A Allan shot my father with a “sulpak” a home made gun.

Q You said you saw Allan Marcella with the used of a “sulpak” shot your father. What is the name of your father?

A Francisco Beatingo, Sr.

Q More or less, how far was Allan Marcella when the latter shot your father x x x?

A Very near.

Q Will you please describe to us that “sulpak” which you said used by Allan Marcella to shot (sic) your father? What is that made of?

A Some what like a “tubo” water pipe.

Q More or less, how long is that?

A About 14 inches long.

Q And how did he shot (sic) your father?

A He pressed it at the right temple.

Q How did Allan Marcella shot (sic) your father? Please demonstrate.

A (Witness demonstrating by pressing and pushing against the right temple. The Court Interpreter acting as the victim.)

Q As a result of that shot made by Allan Marcella, was your father hit?

A Yes, sir.

Q On being hit, what happened to him?

A He fell down.

Q Where?

A In front of the house of Evangeline Gale.

Q And at that instance, what was your brother Francisco Beatingo, Jr. doing?

A He tried to help my father but he was also shot by Roger Pabon.

Q What was the weapon used by Roger Pabon?

A 38 caliber.

Q And was your brother also hit?

A Yes, sir.

Q And after that what did these Allan Marcella and his companions namely, Moises Marcella, Roger Pabon, Tirso Sebuja and Jonathan do?

A They scampered running away.

Q When this shooting incident took place, more or less, how far were you from your father?

A Very near.

Q In your estimate more or less, how many meters?

A About three (3) steps[13]

x x x

Of the witness Anabella Lumacao who testified of the following:

Q

Miss Lumacao, do you know the accused Allan Marcella in this case?

A

Yes.

x x x

Q Please try to look around and tell us if this accused Allan Marcella is in court?

A (Witness pointing to the person who, when asked his name answered as Allan Marcella.)

Q Why do you know this Allan Marcella?

A We are neighbors, we live in the same Barrio.

Q What Barrio?

A Brgy. Buenavista.

Q You mean to say that you know this Allan Marcella, since childhood?

A Yes.

x x x

Q Now, can you recall as to where were you on November 28, 1995 at about 7:30 o'clock in the evening?

A At the fiesta.

Q Where?

A So. Cagay IV.

x x x

Q Now at about 7:30 o'clock in the evening of that day November 28, 1995, could you recall if you noticed any unusual incident that happened?

A Francisco Beatingo, Sr., was shot.

Q By whom?

A Allan Marcella.

x x x

Q What did this Allan Marcella use in shooting Francisco Beatingo, Sr.

A “Sulpak”

Q Could you describe to us what kind of weapon is that?

A A water pipe.

Q Was Francisco Beatingo, Sr. hit by the shooting made by Allan Marcella the accused of this case?

A Yes he was hit.

Q Could you remember where was Francisco hit?

A (Witness pointing to the right side of the head.)

Q How was the shooting made, was it close range or what?

A Point blank. "Dul-it"

Q Will you please demonstrate to us how was effective of Allan Marcella as you said effected with the used (sic) of "Sulpak"?

A (Witness demonstrating that pushing it the left hand to the right hand.)

x x x

Q And what happened after Francisco Beatingo, Sr. fell to the ground?

A Francisco Beatingo, Jr. try to help him.

Q And (was) Francisco Beatingo, Jr. able to help his father?

A No, because he was also shot by Roger Pabon.

Q What weapon did Roger Pabon use in shooting Francisco Beatingo, Jr.?

A

It was revolver[14]."

Factual findings of the trial court on the credibility of witnesses, are entitled to great weight on appeal.

There is no reason for the trial court to disregard the positive declarations of the three prosecution witnesses. Their testimonies sustain the fact of the killing and the identity of the accused-appellant as the person responsible thereto. Well-settled is the rule that between the positive assertions of prosecution witnesses and the negative ones of appellant, the former deserves more credence and evidentiary weight[15]. Applying the rule means that the positive identification of the accused-appellant as the perpetrator by witnesses Jessibel Ausa, Anabella Lumacao and Francisco Beatingo Jr. carries more weight and substance than the denials of defense witnesses, Remedios Berdensen, Eddie Aligato and accused-appellant. Thus, the averment of accused-appellant that his testimony and the testimonies of his witnesses were un rebutted is misplaced.

The testimonies of the prosecution witnesses were consistent with one another. These were given in a simple, straightforward manner, mentioning details that could not have been merely fabricated[16] such as their common description of the weapon used by the accused-appellant to shoot the victim, i.e., “a lead pipe” or a “sulpak, according to Francisco Jr.[17]; “tubo” or “tube of water pipe” or “sulpak” or “water pipe” said Jessiebel Ausa[18]; also a “water pipe”,[19] said Anabella Lumacao. Moreover, these witnesses share a common denominator, that is, they all knew the accused because they lived in Barangay Buenavista, Escalante, Negros Occidental. This fact leaves no doubt of their competence to identify the accused-appellant as the assailant.

Still, the other errors allegedly committed by the trial court in its decision do not seriously impair the credibility of the testimonies of the above-named prosecution witnesses. These can be explained by logic and jurisprudence.

One, the police report[20] that said it was Roger Pabon who shot the victim was made by Enrico Beatingo (another son of the victim), who was not presented as a witness in this case. The veracity of such report remains untested as there is no showing that Enrico Beatingo saw the shooting. As a rule, entries in official records are merely prima facie evidence of the facts therein stated[21].

Two, there are the self-serving assertions that when the accused-appellant visited the wake of the victim, Enrico told him that he reported to the police that Roger Pabon @ “Cabaw” was the assailant and that Jessiebel Beatingo (Enrico's sister) was in Manila at the time of the shooting. The accused-appellant however should have provided particulars of his visit of the wake since it has been established that he fled after the shooting. In fact, he was arrested three years later.

Then, there are claims of heavy rain that night, of people gathered around the gambling game of “cara y cruz” and the small lamp providing the illumination that hindered the identification of the accused-appellant improbable. This Court however, notes that these matters were not amply demonstrated nor even pursued by the defense during the trial. In *People v. Maximo Delmo, et. al.*[22], the Supreme Court was categorical in saying that questions of visibility and lighting conditions are factual ones. As the trial court observed-

“This positive identification is bolstered by the fact that one of the eyewitnesses was the injured victim himself and thus had a “front row seat” when the incident happened x x x Even without the testimony of prosecution witnesses Jessiebel Ausa and Annabel Lumacao, the Court finds that the positive identification made by the prosecution witness Francisco Beatingo, Jr. is enough to point to the accused as the perpetrator of the crime[23]”.

Francisco Beatingo, Jr. and Jessiebel Ausa are credible witnesses despite their relationship to the victim.

The relationship of Francisco, Jr., and Jessiebel Ausa to the victim does not diminish their credibility. According to the Supreme Court in *People v. Mario Villanueva*[24], relationship by itself does not give rise to a presumptions of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of a witness. The natural interest of witnesses, who are relatives of the victim, in securing the conviction of the guilty would deter them from implicating persons other than the true culprits, otherwise, the guilty would go unpunished. A witness' relationship to a victim of a crime would even make his or her testimony more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse thereof somebody other than the real culprit. As in this case before Us, what matters is that Francisco Jr., and Jessiebel Ausa positively identified the accused-appellant as the assailant of their father, Francisco Sr.

In giving credence to the testimonies of these two witnesses, the trial court applied the jurisprudential rule in *People v. Ramos*[25], assigning greater probative value to the testimonies of eyewitnesses of crimes committed against their relatives and who also happen to be victims themselves because these witnesses usually strive to remember the face of the assailants. No doubt, the established principle in *People v. Edgardo Grefaldia*[26] shall

also apply. The trial court's factual findings, particularly its assessment of the credibility of witnesses, are entitled to great weight on appeal. The reason therefor is that the trial judge enjoys the peculiar advantage of observing first-hand the deportment of the witnesses while testifying and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.

The defense theory of multiple gunshot wounds fails.

We tackle the theory of accused-appellant that a home-made shotgun or "sulpak" was not the weapon used because one shot from it could inflict multiple gunshot wounds and yet, the victim sustained one gunshot wound at the right parietal area. Accused-appellant's theory could be relevant if it was a real shotgun that was involved. This multiple gunshot wound theory does not apply where the witnesses only described the weapon as a "lead pipe, "tubo", "tube of water pipe" or "sulpak". Since the weapon was not found, there is no certainty that the improvised firearm had all the powerful firing mechanism of a shotgun. Meanwhile, the information in this case merely stated that the accused were armed with guns. Accused-appellant's invocation of *People v. Ernesto Ebias y Magana*[27] is not therefore relevant since his inference that a "sulpak" could inflict multiple gunshot wounds is largely drawn from the allegation in the information in that case regarding a homemade 12-gauge shotgun. In *People v. Ernesto Ebias y Magana*[28], the Supreme Court did not also dwell on the evidence of the weapon used but on the veracity of the positive identification by the victim of the accused vis-a-vis the alleged confession of another who claimed responsibility for the crime.

Only treachery is proven.

Dr. Elena Yap[29] testified that she saw powder burns around the entrance wound and burnt hair. She said that she prepared a report about the results of her examination. Since the records particularly the Prosecution's Formal Offer of Exhibits[30] do not bear such a report, this Court cannot take cognizance of such opinion. Suffice it to state that all three eyewitnesses are one in saying that the accused-appellant shot the victim at close range. "Very near, it was touching the head of my father",[31] according to Francisco Beatingo, Jr.

As testified to by Francisco Jr., the victim was shot as he was coming out from under the house of Evangeline Gale. The victim was about to straighten up from his bent position when the accused-appellant, who was with the group, shot him. Given the proximity of accused-appellant to the victim and the nature of the gunshot wound sustained by the latter, the victim was unable to defend himself. We agree with the trial court that there was treachery. The victim was shot from the side of his head. The victim was placed in a vulnerable position because he was coming out from under the house. Under these circumstances, the victim did not have the opportunity to anticipate the attack and defend himself. In *People v. Honorato Beltran, Jr.*[32], the Supreme Court reiterated its ruling in *People v. Agsalog*[33], in that as long as the attack was sudden and unexpected, and the unarmed victim was not in a position to repel the attack, there is treachery.

However, the prosecution was not able to prove the allegation of evident premeditation. While it may appear that the accused-appellant was waiting for the victim to come out from under the house to shoot him, this fact alone is not enough. Evident premeditation, like other circumstances that would qualify a killing as murder, must be established by clear and positive evidence[34] showing the planning and the preparation stages prior to the killing[35]. Without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice[36].

Exemplary damages, temperate damages and interests on damages are included.

As a rule, civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. In cases of murder and homicide, moral damages may be awarded without need of

allegation and proof of the emotional suffering of the heirs, other than the death of the victim, since the emotional wounds from the vicious killing of the victim cannot be denied[37]. Moreover and with the finding of the qualifying circumstance of treachery, exemplary damages is awarded too but only in the amount of P30,000.00 in line with current jurisprudence[38].

Based on the amounts awarded in *People v. Adriano Cabrillas and Benny Cabtalan*[39], this Court confirms that the accused-appellant is liable to pay P75,000.00 as civil indemnity and P50,000.00 as moral damages to the heirs of the victim.

No evidence was presented to prove actual damages incurred by the victim's family. With this fact, the amount of temperate damages of P 25, 000.00 as imposed in *People v. Adriano Cabrillas and Benny Cabtalan* [40] can be properly included in the civil liability of accused-appellant.

We apply the rule in *People v. Torres, Sr.*, [41] by imposing interest at 6% on the damages awarded reckoned from the date of the killing up to the finality of the judgment. In addition, interest at 12% per annum shall be imposed on said damages from finality of the judgment until paid.

WHEREFORE, the November 3, 2010 Joint Decision of the Regional Trial Court, Branch 59, San Carlos City, Negros Occidental in Criminal Case No. RTC- 1786, convicting the accused-appellant Allan Marcella of murder is **AFFIRMED** with **MODIFICATION** as to his civil liability.

The accused-appellant is **ORDERED** to pay the heirs of Francisco Beatingo Sr., the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P 30,000.00 as exemplary damages, P25,000.00 as temperate damages, 6% interest on all the damages herein awarded from the date of the incident to the finality of the judgment and 12% interest from the finality hereof until fully paid, and to pay costs.

The Director of the Bureau of Prisons is ordered to submit a **REPORT** to this Court within five (5) days, acknowledging receipt of this Decision.

SO ORDERED.

Ingles, G., (Chairperson) and Maxino, P.A. JJ., concur

* Acting Member in lieu of J. Ma. Luisa Quijano-Padilla, per Office Order No. 09-14-ELDS dated Mar. 28, 2014.

[1]The case was assigned to the ponente on November 8, 2012.

[2] Rollo, pages 60-67.

[3] Records, back portion of p. 34.

[4] Certificate of Arraignment, Records, p. 83.

[5] As summarized by the trial court.

[6] Also as summarized by the trial court.

[7] Records, p. 466.

[8] Rollo, pp. 34-58.

[9] Rollo, pp. 82-100.

[10] G.R. No. 134 138, June 21, 2001.

- [11] G.R. 118435, June 20, 1997.
- [12] TSN, April 10, 2002, pp. 235- 241.
- [13] TSN, August 19, 1999, pp. 80-87.
- [14] TSN, July 12, 2000, pp. 163-167.
- [15] People v. Padre-e, 249 SCRA 422.
- [16] People v. Villanueva, 242 SCRA 47.
- [17] TSN, April 10, 2000, p.8.
- [18] TSN, February 23, 2000, p. 4.
- [19] TSN, July 12,2000, p. 7.
- [20] Exhibit "I", Records p. 432.
- [21] Section 44, Rule 130, Revised Rules of Court.
- [22] G.R. No. 130078-82, October 4, 2002.
- [23] Decision, p. 5, Rollo. p. 64.
- [24] G.R. No.122746, January 29, 1999.
- [25] People v. Ramos, 260 SCRA 402.
- [26] G.R. No. 121787, June 17, 1997.
- [27] G.R. 127130, October 12, 2000.
- [28] Supra.
- [29] No relation to the ponente in this case.
- [30] Records, p. 374377.
- [31] TSN, April 10, 2002, p. 8.
- [32] G.R. No. 168051, September 27, 2006.
- [33] G.R. No. 141087, 31 March 2004.
- [34] People v. Manes, 303 SCRA 231.
- [35] People v. Plantilla, 304 SCRA 339.
- [36] People v. Mahinay, 304 SCRA 767.
- [37] Herrera v. Sandiganbayan, G.R. Nos. 119660-61, February 13, 2009.
- [38] People v. Abaño, G.R. No. 188323, February 21, 2011.
- [39] G.R. No. 175980, February 15, 2012.
- [40] Supra.
- [41] G.R. No. 190317, August 22, 2011.

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