

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO DADAO, ANTONIO SULINDAO, EDDIE MALOGSI
(DECEASED) AND ALFEMIO MALOGSI, ACCUSED-APPELLANTS.**

G.R. No. 201860. January 22, 2014

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal from a Decision[1] dated May 16, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00364, entitled *People of the Philippines v. Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and Alfemio Malogsi*, which affirmed with modifications the Decision[2] dated January 31, 2005 of the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11 that convicted appellants Marcelino Dadao, Antonio Sulindao, Eddie Malogsi (deceased) and Alfemio Malogsi for the felony of murder under Article 248 of the Revised Penal Code, as amended, in Criminal Case No. 93-1272.

The genesis of this court case can be traced to the charge of murder against the appellants in the trial court via an Information[3] dated July 16, 1993. The accusatory portion of said indictment reads:

That on or about the 11[th] day of July 1993, at 7:30 in the evening more or less at barangay Salucot, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with intent to kill, by means of treachery, armed with guns and bolos, did then and there wilfully, unlawfully and criminally attack, assault and sho[o]t PIONIO YACAPIN, hitting his back and left leg, inflicting wounds that cause[d] his death thereafter.

To the damage and prejudice [of] the heirs of the deceased PIONIO YACAPIN in such sum they are entitled under the law.

Contrary to and in violation of Article 248 of the Revised Penal Code.

On September 27, 1993, the appellants were arraigned. All four (4) accused pleaded “NOT GUILTY” to the charge leveled against them.[4]

The factual backdrop of this case as condensed in the trial court’s assailed January 31, 2005 judgment and adopted by the Court of Appeals in its similarly assailed May 16, 2011 Decision is reproduced hereunder:

Evidence for the Prosecution

Prosecution’s first witness, Ronie Dacion, a 14[-]year old stepson of the victim, Pionio Yacapin, testified that on July 11, 1993 at about 7:30 in the evening he saw accused Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and [A]lfemio Malogsi helping each other and with the use of firearms and bolos, shot to death the victim, Pionio Yacapin in their house at Barangay Salucot, Talakag, Bukidnon.

The testimony of the second witness for the prosecution, Edgar Dacion, a 12[-]year old stepson of the victim, corroborates the testimony of his older brother Ronie Dacion.

Prosecution's third witness, Nenita Yacapin, the widow of the victim, also corroborates the testimony of the prosecution's first and second witness. The said witness further testified that she suffered civil and moral damages [due to] the death of her husband.

Prosecution's fourth witness, Bernandino Signawan, testified that at about 10:00 o'clock in the evening of July 11, 1993, Ronie and Edgar Dacion reached to [sic] his house and related to him that their stepfather was killed by accused Eddie Malogsi, [A]lfemio Malogsi, Marcelino Dadao and Antonio Sulindao. Witness Signawan further testified that on the following morning, he and the other people in Ticalaan including the barangay captain, Ronie and Edgar Dacion returned to the house of the victim and found the latter already dead and in the surrounding [area] of the house were recovered empty shells of firearms.

Prosecution's fifth witness, SPO2 Nestor Aznar, testified that he was the one who prepared the sketch of the hut where the incident happened and further testified that the four accused were in the custody of the government and in the following morning of the incident, he was at the scene of the crime and found in the yard of the hut eight (8) garand empty shells caliber 30m[m].

The prosecution presented its sixth and last witness, Modesto Libyocan, who testified that on the evening of July 11, 1993, at Barangay Salucot, he saw in the house of the victim, Pionio Yacapin, lights caused by flashlights and heard several gunshots from the house of the victim, and that the family left their house on that evening and went to Ticalaan where they learned that Pionio Yacapin was killed in his house and that early the following morning, July 12, 1993, he was with some companions, barangay officials of Ticalaan in the house of the victim where they found him dead and sustaining gunshot wounds.

Evidence for the Defense

Defense's first witness, Police Inspector Vicente Armada, testified that on July 30, 1993, at 11:00 in the morning, he conducted an examination for paraffin test on all four accused with the findings that they yielded negative result x x x.

The defense presented Eddie Malogsi, one of the accused, as its second witness, who testified that on July 11, 1993 at 7:30 in the evening, he was at the farm of a certain Boyle together with his brother, [A]lfemio Malogsi, one of the accused herein, being a worker of that farm. He further testified that on the said date and time, he never fired a gun.

Defense's third witness, [A]lfemio Malogsi, another accused in this case, corroborates the testimony of his brother and co-accused, Eddie Malogsi, that on the said date and time above-mentioned, he was at the farm of a certain Boyle with his brother and that they heard several gunshots. He further testified that he never owned a garand rifle.

Another accused, Antonio Sulindao, defense's fourth witness, testified that on the date and time above-mentioned, he was at Salucot together with his family and at 7:30 x x x in the evening, he heard some gun shots. He further testified among others, that he has no grudge x x x with the victim prior to the incident.

The testimony of defense's fifth witness, Fernandez Saplina, [was to] establish the defense of denial and alibi in so far as accused Marcelino Dadao, that on the whole evening of July 11, 1993, accused Marcelino Dadao was all the time at his house in San Fernandez, Salucot, Talacag, Bukidnon, and there was no occasion that said accused went outside or left his house on the said date and time. The said witness further testified that he visited the accused at the municipal jail of Talakag, Bukidnon, where he was detained for having been the suspect in the killing of Pionio Yacapin.

The defense presented its sixth witness, Camilo Dumalig, who corroborates the testimony of Fernandez Saplina to the effect that accused Marcelino Dadao has been residing at San Fernandez, Salucot, Talakag, Bukidnon at the time of the incident on July 11, 1993 which place is about 7 kilometers from the place of the incident.

Defense's seventh witness, Venancio Payonda, father-in-law of accused Antonio Sulindao, testified that the latter was in his house the whole day of July 11, 1993.

The defense presented as its last witness, accused Marcelino Dadao, who testified that three (3) months prior to July 11, 1993, he had been staying at the house of one Fernandez Saplina at Sitio San Fernandez, Salucot, Talakag, Bukidnon, which is about 7 kilometers away from the house of the victim. He further testified that on July 11, 1993, he did not leave the house of Fernandez Saplina until the following morning.[5]

After trial was concluded, a guilty verdict was handed down by the trial court finding appellants guilty beyond reasonable doubt of murdering Pionio Yacapin. The assailed January 31, 2005 Decision disposed of the case in this manner:

WHEREFORE, premises considered, the Court finds accused, EDDIE MALOGSI, [A]LFEMIO MALOGSI, ANTONIO SULINDAO and MARCELINO DADAO, guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended, the said four accused are hereby sentenced to suffer the penalty of reclusion perpetua and are ordered to pay the heirs of the victim, the amount of SEVENTY[-]FIVE THOUSAND PESOS (P75,000.00) as moral damages and TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages and to pay the cost of the suit. Pursuant to Supreme Court Administrative Circular No. 2-92, dated January 20, 1992, the bailbonds of all four accused are hereby ordered cancelled and the latter are ordered detained, pending resolution of any Appeal that may be pursued in this case.[6]

Appellants elevated their case to the Court of Appeals. During the pendency of the appeal, the appellate court acted on a Manifestation filed by Rogelio Tampil, bondsman for Eddie Malogsi, who sought the cancellation of the memorandum of encumbrance that was reflected in his land title (Original Certificate of Title No. P-13825, Entry No. 165683) for the reason that Eddie Malogsi had already died on August 25, 2003. Thus, on February 11, 2008, the Court of Appeals issued a resolution granting Tampil's request.[7] Subsequently, after considering the pleadings and memoranda of the parties, the Court of Appeals issued its May 16, 2011 Decision, the dispositive portion of which states:

ACCORDINGLY, this appeal is DISMISSED and the Decision appealed from is AFFIRMED with the modification the P75,000.00 as civil indemnity and P25,000.00 as temperate damages shall be awarded in addition to the moral and exemplary damages already awarded by the lower court.[8]

Hence, appellants, through counsel, seek final recourse with the Court and reiterate the following assignment of errors from their Appellants' Brief filed with the Court of Appeals:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANTS OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE EVIDENCE OF THE DEFENSE.

III

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH WHEN THE SAME WAS NOT ALLEGED IN THE INFORMATION.[9]

The foregoing arguments were later on amplified by appellants' Supplemental Brief.[10]

Appellants reiterate that their guilt was not proven beyond reasonable doubt because the testimonies of the witnesses for the prosecution were afflicted with inconsistencies and improbabilities, thus, making them of doubtful veracity. Furthermore, appellants faulted the trial court for disbelieving their alibis and for disregarding the fact that the paraffin test which all of them were subjected to produced a negative result. Appellants also underscored the fact that they did not take flight despite the knowledge that they were made suspects in the murder of Pionio Yacapin. Lastly, appellants maintain that the qualifying circumstance of abuse of superior strength should not have been appreciated as it was not alleged in the criminal information filed against them.

The petition is without merit.

In fine, the pivotal issue raised by appellants in questioning the validity of their conviction for the crime of murder is whether or not the eyewitness testimonies presented by the prosecution, specifically that of the two stepsons (Ronie and Edgar Dacion) and the widow (Nenita Yacapin) of the deceased victim, Pionio Yacapin, are credible enough to be worthy of belief.

We have consistently held in jurisprudence that the resolution of such a factual question is best left to the sound judgment of the trial court and that, absent any misapprehension of facts or grave abuse of discretion, the findings of the trial court shall not be disturbed. In *People v. De la Rosa*,^[11] we yet again expounded on this principle in this wise:

[T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude 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. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.

Jurisprudence also tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.^[12] In the case at bar, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellants.

Furthermore, appellants contend that the prosecution witnesses made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not the stepsons of the victim left for Ticalaan together to report the incident, whether the accused were still firing at the victim when they left or not, and whether or not the accused went after the stepsons after shooting the victim. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue. We elucidated on this subject in *Avelino v. People*,^[13] to wit:

Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (Emphasis omitted.)

Notwithstanding their conflicting statements on minor details, Ronie, Edgar and Nenita positively identified appellants as the perpetrators of the dastardly crime of murder committed on the victim which they categorically and consistently claimed to have personally witnessed.

In order to counter the serious accusation made against them, appellants put forward the defense of alibi which necessarily fails in the face of positive identification. It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[14] Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.[15] An examination of the record would indicate that Eddie and Alfemio Malogsi were unable to present a corroborating witness to support their alibi that they were working at a farm owned by a certain Boyle on the date and time of Pionio Yacapin's murder. While the witnesses presented by the defense to corroborate the respective alibis of Marcelino Dadao and Antonio Sulindao consisted of friends and relatives who are hardly the disinterested witnesses that is required by jurisprudence.

With regard to appellants' assertion that the negative result of the paraffin tests that were conducted on their persons should be considered as sufficient ground for acquittal, we can only declare that such a statement is misguided considering that it has been established in jurisprudence that a paraffin test is not conclusive proof that a person has not fired a gun.[16] It should also be noted that, according to the prosecution, only Eddie and Alfemio Malogsi held firearms which were used in the fatal shooting of Pionio Yacapin while Marcelino Dadao and Antonio Sulindao purportedly held bolos. Thus, it does not come as a surprise that the latter two tested negative for powder burns because they were never accused of having fired any gun. Nevertheless, the evidence on record has established that all four accused shared a community of criminal design. By their concerted action, it is evident that they conspired with one another to murder Pionio Yacapin and should each suffer the same criminal liability attached to the aforementioned criminal act regardless of who fired the weapon which delivered the fatal wounds that ended the life of the victim.

In *People v. Nelmidia*,[17] we elaborated on the principle of criminal conspiracy and its ramifications in this manner:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and then decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them. In the absence of any direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. As such, it does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all. (Citation and emphasis omitted.)

As to appellants' argument that their act of bravely reporting to the police station to answer the serious charge of murder against them instead of fleeing militates against a finding of any criminal liability on their part especially in light of the dubious evidence presented by the prosecution, we can only dismiss this as a hollow line of reasoning considering that human experience as observed in jurisprudence instructs us that non-flight does not necessarily connote innocence. Consequently, we have held:

Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee – a circumstance strongly illustrative of guilt – while others may remain in the same vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community.[18]

Contrary to appellants' claim that the aggravating circumstance of abuse of superior strength was used by the trial

court to qualify the act of killing committed by appellants to murder despite it not having been alleged in the criminal information filed against them, the text of the assailed January 31, 2005 Decision of the trial court clearly shows that, even though abuse of superior strength was discussed as present in the commission of the crime, it was not appreciated as either a qualifying or generic aggravating circumstance.

As correctly observed by the Court of Appeals, the lower court appreciated treachery, which was alleged in the information, as an aggravating circumstance which qualified the offense to murder. This is proper considering that, even if abuse of superior strength was properly alleged and proven in court, it cannot serve to qualify or aggravate the felony at issue since it is jurisprudentially settled that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[19]

Time and again, we have declared that treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[20] Furthermore, we have also held that the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[21] In the case at bar, the manner by which Pionio Yacapin was killed carried all the indubitable hallmarks of treachery. We quote with approval the following discussion of the Court of Appeals on this matter, to wit:

Treachery, which was alleged in the information, was duly proven by the prosecution. The Court notes, in particular, the testimony of Nenita Yacapin who declared that when the victim was making a fire in the kitchen, she heard shots and she saw the barrel of the gun inserted on the bamboo split walling of their house. Exhibit "B", the anatomical chart certified by the Philippine National Police (PNP) personnel, shows the relative location of the gunshot wounds sustained by the victim. The chart indicates that the victim was shot from behind. Clearly, the execution of the attack made it impossible for the victim to defend himself or to retaliate.[22] (Citations omitted.)

After reviewing the penalty of imprisonment imposed by the trial court and affirmed by the Court of Appeals, we declare that the imposition of the penalty of reclusion perpetua on the appellants is correct and should be upheld. Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of reclusion perpetua to death for the felony of murder. There being no aggravating or mitigating circumstance, the proper penalty is reclusion perpetua pursuant to Article 63, paragraph 2 of the Revised Penal Code.[23]

Anent the award of damages, it is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[24]

Thus, the award of civil indemnity in the amount of P75,000.00[25] is proper. Likewise, the award of temperate damages, in lieu of actual damages, in the amount of P25,000.00[26] is warranted considering that the death of the victim definitely caused his heirs some expenses for his wake and burial though they were not able to present proof.

However, we must modify the amounts of moral and exemplary damages already awarded in order to conform to existing jurisprudence. Therefore, the exemplary damages awarded should be increased from P20,000.00 to P30,000.00.[27] Moreover, there being no aggravating circumstance present in this case, the award of moral damages in the amount of P75,000.00 should be decreased to P50,000.00.[28] Lastly, the interest rate of 6% per annum is imposed on all damages awarded from the date of finality of this ruling until fully paid.[29]

Finally, we observe that the Court of Appeals did not rule on the effect of the death of Eddie Malogsi during the pendency of this case. Considering that no final judgment had been rendered against him at the time of his death, whether or not he was guilty of the crime charged had become irrelevant because even assuming that he did incur criminal liability and civil liability ex delicto, these were totally extinguished by his death, following Article 89(1) of the Revised Penal Code and, by analogy, our ruling in *People v. Bayotas*.^[30] Therefore, the present criminal case should be dismissed with respect only to the deceased Eddie Malogsi.

WHEREFORE, premises considered, the Decision dated May 16, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00364 is hereby AFFIRMED with the MODIFICATIONS that:

- (1) The amount of exemplary damages to be paid by appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi is increased from Twenty Thousand Pesos (P20,000.00) to Thirty Thousand Pesos (P30,000.00);
- (2) The amount of moral damages to be paid by appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi is decreased from Seventy-Five Thousand Pesos (P75,000.00) to Fifty Thousand Pesos (P50,000.00);
- (3) Appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi are ordered to pay the private offended party interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment; and
- (4) Criminal Case No. 93-1272 is DISMISSED with respect to Eddie Malogsi in view of his death during the pendency of this case.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[*] Sometimes referred to as Elfemio Malogsi in the records of this case.

[1] Rollo, pp. 3-21; penned by Associate Justice Romulo V. Borja with Associate Justices Melchor Quirino C. Sadang and Zenaida Galapate Laguilles, concurring.

[2] CA rollo, pp. 40-51.

[3] Records, pp. 7-8.

[4] Id. at 18.

[5] CA rollo, pp. 41-43.

[6] Id. at 51.

[7] Id. at 61-63.

[8] Rollo, p. 20.

[9] CA rollo, pp. 24-25.

[10] Rollo, pp. 39-44.

[11] G.R. No. 201723, June 13, 2013, 698 SCRA 548, 555, citing *People v. Diu*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 242.

- [12] *People v. Roman*, G.R. No. 198110, July 31, 2013.
- [13] G.R. No. 181444, July 17, 2013, citing *Madali v. People*, G.R. No. 180380, August 4, 2009, 595 SCRA 274, 294.
- [14] *People v. Ramos*, G.R. No. 190340, July 24, 2013.
- [15] *People v. Mallari*, G.R. No. 179041, April 1, 2013, 694 SCRA 284, 298.
- [16] *People v. Tomas, Sr.*, G.R. No. 192251, February 16, 2011, 643 SCRA 530, 547; *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 668; *People v. Villasan*, G.R. No. 176527, October 9, 2009, 603 SCRA 241, 257.
- [17] *People v. Nelmidia*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 429.
- [18] *People v. Mores*, G.R. No. 189846, June 26, 2013, citing *People v. Asilan*, G.R. No. 188322, April 11, 2012, 669 SCRA 405, 419.
- [19] *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 195.
- [20] *People v. De la Rosa*, *supra* note 11.
- [21] *People v. Hatsero*, G.R. No. 192179, July 3, 2013.
- [22] *Rollo*, pp. 18-19.
- [23] Art. 63. Rules for the application of indivisible penalties. – x x x.
- In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:
- x x x x
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- [24] *People v. Rarugal*, G.R. No. 188603, January 16, 2013, 688 SCRA 646, 657.
- [25] *People v. Corpuz*, G.R. No. 191068, July 17, 2013.
- [26] *People v. Roman*, *supra* note 12.
- [27] *People v. Alawig*, G.R. No. 187731, September 18, 2013.
- [28] *People v. Vergara*, G.R. No. 177763, July 3, 2013.
- [29] *Avelino v. People*, *supra* note 13.
- [30] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

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