

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH A. AMPO (APPELLANT) AND JOHNNY A. CALO (AT-LARGE), ACCUSED. JOSEPH A. AMPO, ACCUSED-APPELLANT.

G.R. No. 229938. February 27, 2019

Ponente: PERALTA, J.

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PERALTA, J.:

This is an appeal from the October 18, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01381-MIN, which affirmed with modification the December 2, 2014 Decision[2] of the Regional Trial Court (RTC), Branch 27, Gingoog City, Misamis Oriental, finding accused- appellant Joseph A. Ampo (Ampo) guilty of Murder.

On November 11, 2008, Joseph A. Ampo and Johnny A. Calo were charged with the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (R.A.) No. 7659. The accusatory portion of the Information reads:

That on June 24, 2008, at more or less 2:00 o'clock in the morning, in Purok 5, National Highway, San Juan, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent and with intent to kill, with treachery and evident [premeditation], armed with a double[-]bladed knife with which the accused were conveniently provided, did then and there [willfully], unlawfully and feloniously assault, attack and stab JERRY L. CARILLERO, who was then unaware, defenseless and unarmed, thereby inflicting fatal wound on the stomach which caused his death.[3]

Upon judicial determination of probable cause, a prima facie case was found against Ampo and Calo and, consequently, a Warrant of Arrest[4] was issued against them on November 20, 2008. Since both were still at-large as of January 6, 2011, the case was archived.[5] The case was revived on June 18, 2012 when Ampo was arrested.[6] In his arraignment, he entered a plea of not guilty.[7] Trial ensued while he was detained during the pendency of the case.[8]

The prosecution presented Jelly H. Lagonoy (Jelly), Julius Q. Carillero (Julius). and Dr. Joel A. Babanto, while Josito L. Socias (Josito) and Ampo testified for the defense.

Version of the Prosecution

On June 23, 2008, Jelly was in the house of his cousin, Doring Gamayon (Doring), to celebrate the eve of the fiesta in Barangay (Brgy.) San Juan, Gingoog City. Around 2:00 a.m. the next day, he was at the National Highway of San Juan waiting for a bus ride going to his mother's house in Brgy. 20, Gingoog City. While standing near an electric light post located on the opposite side of the road about 10-15 meters away, he saw Ampo and Calo trying to flag down passing vehicles possibly to hitch a ride. Jelly knows them very well because they also lived in Brgy. 20, where he stayed from April to June 24, 2008 for a vacation at his mother's house.[9] Eventually, a motorcycle going to Cagayan de Oro from Gingoog City stopped about 10 meters away from Ampo

and Calo. After parking it, the driver got down and walked towards them while asking where they were headed. While Ampo and Calo were also walking towards the driver, one of them replied that they were going a little bit farther. When already very near each other, Ampo took a knife from his right side and immediately stabbed the driver's stomach. Thereafter, Ampo and Calo fled towards Gingoog City. The driver went back to his motorcycle, but it fell. He then went to a nearby videoke bar. There, he was "bent down head down."

Despite witnessing the incident, Jelly still decided to flag down a bus going to Brgy. 20. Upon arrival at the bus terminal around 2:30a.m., he had coffee with his sibling, who was selling thereat. He went to his mother's house by 6:00a.m. and was back at the bus terminal by 8:00a.m. for his trip to Davao City, where he resides with his family. Believing that the people at the videoke bar already helped the stabbed motorcycle driver and to spare his family from being involved, Jelly neither shared what he saw to his sibling and mother nor reported the incident to the police or local officials.

It was only later on that Jelly came to know the identity of the motorcycle driver as Jerry L. Carillero (Carillero). On October 15, 2008, he went back to his mother's house in Brgy. 20. Five days after, he returned to Doring's house in San Juan. While having breakfast, she told him that her neighbor, Julius, had a problem because his son was stabbed along the National Highway at the time he (Jelly) left for Brgy. 20. Jelly admitted that he saw what transpired. As a result, he was introduced to Julius, who then asked him to be a witness. When he agreed, they went to the police station where he executed an affidavit.

For his part, Dr. Babanto recalled that, around 3:00a.m.- 3:30a.m. on June 24, 2008, Carillero was referred to him at the Lipunan Hospital. Upon examination of the patient, he saw that there was a stab wound penetrating, perforating the umbilical area and that there was an intestinal prolapse. Unfortunately, Carillero did not survive while waiting for the surgical operation. He died due to hypovolemic shock caused by one stab wound on his navel.

Version of the Defense

Josito, who was a police officer at the time the crime was committed, testified that he had known Ampo for quite a long time because the latter's father is the uncle of his wife. In the evening of June :23, 2008, he was in Brgy. San Juan to monitor notorious individuals and to join friends and relatives in celebrating the vesper day of St. John, the patron of the place. In particular, he was with Ampo and Calo to share a drink in the house of Ampo's cousin. At 10:05 p.m., Ampo, who was a bit drunk like Calo, requested that he be brought to his house in Brgy. 20. Josito acceded. By 10:15 p.m., he flagged down a motorela (motorized tricycle), which Ampo and Calo boarded. Josito has no idea what happened to them after.

Ampo denied that he murdered Carillero. Around 6:00 p.m. on June 23, 2008, he was in the house of Charlie "Popoy" Calo (Popoy) in Brgy. San Juan. Together with Calo and Popoy, they butchered a pig from 6:30p.m. to 8:30 p.m. and ate dinner by 9:00 p.m. After resting for a while, the three A shared a pocket-size Tanduay rum. At more or less 10:00 p.m.; Ampo and Calo left Popoy's house. While walking towards the National Highway to wait for a vehicle going to Gingoog City, they met Josito who offered to accompany them and let them ride a vehicle. By 10:15 p.m., Ampo and Calo were able to ride a motorized tricycle that proceeded to Brgy. Cahulogan together with six other passengers. Upon reaching the place around 10:45 p.m., three passengers disembarked. Thereafter, the driver refused to bring Ampo and Calo to Brgy. 20, reasoning that he experienced a stoning incident there the previous night. The two then went to Bobby Ello (Bobby), whose wife is the first cousin of Ampo's father. His house was located in the area owned by a corporation known as Project 3, Brgy. 26, Gingoog City Urban Poor Association. Ampo and Calo arrived in Bobby's house by 10:55 p.m. After a short talk, they slept at around 12:15 a.m. and woke up at 8:00a.m.

The RTC convicted Ampo of the crime charged. The dispositive portion of the December 2, 2014 Decision states:

WHEREFORE, the Court finds accused Joseph Ampo y Amora GUILTY beyond reasonable doubt of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of reclusion perpetua without eligibility for parole and to pay the heirs of the victim P75,000.00 as civil indemnity, P53,118.50 as actual damages, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. Interest on all damages awarded is imposed at the rate of 6% per annum from date of finality of this judgment until fully paid.

In the service of his sentence, the said accused is credited with the full time during which he has undergone preventive imprisonment provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[10]

The judgment was elevated to the CA, but the appeal was denied. The fallo of the October 18, 2016 Decision reads:

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 27, Gingoog City, Misamis Oriental dated December 2, 2014 is Affirmed but Modified only as to the award of moral and exemplary damages which are hereby increased to P75,000.00 each.

SO ORDERED. [11]

The appeal is without merit. After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds no cogent reason to disturb the factual findings and legal conclusions of the RTC as affirmed by the CA.

Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[12] In the present case, the prosecution was able to establish that (1) Carillero was stabbed and killed; (2) Ampo stabbed and killed him; (3) the killing of Carillero was attended by the qualifying circumstance of treachery; and, (4) the killing of Carillero was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Ampo's guilt beyond reasonable doubt, as the first element of the offense was verified by Dr. Babanto, while the other elements thereof were substantiated by Jelly. It bears to reiterate that in the review of a criminal case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect. Here, the factual findings should not be disturbed on appeal since there are no facts or circumstances of weight and substance that were overlooked or misinterpreted or misapplied and would materially or substantially affect the disposition, result or outcome of the case.[13]

For the trial court, the testimony of Jelly deserves full faith and credit as it was given in a straightforward, candid, and convincing manner. The Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.[14] When the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[15] Having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies, the trial judge can better determine if such witnesses were telling the

truth, being in the ideal position to weigh conflicting testimonies.[16]

Paragraph 16, Article 14 of the RPC defines treachery ,as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.[17] In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[18] These elements are extant from the records. The deceased victim, Carillero, was caught off guard when Ampo stabbed him. He thought all along that Ampo and Calo merely wanted a ride. The stealth and swiftness by which the attack was carried out gave Carillero no opportunity to evade when Ampo suddenly thrust the knife to his abdomen. Likewise, the assault was executed in a methodical manner since Ampo made it certain that Carillero was already very near before he stabbed him. The fact that Carillero was facing Ampo is of no moment. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.[19]

The fact that Jelly failed to immediately come out and help Carillero during the incident does not make his testimony highly suspicious as Ampo would want it to appear. Such reaction was not at all uncommon or unnatural so as to make his testimony incredible. Placed in the same or. similar situation, some may choose to intervene, but others may opt to stay away and remain hidden.

x x x It is settled that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus - some may shout, some may faint, and others may be plunged into insensibility.[20]

Also, delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[21]In this case, Jelly neither shared what he had witnessed to his sibling and mother nor reported the incident to the police or local officials because he wanted to spare his family from being involved in the crime. While this reasoning is considered as purely speculative by Ampo, such way of thinking is not totally baseless; it is a possibility that any eyewitness to a crime is naturally inclined to believe. Indeed, unlike Ampo's contention, Jelly's hesitance and reluctance is not contrary to common experience and observation of mankind.

The Court cannot give credence to Ampo's assertion that Jelly was uncertain as to the identity of the person who stabbed Carillero considering that he failed to refer to Ampo by his complete name in the affidavit that he executed before the police investigator. Aside from Jelly's positive identification of Ampo in open court, his proximity to the crime scene and the relative illumination of the surrounding area bolster the credibility of Ampo's identification. Moreover, Ampo and Calo are not total strangers to Jelly because the latter is familiar with them, being residents of Brgy. 20 where he had stayed for a three-month vacation.

One thing that further strengthens the prosecution witnesses' credibility is the fact that they have no motive to lie against Ampo. Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill will or improper motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[22] In the present case, no imputation of improper motive on the part of the

prosecution witnesses was ever made by Ampo and there was no shred of evidence to indicate that said witnesses were impelled by improper motives to implicate Ampo in the crime. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill- motive to testify against Ampo. The categorical statements of Jelly and Dr. Babanto must prevail over the bare denial of Ampo. After all, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.[23]

Finally, in order for the defense of alibi to prosper, it is not enough to prove that the accused-appellant was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[24] Presence at another place at the time of the perpetration of the crime and physical impossibility to be at the crime scene must concur. Physical impossibility refers to the distance between the place where the accused-appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[25] Where there is the least chance for the accused-appellant to be present at the crime scene, the defense of alibi must fail.[26] Here, Josito's testimony did not corroborate the alibi of Ampo since the former was not with the latter at the time the stabbing incident occurred. He also admitted that it only takes 15 minutes to travel from San Juan to Gingoog City using a motorcycle such that Ampo and Calo would have reached San Juan by 11 p.m. if they went back.[27] Bobby might have made a difference, but he was not presented as a defense witness.

The prescribed penalty for Murder under Article 248 of the RPC is reclusion perpetua to death. There being no aggravating or mitigating circumstance in the commission of the offense (except for treachery which was used to qualify the killing), the RTC correctly imposed the penalty of reclusion perpetua, together with the accessory penalty provided by law. Moreover, consistent with *People v. Jugueta*,[28] Ampo should pay the heirs of Carillero P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages. An interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[29]

WHEREFORE, the appeal is DISMISSED. The October 18, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01381-MIN, which affirmed with modification the December 2, 2014 Decision of the Regional Trial Court, Branch 27, Gingoog City, Misamis Oriental, is AFFIRMED. Accused-appellant Joseph A. Ampo is found guilty beyond reasonable doubt of the crime of murder, and is sentenced to suffer the penalty of reclusion perpetua. He is further ORDERED to indemnify the heirs of Jerry L. Carillero the amounts of P53,118.50 as actual damages, P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages. An interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

Leonen, Reyes, Jr., Hernando and Carandang, JJ., concur.

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

[1] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Edgardo A. Camello and Ruben Reynaldo G. Roxas concurring; rollo, pp. 3-21; CA rollo, pp. 65-83.

[2] CA rollo, pp. 36-47; records, pp. 114-125.

- [3] Records, p. 5.
- [4] Id. at 24-25.
- [5] Id. at 26.
- [6] Id. at 27, 31.
- [7] Id. at 37-39.
- [8] Id. at 28-29.
- [9] TSN, November 6, 2012, pp. 20-21, 33, 39, 44.
- [10] CA rollo, pp. 46-47; records, pp.124-125.
- [11] Rollo, p. 20; CA rollo, p. 82.
- [12] Yap v. People, G.R. No. 234217, November 14, 2018 and People v. Racal, G. R. No. 224886, September 4, 2017, 838 SCRA 476, 488-489.
- [13] See People v. Racal, supra, at 487; People v. Libre, 792 Phil. 12, 25 (2016); and People v. Salahuddin, et al., 778 Phil. 529, 544-545 (2016).
- [14] People v. Racal, supra note 12, at 488.
- [15] People v. Libre, supra note 13. ·
- [16] People v. Salahuddin, et al., supra note 13, at 544.
- [17] See People v. Vibal, Jr., GR. No. 229678, June 20, 2018; People v. Racal, supra note 12, at 489; People v. Bugarin, G.R. No. 224900, March 15, 2017, 820 SCRA 603, 617; People v. Libre, supra note 13, at 32; People v. Jugueta, 783 Phil. 806, 819 (2016); and People v. Salahuddin, et al., supra note 13, at 546.
- [18] People v. Racal, supra note 12, at 489; People v. Salahuddin, et al., supra note 13, at 546; and People v. Zabala, et al., 773 Phil. 412, 424 (2015).
- [19] People v. Racal, supra note 12, at 490.
- [20] People v. Bañez, et al., 770 Phil. 40,46 (2015).
- [21] People v. Salcedo, 660 Phil. 545, 562 (2011).
- [22] People v. Libre, supra note 13, at 29; and People v. Salcedo, supra note 21, at 564.
- [23] People v. Salahuddin, et al., supra note 13, at 548.
- [24] Id.; People v. Libre, supra note 13, at 30; and People v. Salcedo, supra note 21, at 561.
- [25] People v. Salcedo, supra note 21, at 561.
- [26] Id.
- [27] TSN, May 8, 2014, pp. 8-9.
- [28] Supra note 17.
- [29] People v. Tica, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 400.

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