

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MARIO BULUTANO Y ALVAREZ, ACCUSED-APPELLANT.

G.R. No. 232649. November 28, 2018

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CAGUIOA, J:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Mario Bulutano y Alvarez (Bulutano) assailing the Decision[2] dated May 23, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06502, which affirmed the Decision[3] dated July 11, 2013 of the Regional Trial Court (RTC) of Makati City, Branch 144 in Criminal Case No. 98-920, finding Bulutano guilty beyond reasonable doubt of the crime of murder.

The Facts

An Information was filed against the accused-appellant and Jhun Serad (Serad) for the murder of Wilbert Augusto (Wilbert), the accusatory portion of which reads:

That on or about the 16[th] day of February 1998, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with wooden clubs, conspiring and confederating together with Vermel "Panot" Cablores[,] Pengpeng Estrella[,] and Dennis Cabangon[,] whose exact addresses remain uncertain and all of them mutually helping and aiding one another, with intent to kill and with treachery and evident premeditation, and superior strength did then and there willfully, unlawfully and feloniously struck with wooden clubs one WILBERT AUGUSTO Y ERA hitting the latter's head thereby inflicting mortal wounds which directly caused his untimely death.

CONTRARY TO LAW.[4]

The version of the prosecution, as summarized by the CA, is as follows:

On February 16, 1998 at around 11:30 in the evening, Reynaldo Astrolavio (Reynaldo) and his friend Mark Gil Desono (Mark Gil) were at M. Aquino comer M.H. Del Pilar Streets, Barangay Rizal, Makati City. Reynaldo saw Abeng Tabeng (Abeng), Jeremy, and another person known as alias "Panot" as well as three (3) other persons buying at a nearby store. Abeng stared at Reynaldo and said "Why are you staring at me" to which the latter replied "You are not the person I am looking at". Abeng then turned to Mark Gil and said "Ikaw, papalag ka ba? Ang sama mo makatingin ah ", but Mark Gil did not respond.

Reynaldo urged Mark Gil to just leave the place but as soon as Mark Gil stepped forward, Abeng boxed him. Mark Gil retaliated and the two engaged in a fist fight. Reynaldo tried to pacify them but Abeng's brother, known as alias "Kulot", arrived. "Kulot" also boxed Reynaldo which made the latter fall [into] the canal. When Reynaldo stood up, he saw the group of Mario Bulutano [Bulutano] and Jhun Serad [Serad] rushing towards them.

Sensing danger, Reynaldo ran away and hid at a nearby street which was seven (7) to eight (8) meters away from the place of the incident. From where he was hiding, he saw [Serad] hit Wilbert on his head. Afraid, Reynaldo went home.

Around the same time of that fateful night, Allan Ramos (Allan) was at his house in Blk. 137, Lot 10, A.

Bonifacio Street, Zone 3, Barangay Rizal, Makati City. He was then having a drinking spree with some of his friends when he suddenly heard a commotion. Afraid that his friends were involved, he immediately went outside the house and proceeded to M. Aquino corner M.H. Del Pilar Streets which was just five hundred (500) meters away from his house.

Upon reaching the place, Allan saw [Bulutano], [Serad], Dennis Cabangon (Dennis), Pengpeng Estelera (Pengpeng) and Vermel, also known as "Panot", rushing towards the same place. He suspected that the group was there to take revenge because of an earlier fight with another group. He also noticed that [Bulutano] and his group were drunk and carrying bladed weapons, stones, and pieces of wood.

Allan inquired from the group what the problem was and tried to talk them into settling it. Allan was then facing the group while Wilbert, who was just passing by after making a phone call at a nearby site, stood next to him. At that moment, Vermel told his group members not to hurt Allan because the latter was his classmate. Suddenly, [Serad] surreptitiously went behind Wilbert and hit the latter with a piece of wood. Wilbert fell on the ground, shaking. Allan was shocked and his immediate reaction was to punch [Serad]. However, [Serad] was able to parry Allan's fist with the same piece of wood he had used to hit Wilbert. Thereafter, a fight ensued. Allan was pulled away by one of his companions while the others retreated upon seeing that their adversaries were armed with weapons.

While Allan was retreating from the place, he looked back and there he saw [Bulutano] hit Wilbert on the head even if the latter was already lying on the ground gasping for breath. Pengpeng, Vermel and Dennis likewise kicked and mauled the hapless Wilbert.

Meanwhile, Gerald Manaog, who was standing at a post in M. Aquino corner M.H. Del Pilar Streets, also witnessed the brawl as he was only five (5) or six (6) meters away. Before the affray, Gerald saw Wilbert just standing and doing nothing. But then, [Serad] suddenly hit Wilbert on the right side of the latter's face. As a result, Wilbert fell on the ground. But despite Wilbert's state, [Bulutano] still hit him with a piece of wood. Gerald shouted at [Bulutano] to stop hitting Wilbert but [Bulutano] just replied "Bakit, papalag ka ba?["]. Gerald then could only warn them that if something happened to Wilbert, they will all be held responsible.

At that point, operatives from Bantay Bayan arrived. Allan then rushed to the bloodied Wilbert. With the assistance of concerned citizens, they carried Wilbert's body and boarded him on a vehicle. Wilbert was brought to the hospital where he was subsequently pronounced dead.[5]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

In his defense, accused-appellant Mario Bulutano presented a different version of the facts. To disprove the charge filed against him, he denies participation in the crime yet points at his co-accused, Jhun Serad, as the sole perpetrator thereof. He thus claims that he was in front of his house taking some fresh air when [Serad], Delfin Tabing (Delfin), Raffy Estillero (Raffy) and Gerry Solima (Gerry), happened to pass by and invited him for a drink in celebration of having found a new job. On their way to the store, they chanced upon Endy Tabing (Endy), Vermel Cablores, Edwin Candichoy (Edwin) and Dennis Cabangon who volunteered to purchase the liquor for the group. Thus, the rest proceeded to the house of Endy.

Upon arrival thereat, Cabangon returned and informed them that the members of the group known as "No Fear" were ganging up on Endy. When they rushed to help him, they saw Endy already sprawled on the ground but was still being mauled by the group. He and his companions were likewise stoned by members of another group who hid themselves in the shadows.

[Bulutano] was able to carry Endy to the latter's house and told him to rest. He then went back to the place of the melee in an attempt to pacify the brawl but before he can reach the place, stones were again thrown at him thus he shouted at the perpetrators and told them to stop. When he finally reached the site of the incident, he saw a man sprawled on the ground. He instructed his group to stand down. When everything was peaceful, he

brought Endy to the Barangay Hall to have the incident blotted. After which, Endy was brought to the hospital by his mother. At the hospital, he revealed that it was [Serad] who struck the victim during the melee and that he was unable to pacify him at that time because the latter was very angry.

Also, [Bulutano] avers that he has no bad blood with the prosecution witnesses but the only reason which he sees as the possible explanation for them in testifying against him was because of their basketball rivalry.[6]

Bulutano was arraigned on October 30, 2006, in which he pleaded "not guilty" to the crime charged, while his co-accused Serad remained at large.[7] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Decision[8] dated July 11, 2013, the RTC convicted Bulutano of the crime of murder. The dispositive portion of the said Decision reads:

WHEREFORE, in the light of all the foregoing, the Court finds accused MARIO BULUTANO GUILTY Beyond Reasonable Doubt for the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code and is hereby imposed with the penalty of Reclusion Perpetua.

In addition, Bulutano is ordered to pay the heirs of the late Wilbert Augusto y Era, the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, One Hundred Thousand Pesos (P100,000.00) as exemplary damages and One Hundred Thousand Pesos (P100,000.00) as moral damages and Twenty-five Thousand Pesos (P25,000.00) as temperate damages considering that it was reasonable and understandable that the family incurred expenses for his hospitalization and burial only that the mother failed to present receipts to substantiate her claim.

x x x x

SO ORDERED.[9]

The RTC found the positive identification by the prosecution witnesses Allan Ramos (Ramos) and Gerald Manaog (Manaog) that Serad hit Wilbert on the head first, and that Bulutano also hit the said victim on the head subsequently as he was sprawled on the ground, sufficient to convict Bulutano of the crime charged. The RTC did not believe Bulutano's allegation that the foregoing witnesses only testified because they harbored ill feelings against him for their supposed basketball rivalry. Thus, as the witnesses were not found to have been motivated by ill will, the RTC held that there was therefore no doubt that Bulutano perpetrated the crime in light of their positive identification.[10]

The RTC also found that treachery attended the killing of Wilbert. The RTC reasoned that Bulutano continued to hit the victim when the latter was already on the ground, thus rendering him defenseless.[11] Hence, Bulutano was liable for murder instead of homicide.

Aggrieved, Bulutano appealed to the CA.

Ruling of the CA

In the assailed Decision[12] dated May 23, 2016, the CA affirmed the RTC's conviction of Bulutano, and held that the prosecution was able to sufficiently prove the elements of the crime charged and the element of treachery were present in the killing of Wilbert.

The CA held that the supposed inconsistencies in the prosecution witnesses' testimonies that Bulutano was harping on involved only trivial matters that were, by themselves, insufficient to affect the finding of guilt as to the commission of the crime.[13] The CA also upheld the findings of the RTC as to the credibility of the eyewitnesses, thereby establishing Bulutano's guilt beyond reasonable doubt. The CA likewise ruled that

treachery attended the killing as the victim was already in a hapless state when Bulutano continued to strike him.[14]

The appellate court, however, modified the award of damages to be paid to the heirs of Wilbert to conform to recent jurisprudence.[15]

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by accused-appellant Bulutano:

(1)

Whether the CA erred in convicting Bulutano despite the prosecution's failure to prove his guilt beyond reasonable doubt;

(2)

Whether the CA erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of accused-appellant Bulutano but for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not present in the killing of Wilbert.

First Issue: Whether the CA erred in finding Bulutano guilty beyond reasonable doubt

In questioning his conviction, Bulutano stresses that there were inconsistencies in the testimonies of the prosecution witnesses – Ramos, Manaog, and Reynaldo Astrolavio (Astrolavio) – that supposedly tarnish their credibility. He avers that their testimonies were inconsistent in that they differ as to when he and Serad arrived to join the melee. Bulutano maintains that while he was at the scene of the crime, he did not hit the victim and that it was only Serad who did so.

The argument deserves scant consideration.

It is well settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[16] Thus, when the case pivots on the issue of the credibility of the witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.[17] Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence, particularly on the credibility of the eyewitnesses, which was also affirmed in toto by the CA.

In any event, the inconsistencies pointed out by Bulutano refer to trivial matters which would not cast reasonable doubt on the finding of his guilt. In this connection, the Court quotes with approval the following disposition of the CA:

While there appears some inconsistencies in the relevant portions of the testimonies of the prosecution witnesses, which accused-appellant claims to have impaired their credibility, a simple review of the transcripts reveal that the alleged inconsistencies are trivial matters pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue.

We agree with the observation made by the OSG that accused- appellant himself admitted that there was a

fight between the two (2) warring groups at the same place and at the same time. He also confirmed his presence during the said fight and his apparent participation in the said affray. If there is really an inconsistency in the narration of the prosecution witnesses, the same only pertains to the specific time of arrival of accused-appellant, his co-accused [Serad], and their gang members to the place of the incident. Taking into consideration the commotion as well as the different vantage points of the prosecution witnesses, there is a probability of inconsistencies and variances in the declaration of the witnesses. At any rate, the prosecution witnesses were able to clearly see how accused [Serad] treacherously hit Wilbert Augusto as well as how accused-appellant hit Wilbert Augusto while the latter was haplessly lying on the ground. Thus, the allegation of inconsistency in this case refers only to minor details which, even if entertained, are insufficient to impair the integrity of the testimonies of the prosecution witnesses.[18]

Furthermore, the absence of evidence as to improper or ill motive on the part of the prosecution witnesses – it being anchored merely on the allegation that their testimonies were motivated by the supposed basketball rivalry between them and Bulutano – strongly tends to sustain the conclusion that no such improper motive existed.[19] Hence, their testimonies are worthy of full faith and credit.[20]

From the foregoing, the Court thus concludes that the RTC and the CA were correct in convicting Bulutano.

Second Issue: Existence of the Qualifying Circumstance of Treachery

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Bulutano liable for murder instead of homicide. The CA held that the fact that Bulutano continued to attack the victim, even though the latter was already sprawled on the ground, is enough to hold that treachery attended the killing.[21]

On the other hand, Bulutano claims that there was no treachery as the prosecution failed to prove that he consciously adopted the mode of attack to facilitate the perpetration of the crime without risk to himself. He claims that the attack appears to be impulsively done, a spur of the moment act in the heat of anger or extreme annoyance.[22]

On this issue, the Court rules in favor of Bulutano.

It was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the victim was suddenly attacked by Serad, and he was already defenseless at the time that Bulutano continued attacking him. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.[23]

As the Court held in *People v. Santos*,[24] "[t]reachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that 'the attack was sudden;' there must be a clear showing from the narration of facts why the attack or assault is said to be 'sudden.'"[25]

Stated differently, mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the appellants does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer.[26]

Specifically, it must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a view to accomplishing the act without risk to the aggressor.[27]

In the same vein, jurisprudence provides that there cannot be treachery if the meeting between the accused and the victim was casual and the attack was impulsively done.

In *People v. Calinawan*,^[28] the accused therein was carrying a rifle while riding a bicycle. The eventual victim was walking in the same street when he saw the accused, and this prompted the victim to run. The accused then whistled at the victim for him to stop, but the latter continued to run. Thus, the accused got off his bicycle and fired at the victim as he was running away. In ruling that the killing was not attended by treachery, the Court held:

In classifying the offense as murder, the Solicitor General argues that the attack was sudden and unexpected, and made while the deceased, Romualdo Nacario, was running away with his back towards the appellant, and that Romualdo did not have any opportunity of defending himself or of avoiding the attack, which was perpetrated without any risk to the appellant arising from any defense which the deceased might have offered.

We believe that the appellant must be held liable for the killing of Romualdo Nacario, but that the offense should be classified only as homicide. There is absolutely no indication in the record that the appellant was purposely in search for Romualdo, and the bare facts proven at the trial are not inconsistent with the inference that the meeting was casual. Much less can the proof warrant the theory that the appellant had a previous determination to kill Romualdo, and the bare facts proven at the trial are likewise not inconsistent with the conclusion that the appellant fired at his victim impulsively. And considering in this connection, that the shot was fired at a distance of fifty meters and while Romualdo was running, appellant's situation may fairly come under the doctrine mentioned in *People vs. Cañete*, 44 Phil., 478, 481, that the method of assault adopted by the aggressor as not "deliberately chosen with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed may make," said case making special reference to an instance "where the slayer acted instantaneously upon the advantage which resulted from the accidental fall of the person slain."^[29] (Emphasis and underscoring supplied)

In *People v. Magallanes*,^[30] the accused was suddenly slapped and strangled by the victim for no apparent reason. The accused, however, saw a knife tucked in the victim's waist, so he grabbed the same and slashed at the victim so he could break free. The victim then tried to flee but the accused ran after him. When the victim tripped, the accused stabbed him numerous times thereby causing his death. The prosecution in the said case insisted that there was treachery because the victim was running away from the accused, so the latter, therefore, had the opportunity to stab the victim at the back without warning. In ruling against the prosecution, the Court held:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, for treachery or alevosia to be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. The latter condition is immediately negated by the fact that the meeting between the appellant and Tapales was by chance. We have held that:

". . . where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected and while the victim was running away with his back towards the accused. As has been aptly observed the accused could not have made preparations for the attack, . . .; and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done."^[31]

Treachery cannot also be presumed from the mere suddenness of the attack or from the fact that the victim was stabbed with his back towards the appellant. In point is the following pronouncement we made in *People v. Escoto*:

"We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. In fact from

the reaction of Robert in running away from the Escoto brothers the moment he saw them, we can reasonably conclude that he was not completely unaware that herein appellant and Willie posed a danger to him and this necessarily put him on guard, with the opportunity to prevent or repel a possible assault." [31] (Emphasis and underscoring supplied)

In the case at bar, the testimonies of the prosecution witnesses reveal that the melee was only a chance encounter between the warring groups. More importantly, the deceased Wilbert "was just passing by after making a phone call at a nearby site" when he was hit in the head by Serad with a piece of wood [32] and then later on continually hit by Bulutano. The foregoing thus negates the existence of the second requisite for treachery to be appreciated, namely, that the offenders deliberately and consciously adopted the particular means, method or form of attack employed by him. The meeting between the parties – Bulutano, Serad, and the victim Wilbert – was casual, and the attack was done impulsively. Therefore, the killing could not have been attended by treachery.

With the removal of the qualifying circumstance of treachery, the crime committed by Bulutano is therefore homicide and not murder. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant may be sentenced to an indeterminate penalty whose minimum shall be within the range of prision mayor, the penalty next lower in degree and whose maximum shall be within the range of reclusion temporal in its medium period. [33]

Thus, Bulutano shall suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum. [34]

Finally, in view of the Court's ruling in *People v. Jugueta*, [35] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of P50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby PARTIALLY GRANTED. The Court DECLARES accused-appellant MARIO BULUTANO y ALVAREZ GUILTY of HOMICIDE, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum. He is further ordered to pay the heirs of Wilbert Augusto the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.
Perlas-Bernabe, J., on wellness leave.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

[1] See Notice of Appeal dated June 15, 2016; rollo, pp. 23-24.

[2] Id. at 2-22. Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Ramon Paul L. Hernando (now a member of this Court) concurring.

[3] CA rollo, pp. 27-41. Penned by Presiding Judge Liza Marie R. Picardal-Tecson.

[4] Rollo, p. 3.

- [5] Id. at 3-5.
- [6] Id. at 5-6.
- [7] Id. at 3.
- [8] Supra note 3.
- [9] CA rollo, p. 41.
- [10] Id. at 38-39.
- [11] Id. at 39.
- [12] Supra note 2.
- [13] Rollo, p. 9.
- [14] Id. at 11.
- [15] Id. at 20-21.
- [16] People v. Gerola, G.R. No. 217973, July 19, 2017, p. 5-6.
- [17] People v. Aguilar, 565 Phil. 233, 247 (2007).
- [18] Rollo, p. 9.
- [19] People v. Tiengo, 218 Phil. 279, 282 (1984).
- [20] Id.
- [21] Rollo, pp. 10-11.
- [22] CA rollo, p. 89.
- [23] People v. Sabanal, 254 Phil. 433, 436 (1989).
- [24] 175 Phil. 113 (1978).
- [25] Id. at 122.
- [26] People v. Delgado, 77 Phil. 11, 15-16 (1946).
- [27] People v. Bacho, 253 Phil. 451, 458 (1989).
- [28] 83 Phil. 647 (1949).
- [29] Id. at 648-649.
- [30] 341 Phil. 216 (1997).
- [31] Id. at 226-227.
- [32] Rollo, p. 4.
- [33] People v. Duavis, 678 Phil. 166, 179 (2011).
- [34] Id.
- [35] 783 Phil. 806 (2016).

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