

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO ATAMOSA, RENE P. ALCALA, RENATO MARTIZANO ALIAS BOBONG AND TEDDY BENEDICTO, ACCUSED, RENE P. ALCALA, ACCUSED-APPELLANT.

G.R. No. 233319. July 07, 2020

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Before us for review is the Decision[1] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 01337-MIN dated March 29, 2017 which affirmed with modification the Judgment of the Regional Trial Court (RTC) of Panabo City, Branch 34, in Criminal Case No. 356-2008 finding accused-appellant Rene P. Alcala (Alcala) and his co-accused Teddy A. Benedicto (Benedicto) guilty beyond reasonable doubt of the crime of murder.

The Information filed on August 29, 2008 charged Alcala together with his three other co-accused, Pedro E. Atamosa, (Atamosa), Renato (Martizano) and Benedicto with murder, committed as follows:

That on or about November 24, 2007 in Brgy. Aundanao, Samal District, Island Garden City of Samal and within the jurisdiction of this Honorable Court, said accused, with evident premeditation, treachery, and in consideration of a price or reward, conspiring and confederating together armed with deadly weapons, to wit: knife and handgun, did then and there wilfully, unlawfully and feloniously attack and wound therewith Richard Tomaquin in different parts of the body and as a result thereof, the said Richard Tomaquin died instantly.[2]

Except for Martizano who is still at-large, the three accused pleaded not guilty when arraigned.

During the trial, the prosecution presented Benito Daluno (Daluno), Heber Omandam (Omandam), Dr. Ma. Zarex Amasol (Dr. Amasol), My ma Lipusan (Lipusan). Accused-appellant Alcala was also presented as a rebuttal witness. Their testimonies are summarized as follows:

Daluno, a laborer of accused Atamosa testified that on November 22, 2007, he went to the latter's house to collect his salary. He saw Atamosa conversing with his brother Carlos Atamosa (Carlos), together with Alcala and co-accused Benedicto. Later he joined in their conversation. They were allegedly talking about a plan to kill Richard Tomaquin (Richard). Atamosa reiterated his offer of P5,000.00 for him to join them. Per Atamosa's instruction, he will pretend to bring Richard to Aundanao where Alcala will be waiting. He refused to accept the offer as he is not familiar with the place. Alcala then volunteered his friend, a certain Martizano to do it instead.

On November 25, 2007 he heard of the killing of Richard, so he went to Atamosa's house and asked the latter if he really pushed through with their plan, but the latter merely smiled and left. On cross-examination, Daluno admitted that he could not remember the exact month when Atamosa made his offer for him to kill the victim or how many times the offer was made, although, he was sure that it was in 2007.[3]

Omandam, a skylab driver, testified that on November 24, 2007, before 6:00 p.m., he dropped his female

passenger at a store owned by Lanie Cortes (Lanie). When he was about to leave the premises, a motorcycle driven by the victim arrived. Seated behind his back was accused Martizano, whom he knew since 1989.[4] After talking to Lanie, Richard, with Martizano still seated at the back of the motorcycle, left. He and Richard were traversing the same route until they arrived at the terminal in Penaplata market at past 6:00 p.m., where Richard drove to the direction of Aundanao. At past 7:00 p.m., he heard the news of the killing of Richard about 8 to 9 kilometers away from where he last saw him and Martizano.[5]

Lipusan who lived near the scene of the crime testified that on November 24, 2007, at around 4:00 p.m., while she was feeding her pigs outside their house, she saw two people on a motorcycle stop under the mango tree. Thinking that it was her husband, she peeped outside to check. She was able to identify the two men as she intentionally glanced at them as she thought that it was her husband.[6] When her husband arrived at around 6:30 p.m., she told him of the two men she saw earlier.

Together, they went out to verify as theft of pigs are rampant in their place. They were able to see them but did not confront the two men out of fear.[7]

When they were about to leave, they heard the arrival of a second motorcycle prompting them to hide due to the light coming from it. When the driver and the passenger alighted from the second motorcycle, she saw the passenger (Martizano) stab the driver (Richard). The two other persons (Alcala and Benedicto) who arrived earlier helped in clubbing the victim. The victim shouted as if asking for help, but he was gunned down by Alcala. After he was stabbed and shot, he rolled down the hill while his attackers boarded their motorcycle and left the scene.

Lipusan added that she was able to see the faces and can identify the three persons involved because of the light coming from the motorcycle and that she was merely 10 meters away from the crime scene.[8] She pointed Benedicto and Alcala as the persons who first arrived, but added that the passenger of the second motorcycle Martizano was not in court. She further added that it was Alcala who shot the victim.[9]

Dr. Amasol testified on the medical examination she conducted on the body of Richard that she found to have sustained multiple gunshot wounds and multiple incise wounds on different parts of the body[10]

The prosecution also presented Alcala as its rebuttal witness to testify on the circumstances surrounding the death of Richard and to rebut the categorical denial of his co-accused with respect to their participation and to identify the person who had direct participation on the death of the victim.

Alcala testified that on November 24, 2007 he was at the house of his employer in Sitio Bucawe. On his way home at around 4:00 p.m., he saw Benedicto and Carlos who asked him to go to the house of Atamosa. As instructed, he went to Atamosa's house who then asked him if he could drive them to Aundanao using a rented motorcycle. Later, Benedicto and Carlos arrived. He heard Benedicto informing Atamosa that he already did what the latter ordered him to do and that they will just meet at Penaplata. The four of them left riding on a motorcycle and upon arrival at Penaplata, Benedicto told them to meet at a particular area at 6:00 p.m. Atamosa decided that they should have their dinner first at a carinderia nearby. Benedicto went to the park to see if the person they were waiting for has arrived. After having their dinner, Benedicto left and when he returned, he informed Atamosa that the person they were waiting for was already at the park. Benedicto then took an orange clutch bag from Atamosa. He saw Benedicto ride on the back seat of the motorcycle driven by Richard. When Benedicto passed by them, they followed the latter aboard their motorcycle.[11]

Before reaching Aundanao at around 6:00 p.m., Richard's motorcycle stopped, prompting him to stop too. When Benedicto and Richard alighted from their motorcycle, he saw Benedicto take a gun tucked on his back and pointed it at Richard who tried to grapple for the gun until a shot was fired. After he heard the shot, he saw

Richard run to his motorcycle, but the latter could not reach it because the motorcycle was already on the ground. Richard then continued running until he fell on the ground. He heard Atamosa ordering Benedictoto finish off Richard. Atamosa alighted from the motorcycle and took the gun from Benedicto and then pointed the gun at Richard who pleaded for his life, but to no avail. Atamosa was about three meters from Richard when he shot the latter. He cannot recall how many times Richard was shot because he was too scared, but he was sure that Atamosa shot Richard several times as he was only three meters away from them. Carlos who was seated at the back of his motorcycle alighted and stabbed Richard several times also. He did nothing because Carlos threatened him and his family if he would tell anybody. After the incident, they went back to Atamosa's house.[12]

On the other hand, the defense presented Atamosa and Benedicto. Also presented as a witness was Simproson Navaja (Navaja) to corroborate Atamosa's testimony and Jesus Avila (Avila) to support Benedicto's testimony.

Atamosa maintained that on the date material to this case, he was just in his house tending to his fighting cock with his brother Carlos and Navaja, his laborer. He admitted knowing the prosecution witness Daluno, but he denied that the latter was at his house on said date and neither were his co-accused Alcala and Benedicto, although, he knew them. He also denied knowing his other co-accused Martizano.[13]

Atamosa also declared that he knew the victim Richard because they were neighbors and the latter used to drive him when he sells copra until he filed a case against the latter.[14] The case arose when Richard removed his fence made up of 30 madre de cacao trees. No settlement was arrived at, but according to him even if he lost the case, he did not feel aggrieved and was even happy because he no longer needs to spend for the case. After that, he no longer hired the victim as his driver.[15]

During his cross-examination, Atamosa recalled that the last time he saw Daluno was on September 1, 2007. Daluno owed him money and when he tried to collect it, Daluno got angry.[16]

Najava was presented as a witness to corroborate the testimony of Atamosa regarding the fact that the latter's co-accused, Benedicto and Alcala were not in Atamosa's residence the whole day of November 21 to November 23, 2007. On cross-examination, however, he admitted that most of the time, he was at Atamosa's piggery doing repairs which was quite far from the house, thus, he cannot really see visitors coming inside the house.

Benedicto testified that he knew Atamosa although they are not friends, but merely an acquaintance. That the whole day of November 24, 2007, he was in his own house taking care of his two children. He denied knowing his co-accused except Atamosa.

Avila, Benedicto's neighbor was presented to support the latter's claim that he was in his own house the whole day of November 24, 2007. According to Avila, he saw Benedicto doing the laundry in the morning and at around 5:00 p.m., the latter went to his own house and watched the local news on TV Patrol. However, on cross-examination, it was established that November 24, 2007 was a Saturday, thus, there was no TV Patrol or any local news on weekends. Yet, Avila insisted that he and Benedicto were watching TV Patrol on that date.

On February 12, 2014, the RTC rendered a Decision finding Alcala and his co-accused Benedicto guilty of the crime charged. It gave full faith and credence to the testimony of Lipusan who positively identified Alcala and Benedicto over their defense of denial and alibi. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered as follows, to wit:

- a. Finding accused Rene P. Alcala and Teddy A. Benedicto guilty beyond reasonable doubt of the offense charged. Accordingly, they are each sentenced to suffer the penalty of reclusion perpetua and each directed to pay the heirs of the victim Richard Tomaquin the amount of Php75,000.00 as death indemnity and another Php75,000.00 as moral damages; and

b. Acquitting accused Pedro E. Atamosa of the charge due to the failure of the prosecution to establish his participation in the killing of the victim beyond reasonable doubt as discussed above. However, in this particular case, the act upon which civil liability may arise still exist.

In the service of their respective sentences, accused Alcala and Benedicto are entitled to the full time they have undergone preventive imprisonment, if any, pursuant to Article 29 of the Revised Penal Code.

Both accused shall serve their respective sentences at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

In view of his acquittal, accused Atamosa is forthwith ordered released from his present confinement at Davao del Norte District Jail unless his continued detention thereat is justified on some other legal grounds.

The case against accused Renato Martizano is ordered archived subject to its revival once he is arrested.

Done in Chambers, this 12[th] day of February, 2014 at Panabo City.[17]

Not satisfied with the decision, Alcala appealed the case to the CA. The CA rendered a Decision affirming with modification on the amount of damages awarded. As regard the contention of Alcala that his testimony should be given more weight than that of Lipusan's testimony considering that he was even used by the prosecution as a rebuttal witness which is a strong indication that the latter has ascertained his story to be true, the CA ruled otherwise. It gave full faith and credence to Lipusan's testimony in the absence of improper motive on the part of the latter. The CA disposed the case in this wise:

WHEREFORE, the appeal is DISMISSED. The February 12, 2014 Decision of the Regional Trial Court, Branch 34, Panabo City, in Criminal Case No. 356-2008 is AFFIRMED with MODIFICATIONS. In addition to the award of moral damages and civil indemnity of P75,000.00 each in favor of Richard Tomaquin's heirs, the award of exemplary damages of P30,000.00 is also GRANTED. All monetary awards shall earn an interest of 6% per annum from the finality of this judgment until fully paid.

SO ORDERED.[18]

Appellant appealed the decision of the C A. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution dated November 6, 2017, this Court required the parties to submit their respective supplemental briefs.[19] Both parties manifested that they are no longer filing their supplemental briefs, as they are adopting all the arguments contained in their respective briefs.[20]

In his Brief, Alcala raises this lone assignment or error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

In asserting his innocence, accused-appellant avers that the trial court erred in giving full credence to the testimony of the prosecution witness Lipusan to establish the fact of the case. He insists that his testimony on rebuttal should carry more weight as the prosecution had utilized him to establish the case against his co-accused. Also, he maintains that the elements of murder were not completely proven because the prosecution witness Lipusan failed to identify if the motorcycle driver she saw was really the victim and that the police officer who confirmed that Lipusan indeed verified the victim was not presented as a witness in court. Moreover, Lipusan could not have identified the assailants because it was dark.

On the other hand, the Office of the Solicitor General counters that the prosecution proved beyond reasonable doubt the guilt of Alcala. The trial court did not err in giving credence to the testimony of Lipusan over Alcala's

accounts emphasizing that the matter of credibility is best left for the trial court to determine and its finding should be respected absent glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions.

The instant appeal is bereft of merit.

Article 248 of the Revised Penal Code (RPC), as amended, defines and penalizes the crime of Murder as follows:

ART. 248. Murder. — Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or person to insure or afford impunity:

Significantly, to sustain a conviction for murder, the prosecution must prove the following essential elements, to wit: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing does not amount to parricide or infanticide.[22]

After a thorough review of the case, we find no reason to disturb the ruling of the CA, save for the amount of damages awarded.

As correctly held by the trial court and affirmed by the CA, the prosecution was able to prove the presence of all the elements constituting the crime of murder. It is undisputed that Richard was killed and Alcala conspired with his co-accused in killing the latter. It is also shown that the killing was attended by treachery and that the victim was not related in any way to all the assailants.

In this appeal, Alcala wants this Court to determine if the prosecution was able to establish his guilt beyond reasonable doubt considering that: (1) he was utilized as a rebuttal witness by the prosecution; (2) the prosecution eyewitness Lipusan failed to identify the victim; and (3) Lipusan failed to identify all the assailants as it was dark.

The issues raised are essentially factual, calling for a review of the evidence presented. Being a non-trier of facts, the Court generally gives utmost credence to the findings of fact and assessment of the credibility of witnesses made by the RTC, especially when upheld by the CA. The reason is because it is the RTC which had the opportunity to observe the deportment of witnesses on the stand which is not reflected on the written submissions of the parties. Hence, the findings of the RTC, as affirmed by the CA, are accorded with finality unless a fact or circumstance was overlooked, misunderstood or misappreciated which, if properly considered, would alter the results of the case.[23] Such does not exist in this case.

A review of the evidence presented shows that as between Alcala and Lipusan's testimony, the Court is constrained to give due weight and credit to the latter's testimony, as found by the RTC and affirmed by the CA. In this connection, the Court quotes with approval the following disquisition by the CA on the credibility of the testimony of eyewitness Lipusan:

In the case of witness Lipusan, there is no sufficient basis to doubt the veracity of her testimony. There is no indication that she was moved by [ill motive] in testifying against the accused-appellant. The defense failed to show any reason why the said witness would concoct such grievous charge against Alcala considering the gravity of the offense. Neither was there any noted material inconsistency in her testimony that could raise questions on its reliability thus, strongly negating any claim that her recount of events was mere speculation. It would be implausible for someone to make up such kinds of stories against another considering the consequences it would bring against the person accused. As held in *People v. Martina*, it would be highly

unusual, likewise contrary to human nature, for a man to impute such serious crime to another person if there were no truth to his testimony.

The fact that Alcala was used as a rebuttal witness does not necessarily mean that the prosecution has taken all of his statements as absolute truth. It bears noting that Alcala's testimony was offered to rebut the categorical denial of all the accused with respect to their participation in the killing of the victim. In essence, his testimony was only to contradict the denials made by his co-accused, to whom he completely attributes the crime but maintaining that he had nothing to do with it. It is settled, however, that statements from a co-conspirator should be received with caution because it is considered as coming from a polluted source. As is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself.

Accordingly, as between the straightforward testimony of witness Lipusan and Alcala's version of events, this Court is constrained to give due weight and credit to the former. Sans [ill will] imputed on her and considering the trial court's observation on her demeanor while testifying, which it finds suitable of belief, then there is no ground to doubt Lipusan's testimony. The absence of evidence of improper motive tends to indicate that the testimony is worthy of full faith and credence.[24] (Citation omitted)

With regard to the contention of Alcala that Lipusan was not able to identify the victim, we are not swayed.

While Lipusan may not have known the victim by name, however, she had a good look at the victim's face when the assailants left the latter on the ground lifeless. She was also present when the police officers searched on the victim's body to look for his identification in the very same area referred to by her as to where the killing happened. Likewise, Lipusan's testimony on the victim being stabbed and shot several times was verified by the autopsy report that the victim died of multiple gunshots and stabbed wounds. Lipusan declared:

PROS. APAO:

Q

Were you able to know the identity of the victim?

LIPUSAN:

A

I was able to recognize sir because I already saw him lying down, sir.

Q

And who was the victim?

A

I do not actually know his name but when the policemen arrived they looked for his identity sir.[25]

Even assuming that Lipusan failed to identify the victim by name, the prosecution was able to present other evidence, establishing the victim's identity. Prosecution witness Omandam positively identified Richard as the one who drove the motorcycle with Martizano as his passenger, whom he knew way back in 1989. Several minutes later, he heard the news that Richard was killed in about 8 to 9 kilometers from where he last saw them.

As to the contention of Alcala that Lipusan could not have seen the culprits as the area where the incident happened was already dark, again, we are not persuaded.

Lipusan categorically maintained that she saw the whole incident from the time Alcala together with Benedicto

arrived at around 4:00 p.m. and stopped under the mango tree. She intentionally glanced at them as she thought it was her husband who arrived from work. When her husband arrived at around 6:30 p.m., she told him about the two persons in a motorcycle, so, they went out to verify as theft of pigs was rampant in their area. When they were about to leave, they heard the arrival of a second motorcycle. She saw that when the driver and passenger disembarked from the motorcycle, the passenger suddenly stabbed the driver at the back. Later the two passengers of the motorcycle that earlier arrived joined in clubbing the driver. She was so sure that it was Alcala who shot the victim and her recognition of the latter was bolstered when she pointed him out and identified in open court. Lipusan added that even if the killing occurred when it was dark, she could still see the incident not only because she was just 10 meters away, but because of the light coming from the victim's motorcycle.

The Court also concurred with the findings of the RTC and the CA that the killing was attended by treachery.

The essence of treachery lies in the nature of an attack done deliberately and without warning — it must be done in a swift and unexpected manner, giving the hapless, unarmed and unsuspecting victim no chance to resist or escape.[26] Based on the testimony of Lipusan, when the motorcycle driven by the victim arrived, his back seat passenger alighted from the motorcycle and suddenly stabbed the victim from behind. Then the passengers of the motorcycle who arrived earlier, helped in clubbing the victim. Later on, Alcala shot the victim. This was supported by the medical report finding incised wounds on the victim's back scapular area or shoulder blade, lumbar area and at the level of his back retinae. Also, there was a gunshot on the victim's back occipital area at the base of his skull. Inasmuch as the wounds were directed at the back of the victim, it is then apparent that the attacks were made while the victim was not facing the assailants and, thus, was made in a sudden and unexpected manner. The number of wounds inflicted on the victim and the way they attacked underscores not only the culprits' intent to kill him, but also their intention to deny him the chance to defend himself or escape the attack.

In fine, the Court finds no error in the conviction of Alcala.

As to the penalty imposed, we affirm the penalty of reclusion perpetua imposed upon Alcala. Under Article 248 of the RPC, as amended, the crime of murder qualified by treachery is penalized with reclusion perpetua to death. The lower courts were correct in imposing the penalty of reclusion perpetua in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of civil indemnity and moral damages in the amount of P75,000.00 each. However, the award of exemplary damages should be modified in accordance with the prevailing jurisprudence. In *People v. Jugueta*,^[27] the Court ruled that civil indemnity, moral damages, and exemplary damages should be awarded at P75,000.00 each in cases involving murder wherein the penalty imposed is reclusion perpetua, as in this case. As such, the Court deems it proper to increase the amount of exemplary damages from P30,000.00 to P75,000.00.

We also note that both the RTC and the CA did not award any actual damages in favor of the heirs of the victim. Again, in *People v. Jugueta*, it was held that when no documentary evidence of burial or funeral expenses is presented in court, the amount of P50,000.00 as temperate damages shall be awarded. Since prevailing jurisprudence now fixes the amount of P50,000.00 as temperate damages in murder cases, the Court finds it proper to award temperate damages to the heirs of Richard, in lieu of actual damages.

In view, however, that it was only Alcala who appealed to this Court, the increase of exemplary damages and the grant of temperate damages in favor of the heirs of the victim, shall only apply to Alcala following Section 11(a), Rule 122 of the Rules of Court which provides that "an appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

WHEREFORE, the appeal is DISMISSED for lack of merit. The Decision dated March 29, 2017 of the Court of

Appeals-Cagayan de Oro City in CA-G.R. CR-HC No. 01337-MIN finding accused-appellant Rene P. Alcala guilty beyond reasonable doubt of the crime of murder is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant is **ORDERED** to **PAY** the heirs of Richard Tomaquin P75,000.00 as exemplary damages and P50,000.00 as temperate damages in lieu of actual damages. The award of other damages imposed against the accused-appellant is sustained. In addition, interest shall be imposed on all monetary awards at the rate of 6% per annum from the finality of this Decision until fully paid.

SO ORDERED.

Peralta, C.J., (Chairperson), Caguioa, Lazaro-Javier, and M. Lopez, JJ., concur.

[1] Penned by Associate Justice Perpetua T. Atal-Pano, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; rollo, pp. 3-24.

[2] CA rollo, pp. 47-48.

[3] TSN, August 18, 2009, p. 5.

[4] TSN, November 17, 2009, p. 3.

[5] Id. at 3-5.

[6] TSN, August 3, 2010, p. 9.

[7] Id. at 19-24.

[8] Id. at 10-12.

[9] Id. at 14-15, 30.

[10] TSN, March 9, 2010.

[11] TSN, March 12, 2013. pp. 5-12.

[12] Id. at 14-23, 39.

[13] TSN, October 25, 2011, pp. 4-9.

[14] Id. at 21-22.

[15] TSN, March 13, 2012, pp. 7-10.

[16] TSN, October 25, 2011, pp. 20-21.

[17] CA rollo, p. 61.

[18] Rollo, p. 24.

[19] Id. at 30.

[20] Id. at 32-35, 37-38.

[21] CA rollo, p. 37.

[22] *People v. Naife*, G.R. No. 233832, July 1, 2019 (Minute Resolution).

[23] *Balasta v. People*, G.R. No. 242912, February 13, 2019 (Minute Resolution).

[24] Rollo, pp. 15-16.

[25] Id. at 17.

[26] People v. Matias, G.R. No. 225504, January 19, 2018 (Minute Resolution).

[27] 783 Phil. 806 (2016).

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