



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
*W. Lapitan*  
 WILFRIDO W. LAPITAN  
 Division Clerk of Court  
 Third Division  
 SEP 21 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
 Plaintiff-Appellee,

G.R. No. 215715

Present:

- versus -

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 DEL CASTILLO,\*  
 PEREZ, and  
 REYES, JJ.

EDCEL COLORADA,  
 Accused-Appellant.

Promulgated:

August 31, 2016

*W. Lapitan*

X ----- X

RESOLUTION

**PEREZ, J.:**

On appeal is the Decision<sup>1</sup> dated 28 February 2014 of the Court of Appeals in CA-G.R. CR-HC NO. 01501, affirming with modification as to damages, the Decision<sup>2</sup> dated 26 April 2012 of the Regional Trial Court, Branch 6, Tacloban City, in Criminal Case No. 2001-09-655, which found accused-appellant Edcel Colorada guilty beyond reasonable doubt of the crime of Murder, and sentenced him to suffer the penalty of *reclusion perpetua*.

Accused-appellant was charged with the crime of Murder. The accusatory portion of the Information narrates:

\* Additional Member per Raffle dated 25 May 2016.

<sup>1</sup> *Rollo*, pp. 3A-12; Penned by Acting Executive Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy concurring.

<sup>2</sup> Records, pp. 251-257; Penned by Presiding Judge Alphinor C. Serrano.

*8*

That on or about the 20<sup>th</sup> day of December, 2000, in the Municipality of Jaro, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with abuse of superior strength and with treachery did, then and there, willfully, unlawfully and feloniously attack, hack and wound the blind Genoviva Barraza, alias "Ebang" a woman, with the use of a long bolo which the accused provided himself for the purpose, thereby inflicting a fatal hacking wound in the neck which was the direct and proximate cause of her death.

Contrary to law with the aggravating circumstance of disregard the respect due the offended party on account of her age and sex.<sup>3</sup>

On arraignment, accused-appellant pleaded NOT GUILTY<sup>4</sup> to the charge. At the pre-trial conference, the parties failed to arrive at any plea-bargaining. Nevertheless, the parties agreed on the following stipulation of facts: (1) that the accused is the same person named in the Information; (2) that the court has jurisdiction over the case; and (3) that the Certificate of Death<sup>5</sup> attached to the record is genuine and authentic.<sup>6</sup> Trial on the merits ensued afterwards.

### *The Facts*

The facts culled from the records and as summarized by the Court of Appeals, are as follows:

The prosecution presented Ernesto Encajas (Ernesto), Dr. Winston Villaflor (Dr. Villaflor), Leonilo Encajas (Leonilo), and Apolinario Caigoy (Apolinario) as witnesses. On the other hand, accused-appellant was the lone witness for the defense.

Apolinario testified that at around 3:30 in the afternoon of 20 December 2000, he was at Brgy. Sari-Sari Jaro, Leyte, to buy a pig for his child's birthday. While he was in the area, Apolinario heard accused-appellant shouting for a fight. Apolinario hid himself in a chapel, located across the house of Leonilo, to avoid a confrontation.<sup>7</sup> Peeping through a hole in the chapel,<sup>8</sup> Apolinario saw accused-appellant enter the house where the victim was and challenged her to a fight. Because accused-appellant did

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<sup>3</sup> Id. at 1.

<sup>4</sup> Id. at 30.

<sup>5</sup> Id. at 13.

<sup>6</sup> Id. at 44.

<sup>7</sup> TSN, 1 February 2005, pp. 4-5.

<sup>8</sup> Id. at 13.



not get a response,<sup>9</sup> he went up to the house's porch and hacked the victim on the neck with the use of a long bolo. The victim immediately fell down.<sup>10</sup> Terrified, Apolinario went home immediately after the incident.<sup>11</sup>

Ernesto, the victim's son,<sup>12</sup> testified that he was processing copra at his copra kiln, approximately nine (9) arms length away from the house of his brother, when the accused-appellant allegedly hacked his mother.<sup>13</sup> Ernesto said that earlier on the same afternoon, he already saw the accused-appellant drunk and running after people in Brgy. Sari-Sari. He ignored accused-appellant's actions and avoided him instead.<sup>14</sup> However, later on, he saw his already wounded mother being dragged by accused-appellant by the armpit.<sup>15</sup> This is what triggered Ernesto to quickly approach accused-appellant and the victim. Upon nearing accused-appellant, Ernesto was also hacked by him. He tried to defend himself from accused-appellant's long bolo but, still, Ernesto's three fingers on his right hand were injured. He had to run away and hide.<sup>16</sup>

Leonilo, also the victim's son, submits that at around 3:30 in the afternoon of 20 December 2000, he was in the house of his *compadre* to deliver some tuba. While at his *compadre's* house, one Lynlyn Navarette told Leonilo to go home immediately for his mother was hacked. Leonilo immediately left and hurried back to his house. Upon entering his house, he saw his mother lying on her stomach. Leonilo lifted his mother up and saw that her neck was already wounded. According to Leonilo, his mother revealed to him that it was Edcel who inflicted the wound. Subsequently, the barangay captain and some policemen arrived and his mother was brought to Jaro, Leyte and then transferred to a hospital in Tacloban, where she eventually died.<sup>17</sup>

Dr. Villafor, one of the physicians who attended to the victim at the Eastern Visayas Regional Medical Center (EVRMC) hospital, testified as an expert witness.<sup>18</sup> He noted that the injury of the victim was a deep hacking wound at the anterior part of her neck.<sup>19</sup> As stated in the Death Certificate,<sup>20</sup>

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<sup>9</sup> Id. at 10-12.

<sup>10</sup> Id. at 5.

<sup>11</sup> Id. at 7.

<sup>12</sup> TSN, 16 December 2002, p. 4.

<sup>13</sup> Id. at 6.

<sup>14</sup> Id. at 9.

<sup>15</sup> Id. at 6-7.

<sup>16</sup> Id. at 10-11.

<sup>17</sup> TSN, 17 November 2004, pp. 3-5.

<sup>18</sup> TSN, 2 September 2004, p. 8.

<sup>19</sup> Id. at 11.

<sup>20</sup> Records, p. 13.

the underlying cause of death of the 98-year old victim was the hacking wound, which caused massive blood loss to the patient.<sup>21</sup>

The defense has a different version of the story.

Accused-appellant claims that at around 3 o'clock in the afternoon of 20 December 2000, he was on his way to his mother's house to bring milk to his children. As he was passing by the house of Leonilo, he allegedly saw him engaged in a fight with his brother, Ernesto. He tried to pacify the two. However, Ernesto faced and attacked accused-appellant using a short bolo. Accused-appellant tried to guard himself from the attack but he still sustained injuries on his right elbow. Ernesto ran away and accused-appellant moved backward. Afterwards, it was Leonilo who faced accused-appellant and tried to hack the latter with the use of a long bolo. Alerted by this, accused-appellant immediately went over the fence. In the process, the fence collapsed and accused-appellant fell down. It was around this time when he allegedly saw the victim by the door, already wounded. He also noticed that Ernesto was standing in front of him and about to deliver a hacking blow so he immediately stood up and ran away.<sup>22</sup>

Accused-appellant said that he had his wound treated and tried to obtain a medical certificate. However, he claimed that he was unable to obtain a copy because it was in the possession of his mother who was not around.<sup>23</sup>

Accused-appellant explained that nine (9) days after the incident, he left for his uncle's place in Dagami. From Dagami he went back to their home in Jaro during the first week of January 2001 before leaving for Baguio on 15 February 2001 for work.<sup>24</sup> Accused-appellant was finally arrested on 1 June 2001, in Baguio City.<sup>25</sup>

### ***Ruling of the Regional Trial Court***

On 26 April 2012, the RTC rendered a Decision finding accused-appellant guilty beyond reasonable doubt of the crime of Murder. The dispositive portion of the decision reads:

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<sup>20</sup> Records, p. 13.  
<sup>21</sup> TSN, 2 September 2004, p. 21.  
<sup>22</sup> TSN, 7 August 2007, pp. 5-10.  
<sup>23</sup> Id. at 10-11.  
<sup>24</sup> TSN, 10 February 2009, pp. 7-8.  
<sup>25</sup> Records, p. 21.



**WHEREFORE**, in view of all the foregoing considerations, this Court finds accused **EDCEL COLORADA** guilty beyond reasonable doubt of the crime of Murder and sentences him to suffer the penalty of imprisonment of **RECLUSION PERPETUA**; and, to pay, the heirs of the victim, Genoveva Barraza, P75,000.00 as civil indemnity, and P75,000.00 for moral damages. And to pay the Costs.<sup>26</sup>

### *Ruling of the Court of Appeals*

The Court of Appeals, in its assailed Decision dated 28 February 2014, affirmed with modification the judgment of conviction of the RTC. The dispositive portion of the decision reads:

**WHEREFORE**, absent any reversible error, the instant appeal is DENIED. The 26 April 2012 Decision of the Regional Trial Court, Branch 6, Tacloban City in **Criminal Case No. 2001-90655** finding herein accused-appellant **EDCEL COLORADA** guilty beyond reasonable doubt with the **MURDER** of Genoveva Barraza is hereby **AFFIRMED with the MODIFICATION** that the moral damages should be decreased to Php50,000.00 and that, Edcel Colorada is further **ORDERED** to pay to the heirs of Genoveva Barraza interest on all amounts awarded as damages at the legal rate of six percent (6%) per annum from finality of this judgment until fully paid, consistent with the recent jurisprudence.<sup>27</sup>

Manifesting his intention to appeal to this Court, accused-appellant, by counsel, timely filed a Notice of Appeal.<sup>28</sup> The Notice of Appeal was given due course and the entire records of the case were directed to be transmitted to this Court for review. In a Resolution<sup>29</sup> dated 11 February 2015, this Court required the parties to file their respective supplemental briefs. The parties manifested<sup>30</sup> that they are adopting their respective briefs submitted before the Court of Appeals, in lieu of filing supplemental briefs.

### *Our Ruling*

We deny the appeal.

Article 248 of the Revised Penal Code (RPC) defines Murder as follows:

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<sup>26</sup> Id. at 257.  
<sup>27</sup> *Rollo*, p. 11.  
<sup>28</sup> Id. at 13.  
<sup>29</sup> Id. at 18-19.  
<sup>30</sup> Id. at 20-22 and 25-27.



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 temporal in its maximum period 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 persons to insure or afford impunity.

x x x x

The prosecution must establish the following to prove the crime of murder: (1) that the victim was killed; (2) that the killing is not infanticide or parricide; (3) that the accused killed the victim; and (4) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC.<sup>31</sup>

All the elements are present in this case.

The Death Certificate<sup>32</sup> of the victim clearly established her death. Furthermore, the case is neither infanticide<sup>33</sup> nor parricide,<sup>34</sup> as defined by the RPC. That the accused-appellant killed the victim, as attended by treachery and taking advantage of superior strength, was likewise proven by the prosecution beyond reasonable doubt.

### ***Treachery***

We thus agree with the lower courts that the killing is attended by treachery and taking advantage of superior strength. The essence of treachery is the sudden and unexpected attack on an unsuspecting victim, depriving the victim of any chance to defend himself or herself.<sup>35</sup> Given the blindness and old age of the victim, it was highly improbable for her to defend herself or escape from her attacker.

<sup>31</sup> *People v. Adriano*, G.R. 205228, 15 July 2015.

<sup>32</sup> Records, p. 13.

<sup>33</sup> Article 255. *Infanticide*. - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age. If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prision correccional in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be prision mayor.

<sup>34</sup> Article 246. *Parricide*. - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

<sup>35</sup> *People v. Bosito*, G.R. No. 209346, 12 January 2015, 745 SCRA 190, 200.

### *Credibility of Witness*

Accused-appellant argues that the testimony of eyewitness Apolinario is unreliable for several reasons. First, he claims that it is contrary to human experience that accused-appellant would challenge a person who can no longer walk and cannot move on her own because of blindness. Second, he points out that the answers of Apolinario to the questions asked were irresponsive in many points. He also noted that his testimony as to where the victim was when she was allegedly hacked by accused-appellant is inconsistent with the testimony of the victim's two sons. Lastly, he asserts that it is impossible for Apolinario to see the hacking incident fifteen (15) meters away when the victim's son Ernesto, who was only nine (9) arm's length away, did not witness it.<sup>36</sup>

We disagree.

First, it is not contrary to human experience for an assailant to attack a victim regardless of his or her physical condition. In fact, this works to the advantage of the attacker since his or her victim has a lesser chance of defending himself or herself.

Second, the inconsistencies that accused-appellant pointed out are immaterial. As stated in *People v. Albarido*,<sup>37</sup> and repeatedly in cases prior thereto and thereafter to the point of being axiom in evidence, the testimonies of prosecution witnesses with respect to minor details do not affect the substance of their declaration nor the validity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were rehearsed.<sup>38</sup>

Accused-appellant's last contention as to Apolinario's credibility was very well addressed by the Court of Appeals. Indeed, the position and angle of Apolinario and Ernesto in relation to where the hacking happened were significantly different. Apolinario testified that the chapel where he hid was right across the house where the unfortunate incident happened.<sup>39</sup> On the other hand, Ernesto was in his copra kiln located at the back of his house, which in turn is located beside the house where the hacking incident

<sup>36</sup> CA rollo, pp. 38-40.

<sup>37</sup> 420 Phil. 235, 244-245 (2001) as cited in *People v. Lucio*, 711 Phil. 591, 608 (2013).

<sup>38</sup> *People v. Lucio*, 711 Phil. 591, 608 (2013).

<sup>39</sup> TSN, 1 February 2005, p. 12.



occurred.<sup>40</sup> Clearly, Apolinario even had a better view of the crime scene.

We find no reason to depart from the ruling of the trial court as to the credibility of the witnesses. Ruling into this matter, the trial court stated:

No evidence nor proof of ill-motive was proved, nor could be inferred that the said witnesses would falsely testify against accused Colorada. "Absence of improper motive makes testimony worthy of full faith and credence." The testimonies of prosecution witnesses were narrated in a sincere, honest and straightforward manner, and are worthy of belief.<sup>41</sup> (Emphasis omitted)

This Court has consistently conformed to the rule that findings of the trial court on the credibility of witnesses deserve great weight.<sup>42</sup> Factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect, if not conclusive effect, most especially when affirmed by the Court of Appeals.<sup>43</sup> The reason for this is that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their demeanor and manner of testifying under grueling examination.<sup>44</sup> In the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.<sup>45</sup>

### ***Dying Declaration***

In a further attempt to exculpate himself, accused-appellant argues that the dying declaration of the victim should not be considered, given the fact that the victim was blind even prior to accused-appellant's birth. He also argues that the prosecution failed to establish that accused-appellant was close to the victim for the latter to identify the former despite the fact that she was blind.<sup>46</sup>

As correctly observed by the Court of Appeals, the requisite that the declarant must be competent as a witness is lacking, making the dying declaration inadmissible. The defense established that the victim was blind.

<sup>40</sup> TSN, 16 December 2002, pp. 14-16.

<sup>41</sup> Records, p. 256.

<sup>42</sup> *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227.

<sup>43</sup> *People v. Serenas*, 636 Phil. 495, 503 (2010).

<sup>44</sup> *People v. Rarugal*, 701 Phil. 592, 600 (2013).

<sup>45</sup> *People v. Bontuyan*, G.R. No. 206912, 10 September 2014, 735 SCRA 49, 64.

<sup>46</sup> CA rollo, pp. 40-42.



Since the prosecution failed to establish the familiarity between the victim and accused-appellant, it is highly doubtful that the former could positively identify her assailant despite her old age and lack of sight.<sup>47</sup>

Nonetheless, without even taking into account the victim's dying declaration, the guilt of accused-appellant was still established beyond reasonable doubt. The prosecution presented several witnesses, including an eyewitness, in the person of Apolinario,<sup>48</sup> who as already discussed positively identified the accused-appellant the assailant of the victim.

### ***Positive Identification as Against Denial***

Apolinario categorically identified accused-appellant as the one who hacked the victim on the neck.<sup>49</sup> This was further corroborated by the testimonies of Ernesto and Leonilo, and the medical report. There was no indication that Apolinario's testimony was motivated by ill-motive or attended by bad faith. In fact, accused-appellant himself testified that he does not know any reason for eyewitness Apolinario to falsely testify against him.<sup>50</sup> As against the credible testimonies and positive identification of the prosecution witnesses, the denial of accused-appellant cannot prosper. Denial is an inherently weak form of defense, particularly when it is not substantiated by clear and convincing evidence just like in the present case.<sup>51</sup>

### ***Penalty and Damages***

As to the penalty imposed upon accused-appellant, Article 248 of the RPC, as amended, states that the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death.

The Death Certificate of the victim proved that she was 98-years of age when she was killed. On the other hand, accused-appellant himself stated that he was 24 years old when the crime took place.<sup>52</sup> In *People v. Zapata and Tubadeza*,<sup>53</sup> where the victim was 65 years old and her killers were aged 32 and 27, this Court appreciated the disregard to the sex and age of the victim as an aggravating circumstance to murder. In a similar case where the

<sup>47</sup> *Rollo*, p. 8.

<sup>48</sup> *Id.*

<sup>49</sup> TSN, 1 February 2005, pp. 4-5.

<sup>50</sup> TSN, 10 February 2009, p. 4.

<sup>51</sup> *People v. Tancinco*, 736 Phil. 610, 623 (2014).

<sup>52</sup> *CA rollo*, p. 42.

<sup>53</sup> 107 Phil. 103 (1960).

victim was 60 years old when killed by her 23-year-old offender, this Court appreciated the same aggravating circumstance.<sup>54</sup> Since the aggravating circumstance of disregard of the respect due the offended party on account of her age and sex was properly alleged in the Information<sup>55</sup> and is evident in the present case, the appropriate penalty to be imposed is death. However, pursuant to R.A. 9346,<sup>56</sup> the penalty of *reclusion perpetua* without eligibility for parole shall be imposed in lieu of death.

Furthermore, we modify the award of damages in accordance with prevailing jurisprudence.<sup>57</sup> As such, we increase the award of civil indemnity to ₱100,000.00, and moral damages to ₱100,000.00. We also find it appropriate to add the award of exemplary damages given the nature of the crime committed and the existence of an aggravating circumstance. Accordingly, we order that exemplary damages be likewise paid to the heirs of the victim, Genoveva Barraza, in the amount of ₱100,000.00. The damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.<sup>58</sup>

**WHEREFORE**, the appeal is **DISMISSED**. Accused-appellant EDCEL COLORADA is convicted of Murder, sentenced to *reclusion perpetua* without eligibility for parole, and ordered to indemnify the heirs of Genoveva Barraza in the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>54</sup> *People v. Rubio*, 327 Phil. 316 (1996).


<sup>55</sup> Records, p. 1.

<sup>56</sup> Republic Act No. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," 24 June 2006


<sup>57</sup> *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

<sup>58</sup> *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

**WE CONCUR:**



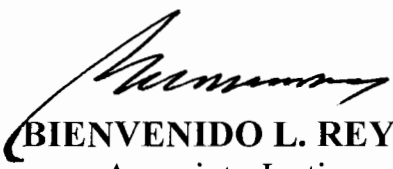
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



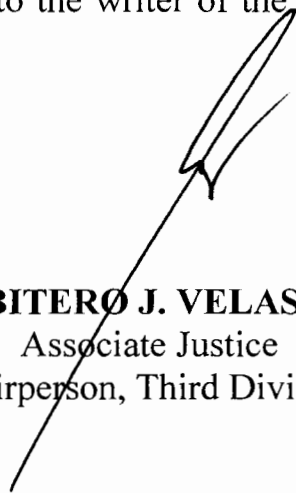
**MARIANO C. DEL CASTILLO**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

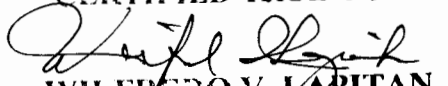
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

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**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division  
SEP 21 2016