



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

FEB 17 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Appellee,

G.R. No. 206291

Present:

-versus-

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

**ZALDY SALAHUDDIN and
 Three (3) other UNIDENTIFIED
 COMPANIONS,**

Promulgated:

Appellants.

January 18, 2016

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

This is an appeal from the Decision¹ dated October 25, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00638-MIN, which affirmed the decision² of the Regional Trial Court (*RTC*) of Zamboanga City, Branch 16, finding Zaldy Salahuddin guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 20664.

Appellant Zaldy Salahuddin was charged with the crime of murder in the Information dated June 9, 2004, the accusatory portion of which reads:

That on or about February 10, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a .45 caliber pistol and other handguns, conspiring and confederating (*sic*) together, mutually aiding and assisting one another, by means of treachery, evident premeditation and abuse of superior strength, and with intent to kill, did then and there,

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated January 20, 2016.

¹ Penned by Associate Justice Abraham B. Borreta, with Associate Justices Edgardo A. Camello and Melchor Q. C. Sadang, concurring.

² Penned by Presiding Judge Jesus C. Carbon, Jr.

wilfully, unlawfully and feloniously, assault, attack and shoot with the use of said weapons ATTY. SEGUNDO SOTTO, JR. y GONZALO, employing means, manner and form which tended directly and specially to insure its execution without any danger to the persons of the herein accused, as a result of which attack, said Atty. Segundo Sotto, Jr. y Gonzalo sustained mortal gunshot wounds on the fatal parts of his body which directly caused his death, to the damage and prejudice of the heirs of said victim;

That the commission of the above-stated offense has been attended by the following aggravating circumstances, to wit:

1. Use of unlicensed firearm; and
2. Use of motorcycle to facilitate not only the commission of the crime but also the escape of the accused from the scene of the crime.
3. That the crime be committed at night time.

CONTRARY TO LAW.³

Upon arraignment, appellant pleaded not guilty to the murder charge. Trial ensued afterwards.

Appellant was also charged with frustrated murder in Criminal Case No. 20665 for having fatally wounded Liezel Mae Java, the niece of the victim, during the same shooting incident. Since Java was alleged in the Information to be a minor, the said case was transferred to Branch 15 of the RTC of Zamboanga City, which is the only designated family court in the city.

To establish its murder case against appellant, the prosecution presented the testimonies of nine (9) witnesses, namely: (1) Juanchito Vicente Delos Reyes, the security guard who witnessed the shooting incident; (2) Dr. Melvin Sotto Talaver, the one who assisted the doctor who examined the victim's cadaver; (3) Java, the niece and companion of the victim at the time of the incident; (4) Michal Maya, the secretary of the victim in his law office; (5) Vicente Essex Minguez, the National Bureau of Investigation Agent who investigated the incident; (6) SPO3 Ronnie Eleuterio, a police officer attending to records of firearms and licenses; (7) Police Chief Inspector Constante Sonido, the one who conducted ballistic examination over the 2 empty shells; (8) Atty. Wendell Sotto, the son of the victim; and (9) Gloria Sotto, the victim's wife.

As summarized by the Court of Appeals (CA), the facts established by the evidence for the prosecution are as follows:

³ Records, p. 1.

On February 10, 2004, at around 5:30 in the afternoon, Atty. Segundo Sotto Jr., a prominent law practitioner in Zamboanga City, together with his niece, Liezel Mae Java[,] left the former's law office and went home driving an owner[-]type jeep. On the way towards their house at Farmer's Drive, Sta. Maria, Zamboanga City, they passed by Nunez Street, then turned left going to Governor Camins Street and through Barangay Sta. Maria. When the jeep was nearing Farmer's Drive, the jeep slowed down, then, there were two gun shots. Liezel Mae, the one sitting at the right side of the jeep felt her shoulder get numb. Thinking that they were the ones being fired at, she bent forward and turned left towards her uncle. While bending downwards, she heard a sound of a motorcycle at her right side. Then, she heard another three (3) [gunshots] from the person in the motorcycle. After that, the motorcycle left.

While Liezel's head was touching the abdomen of her uncle, she was crying and calling out his name. A few minutes later, rescuers arrived. Liezel and Atty. Segundo, with the use of tricycles, were brought to Western Mindanao Medical Center (WMMC).

Juanchito Vicente Delos Reyes, a Security Guard at the house of George Camins, located in Brgy. Sta. Maria, while seated on a stool at the inner side of the gate, facing the road, noticed that in the early evening of February 10, 2004, he saw a man driving a jeep, with a woman inside. He then heard two [gunshots]. Immediately after that, the jeep bumped at an interlink wire at the left side of the road, going to the entrance of Farmer's Drive. He peeped through the jeep and saw the face of the person in the driver's seat slammed on the steering wheel. He thereafter saw the motorcycle in front of the victim and the latter was shot again. The motorcycle went to the right side of the jeep and the backrider again shot the victim. Seeing the shooting incident, Delos Reyes aimed his gun at the person shooting. When the latter saw this, he made a sign – with his extended left hand, moving his left with open palms sideways. To Delos Reyes' mind, the sign means that the assailant does not want to be interfered [with]. When the motorcycle was about to leave, the assailant fired again.

After the motorcycle left, Delos Reyes called two tricycles in the highway to bring the wounded victims to the hospital. After the tricycles left, three (3) policemen from Sta. Maria Police Station arrived. Delos Reyes right away contacted the manager of WW Security Agency, Mr. Wilfredo Manlangit and told him about the incident. When the police officers were already in the crime scene, Delos Reyes told them that he still cannot relay everything that happened for he was still in a state of shock. It was his first time to see such an incident.

Atty. Wendell Sotto, the son of the victim, on the date of the incident, came from the law office and went home to their house at Farmer's Drive ten (10) minutes after the victim and his niece left the office. When Atty. Wendell was about to turn right to Farmer's Drive, he saw his father's jeep stalled at the left side of the said street. Upon seeing his father's jeep, he stopped his car and saw his father already slouching on the steering wheel of the jeep and his cousin slouching on his father's side. He noticed that his father was already full of blood. He went to the left side of the jeep, tried to pull his father out and shouted for help. Atty.

Wendell brought his father to the Operating Room of WMMC. Dr. Lim and Dr. Melvin Talaver attended to the victim, but they pronounced the victim to be dead on arrival.

Dr. Melvin Sotto Talaver, the one who assisted Dr. Lim in the examination of the cadaver testified that on February 10, 2004, at around 5:30 in the afternoon, he was at home, taking a rest from his duty. At around 6 o'clock, he was called by a staff of the Emergency Room of WMMC informing him about what happened to his relative, Atty. Segundo. Immediately thereafter, he went to the hospital. When he arrived there, Dr. Lim already declared the patient to be dead. After that announcement, the deceased was transferred to a smaller room. Dr. Talaver and Dr. Lim examined the body and made the recording of the entry and exit wounds. Dr. Talaver witnessed how Dr. Lim used a sketch of the human body, front and back, to document her findings.

As seen in the Physical Examination Form, there were four wounds in the front anatomy – one in the neck area, another on the chest above the left nipple, the third one was in the solarplexus – between the two breasts, and the last is somewhere in the abdominal area. For the back anatomy, they discovered exit wounds, from where they recovered the two (2) slugs, which they gave to Atty. Wendell, the son of the victim. Based on the Medical Certificate issued by Dr. Lim, the diagnosis stated Dead on Arrival – Cardiorespiratory arrest, secondary to hypovolemia, secondary to multiple gunshot wounds.

Vicente Essex Minguez, an NBI agent assigned at Western Mindanao Regional Office, Zamboanga City stated under oath that on February 13, 2004, Mayor Sotto of the Municipality of Siay, Zamboanga Sibugay, the brother of the deceased, filed a complaint before the NBI Office. On March 17, 2004, the NBI Office also received a Resolution from the City Government of Zamboanga City requesting the said agency to conduct an investigation regarding the killer of Atty. Segundo Sotto. Upon receipt of the resolution, NBI Agent Minguez then coordinated with his civilian agents to gather information about the death of Atty. Segundo. He also went to Sta. Maria Police Station and asked the police officers the progress of the investigation that they conducted. Sta. Maria Police then gave him a copy of the Report and told him that the empty shells were turned over to the crime laboratory. Subsequently, he tacked (sic) some investigation agents to look for witnesses of the said crime. When they came to know the name of the Security Guard Delos Reyes, they asked him to be a witness.

On March 3, 2004, Delos Reyes was brought by his manager Manlangit at the NBI Office, and there he gave a statement as to what happened during the incident on February 10, 2004. Delos Reyes also mentioned in his testimony that on February 17, 2004, at around 10 o'clock in the evening, while he was at the side of the gate inside the fence of the residence of George Camins, a motorcycle with two (2) males riding on it stopped. Delos Reyes called on the two (2) maids of George Camins to peep through the persons outside. After that, the maids returned and told him that they saw the backrider holding something and demonstrated the left or right hand pulling something backward and pulled it again forward, as if making a cocking action. The next day after the said

incident, Delos Reyes stopped reporting for work, with the permission of his manager, because it came to his mind that those were the people who killed Atty. Segundo.

On March 16, 2004, Delos Reyes was again at the NBI Office, and was asked to piece together the eyes, ears, mouth and nose of the accused. After having the sketch of the assailant, NBI Agent Minguéz designated it to his informants to gather more information. During the later part of March 2004, an informant told Agent Minguéz that he can identify the gunman. On March 28, 2004, the NBI then conducted a surveillance in Barangay Dita where the assailant was residing, as informed by the informant. In the said area, the NBI spotted the gunman riding a motorcycle.

On April 1, 2004, NBI agents, about ten (10) of them, together with Delos Reyes, disguised themselves as campaigners of the late Fernando Poe Jr. During that time, accused was spotted in a shop talking to two (2) women agents. Agent Minguéz asked confirmation from Delos Reyes if the person in the sketch was the same person that they saw in the shop. Thereafter, the agents backed out, Minguéz went to the NBI Office and prepared into writing the surveillance that was conducted.

On April 22, 2004, NBI filed the case with the Office of the City Prosecutor. Thereafter, a warrant of arrest was issued. On July 22, 2004, Minguéz and some of the NBI agents served the warrant at Barangay Vitali and arrested the accused. Upon his arrest, the agents recovered a .45 caliber firearm from the accused.

On the next day, Agent Minguéz invited Delos Reyes and Liezel Mae to identify if the person that they arrested was the same person whom they saw kill the victim. Both [eyewitnesses] positively identified the person to be the gunman.

Michal Macaya, the secretary of the law office of deceased Atty. Segundo, testified that on February 10, 2004, at about 10:30 in the morning, while Atty. Segundo was having a hearing at Branch 13, two men arrived at the office, looked for Atty. Segundo and asked where he was having a hearing. They left but returned thirty (30) minutes later. Macaya told them to come inside the office, but they refused to do so. They left again, and when they came back at past eleven, there were already four (4) of them, looking for Atty. Segundo. The four (4) men left and came back at about 12 o'clock in the morning. After the accused was arrested, Macaya was asked to come to the NBI Office to identify the accused. She stated that the accused and the person who went to the law office four (4) times have the same shape of the face.

Mrs. Gloria Sotto, the wife of the deceased, testified that at the time of the incident, she was at home. She came to know about what happened to her husband when her neighbors came shouting that Atty. Segundo was shot outside. She trembled and her children cried, but still she managed to go to the crime scene, and found that her husband was no longer there. She immediately went to the hospital and saw her husband already dead. The body of the victim was released at around 7:30 to 8 o'clock on that same night. The body of her husband was made to lie at La Merced Memorial Homes for nine (9) days and was buried at Forest Lake.

SPO3 Ronnie Eleuterio, a Police Office[r] attending records pertaining to firearms and licenses, testified that on August 5, 2004, he received a request for verification from the Fiscal Office to issue a Certification whether accused Zaldy Salahuddin has a licensed firearm. He checked the records and found that accused has no existing record of any firearms license, permit to transport or permit to carry firearms outside of his residence.

Police Chief Inspector Constante Sonido, Regional Chief and Firearm Examiner of the Regional Crime Laboratory, Region IX, testified that on February 11, 2004, he received a request from Sta. Maria Police Station for the conduct of a ballistic examination on the 2 empty shells. Based on his examination and as seen in the Firearms Identification Section Report No. FAIS-003-04, the two (2) cartridge cases were part from the same .45 caliber firearm.⁴

To substantiate appellant's defenses of denial and *alibi*, on the other hand, the defense presented the testimonies of 9 witnesses, namely: (1) appellant; (2) Sarabi Hussin; (3) Jauhari Hussin; (4) Sairaya Temong; (5) SPO1 Vicente Alama y Tanuan; (6) PO2 Donato Acosta y Mendoza; (7) Wilfredo Manlangit; (8) P/Sr. Ins. Hado Edding; and (9) P/Chief Insp. Roman Cornel Arugay.

As summarized by the CA, the facts established by the evidence for the defense are as follows:

The accused, on the other hand, interposed the defense of denial. He averred that on February 10, 2004, he was on duty as a Barangay Tanod, together with Jauhari Hussin, a Barangay Kagawad. On that day, he reported for duty at 7 o'clock in the morning until 5 o'clock in the afternoon, and stayed, during the whole day, in the barangay hall, and in some instances at the nearby elementary school. After 5 o'clock P.M. of that day, he passed by the house of Barangay Chairman, Sarabi Hussin, the brother of the above-named Kagawad. He stayed there and had a long conversation with the Barangay Chief and went home at around 9 o'clock in the evening. He claimed that he does not know about any participation in the killing of Atty. Segundo. During the time of the incident, accused insisted that he was at the house of the Barangay Captain for the latter did not go to the Barangay Hall.

Major Wilfredo Manlangit, a Major of the Philippine Army and Operator of WW Security Agency testified that based on the Monthly Disposition Report of WW Security Agency for the month of February 2004, no name of Juanchito Delos Reyes appears as one of the security guards for the month of February. A Certification dated September 30, 2004 stated that Juanchito Delos Reyes was on active duty at "Tu Casa" residence under the residence of Mrs. Corazon Camins as of March 3, 2004 only. However, on cross-examination, Major Manlangit affirmed that Delos Reyes was already one of the Security Guards of the agency.

⁴ Rollo, pp. 5-11. (Citations omitted.)

He remembered that Delos Reyes had already started working as one of its security guards in February 2004. He explained that Delos Reyes' name did not appear in the report because he did not complete the 30[-]day period in one month. It was required that he completes the 30-day period because the names in the report reflected only the names of the guards who completed the whole month.

Another defense witness Police Officer Donato Acosta, the assigned duty investigator for the killing of Atty. Segundo testified that he, together with his assistant PO1 Alama, under the supervision of Police Chief Edding, tried to find witnesses on the incident. He spoke with a certain Bayot, the seller of the store, near the place of the incident. The seller told the investigator that she saw the driver wearing a closed helmet, and the one riding at the back wore a shade. The result of their investigation was that a certain Toto Amping is the alleged assailant. These findings were written down by another defense witness PO1 Vicente Alama, who prepared a Special Investigation Report dated February 25, 2004, which was submitted to NBI Agent Minguez, but was unsigned by Chief of Police Edding.

Chief of Police Hado Edding testified that he did not sign the Special Investigation Report because the name mentioned in the report, purporting to be the assailant, was not supported by witnesses. He stated that the Special Investigation Report could not be taken as an official report of the Sta. Maria Police Station because as a matter of procedure, a report is considered official when the Chief of Police approves it. x x x.

Sarabi Hussin, the Barangay Chairman of Barangay Dita, testified that on February 10, 2004, he was at the Barangay Hall of Barangay Dita from 7 o'clock in the morning until 5 o'clock in the afternoon. He affirmed that he and accused Zaldy just stayed at the Barangay hall the whole day. He left the barangay hall at around 5 o'clock in the afternoon with the accused Salahuddin, through a motorcycle. Accused Zaldy, and Kagawad Jauhari Hussi[n] stayed at the house of the barangay chairman, ate there and left at around 8 o'clock in the evening.

Jauhari Hussin, a Barangay Kagawad of Barangay Dita corroborated the testimony of the barangay chairman. He declared that on February 10, 2004, he reported for duty with accused Salahuddin. Accused and the barangay chairman went home together, with the use of a motorcycle. He just walked home a little later.

Another defense witness, Saiyara Temong, the barangay secretary of Dita supported the testimony of the barangay chairman, kagawad and accused. She declared that the persons present on February 10, 2004 were Brgy. Kagawad, Jauhari Hussin, Brgy. Chairman Sarabi Hussin and accused Barangay Tanod Salahuddin.

Chief of Firearm Explosive Security Agencies and Guard Section (FESAGS) Roman Arungay, testified that he received a request from Atty. Mendoza of the Public Attorney's Office to submit some data regarding a Security Guard named Juanchito Delos Reyes. He issued a Certification stating that Delos Reyes was not included in the monthly disposition of the guards of WW Security Agency Specialist Services covering the period

from 01 to 29 February 2004. Delos Reyes was, however, included in the list of security guards employed under the said agency.⁵

After trial, the RTC convicted appellant of the crime of murder. The dispositive portion of its Decision dated March 28, 2008 states:

WHEREFORE, the Court finds accused ZALDY SALAHUDDIN y MUSU GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, as principal, for the unjustified killing of Atty. Segundo Sotto, Jr. y Gonzalo with the qualifying circumstances of treachery and evident premeditation and the ordinary aggravating circumstances of use of unlicensed firearm and use of motor vehicle which facilitated the commission of the crime and the escape of the accused and his companion from the crime scene, and SENTENCES said accused to suffer the penalty of RECLUSION PERPETUA and its accessory penalties; to pay the heirs of the late Atty. Segundo G. Sotto, Jr. the amount of Php50,000.00 indemnity for his death; Php100,000.00 as moral damages; Php50,000.00 as exemplary damages; Php197,548.25 as actual damages; and Php4,378,000.00 for loss of earning capacity; and to pay the costs.

SO ORDERED.⁶

The trial court found that two (2) eyewitnesses positively and categorically identified appellant as the gunman who shot Atty. Segundo and Java at around 6:00 p.m. on February 10, 2004 at Farmer's Drive, Sta. Maria, Zamboanga City. The trial court stressed that Java could not have been mistaken in identifying appellant as the gunman as he was just a meter away when he shot Atty. Segundo, while Juanchito Delos Reyes, a security guard on-duty at an establishment near the crime scene, also positively identified appellant as the gunman, and could not be mistaken as to the latter's identity because they had an eye-to-eye contact for about 5 seconds at a distance of 6 meters. The trial court added that the testimonies of the defense witnesses were replete with inconsistencies and contradictions, and were incredible when ranged against the positive testimonies of the prosecution witnesses who were not shown to have any improper motive to falsely testify against appellant.

On appeal, the CA affirmed with modification the trial court's decision by increasing the civil indemnity from ₱50,000.00 to ₱75,000.00, and reducing the award of exemplary damages from ₱50,000.00 to ₱30,000.00. The dispositive portion of the CA decision reads:

WHEREFORE, the appeal is **DENIED**. We affirm the Regional Trial Court Branch 16 of Zamboanga City Decision dated March 28, 2008 in Criminal Case No. 20664, finding ZALDY SALAHUDDIN y MUSU guilty of Murder and sentencing him to suffer *Reclusion Perpetua* and its

⁵ *Id.* at 11-14.

⁶ CA *rollo*, pp. 102-103.

accessory penalties, subject to the modification that he is held liable to pay the heirs of [the] late Atty. Segundo G. Sotto, Jr., death indemnity of PhP75,000.00, moral damages of PhP100,000.00, PhP30,000.00 as exemplary damages, PhP197,548.25 as actual damages and PhP4,378,000.00 for loss of earning capacity and to pay the costs.

SO ORDERED.⁷

The CA found that Java, Atty. Segundo's niece, positively identified appellant as the gunman, as it was not yet dark and she was just about 1 meter away from him, while Delos Reyes, a security guard at a nearby establishment, was about 4 to 6 meters away from the crime scene when he aimed his service firearm at the appellant who, in turn, made a hand sign at him not to interfere. The CA ruled that appellant failed to present convincing evidence that he was indeed at the barangay hall the whole day of February 10, 2004, and that his defenses were anchored on the testimonies of the Barangay Chairman, Kagawad and Secretary, which were all inconsistent from his very own testimony. Even if appellant's denial and *alibi* were corroborated by said defense witnesses, the CA rejected such defenses as unworthy of belief and credence, as they were established mainly by appellant himself, his friends and comrades-in-arms. The CA also found that it was not physically impossible for appellant to be present at the crime scene because the barangay hall where he supposedly stayed the whole day was just about 44 kilometers away and can be reached within a travel time of about 1 hour and 30 minutes.

On the issue of whether the crime was committed with evident premeditation, the CA noted that although the prosecution has clearly established the second element of overt act indicating that appellant had clung to his determination to commit the crime, no evidence was adduced to prove the first and third elements, *i.e.*, the time when the appellant had determined to commit the crime, and the sufficient lapse of time between the decision to commit and the execution of such crime. Nevertheless, the CA upheld appellant's conviction for murder, as the prosecution has established beyond reasonable doubt that the killing of the victim was qualified by treachery.

Hence, this appeal.

In support of his theory that the trial court gravely erred in convicting him despite the failure of the prosecution to provide evidence of his guilt beyond reasonable doubt, appellant reiterates the same arguments he raised before the CA.

⁷

Rollo, p. 22.

According to appellant, he was at the barangay hall on February 10, 2004 at 7:00 a.m. and rendered duty together with Barangay Kagawad Jauhari Hussin until 5:00 p.m. Thereafter, he passed by the house of Barangay Chairman Sarabi Hussin, who was his neighbor and stayed there until 9:00 p.m. before he finally went home. For his part, Barangay Chairman Sarabi corroborated appellant's *alibi*, and testified that appellant had reported for duty on February 10, 2004 from 7:00 a.m. to 5:00 p.m., and that they went home together afterwards. Barangay Kagawad Jaurai Hussin and Barangay Secretary Saiyara Temong also confirmed that appellant had indeed reported for duty on even date. They added that appellant and the Barangay Chairman rode a motorcycle and went home together at 5:00 p.m. The barangay logbook showed that appellant timed in at 7:30 a.m. and timed out at 5:00 p.m. on February 10, 2004.

Considering the foregoing evidence that he was at the barangay hall from 7:30 a.m. to 5:00 p.m. on February 10, 2004, appellant insists that the defense has shown that it was impossible for him to have committed the crime by going to Atty. Segundo's law office which is about 44 kilometers away or 1½ hour-ride from the city proper. He asserts that the said barangay officials are credible witnesses, and that their testimonies are worthy of full faith and credit, since they testified in a categorical and frank manner, and were not shown to have any improper motive to falsely testify in court. He concedes that there are a few discrepancies and inconsistencies in the testimonies of the defense witnesses, which pertain only to minor details, and are not of a nature and magnitude that would impair their credibility.

The appeal lacks merit.

It is well settled that the trial court's evaluation of the credibility of witnesses is entitled to great respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies.⁸ The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by the Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. After a careful review of the records, the Court finds that no compelling reason exists to warrant a deviation from the foregoing principles, and that the RTC and the CA committed no error in giving credence to the testimonies of the prosecution witnesses.

⁸ *People v. Tagudar*, 600 Phil. 565, 583 (2009).

Prosecution witnesses Java and Delos Reyes were clear and consistent in the identification of appellant as the one who fatally shot Atty. Segundo several times. As aptly held by the CA:

In the case at bar, eyewitnesses Liezel Mae Java and Juanchito Delos Reyes positively and categorically identified the accused-appellant to be the assailant of the murder (sic). Liezel Mae Java, in her testimony, stated that she was one hundred percent (100%) sure that the accused-appellant was the man who shot her uncle. She could not forget the man because even if it was around 6 o'clock in the evening it was not yet totally dark and she was only about one meter from the accused. Juanchito Delos Reyes also declared that he was about four (4) to six (6) meters away from the scene of the crime and he saw the accused making a sign at him, by the time he aimed his gun at the assailant. These direct, straightforward and positive testimonies of the aforesaid witnesses pointing to the accused appellant as the gunman created strong and credible evidence against him, thus no weight can be given to the alibi of the accused.⁹

Murder is defined under Article 248¹⁰ of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation.¹¹ The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor.¹² Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.¹³ In *People v. Biglete*,¹⁴ the Court ruled:

x x x Indeed, the victim had no inkling of any harm that would befall him that fateful night of August 27, 2001. He was merely plying his regular [jeepney] route. He was unarmed. The attack was swift and unexpected. The victim's arms were on the steering wheel; his focus and

⁹ CA *rollo*, pp. 256-257. (Citations omitted.)

¹⁰ 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 persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

¹¹ *People v. Adviento, et al.*, 684 Phil. 507, 519 (2012).

¹² *Id.*, citing *People v. Sanchez*, 636 Phil. 560, 576 (2010).

¹³ *People v. Anticamara, et al.*, 666 Phil. 484, 508 (2011).

¹⁴ 690 Phil.____ (2012)

attention on the traffic before him. All these showed that the victim was not forewarned of any danger; he also had no opportunity to offer any resistance or to defend himself from any attack.¹⁵

In this case, the trial court correctly ruled that the fatal shooting of Atty. Segundo was attended by treachery because appellant shot the said victim suddenly and without any warning with a deadly weapon, thus:

x x x Atty. Segundo G. Sotto, Jr., who was driving his jeep with his teenage niece as passenger sitting on his right side on the front seat, was totally unaware that he will be treacherously shot just 200 meters away from his residence. He was unarmed and was not given any opportunity to defend himself or to escape from the deadly assault. After he was hit when the gunman fired the first two shots at him and his niece and after he lost control of his jeep which bumped an interlink wire fence and stopped, he was again shot three times by the gunman. x x x¹⁶

The essence of evident premeditation, on the other hand, is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.¹⁷ For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.¹⁸ As aptly pointed out by the Office of the Solicitor General, the trial court conceded that the specific time when the accused determined to commit the crime, and the interval between such determination and execution, cannot be determined.¹⁹ After a careful review of the records, the Court agrees with the CA's finding that no evidence was adduced to prove the first and third elements of evident premeditation.

In seeking his acquittal, appellant raises the defenses of denial and *alibi*. However, such defenses, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.²⁰ They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.

Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the

¹⁵ *Id.* at 558.

¹⁶ CA rollo, pp. 206-207.

¹⁷ *People v. Anticamara, et al.*, *supra* note 13, at 510.

¹⁸ *People v. Duavis*, 678 Phil. 166, 177 (2011).

¹⁹ CA rollo, p. 234.

²⁰ *People v. Anticamara, et. al.*, *supra* note 13, at 507.

appellants.²¹ Between the categorical statements of the prosecution eyewitnesses Java and Delos Reyes, on one hand, and the bare denial of the appellant, on the other, the former must prevail. After all, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. In order for the defense of *alibi* to prosper, it is also not enough to prove that the accused 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.²² The Court sustains the CA in rejecting appellant's defenses of denial and *alibi*, as follows:

In the instant case, accused-appellant failed to present convincing evidence that he was indeed at the barangay hall the whole day of February 10, 2004. Accused anchored his defense from the testimonies of [the] Barangay Chairman, Barangay Kagawad and Barangay Secretary, which were all inconsistent from his very own statements in court. First, accused claimed that on February 10, 2004, he just stayed at the Barangay Hall and then did some rounds at the school nearby. However, Barangay Chairman Hussin claimed that accused just stayed only at the barangay hall for the whole day. Second, accused claimed that at around 5 o'clock in the afternoon, he went home walking together with Barangay Kagawad Jauhari Hussin. On the other hand, Barangay Chairman testified that he went home together with the accused at around 5 o'clock in the afternoon of that day. Jauhari Hussin corroborated [the] Barangay Chairman's statement saying that accused and the latter went home together with the accused driving the motorcycle. Third, accused claimed that they did not eat at the house of the Barangay Captain, for they only had long conversations and he only ate at their house, at around 9 o'clock. Conversely, Barangay Captain Hussin testified that accused stayed at their house and ate dinner there. Fourth, accused claimed that he does not know how to drive a motorcycle for he was just learning the skill. On the other hand, the barangay captain, corroborated by the testimony of his brother Barangay Kagawad affirmed that the accused and the former went home together by the use of a motorcycle, with the accused driving it. All of these are declarations of the defense witnesses which, instead of corroborating accused's defense of *alibi* and denial, tend to diminish the credibility of the accused.

Furthermore, even if the defense of *alibi* was corroborated by [the] testimonies of the Barangay Chairman, Barangay Kagawad, and Barangay Secretary, it is undeserving of belief because it has been held that *alibi* becomes more unworthy of merit where it is established mainly by the accused himself and his or her relatives, friends, and comrades-in-arms, and not by credible persons.²³

In contrast to the credible testimonies of the prosecution witnesses Delos Reyes and Java who positively identified appellant as the gunman, the

²¹ *Id.*

²² *Id.* at 507-508.

²³ *Rollo*, pp. 16-17. (Citations omitted.)

testimonies of the defense witnesses in support of appellant's denial and *alibi*, are tainted with material inconsistencies.

On the one hand, Barangay Chairman Sarabi Hussin testified that he, together with appellant, reported for work at the Barangay Hall of Dita on February 10, 2004 at 7 o'clock in the morning and left at 5 o'clock in the afternoon, and that he let appellant drive his motorcycle from his home, to the barangay hall, and back.²⁴ Despite his insistence that he signed the attendance logbook on February 10, 2004, Sarabi later admitted that his signature does not appear thereon.²⁵ On the other hand, appellant testified that Sarabi did not report for work that day, and that aside from himself, the two (2) other persons at the Barangay Hall that day were Barangay Kagawad Jauhari Hussin and Barangay Secretary Sairaya Temong.²⁶ Appellant added that after 5 o'clock in the afternoon of February 10, 2004, his companion in going home was Barangay Kagawad Jauhari, and not Sarabi.

With respect to the aggravating circumstances alleged in the Information, the Court finds that the trial court duly appreciated the presence of the use of unlicensed firearm in the commission of the crime, as well as the use of motor vehicle to facilitate its commission and escape of the accused from the crime scene.

To establish the special aggravating circumstance of use of unlicensed firearm in the fatal shooting of Atty. Segundo, the prosecution presented the following evidence: (1) testimony of Delos Reyes that the gun used by appellant was a "short gun";²⁷ (2) the testimony of SPO3 Ronnie Eleuterio and the Certification²⁸ from the Firearms, Explosives, Security Agencies and Guards Section (*FESAGS*) of the Police Regional Office 9 of the Philippine National Police (*PNP*) to the effect that records of the said office do not show that a firearms license, permit to carry or permit to transport firearms outside of residence were issued to appellant; (3) the request²⁹ for ballistics examination of two pieces .45 caliber slugs recovered by the attending physicians on the body of the victim and two pieces of .45 caliber slugs that were test-fired from the .45 caliber pistol recovered from appellant when he was arrested by NBI operatives; and (4) FID Report No. 192-2-2-8-2004³⁰ dated September 15, 2004 which contain the result of the said examination.

In *People v. Dulay*,³¹ the Court ruled that the existence of the firearm can be established by testimony even without the presentation of the firearm. In the said case, it was established that the victims sustained and died from

²⁴ TSN, July 24, 2006, pp. 23-24.

²⁵ *Id.* at 34-38.

²⁶ TSN, May 12, 2006, pp. 31-32.

²⁷ TSN, February 27, 2006, p. 30

²⁸ Exhibit "O."

²⁹ Exhibit "T-2."

³⁰ Exhibit "T-3."

³¹ 561 Phil. 764, 771-772 (2007).

gunshot wounds, and the ballistic examinations of the slugs recovered from the place of the incident showed that they were fired from a .30 carbine rifle and a .38 caliber firearm. The prosecution witnesses positively identified appellant therein as one of those who were holding a long firearm, and it was also proven that he was not a licensed firearm holder. Hence, the trial court and the CA correctly appreciated the use of unlicensed firearm as a special aggravating circumstance.

In contrast, in *People v. De Leon*,³² the Court found that the said aggravating circumstance was not proven by the prosecution because it failed to present written or testimonial evidence to prove that appellant did not have a license to carry or own a firearm. Although jurisprudence dictates that the existence of the firearm can be established by mere testimony, the fact that appellant therein was not a licensed firearm holder must still be established.³³

Despite the result of the ballistic examination that the slugs test-fired from the gun recovered from appellant when he was arrested, were different from the 2 slugs recovered from the body of the victim, the prosecution was still able to establish the special aggravating circumstance of use of unlicensed firearm in the commission of the crime. Given that the actual firearm used by appellant in shooting the victim was not presented in court, the prosecution has nonetheless proven through the testimony of Delos Reyes that the firearm used by appellant was a “short gun.”³⁴ It has also established through the testimony of SPO3 Ronnie Eleuterio and the Certification³⁵ from the FESAGS of the PNP that appellant was not issued a firearms license, a permit to carry or permit to transport firearms outside of residence.

Notably, the term unlicensed firearm includes the unauthorized use of licensed firearm in the commission of the crime, under Section 5³⁶ of Republic Act (RA) No. 8294.³⁷ Assuming *arguendo* that the actual firearm used by appellant was licensed, he still failed to prove that he was so authorized to use it by the duly licensed owner. The prosecution having proven that appellant was not issued a firearms license or permit to carry or permit to transport firearms, the burden of evidence is then shifted to appellant to prove his authorization to use the firearm. All told, the trial

³² 608 Phil. 701 (2009).

³³ *People v. De Leon*, *supra*, at 725.

³⁴ TSN, February 27, 2006, p. 30.

³⁵ Exhibit “O.”

³⁶ Section 5. *Coverage of the Term Unlicensed Firearm.* – The term unlicensed firearm shall include:
1) firearms with expired license; or
2) unauthorized use of licensed firearm in the commission of the crime.

³⁷ *An Act Amending the provisions of Presidential Decree No. 1866, as amended, entitled “Codifying the laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing stiffer penalties for certain violations thereof, and for relevant purposes.”*

court correctly appreciated the presence of the said aggravating circumstance in imposing the penalty against appellant.

Meanwhile, the use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape,³⁸ but not when the use thereof was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult.³⁹ In *People v. Herbias*,⁴⁰ the Court held:

The use of motor vehicle may likewise be considered as an aggravating circumstance that attended the commission of the crime. The records show that assailants used a motorcycle in trailing and overtaking the jeepney driven by Saladio after which appellant's back rider mercilessly riddled with his bullets the body of Jeremias. There is no doubt that the motorcycle was used as a means to commit the crime and to facilitate their escape after they accomplished their mission.⁴¹

The prosecution has proven through the testimonies of Java and Delos Reyes that appellant was riding a motorcycle behind the unknown driver when he twice shot Atty. Segundo who thus lost control of his owner-type jeep and crashed into the interlink wire fence beside the road. The motorcycle then stopped near the jeep, and appellant shot Atty. Segundo again thrice, before leaving the crime scene aboard the motorcycle. Clearly, the trial court correctly appreciated the generic aggravating circumstance of use of motor vehicle in the commission of the crime.

Since the fatal shooting of the victim was attended by the qualifying circumstance of treachery, the Court upholds the trial court in convicting appellant of the crime of murder. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. Although evident premeditation was not established, the other aggravating circumstances of use of unlicensed firearm and use of motor vehicle in the commission thereof, were alleged in the Information and proven during the trial. The presence of such aggravating circumstances warrants the imposition of the death penalty. However, in view of the enactment of RA No. 9346,⁴² the death penalty should be reduced to *reclusion perpetua* "without eligibility for parole" pursuant to A.M. No. 15-08-02-SC.⁴³

³⁸ *People v. Lozada*, 454 Phil. 241, 255 (2003).

³⁹ *People v. Astudillo*, 449 Phil. 778, 796 (2003).

⁴⁰ 333 Phil. 422 (1996).

⁴¹ *People v. Herbias*, *supra*, at 432-433.

⁴² Entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

⁴³ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties. II. (2) When circumstances are present warranting the imposition of the death penalty, but this

Anent the civil liability of appellant, the award of actual damages in the amount of ₱197,548.25 is in order because the victim's spouse, Gloria Sotto, had testified that funeral expenses were incurred and they were duly supported by official receipts.⁴⁴

In addition, the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.⁴⁵ Even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the award of civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.⁴⁶ In recent jurisprudence,⁴⁷ the Court has increased the award of civil indemnity from ₱75,000.00 to ₱100,000.00.

Moreover, in line with current jurisprudence⁴⁸ on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award for moral damages has been increased from ₱75,000.00 to ₱100,000.00, while the award for exemplary damages has likewise been increased from ₱30,000.00 to ₱100,000.00. Hence, while the CA correctly affirmed the trial court's award of ₱100,000.00 as moral damages, the award of civil indemnity and exemplary damages in the amounts of ₱50,000.00 each should be both increased to ₱100,000.00. The award of moral damages is called for in view of the violent death of the victim, and these do not require any allegation or proof of the emotional sufferings of the heirs.⁴⁹ The award of exemplary damages is also proper because of the presence of the aggravating circumstances of use of unlicensed firearm and use of a motor vehicle in the commission of the crime.

However, the Court is constrained to disallow the award of ₱4,398,000.00 as compensation for loss of earning capacity for insufficiency of evidence. The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity.⁵⁰ By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work,

penalty is not imposed because of R.A. 9346, the qualification "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. 9346.

⁴⁴ Exhibits "S" to "S-6."

⁴⁵ *People v. Anticamara, et al.*, *supra* note 13, at 515.

⁴⁶ *Id.*

⁴⁷ *People of the Philippines v. Eddie Salibad y Dilo*, G.R. No. 210616, November 25, 2015 and *People v. Gambao*, G.R. No 172707, October 1, 2013, 706 SCRA 508, 533.

⁴⁸ *Id.*

⁴⁹ *People v. Del Rosario*, 657 Phil. 635, 646 (2011).

⁵⁰ *People v. Lopez*, 658 Phil. 647, 651(2011).

no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.⁵¹ None of such exceptions was shown to obtain in this case.

Even if the testimony of Gloria Sotto, the victim's spouse, was not disputed by the defense, the prosecution failed to present any documentary evidence to prove the victim's monthly income. Thus, the Court disagrees with the trial court in awarding ₱4,398,000.00 as compensation for loss of earning capacity based on the unsubstantiated testimony of Gloria that her husband had a good law practice and earned at least ₱50,000.00 a month or ₱600,000.00, as one of the prominent law practitioners in Zamboanga City with almost daily appearance in court. Be that as it may, in light of settled jurisprudence and of Gloria's undisputed testimony, the Court finds it reasonable to award ₱1,000,000.00 as temperate damages *in lieu* of actual damages for loss of earning capacity. As held in *Tan, et al. v. OMC Carrier, Inc., et al.*:⁵²

In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.

In *Pleno v. Court of Appeals*, we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiffs' income was not sufficiently proven.

We did the same in *People v. Singh*, and *People v. Almedilla*, granting temperate damages in place of actual damages for the failure of the prosecution to present sufficient evidence of the deceased's income.

Similarly, in *Victory Liner, Inc. v. Gammad*, we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs ₱500,000.00 as temperate damages.⁵³

Finally, all the damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until fully paid.⁵⁴

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 25, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00638-

⁵¹ *Tan, et al. v. OMC Carriers, Inc., et al.*, 654 Phil. 443, 456 (2011).

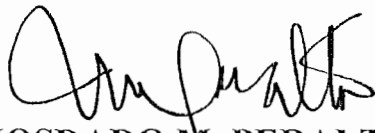
⁵² *Id.*

⁵³ *Id.* at 457. (Citations omitted.)

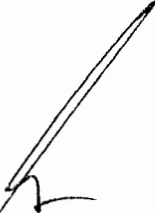
⁵⁴ *People of the Philippines v. Edgardo Zabala y Balada and Romeo Albius Jr. y Bautista*, G.R. No. 203087, November 23, 2015.

MIN is **AFFIRMED** with the following **MODIFICATIONS**: (1) to qualify the penalty of *reclusion perpetua* to be “without eligibility for parole”; (2) to increase the award of civil indemnity from ₱75,000.00 to ₱100,000.00; (3) to increase the award of exemplary damages from ₱30,000.00 to ₱100,000.00; (4) to award ₱1,000,000.00 as temperate damages *in lieu* of the award of ₱4,398,000.00 as compensation for loss of earning capacity of Atty. Segundo G. Sotto Jr.; and (5) to impose the legal interest rate of six percent (6%) *per annum* on all the damages awarded from the finality of judgment until fully paid.

SO ORDERED.


DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


PERESBITERO J. VELASCO, JR.
 Associate Justice
 Chairman



MARIANO C. DEL CASTILLO
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision 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

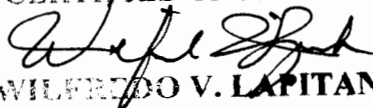
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 17 2016