



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Laptan
WILFREDO V. LAPATAN
Division Clerk of Court
Third Division

JUL 24 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 222645

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

- versus -

MICHAEL DELIMA, ALLAN DELIMA,
JOHN DOE, PAUL DOE AND PETER
DOE

Accused,

MICHAEL DELIMA AND ALLAN
DELIMA,

Accused-Appellants.

Promulgated:

June 27, 2018

Wilfredo V. Laptan

X

X

DECISION

MARTIRES, J.:

This is an appeal from the 18 September 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 01820, which affirmed the 22 October 2013 Decision² of the Regional Trial Court, Branch 58, Cebu City (RTC), in Criminal Case No. CBU-88328 finding accused-appellants Michael Delima (*Michael*) and Allan Delima (*Allan*) guilty beyond reasonable doubt of the crime of murder.

Pray

¹ *Rollo*, pp. 4-13; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez.

² *CA rollo*, pp. 34-41; penned by Presiding Judge Ma. Lynna P. Adviento.

THE FACTS

In an Information³ dated 26 February 2010, Michael and Allan, together with their co-accused, were charged with murder for the death of Ramel Mercedes Congreso (*Ramel*). The accusatory portion of the information reads:

That on or about the 14th day of June 2009, at about 4:00 a.m., more or less, at Burgos St., Poblacion, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating with together and mutually helping one another, armed with a bladed and pointed weapon, with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there attack, assault and stab one RAMEL MERCEDES CONGRESO, with the use of said bladed and pointed weapon, hitting the latter on different parts of his body, and as a consequence of said stab wounds, RAMEL MERCEDES CONGRESO died instantaneously.

During their arraignment on 25 May 2010, Allan and Michael entered a plea of "Not Guilty."⁴

Version of the Prosecution

The prosecution presented Ramel's mother Josefina Congreso (*Josefina*), Jose Gajudo, Jr. (*Jose*), and Anthony Nator (*Anthony*) as its witnesses. Their combined testimonies sought to establish the following:

On 13 June 2009, Anthony invited Jose to his home to celebrate the barangay fiesta.⁵ At around 4:00 A.M. the following day, Jose decided to go home. As he came out from Anthony's house, he saw five individuals ganging up on Ramel — the scuffle was around eight meters from Anthony's house. When they saw him, three of the five assailants scampered away while the two left continued to beat Ramel, whom they stabbed while they held and pulled him back by his pants. Scared of what he saw, Jose rushed back inside Anthony's house.⁶

Anthony was surprised that Jose was back because he had already asked permission to go home. When he asked why, Jose told him about the stabbing incident and asked Anthony to accompany him to where it happened.⁷ There, Jose pointed to the two persons whom he saw holding and stabbing Ramel and asked Anthony who they were.⁸ Anthony said Allan was

³ Records, pp. 1-2.

⁴ Id. at 34.

⁵ TSN, 28 September 2010, p. 6.

⁶ TSN, 14 September 2010, pp. 3-5.

⁷ TSN, 28 September 2010, pp. 3-4.

⁸ Id. at 4.

the one Jose saw stab Ramel while Michael held the victim by his pants; and that after the incident, he saw Michael and Allan just walk away from the crime scene.⁹

On 16 June 2009, Josefina's sister-in-law called her to say her that her son Ramel had died from a stabbing incident. She travelled to Cebu and viewed Ramel's remains at the funeral parlor where she noticed that her son had several stab wounds on various parts of his body.¹⁰

Version of the Defense

The defense presented Michael, Allan, and their father Francisco Delima (*Francisco*) as witnesses. In their combined testimonies, they narrated:

On 13 June 2009, Michael, who was with a certain Lito, went to a disco at Poblacion, Talisay City. Meanwhile, his brother Allan was at home drinking with Francisco, in celebration of the barangay fiesta, and slept after their drinking session. On 14 June 2009, at around 1:00 A.M., Francisco fetched Michael from the disco and they went home. Once home, Michael slept and woke up at around 6:30 A.M. the next morning, when both he and Allan learned of the stabbing incident.¹¹

The RTC Ruling

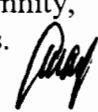
In its 22 October 2013 decision, the RTC found Michael and Allan guilty of murder for the stabbing of Ramel. The trial court noted that Jose, who neither knew Ramel nor Michael and Allan, positively identified Allan as the one who stabbed Ramel while Michael held the victim by his pants. It disregarded the arguments of accused-appellants that Anthony had a grudge against them on account of their conflicting testimonies, and that Anthony only named them after Jose had asked for their names. The RTC also explained that their defenses of denial and alibi had no leg to stand on because their testimonies did not match. Further, the trial court expounded that Michael and Allan conspired with each other to kill Ramel. The dispositive portion reads:

ACCORDINGLY, judgment is hereby rendered finding both accused Michael Delima and Allan Delima GUILTY of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua. They are also ordered to pay, jointly and severally, the heirs of Ramil [sic] Mercedes Congreso, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.

⁹ TSN, 14 September 2010, pp. 5 and 9.

¹⁰ TSN, 17 August 2010, pp. 3-4.

¹¹ TSN, 31 January 2012, pp. 3-4; TSN, 22 January 2013, pp. 3-4.



The full preventive detention shall be credited in the service of their sentence.

SO ORDERED.¹²

Aggrieved, accused-appellants appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed that of the RTC. The appellate court ruled that the perceived inconsistencies in the testimonies of the prosecution witnesses pertained to minor details which, in fact, strengthened their credibility because they tended to prove that their testimonies were not rehearsed. It also explained that inconsistencies in the sworn affidavit and in the testimony of the witness do not discredit the witness' credibility because affidavits are generally incomplete. The CA found that Michael and Allan conspired to kill Ramel as evidenced by their concerted actions of stabbing him while he was being held by his pants; and that treachery attended the killing because Ramel was helpless when the fatal blow was inflicted. The dispositive portion reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated October 22, 2013 of Branch 58 of the Regional Trial Court (RTC) of Cebu City in Criminal Case No. CBU-88328 finding accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED.

SO ORDERED.¹³

Aggrieved, accused-appellants appealed before the Court raising:

ISSUE

I

WHETHER ACCUSED-APPELLANTS ARE GUILTY BEYOND REASONABLE DOUBT OF SERIOUS ILLEGAL DETENTION.

THE COURT'S RULING

The appeal is partly meritorious.



¹² CA rollo, p. 40.

¹³ Rollo, p. 12.

It must be remembered that an appeal in criminal cases throws the case wide open such that the Court is not limited to the assigned errors of the parties and may settle other issues relevant to the case. The appeal grants the appellate court full jurisdiction over the case enabling it to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.¹⁴

Inconsistencies over trivial matters do not discredit the witness.

Accused-appellants contest the credibility of Jose because of perceived inconsistencies. They highlight that based on his affidavit and Anthony's testimony, Jose saw them stabbing Ramel before he went back to Anthony's house; but, in his testimony, he claimed that he went inside immediately when he saw five persons ganging up on the victim. It must be remembered that in order for inconsistencies in a witness' testimony to warrant acquittal, the same must refer to significant facts vital to the guilt or innocence of the accused or must have something to do with the elements of the crime.¹⁵ In *Avelino v. People*, the Court explained why minor inconsistencies over trivial matters do not discredit a witness, to wit:

Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. **As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility.** Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (emphasis supplied)

Here, the apparent inconsistency merely refers to insignificant matters as it only pertained to the sequence of how the events unfolded. Accused-appellants earnestly try to refute Jose's credibility on the ground that it is contrary to his affidavit and Anthony's testimony. Nevertheless, the assailed inconsistency is simply whether Jose called Anthony before or after Ramel was stabbed. It does not discount the fact that Jose's testimony categorically identified accused-appellants as those responsible for Ramel's death and clearly narrated their respective participation. His testimony shows consistency on material points, i.e., the elements of the crime and the identity of the perpetrators, viz:



¹⁴ *People v. Ramos*, G.R. No. 221425, 23 January 2017, 815 SCRA 226, 233.

¹⁵ *People v. Mahinay*, 462 Phil. 53, 70 (2003).

FISCAL MACION

Q: While you were in that place at around 4:00 o'clock in the morning, do you remember having witnessed any unusual incident?

A: Yes.

Q: What was that incident?

A: As I came from the house of my friend when I was about to go home when I went out there were people fighting.

Q: How many people where (sic) fighting?

A: As I saw at the side there were six (6) people including the person they were beating up.

Q: How many people were beating up that person you were referring to Mr. Witness?

A: As I first saw it there were five (5).

Q: You are saying Mr. Witness that it was a case of five (5) persons against one (1)?

A: Yes.

x x x x

Q: Earlier Mr. Witness you mentioned of five persons were beating up this lone person, what did these five persons actually do to that lone person?

A: They were ganging up on him some were pushing and some were pulling him.

Q: After seeing these persons one stabbing the said person and the other one holding the back portion of the pants, what did you do next?

A: I was in shock when I saw the incident and it was my friend Anthony Nator that said it was Michael and Allan and they are crazy.

Q: Your friend Anthony Nator was referring to the two persons whom you saw the other one stabbing and the other one holding the pants, is that correct?

A: Yes.

Q: Who was actually stabbing the victim Mr. Witness?

A: What I saw and what Sator (sic) told me it was Allan who stabbed the victim.

Q: How about Michael?

A: He was the one pulling the pants.

Q: If this Michael and Allan present (sic) inside this court room can you please point them out to us?

A: Those two persons sitting sir. (Witness pointing to the two persons who when asked answered by the names of Michael Delima and Allan Delima).¹⁶



¹⁶ TSN, 14 September 2010, pp. 3-5.

Accused-appellants also challenge the credibility of the prosecution witnesses on account that Anthony had a grudge against them, and that as his friend, Jose could have been easily convinced to testify against them. As correctly observed by the courts *a quo*, accused-appellants' allegations of ill will on the part of Anthony is specious considering that they offered conflicting versions: Michael claimed that Anthony held a grudge against them because he had a fistfight with his son while Allan alleged that it was he who fought Anthony's son. More importantly, Anthony's purported grudge is not fatal to the prosecution since he merely provided the names to Jose, who was the one who identified accused-appellants as Ramel's attackers.

Further, the Court finds hollow accused-appellants' claim that Anthony could have easily influenced his friend Jose to testify against them because it is purely conjecture. Surely, such unsubstantiated allegations devoid of any proof do not deserve even the faintest merit.

***Positive identification
trumps denial and
alibi.***

In view of Jose's identification of accused-appellants as Ramel's killers, their defenses of denial and alibi have no leg to stand on. It is axiomatic that the denial and alibi cannot prevail over positive identification.¹⁷ Further, in *Escalante v. People*,¹⁸ the Court explained that the alibi must show that it was physically impossible for the accused to be at the crime scene, to wit:

However, for the defense of alibi to prosper, the accused must prove (a) that she was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for her to be at the scene of the crime during its commission. Physical impossibility refers to the distance and the facility of access between the crime scene and the location of the accused when the crime was committed. She must demonstrate that she was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

Accused-appellants claim that they were in their house sleeping at the time Ramel was stabbed. It is noteworthy that they were Anthony's neighbors and that the crime scene was merely 8 meters away from Anthony's home. Obviously, it was physically possible for them to be at the crime scene considering its proximity to their house. From such short

¹⁷ *People v. Agcanas*, 674 Phil. 626, 632 (2011).

¹⁸ G.R. No. 218970, 28 June 2017, citing *People v. Ramos*, 715 Phil. 193, 206 (2013).

distance, they could have easily left their house and proceeded to the crime scene.

In addition, disinterested witnesses must corroborate the defense of alibi, otherwise, it is fatal to the accused.¹⁹ In the case at bar, the only person who could corroborate accused-appellants' alibi was Francisco. He could not be the disinterested witness required by jurisprudence because he is their father. Relatives can hardly be categorized as disinterested witnesses.²⁰

Further, accused-appellants' alibi should not be given weight and credence because of inconsistencies in their story. *First*, Michael testified that Allan was not at home because he lived in a separate house, but according to Allan's testimony, Michael shared a home with him together with their sister and parents.²¹ *Second*, Allan claimed that he was at home drinking with Francisco but the latter narrated that he fetched Allan from Landmark.²² These incongruities cast doubt on the veracity of their allegations.

***Conspiracy established
by overt acts***

Accused-appellants argue that conspiracy was not proven because their actions do not establish that they were motivated by a common desire. They assail that Allan stabbing and Michael holding Ramel were two separate and distinct actions insufficient to prove conspiracy. There is an implied conspiracy if two or more persons aim their acts towards the accomplishment of the same unlawful subject, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment and may be inferred though no actual meeting among them to concert means is proved.²³ The essence of conspiracy is unity of action and purpose.²⁴

As early as the initial assault against Ramel, it is readily apparent that Allan and Michael's concerted action was towards the common purpose of hurting Ramel after they ganged up on him together with three other unidentified malefactors. Then, accused-appellants were mutually motivated by the desire to kill Ramel after Allan stabbed Ramel while Michael held the latter by the legs. Their concerted actions cannot be brushed aside as

¹⁹ *People v. Dadao*, 725 Phil. 298, 312 (2014).

²⁰ *People v. Basallo*, 702 Phil. 548, 575-576 (2013).

²¹ TSN, 31 January 2012, p. 7; TSN, 22 January 2013, p. 3.

²² TSN, 22 January 2013, p. 3; TSN, 11 June 2013, p. 4.

²³ *People v. de Leon*, 608 Phil. 701, 718-719 (2009).

²⁴ *Quidet v. People*, 632 Phil. 1, 11 (2010).

separate and distinct because Michael continued to hold the victim while Allan stabbed him several times.

In addition, accused-appellants err in relying on *People v. Pugay*²⁵ because unlike the said case, prior to their attack on Ramel, animosity existed between them and the victim. Immediately prior to the stabbing incident, they already ganged up on the deceased and beat him up. Thus, it is evident that accused-appellants truly wanted to inflict bodily harm on Ramel, ultimately leading to his stabbing. Their desire to hurt Ramel progressed to a desire to kill him.

***Killing tantamount to murder only
when qualifying circumstances are
present***

Finally, accused-appellants argue that even if they are found responsible for Ramel's death, they could not be found guilty of murder because there was no proof of the qualifying circumstances of treachery and evident premeditation.

For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts.²⁶ In this case, nothing in the records establishes the above-mentioned elements. In fact, it is worth emphasizing that neither the RTC nor the CA discussed the presence of the said qualifying circumstance. Consequently, evident premeditation cannot qualify the crime to murder.

On the other hand, there is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.²⁷ The requisites for treachery to be appreciated are: (a) at the time of the attack, the victim was not in a position to defend; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed.²⁸



²⁵ 249 Phil. 406 (1988).

²⁶ *People v. Isla*, 699 Phil. 256, 270 (2012).

²⁷ Article 14(16) of the Revised Penal Code.

²⁸ *People v. Dolorido*, 654 Phil. 467, 476-477 (2011).

Here, it is unquestionable that Ramel was in no position to defend himself when Allan stabbed him. He was previously mauled by five persons and at the time of the stabbing, Michael was holding him by his legs. Ramel's weakened state and restricted movement rendered him unable to parry the lethal blows Allan inflicted on him. Nevertheless, Ramel's defenseless state alone does not suffice to appreciate the existence of treachery. After all, not only must the victim be shown defenseless, but it must also be shown that the accused deliberately and consciously employed the means and method of attack.

In *People v. De Leon*,²⁹ the Court explained that the commencement of the attack is crucial in determining the presence of treachery, to wit:

Inevitably, where treachery is alleged, the manner of attack must be proven. **Without any particulars as to the manner in which the aggression commenced or how the act that resulted in the victim's death unfolded, treachery cannot be appreciated.** It is not sufficient that the victim was unarmed and that the means employed by the malefactor brought about the desired result. The prosecution must prove that appellant deliberately and consciously adopted such means, method or manner of attack as would deprive the victim of an opportunity for self-defense or retaliation.

In the case at bar, the prosecution's principal witness testified that he had actually witnessed the stabbing, but not the commencement of the attack. In fact, he himself declared that the commotion had begun outside the establishment he was in.

Where, as in this case, there is no proof of the circumstances surrounding the manner in which the aggression commenced, appellant should be given the benefit of the doubt and treachery cannot be considered.³⁰ (emphases supplied)

Similarly, when Jose came out of Anthony's house, Allan and Michael, together with the other unknown assailants, were already assaulting Ramel. The aggression continued until ultimately Allan stabbed Ramel. Jose never saw how the commotion commenced. As a result, there is doubt whether accused-appellants consciously and deliberately adopted the means employed to kill Ramel. It is doctrinal that all doubts must be resolved in favor of the accused.³¹ Consequently, treachery could not be appreciated as a qualifying circumstance.

In view of the absence of the qualifying circumstance of treachery and evident premeditation, Allan and Michael should be found guilty only of homicide for Ramel's killing.



²⁹ 428 Phil. 556 (2002).

³⁰ Id. at 581-582.

³¹ *People v. Villalba*, 746 Phil 270, 285 (2014), citing *People v. Gerolaga*, 331 Phil. 441, 446 (1996).

Under the Revised Penal Code (*RPC*),³² homicide is punishable by *reclusion temporal*. When neither aggravating nor mitigating circumstances are present, the penalty prescribed by law shall be imposed in its medium period.³³ On the other hand, the Indeterminate Sentence Law³⁴ provides that courts shall sentence the accused to an indeterminate sentence, the maximum term of which shall be that, in view of the attending circumstances, could be properly imposed under the rules of the *RPC*; and the minimum of which shall be within the range of the penalty next lower to that prescribed by the *RPC* for the offense.


In the case at bar, there are no aggravating circumstances against accused-appellants or mitigating circumstances in their favor.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. Accused-appellants Michael and Allan Delima are found **GUILTY** of **HOMICIDE** and sentenced to suffer an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum. Further, they are ordered to pay the heirs of Ramel Mercedes Congreso ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest on all the damages awarded at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.


SAMUEL R. MARTIRES
 Associate Justice

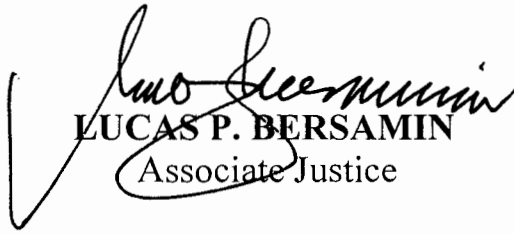
WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

³² Article 249.

³³ Article 64(1) of the Revised Penal Code.

³⁴ Section 1 of Act No. 4103, as amended.

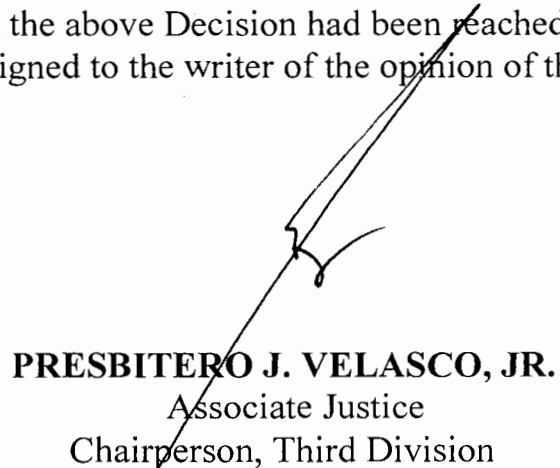

LUCAS P. BERSAMIN
 Associate Justice


MARVIC M.V.F. LEONEN
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

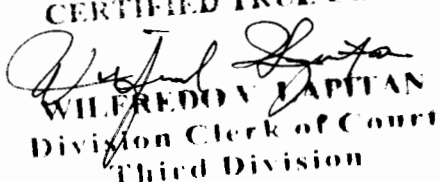
ATTESTATION


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.

CERTIFIED TRUE COPY

WILFREDO LAPATAN
 Division Clerk of Court
 Third Division


ANTONIO T. CARPIO
 Senior Associate Justice
 (Per Section 12, R.A. 296,
 The Judiciary Act of 1948, as amended)

JUL 24 2018