



Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 233205

Present:

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

- versus -

SPO2 EDGARDO MENIL y
BONGKIT,
Accused- Appellant.

Promulgated:

26 JUN 2019

X-----X

DECISION

CAGUIOA, J.:

Before the Court is an appeal¹ filed under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated April 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01266-MIN, which affirmed the Judgment³ dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City (RTC) in Criminal Case No. 6048, finding herein accused-appellant SPO2 Edgardo Menil y Bongkit (Menil) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Menil was charged with the crime of Murder under the following Information:⁴

That at or about 1:30 o'clock in the morning of December 28, 1993 at the ground floor of Sing-Sing Garden and Restaurant, Villanueva Street, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, by means of force and violence and with treachery and evident premeditation, did then and there

¹ See Notice of Appeal dated May 11, 2017, *rollo*, pp. 22-23.
² *Rollo*, pp. 3-21. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Romulo V. Borja and Rafael Antonio M. Santos, concurring.
³ *CA rollo*, pp. 37-41. Penned by Presiding Judge Francisco F. Maclang.
⁴ Records, p. 1.

willfully, unlawfully[,] and feloniously attack, assault[,] and shot with the use of a handgun one Edwin B. Bagaslao [(victim)] thereby inflicting upon him [a] gunshot wound on his head which caused his subsequent death.

CONTRARY TO LAW: (Art. 248 of the Revised Penal Code)⁵

Upon arraignment, Menil pleaded not guilty.

Version of the Prosecution

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

The prosecution presented three (3) witnesses, namely: Cynthia Rose Coloma, the victim's common-law wife, Ricardo Oracion Torralba and Dr. Renato Salas Muñoz.

Coloma testified that on December 28, 1993 at around 1:00 o'clock in the morning, she and the victim Edwin B. Bagaslao were about to leave the Christmas party held at Tip-Topp Disco in Sing-Song Garden Restaurant and organized by the Butuan Bet Takers Association, of which victim Bagaslao was a member. As they were on their way downstairs, accused-appellant Menil pushed Coloma. A heated argument ensued. It appeared that accused-appellant was looking for the girl who left him on the dance floor and had mistaken Coloma to be that girl. Dodoy⁶ Plaza [(Dodoy)], who was also a member of the organization, pacified the victim and accused-appellant.

When the two were already on their path on the sidewalk of the Sing-Sing Garden, accused-appellant suddenly came from behind and shot the victim. Prosecution witness Toralba, who was also leaving the party, was approximately one (1) meter away from the victim and accused-appellant. He saw the latter shoot the victim. Torralba also testified that accused-appellant ran away after the shooting incident.

The victim fell on the shoulders of Coloma. Dodoy Plaza and the other friends of the victim brought him to the hospital on board a police car. Coloma reported the incident to the police station and had the incident blotted. Thereafter, she went to the hospital where the victim was admitted. However, at around 3:00 o'clock in the afternoon of the same day, the victim died.

Dr. Muñoz, who signed the Medical Certificate, testified that the victim was admitted due to "*a gunshot wound point of entry right zygomatic area, point of exit left parietal region[.]*"⁷

Version of the Defense

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

As for accused-appellant, he vehemently denied the accusations hurled against him.

⁵ Id.

⁶ Spelled as "Dodong" in some parts of the *rollo*.

⁷ *Rollo*, pp. 4-5.

He testified that on December 27, 1993, he was strolling along Montilla Boulevard at about 9:00 o'clock in the evening. There, he saw some friends namely Armando de Castro and Jose Tadyamon, who invited him to join them at Sing-Sing Garden where they sat themselves and had beer.⁸

At around 11:00 o'clock in the evening, Bagaslao and some of his companions, who were seated two tables away from accused-appellant, allegedly got very rowdy. Accused-appellant admonished them to behave themselves.

At 1:20 o'clock in the morning of the next day, accused-appellant and his companions decided to call it a night and went downstairs. On the way down, Bagaslao blocked his path. By the time accused-appellant was [on] the last step of the stairs, Bagaslao grabbed his revolver. Accused-appellant had no choice but to grapple with Bagaslao in order to regain possession of the revolver. Bagaslao then said to him, "*patuo-tuo ka*" which translates to English as "*you're pretending to be someone[.]*"

After the grappling, a shot was fired. Bagaslao fell. Accused-appellant denies having killed Bagaslao.⁸

Ruling of the RTC

After trial on the merits, in its Judgment dated November 26, 2013, the RTC convicted Menil of the crime of Murder. The dispositive portion of said Judgment reads:

WHEREFORE, the foregoing considered, accused **EDGARDO B. MENIL** is found **GUILTY** beyond reasonable doubt of the crime of Murder, for the death of Edwin B. Bagaslao, as defined under **Article 248 of the Revised Penal Code**, as amended by **Republic Act No. 7659**, qualified by **treachery** and **evident premeditation**. The accused **EDGARDO B. MENIL** is hereby sentenced to suffer a penalty of **Reclusion Perpetua** without **possibility of parole**.

Furthermore, the accused **EDGARDO B. MENIL** is ordered to indemnify the heirs of Edwin B. Bagaslao, the following sums:

- a. Fifty Thousand (**P50,000.00**) Pesos, as *civil indemnity ex delicto*;
- b. Fifty Thousand (**P50,000.00**) Pesos, as *moral damages*; and
- c. Twenty Five Thousand (**P25,000.00**) Pesos, as *exemplary damages*.

SO ORDERED.⁹

The RTC ruled that the prosecution was able to establish beyond reasonable doubt the guilt of the accused.¹⁰ The accused freely admitted regarding the shooting, which resulted to the death of the victim.¹¹ In fact, he

⁸ Id. at 5-6.

⁹ CA *rollo*, p. 41.

¹⁰ Id. at 40.

¹¹ Id.

testified under oath that the firearm that was used to shoot the victim was his service firearm.¹² Further, the RTC held that treachery and evident premeditation attended the killing of the victim.¹³ There was clear showing that the accused deliberately and consciously employed a specific form or plan of attack, which would ensure the commission of the crime.¹⁴

Aggrieved, Menil appealed to the CA.

Ruling of the CA

On appeal, in its assailed Decision dated April 28, 2017, the CA affirmed the conviction by the RTC with modifications:

WHEREFORE, the appeal is hereby DENIED. The assailed Judgment dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City in Criminal Case No. 6048 is AFFIRMED with MODIFICATION. Accused-appellant EDGARDO B. MENIL is found GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *reclusion [p]erpetua* without possibility of parole.

Accused-appellant is also ORDERED to pay the heirs of Edwin B. Bagaslao the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

SO ORDERED.¹⁵

The CA ruled that the prosecution witnesses positively identified Menil as the perpetrator of the crime.¹⁶ It further ruled that the fact that the witnesses' testimonies were given only fourteen (14) years after the incident is of no moment.¹⁷ Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with high degree of reliability the identity of criminals at any given time.¹⁸ Furthermore, the CA noted that after the warrant of arrest for Menil was first issued, the return thereof provided that he could no longer be found in his indicated residence, thus the case was temporarily archived by the trial court.¹⁹ In fact, it took eleven (11) years before Menil was finally apprehended.²⁰ Flight, in jurisprudence, has always been a strong indication of guilt, betraying a desire to evade responsibility.²¹ Lastly, it ruled that

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ *Rollo*, p. 20.

¹⁶ Id. at 9.

¹⁷ Id. at 14.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.



treachery attended the killing of the victim.²² However, the prosecution failed to prove the presence of the aggravating circumstance of evident premeditation.²³

Hence, this appeal.

Issues

Whether the CA erred in affirming Menil's conviction for Murder.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.²⁴ This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.²⁵ The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²⁶

The accused should only be convicted of the crime of Homicide, not Murder.

In the assailed Decision, the CA held that treachery attended the commission of the crime, thus Menil should be convicted of the crime of Murder. The CA ruled:

In the case at bench, the victim Bagaslao and his common-law wife were walking on the sidewalk, awaiting for their ride back home, when accused-appellant suddenly appeared at their back and shot the victim. To recall, although the victim and accused-appellant had an altercation at the stairs of the restaurant prior to the shooting, the two were pacified by a certain Dodong Plaza. Thus, the victim had no reason to suspect that [the] accused-appellant had any intention of shooting or killing him. The shooting of the unsuspecting victim was sudden and unexpected[,] which effectively deprived him of the chance to defend himself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.²⁷

²² Id. at 17.

²³ Id. at 18.

²⁴ *People v. Duran Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

²⁵ Id.

²⁶ *Ramos v. People*, 803 Phil. 775, 783 (2017).

²⁷ *Rollo*, p.18.

The Court disagrees.

The prosecution failed to establish by clear and convincing evidence that treachery attended the commission of the crime. Treachery is never presumed. It is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself.²⁸

In the present case, the prosecution was not able to establish by clear and convincing evidence that the killing of the victim was attended by treachery. Thus, the accused should only be convicted of the crime of Homicide, not Murder.

To start, it has been consistently held by the Court that chance encounters, impulse killing or crimes committed at the spur of the moment or **that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack.**²⁹

In this case, Menil and the victim had a heated altercation at the restaurant prior to the killing of the victim by the accused. It is true that a certain Dodoy had pacified their fight. **However, this does not necessarily mean that at the time the shooting incident happened, they already had cool and level heads since only a short amount of time had lapsed between the heated altercation and the shooting of the victim.**³⁰ Immediately after they were pacified by Dodoy, the victim went down the stairs followed by Menil and upon reaching the sidewalk, Menil immediately shot the victim. Verily, the victim should have still been aware that there was a possibility of an impending attack as the armed accused was still in the same area. As testified by Coloma:

Q What happened next when the accused Edgardo Menil pushed you?

A Edwin Bagaslao asked him why did you push her?

Q What was the answer of the accused?

A According to him, he was looking for that girl who left him on the dance floor.

Q What happened after that?

A Heated argument pursued.

Q With whom?

A Between accused Edgardo Menil and Edwin Bagaslao.

Q What were (*sic*) the argument about?

A Edwin Bagaslao told him that I was not the woman who left him at the dance floor, because I am his wife.

²⁸ *People v. Gonzales, Jr.*, 411 Phil. 893, 917 (2001), citing *People v. Manalo*, 232 Phil. 105, 118 (1987).

²⁹ *Id.* at 916, citing *People v. De Jesus*, 204 Phil. 247, 260 (1982); *People v. Maguddatu*, 209 Phil. 489, 495 (1983).

³⁰ TSN, February 22, 2007, pp. 6-8.

Q After Edwin Bagaslao said that, what was (sic) the accused do?

A They were pacified because somebody intervene (sic).

Q Who pacified the two?

A Dodoy Plaza.

Q After they were pacified, what happened next?

A We went down and were about to go home.

Q Who was your companion when you went down?

A I was with Edwin Bagaslao.

Q After that when you went down what happened?

A When we were already downstairs, and we were already taking the path on the sidewalk of the Sing-Sing Garden, all of a sudden this Edgardo Menil approached us from behind.

Q After the accused approached you from behind, what happened next?

A I heard a soft gun report.³¹ (Emphasis and underscoring supplied)

Furthermore, to qualify the crime to Murder, the following elements of treachery in a given case must be proven: (a) the employment of means of execution which gives the person attacked no opportunity to defend or retaliate; and, (b) said means of execution were deliberately or consciously adopted.³²

It has been repeatedly held that for treachery to be appreciated, **both** elements must be present.³³ It is not enough that the attack was sudden, unexpected, and without any warning or provocation.³⁴ There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

In the instant case, the Court finds that the second requisite for treachery, *i.e.*, that the accused deliberately adopted the means of execution, was not proven by clear and convincing evidence by the prosecution. The means of execution used by the accused cannot be said to be deliberately or consciously adopted since it was more of a result of a sudden impulse due to his previous heated altercation with the victim than a planned and deliberate action. Similarly, in another case, the Court held, “[t]here is no treachery when the assault is preceded by a heated exchange

³¹ Id.

³² *People v. Aquino*, 396 Phil. 303, 307 (2000).

³³ Id.

³⁴ *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

of words between the accused and the victim; or when the victim is aware of the hostility of the assailant towards the former.”³⁵

Thus, due to the absence of the aggravating circumstance of treachery, Menil should only be convicted of the crime of Homicide.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* [six (6) years and one (1) day to twelve (12) years]. Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, should be as it is hereby imposed.³⁶

Finally, in view of the downgrading of the crime to Homicide, the Court’s ruling in *People v. Jugueta*³⁷ directs that the damages awarded in the questioned Decision should be, as it is, hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

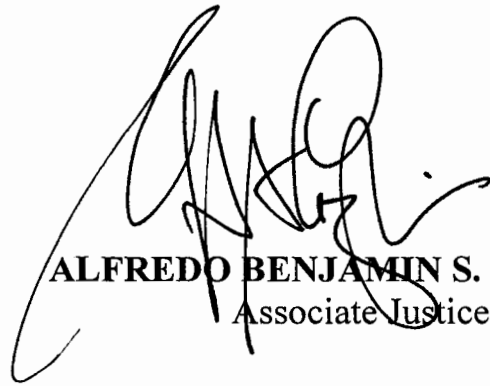
WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant **SPO2 EDGARDO MENIL y BONGKIT GUILTY of HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Edwin B. Bagaslao the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

³⁵ *People v. Escarlos*, 457 Phil. 580, 599 (2003), citing *People v. Reyes*, 420 Phil. 343, 353 (2001).

³⁶ *People v. Duavis*, 678 Phil. 166, 179 (2011).

³⁷ 783 Phil. 806 (2016).

SO ORDERED.

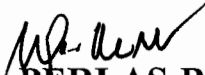


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

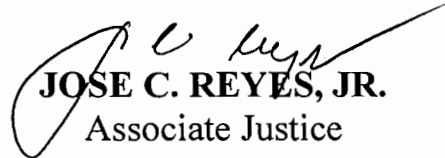
WE CONCUR:



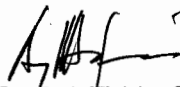
ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

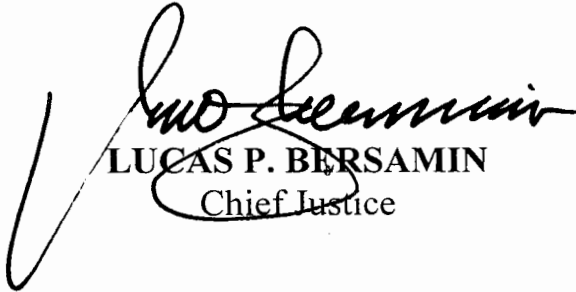
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.



LUCAS P. BERSAMIN
Chief Justice

