



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 247651

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

MARK IAN LIBUNAO y MARIANO,
Accused-Appellant.

Promulgated:

MAR 24 2021

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DECISION

PERALTA, C.J.:

Before us is an appeal from the Decision¹ dated May 9, 2018 of the Court of Appeals (CA) issued is CA-G.R. CR No. 40234, which affirmed the Judgment² dated February 16, 2017 and the Order³ dated June 23, 2017 of the Regional Trial Court of Quezon City, Branch 100 (RTC), convicting appellant of the crime of homicide. Also assailed is the CA Resolution⁴ dated January 11, 2019 denying reconsideration thereof.

Appellant was charged with murder in an Information⁵ dated January 5, 2015, the accusatory portion of which reads:

¹ Penned by Associate Justice Marlene B. Gonzales-Sison, concurred in by Associate Justices Ramon Paul L. Hernando (now a member of the Court), and Pedro B. Corales; *rollo*, pp. 3-14.

² Per Judge Editha G. Mina-Aguba; Docketed as Criminal Case No. R-QZN-15-00049-CR; CA *rollo*, pp. 118-127.

³ *Id.* at 54-56.

⁴ Penned by Associate Justice Marlene B. Gonzales-Sison, concurred in by Associate Justices Pedro B. Corales and Josep Y. Lopez (now a member of this Court); *id.* at 417-421.

⁵ Records, pp. 1-2.

That on or about the 19th day of December, 2014, in Quezon City, Philippines, the said accused, with intent to kill, qualified by means of motor vehicle, did then and there willfully, unlawfully and feloniously drag the victim SONNY DELA CRUZ ACOSTA, an MMDA Traffic Enforcer, by then and there hitting/bumping him with the use of an Isuzu Sportivo Wagon, bearing Plate No. AAB-4197 after the accused was apprehended for a traffic violation along EDSA, in front of Farmer's Market, Bgy. Socorro, Cubao, this City, thereby inflicting upon him serious and mortal injuries which were the direct and proximate cause of his death on December 23, 2014, to the damage and prejudice of the heirs of the said victim.

That accused planned the commission of the crime prior to its execution and consciously adopted the means and methods of execution of the crime which was done suddenly and unexpectedly and he purposely took advantage of the fact that the victim was not aware that he was going to hit him with the use of a motor vehicle, to ensure [the] commission of the crime without risk to himself from any defense that victim might make thereby committing the attendant circumstances of use of motor vehicle.

CONTRARY TO LAW.⁶

Upon his arraignment, appellant pleaded not guilty⁷ to the crime charged.

Appellant filed a Motion for Bail⁸ on the main argument that he was not the one who committed the alleged crime and was only wrongfully identified. The RTC set the case for the reception of the prosecution's evidence to prove that the guilt of the appellant was strong.

The prosecution presented the testimonies of Liberty Tongco (*Tongco*), Lourdes S. Liton (*Liton*) and Rommel P. Montipio (*Montipio*).

Tongco, a Traffic Constable of the Metro Manila Development Authority (*MMDA*) assigned at Farmers Market northbound loading bay, testified that at around 9:35 a.m. of December 19, 2014, she was with Liton, Acosta (the deceased victim), and two others performing their duties when Acosta apprehended a maroon colored vehicle with Plate No. AAB-4197 for illegally entering a lane reserved only for the loading and unloading of buses.⁹ Later, she saw the vehicle sped away and Acosta fell near the gutter and sustained injuries on his head.¹⁰ She was about seven meters from Acosta when the latter fell on the ground.¹¹ She declared that Acosta was not bumped by the vehicle but fell to the ground after the car sped away, and that he did

⁶ *Id.* at 1.

⁷ *Id.* at 25.

⁸ *Id.* at 28-30.

⁹ TSN, February 11, 2015, pp. 13-16.

¹⁰ *Id.* at 17.

¹¹ *Id.* at 28-29.

not move at all nor opened his eyes.¹² She testified on cross-examination that she did not see the driver while the car was fleeing from the scene as the same was tinted.¹³

Liton, another MMDA Enforcer, testified that she was also on duty at the Epifanio Delos Santos Avenue (*EDSA*) northbound in front of the Farmers Market in the morning of December 19, 2014; that at around 9:45 a.m., she heard a noise, from a distance of three meters, as if someone fell on the ground (*kumalabog*). When she turned around, she saw Acosta lying on the pavement with head injuries and a red maroon wagon speeding away from the incident.¹⁴ She did not know what actually happened as she only saw the back of the vehicle and the window was tinted.¹⁵

Montipio testified that in the morning of December 19, 2014, while he was working as a barker for public buses at the EDSA, Farmers Plaza bus loading bay, northbound lane, he saw Traffic Enforcer Acosta apprehend a maroon-colored Isuzu Sportivo with Plate No. AAB 4197 for illegally entering the bus lane.¹⁶ Acosta first made a salute gesture and after that, he knocked on the window of the vehicle which prompted the driver to pull down his window and the two talked to each other.¹⁷ Acosta then asked for the driver's license of appellant, but the latter pushed aside Acosta's hand (*hinahawi-hawi*).¹⁸ Acosta then put his hand inside the subject vehicle, but the vehicle suddenly sped away dragging the former. Acosta fell down hitting the top of his head which rendered him unconscious.¹⁹ Montipio was just five steps away from the vehicle. He identified appellant as the driver of the subject vehicle in a police line-up and later inside the courtroom by tapping his shoulder.²⁰ He later learned that Acosta passed away on December 23, 2014.

In an Order²¹ dated June 26, 2015, the RTC granted appellant's motion for bail and was allowed to post bail in the amount of ₱100,000.00 subject to certain conditions. In the same Order, the RTC resolved the issue of the appellant's identification and found that the People was able to discharge such burden as witness Montipio declared, in no uncertain terms, that he saw appellant driving the maroon colored Isuzu Sportivo with plate number AAB 4197; that Montipio was able to see the driver despite the vehicle being tinted because he was so near the said vehicle. The RTC did not find the presence of

¹² *Id.* at 31; as appearing in the TSN, "*Hindi po sya bumangga. Bale paglagpas ng sasakyan, nakita ko po nahulog si Acosta sa sahig, na yun na bumulagta na, sir. Hindi man lang gumalaw [o] dumilat yung mata.*"

¹³ TSN, February 11, 2015, p. 32.

¹⁴ TSN, February 18, 2015, pp. 5-9.

¹⁵ *Id.* at 10-11.

¹⁶ TSN, February 25, 2015, pp. 7-8.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 13-14.

²¹ Records, pp. 141-147.

the qualifying circumstance of the use of vehicle since it was established that the parties had a chance encounter only on that fateful day and there was no evidence that appellant premeditated and planned to hurt Acosta prior to and during their meeting.

Appellant filed a motion for reduction of bail, while Dante Borguete, the registered owner of the Sportivo, filed a motion for release of his vehicle, which were both denied by the RTC in its Order²² dated September 10, 2015.

The prosecution then continued with the presentation of its evidence. It adopted the evidence already presented during the bail hearing. It subsequently presented the testimonies of Rechille Acosta (*Rechille*), wife of the deceased; PCI Erlito Trinidad Renegin (*PCI Renegin*), Chief of the District Traffic Enforcement Unit, Sector 3, who investigated the case; and Dr. Maria Cecilia F. Lim (*Dr. Lim*), forensic pathologist, who performed the autopsy on the body of Acosta.

Rechille testified that the deceased was her husband and the breadwinner of their family; and that they have three children. On December 19, 2014, she received a text message from an unfamiliar number asking her to go to St. Luke's Hospital because her husband had an accident. She then went with her father to the hospital and found her husband in a critical condition and unconscious at the emergency room.²³ Her husband was confined for 4 days and died on December 23, 2014 of head injury due to the accident that happened.²⁴ She spent ₱72,000.00 for funeral expenses, as shown by the official receipts and the medical expenses were paid by the MMDA.²⁵

PCI Renegin testified that on December 19, 2014, he received reports from MMDA Traffic Enforcers Tongco and Liton about a vehicular accident involving Acosta. After taking their statements and conducting an investigation, he then verified with the Land Transportation Office (*LTO*) Plate No. AAB-4197 which was given by the witnesses and found that the vehicle was under the name of Dante Borguete of San Miguel, Bulacan. He formed a tracking team and went to San Miguel, Bulacan and they found the subject vehicle at the residence of Borguete which was being driven by appellant. He invited appellant to their office in Quezon City to answer the complaint of hit and run against him. He later learned that appellant's driver's license had already expired in 2013 as certified to by the LTO.²⁶ While at the Traffic Sector in Quezon City, appellant admitted to him that he was the

²² *Id.* at 172-175.

²³ TSN, September 16, 2015, pp. 6-8, 11-13.

²⁴ *Id.* at 17-18.

²⁵ *Id.* at 20-21.

²⁶ TSN, October 21, 2015, pp. 5-15; records, p. 187.



authorized driver of the subject vehicle on December 19, 2014,²⁷ however, it was only after appellant made such admission that he was informed of his constitutional right.²⁸

Dr. Lim declared that Acosta's cause of death was craniocerebral injuries following a motor vehicular accident; that he had extensive skull structures at the back of his head associated with a lot of bleeding into and on the brain; and that such would cause an increase in the pressure within the skull which will cause pressure in the brain and cause the brain to not function well.²⁹ He had severe head injuries and would not have survived another minute if not for the medical attention given to him and he also had lots of contusions and bruises.³⁰ Her findings was contained in the Final Anatomic Diagnosis.³¹

Teresita F. Octubre's testimony was dispensed with after the defense admitted the authenticity, execution and genuineness of the certificate of employment and compensation issued by the MMDA establishing that Acosta had a monthly income of ₱12,401.00 prior to his death.³²

Appellant then filed a Motion for Waiver of Presentation of Evidence for the Defense with Motion to Admit Attached Memorandum for the Defense.³³

On February 16, 2017, the RTC rendered its judgment³⁴ convicting appellant of homicide, the fallo of which reads:

WHEREFORE, premises considered, this Court finds accused MARK IAN LIBUNAO y MARIANO guilty beyond reasonable doubt of the offense of Homicide and hereby sentences him to suffer the indeterminate prison term of seven (7) years of *prision mayor* in its minimum period, as minimum, to fifteen (15) years of *reclusion temporal* in its medium period, as maximum.

Likewise, said accused is hereby ordered to pay the heirs of the deceased, the following:

1. The amount of Php71,000[.00] as actual damages;
2. The amount of Php50,000[.00] as civil indemnity;
3. The amount of Php50,000[.00] as moral damages; and
4. P2,093,784.84 as reparation for the loss of earning capacity.

²⁷ *Id.* at 17-18.

²⁸ *Id.* at 23.

²⁹ TSN, February 3, 2016, pp. 5-8.

³⁰ *Id.* at 9-10.

³¹ *Id.* at 10.

³² Records, pp. 181-182.

³³ *Id.* at 335-350.

³⁴ CA *rollo*, pp. 118-127.



Accused is also ordered to pay interest at the rate of six percent (6%) *per annum* from the time of the finality of this decision until fully paid, to be imposed on the aforementioned damages.

No pronouncement as to costs.

SO ORDERED.³⁵

The RTC ruled that the matter of appellant's identification was already settled in its Order dated June 26, 2015 which granted and fixed the latter's bail; and that all the elements of the crime of homicide are present. Appellant had already admitted the fact and cause of death; that there was intent to kill when appellant unceremoniously left the place knowing that Acosta's hand was still inside the vehicle and dragging him in the process; that appellant went on driving his car until Acosta was left sprawled on the ground unconscious; and that appellant's flight was indicative of his guilt.

Anent appellant's claim of illegal arrest, the RTC found that he never objected to the irregularity of his arrest before his arraignment, even pleaded not guilty upon arraignment and actively participated in the trial; thus, he had voluntarily submitted to the jurisdiction of the court and waived his right to question the validity of his arrest.

Appellant's motion for reconsideration was denied in an Order³⁶ dated June 23, 2017.

Appellant filed an appeal with the CA. After the filing of the parties' respective pleadings, the case was submitted for decision.

On May 9, 2018, the CA issued its assailed Decision denying the appeal for lack of merit and affirmed the RTC Judgment and Order.

Appellant filed a Motion for Reconsideration to which the People filed its Comment. Private complainant Rechille Acosta, wife of the deceased, filed a Motion to Release Vehicle³⁷ in view of the termination of the separate civil action resulting from the instant criminal action she filed against Dante F. Borguete, the owner of the subject vehicle, in the RTC of Caloocan City, Branch 122, docketed as Civil Case No. C-23954.

On January 11, 2019, the CA issued a Resolution, the decretal portion of which reads:

³⁵ *Id.* at 127.

³⁶ *Id.* at 54-55.

³⁷ *Id.* at 364-367.

WHEREFORE, premises considered, the Motion for Reconsideration filed by accused-appellant is DENIED for utter lack of merit. The Motion to Release Vehicle filed by private complainant Rechille R. Acosta is GRANTED. Accordingly, the subject vehicle is hereby ORDERED RELEASED from *custodia legis* into the possession of the owner thereof, Dante F. Borguete.

SO ORDERED.³⁸

Hence, appellant filed the instant appeal.

In a Resolution³⁹ dated July 31, 2019, we required the parties to submit their respective supplemental briefs if they so desire within 30 days from notice. The Office of the Solicitor General filed a Manifestation dated October 25, 2019 stating that it no longer desires to file a supplement to its appellee's brief filed in the CA, considering that the issues in their case had already been sufficiently and exhaustively discussed and argued therein. Appellant failed to file its supplemental brief as of this time; thus, we deem waived the filing of the same, and refer to his brief filed with the CA.

Appellant insists that his identity had not been proved beyond reasonable doubt. He claims that it was highly improbable for Montipio to have seen the driver of the vehicle when the same was tinted and his position was oblique from the driver side of the car.

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.⁴⁰

The RTC declared that it had resolved the issue of the identification of the appellant in its Order granting appellant's motion for bail where it found that witness Montipio declared, in no uncertain terms, that he saw appellant driving the maroon-colored Isuzu Sportivo with plate number AAB 4197; and that he was able to see the driver despite the vehicle being tinted because he was so near the said vehicle. The CA affirmed the RTC's findings.

It is a basic rule of appellate adjudication in this jurisdiction that the trial judge's evaluation of the credibility of a witness and of the witness'

³⁸ *Id.* at 420.

³⁹ *Rollo*, pp. 21-22.

⁴⁰ *People v. Tumaming*, 659 Phil. 544, 547 (2011).

testimony is accorded the highest respect because the trial judge's unique opportunity to observe directly the demeanor of the witness enables him to determine whether the witness is telling the truth or not.⁴¹ Such evaluation, when affirmed by the CA, is binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.⁴² In this case, a review of the records shows that the lower courts had overlooked significant circumstances that would affect the decision.

Montipio testified in his direct examination that he saw the appellant as the driver of the maroon-colored Isuzu Sportivo that dragged and killed Acosta on December 19, 2014 because he was just 5 steps away from the car. However, his testimony on cross-examination created doubts as to his positive identification of the appellant, to wit:

Q You mentioned, Mr. Witness, that you are a barker. What do you do as a barker?

A I call passengers to ride in the bus, sir.

Q So, where in particular?

A In Farmer's Cubao, sir.

Q Do you go there everyday?

A Yes, sir.

Q So in performing your work, where do you usually take your position?

A In the second lane, [northbound], going to Fairview, sir.

Q You mentioned in your affidavit that you were there on December 19, 2014 and you witnessed this incident involving the good officer Sonny Acosta. What is your particular position when you witnessed the incident?

A I was on the right side and I was five steps away from the Sportivo, sir.

Q So, you were at the right side. So, meaning to say at the passenger's side?

A No, sir. On the right side, sir.

Q So, you are in front of Farmers Plaza, am I right?

A Yes, sir. I was in front of Farmers Plaza.

Q So, the side where you are, is in between the Sportivo and the Farmers Plaza, is that right?

A *Nasa tapat po ako ng Sportivo. Limang talampakan lang ang layo ko.*

ATTY DELA CRUZ: We move to strike, Your Honor. Mr. Witness, please answer the question, Were you in between the Sportivo and Farmers Plaza?

COURT: Excuse me. I will just require the witness to do a sketch. Do you know how to make a sketch?

⁴¹ *Atizado, et al. v. People*, G.R. No. 173822, October 13, 2020.

⁴² *Id.*

- WITNESS: Yes, Your Honor.
- COURT: Could you sketch where you are when the incident happened?
- WITNESS: (Witness is making a sketch indicating the place and the positions of the Sportivo, TC Sonny Acosta and the witness himself)
- ATTY. DELA CRUZ: Just for the record, Your Honor, the witness has drawn a sketch indicating his exact position. It is apparent, your Honor, that the witness is in between Farmers Plaza and the Sportivo. Which direction is this, Mr. Witness?
- COURT INTERPRETER: Counsel is asking and pointing a portion in the sketch.
- WITNESS: It is the second lane going to Fairview, [northbound], sir.
- ATTY DELA CRUZ: Mr. Witness, how would you describe the vehicle, the Sportivo? Were the windows closed at that time on your side. (interrupted)
- COURT: What time?
- ATTY DELA CRUZ: At the time he witnessed the incident, Your Honor.
- Q Was it tinted?
- WITNESS: Yes, sir. It is tinted.
- Q So, on your side when you looked at the vehicle, what you have seen is a tinted window?
- A Yes, sir.
- COURT: How was it tinted?
- WITNESS: *Kapag malapit po kayo, makikita ninyo po ang loob.* (If you are near, you can see what is inside the vehicle).
- COURT: Put that in the vernacular. Next.
- ATTY. DELA CRUZ: And during the incident, you said that you were performing your job as a barker, right?
- WITNESS: Yes, sir. I was on duty at that time.
- Q So, where were you facing then when the incident happened?
- A I was facing the Sportivo, sir.
- Q Why were you facing the Sportivo?
- A Because I was at the second lane calling passengers, sir.



COURT: Because this second lane are for buses going to Fairview, that is why you were at the second lane?

WITNESS: Yes, your Honor.

Q Are you saying that passengers will cross the first lane before they could ride a bus going to Fairview?

A Yes, Your Honor.

ATTY. DELA CRUZ: So, during at (sic) that time, was there a bus behind the Sportivo at that time?

WITNESS: Yes, sir. There is one bus.

Q So, as a barker, you are calling the passengers to board that bus?

A Yes, sir.

Q And definitely, in doing so, your attention is with the passengers and the bus?

A No, sir.

x x x x

ATTY. DELA CRUZ: So you mentioned, Mr. Witness, that you saw the driver rolled (sic) down the window of the Sportivo, how is that possible, Mr. Witness?

WITNESS: *Nung hinuli na po yung driver, sumaludo muna po tapos binaba po yung bintana, sir.*

ATTY DELA CRUZ: Where was the good officer Sonny Acosta there (sic) at that time?

WITNESS: He was at the driver's side.

COURT INTERPRETER: Witness is indicating a cross on the driver's side of the Sportivo and placing the name of Traffic Enforcer Sonny Acosta in the sketch.

ATTY. DELA CRUZ: So, technically the vehicle is in between you and the good officer, Sonny Acosta, So the vehicle, the Sportivo is in between your position and that of Mr. Sonny Acosta's position?

WITNESS: Yes, sir.

COURT: Next question.

ATTY. DELA CRUZ: And considering that, as you mentioned, that the window of the Sportivo is tinted, it is dark when you looked inside the vehicle?

WITNESS: When you are near, you can see what is inside, sir.

Q And you mentioned, Mr. Witness, that you were five steps away from the vehicle based on your affidavit?

A Yes, sir.⁴³

Clearly, it was established that the vehicle's window was tinted and dark as Montipio declared that it was only when you are near that you can see what is inside the vehicle. Montipio also testified that he was at the right side of the Sportivo which was the passenger side and which window was not rolled down, and he was five steps away from the vehicle. We find that the distance of five steps away from a closed, dark, tinted window of the vehicle was not near enough to be able to see the identity of the person in the driver seat.

Montipio also admitted that he was performing his job as a barker at that time, *i.e.*, calling the passengers to board the bus which was behind the Sportivo, which could had also disrupted his focus and attention on the incident. Hence, the distance of Montipio from the tinted vehicle as well as his divided attention to the crime incident, cast doubts on his identification of the driver of the Isuzu Sportivo considering the short period of time that the incident transpired.

Moreover, we note that nowhere in the records was it shown that Montipio had made any prior description of the driver of the Isuzu Sportivo until the appellant was presented to him on December 26, 2014, *i.e.*, 7 days from the incident, in a police line-up where he identified him as the driver of the vehicle.

Considering the doubt that is created in the identification of the driver of the Isuzu Sportivo, such doubt should be considered in favor of the appellant. In *People v. Rodrigo*,⁴⁴ the Court had the occasion to instruct that great care should be taken in considering the identification of the accused, especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification.


WHEREFORE, premises considered, the Decision dated May 9, 2018 and the Resolution dated January 11, 2019 of the Court of Appeals in CA-G.R.CR No. 40234 are hereby **REVERSED** and **SET ASIDE**. Accused-appellant Mark Ian Libunao y Mariano is hereby **ACQUITTED** on the ground of reasonable doubt of the crime of homicide. He is ordered **IMMEDIATELY RELEASED** from detention unless he is confined for another lawful cause.

⁴³ TSN, February 25, 2015, pp. 18-25.

⁴⁴ 586 Phil 515 (2008).

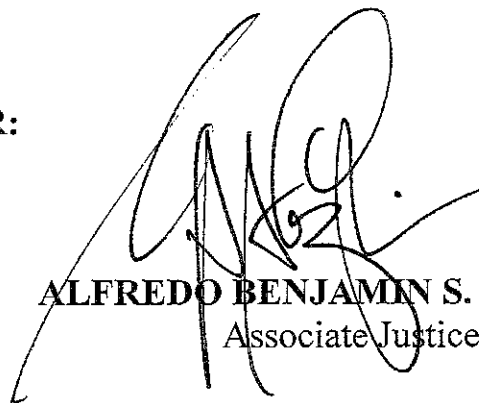
Let a copy of this Decision be furnished the Director of the Bureau of Corrections in Muntinlupa City for his immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to **REPORT** to this Court within five days from receipt of this Decision the action he has taken.

SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

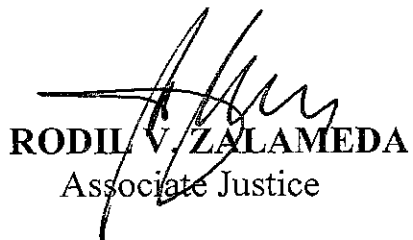
WE CONCUR:



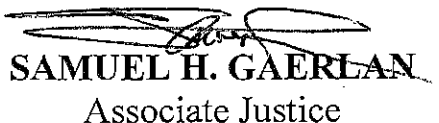
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice



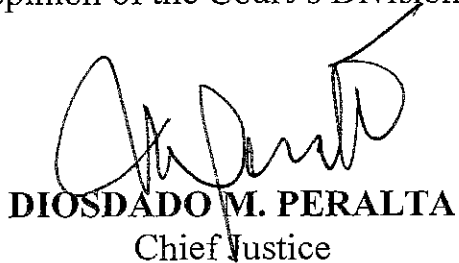
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice

