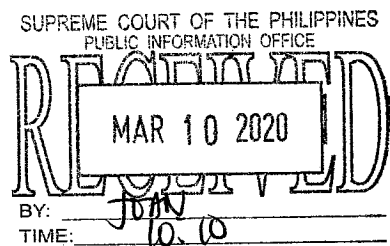




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 249822 - Eldefonso Virtucio, Jr., y Guimarangan alias “Gaga” and Leo Domingo y Lindayao v. People of the Philippines

This concerns the Petition for Review filed under Rule 45 of the Rules of Court over the June 8, 2018 Decision¹ and August 29, 2019 Resolution² of the Court of Appeals-Cebu City (CA-Cebu City) in CA-G.R. CEB-CR-HC No. 02551, affirming the conviction of petitioners Eldefonso Virtucio, Jr., y Guimarangan alias “Gaga” (Virtucio) and Leo Domingo y Lindayao (Domingo) for the crimes of murder and attempted murder.

It bears mentioning at the outset that petitioners should have instead filed a notice of appeal³ with the CA-Cebu City. A Rule 45⁴ petition is not proper, considering that the penalty imposed on petitioners for the murder charge was *reclusion perpetua* without eligibility for parole under Republic Act No. 9346.⁵ We further observe that the issues raised by petitioners pertain to factual and evidentiary matters that are generally not subject to review *via* Rule 45 of the Rules of Court. “Questions on whether certain pieces of evidence should be accorded probative value or whether the proofs presented by one party are clear, convincing and adequate to establish

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¹ Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Edward B. Contreras and Louis P. Acosta, concurring; *rollo*, pp. 23-39.

² Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Edward B. Contreras and Emily R. Aliño-Geluz, concurring; *id.*, pp. 40-41.

³ RULES OF COURT, Rule 122, Sec. 3(a).

⁴ *Id.*, Rule 45, Sec. 9.

⁵ Joint Decision, *rollo*, pp. 412-425.

a proposition are issues of fact.”⁶ Be that as it may, the petition fails on the merits and presents no exceptional reason to overlook the foregoing defects.

As established by the prosecution, at around 1:00 a.m. on August 23, 2010, prosecution witness Analuna Bermejo (Analuna) and her common-law partner, Jemar Mahilum (Jemar), were on board a motorcycle driven by Jemar. They were on the national highway along Barangay Refugio, Calatrava, bound for San Carlos City, Negros Occidental, when a motorcycle appeared from a corner and ran alongside their left. Analuna recognized the motorcycle driver as Virtucio and the rider at the back as Domingo. The latter pulled out a gun and fired at Jemar and Analuna. Jemar was wounded and Analuna was hit on her left shoulder. Petitioners sped ahead and swerved to face them. Domingo fired more shots at them. Jemar was hit once again and the motorcycle fell down. Jemar and Analuna started running towards the sugarcane field on the side of the road, but Jemar turned back and shouted to Analuna to continue running for the sake of their children. Analuna heard another gunshot. Analuna also overheard the petitioners ask Jemar something, to which Jemar responded that he doesn't know anything about it. Analuna hid for a while and crawled back to the highway. Crouching, Analuna saw Jemar on the ground and petitioners standing near him. Analuna stayed hidden until the petitioners boarded their motorcycle and left in the direction of Calatrava. Analuna then went in the direction of San Carlos City where she was able to ask for help from a motorcycle driver who brought her to the hospital where she underwent surgery.⁷

Consequently, in two separate Information dated August 26, 2010, petitioners were charged with Murder for the death of Jemar and Frustrated Murder for the attack on Analuna.⁸ The accusatory portions respectively read:

a) Frustrated Murder

That on or about the 23rd day of August, 2010, in the Municipality of Calatrava, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the second above-named accused, armed with a .45 caliber pistol, conspiring, confederating and mutually helping with the first above-named accused, with intent to kill, with treachery and

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⁶ *Batistis v. People*, 623 Phil. 246, 255 (2009), citing *Belgica v. Belgica*, 558 Phil. 67, 73 (2007).

⁷ *Rollo*, pp. 26-27.

⁸ *Id.* at 23-25.

evident premeditation, committing the offense at dawn/nighttime and taking advantage of their superior strength, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one, ANALUNA BERMEJO y TOLENTINO with the use of the said .45 caliber pistol that the first above[-]named accused was provided with, in treacherous manner, without giving the victim the opportunity to defend herself and to repel or resist the attack, thereby inflicting upon the latter one (1) gunshot wound on the left shoulder perforated in her lower armpit, which ordinarily would have caused her death, to her damage and prejudice; thus, the accused had performed all the acts of execution which would produce the crime of murder as a consequence, but which nevertheless, did not produce it by reason of some cause independent of the will of the accused, that is, due to the timely medical intervention which prevented her death.

CONTRARY TO LAW.⁹

b) Murder

That on or about the 23rd day of August, 2010, in the Municipality of Calatrava, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the second above-named accused, armed with a .45 caliber pistol, conspiring, confederating and mutually helping with the first above-named accused, with intent to kill, with treachery and evident premeditation, committing the offense at dawn/nighttime and taking advantage of their superior strength, did then and there, willfully, unlawfully and feloniously, attack, assault and shoot one, JEMAR MAHILUM y VILLARANTE, with the use of the said .45 caliber pistol that the first above-named accused was provided with, who was, unarmed, defenseless and unaware of the attack, without any opportunity to defend himself or resist the same, thus, hitting the said victim on the different parts of his body, thereby inflicting several gunshot wounds, which immediately caused his death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.¹⁰

Petitioners pleaded not guilty to the charges and agreed to be tried jointly.¹¹

Later in the trial, after the prosecution rested its case, Analuna submitted an affidavit of retraction.¹² However, on rebuttal, the mother of Jemar, Emelieta B. Mahilum (Emelieta), testified that

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⁹ Id. at 24.

¹⁰ Id. at 25

¹¹ Id.

¹² Id. at 27.

Analuna executed the affidavit of retraction in exchange for a considerable amount of money and even attempted to persuade her to drop the case against petitioners for a considerable amount.¹³

Despite Analuna's retraction, as well as petitioners' denials and assertion that they were asleep in their respective homes at the time of the incident, the Regional Trial Court (RTC) of San Carlos City, Branch 59, gave weight to the positive identification made by prosecution witnesses who had no ill motive to falsely testify against petitioners.¹⁴ Convinced that the prosecution sufficiently discharged its burden to prove petitioners' guilt beyond reasonable doubt, the RTC rendered a Joint Decision¹⁵ on March 28, 2017, disposing:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment:

1. In Criminal Case No. RTC-4477, finding accused ELDEFONSO VIRTUCIO y Gimarangan and LEO DOMINGO y Lindayao "GUILTY" beyond reasonable doubt for the crime of ATTEMPTED MURDER qualified by evident premeditation and taking into consideration the aggravating circumstances of treachery and nighttime and hereby sentences them to suffer the indeterminate penalty of imprisonment ranging from two (2) years of *prision correccional* as minimum to eleven (11) years of *prision mayor* as maximum.

No damages are awarded there being no proof presented in Court.

2. In Criminal Case No. RTC-4478, finding accused ELDEFONSO VIRTUCIO y Gimarangan and LEO DOMINGO y Lindayao "GUILTY" beyond reasonable doubt for the crime of MURDER qualified by evident premeditation and taking into consideration the aggravating circumstances of treachery and nighttime and Republic Act No. 9346 which prohibits the imposition of the Death Penalty and applicable jurisprudence, hereby sentences them to suffer the penalty of *Reclusion Perpetua* without the possibility of parole and with the accessory penalties for Death.

They are likewise ordered to jointly and solidarily pay the heirs of Jemar Mahilum the following amounts:

1. Seventy Five Thousand (P75,000.00) Pesos as indemnity for death;
2. Fifty Thousand (P50,000.00) Pesos as moral damages;

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¹³ Id. at 28 and 33.

¹⁴ Id.

¹⁵ Supra note 5, at 424-425.

3. Nine Thousand (P9,000.00) Pesos as temperate damages;
4. Thirty Thousand (P30,000.00) Pesos as exemplary damages;
and
5. Cost of suit.

It appearing that [petitioners] are detention prisoners, they are given full credit for the period of their detention provided that they have complied with the rules and regulations of the place where they are presently detained.

SO ORDERED.

On appeal, the CA-Cebu City held that recantations are hardly given much weight, except when there is no other evidence sustaining a conviction other than the testimony of a witness or witnesses who has or have made contradictory statements as to material facts. It agreed that Analuna's previous affidavit is more verifiable and convincing than her subsequent affidavit of retraction because other prosecution evidence, testimonial and documentary alike, corroborate her previous testimony.¹⁶

For one, the CA-Cebu City took judicial notice of the fact that there was a full moon on August 24, 2010, jibing with Analuna's testimony that the moon was bright. The description and clothing of Virtucio when he was arrested also matched the description provided by Jemar's brother, Jenard Mahilum (Jenard), of the person stalking him and Jemar on the night before Jemar was killed. Analuna and Jenard's description also matched Ruben Orantoy's description of the person he saw on board a motorcycle on standby along the national highway of Barangay Refugio, Calatrava, at dawn on August 23, 2010. Furthermore, petitioners failed to show any ill motive on the part of the prosecution witnesses for the latter to falsely testify against the former.¹⁷

The CA-Cebu City, thus, found that evident premeditation and treachery were clearly established in this case and all the elements of murder were present in the killing of Jemar. As to the wounding of Analuna who survived the attack, it agreed that the crime committed against her was attempted murder, in view of the physician's testimony that the wound sustained by Analuna was not fatal. Finally, it agreed that from the concerted acts of petitioners, conspiracy was clearly present. Thus, the CA's assailed disposition, which reads:

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¹⁶ *Rollo*, p. 30.

¹⁷ *Id.* at 30-31.

WHEREFORE, premises considered, the instant appeal is hereby DENIED for utter lack of merit. The joint decision of Regional Trial Court, Branch 59, San Carlos City, Negros Occidental in Crim. Case Nos. RTC-4477 and RTC-4478 is hereby AFFIRMED with MODIFICATIONS, as follows:

(1) In Crim. Case No. RTC-4478, the Court finds [petitioners] x x x GUILTY beyond reasonable doubt of the crime of murder defined under Article 248 of the Revised Penal Code, attended by the ordinary aggravating circumstance of evident premeditation, and hereby sentences them each to suffer the penalty of *reclusion perpetua* without eligibility for parole under R.A. 9346. They are ORDERED to PAY the heirs of JEMAR MAHILUM y VILLARANTE: (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages; (c) ₱100,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages;

(2) In Crim. Case No. RTC-4477, the Court finds [petitioners] x x x also GUILTY beyond reasonable doubt of the crime of attempted murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, attended by the ordinary aggravating circumstance of evident premeditation, and sentences them to suffer the indeterminate penalty [of] two (2) years of *prision correccional* as minimum to eleven (11) years of *prision mayor* as maximum. They are ORDERED to PAY the amounts of: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as exemplary damages to Analuna Bermejo y Tolentino.

(3) [Petitioners] are likewise ORDERED to PAY interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages.

SO ORDERED.¹⁸

Petitioners moved for reconsideration, but this was denied for lack of merit by the CA-Cebu City; hence, petitioners' present recourse.¹⁹

After going over the foregoing antecedents, we find no meritorious reason to set aside the questioned CA Decision and Resolution, even if we were to treat this petition as one brought to us by notice of appeal or if we were to delve into evidentiary matters.

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¹⁸ Id. at 37-38.

¹⁹ Supra note 2.

Where there is no showing that the RTC overlooked or misinterpreted some material facts or that it gravely abused its discretion, then we do not disturb and interfere with its assessment of the facts and the credibility of the witnesses.²⁰ The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.²¹ Furthermore:

Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if credible. The general rule is that courts look with disfavor upon retractions of testimonies previously given in court.

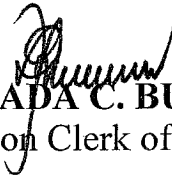
It is only where there exist special circumstances which, when coupled with the desistance or retraction raise doubts as to the truth of the testimony or statement given, can a retraction be considered and upheld.²²

In sum, the CA-Cebu City appears to have correctly upheld petitioners' conviction for attempted murder and murder, and appropriately modified the award of indemnity and damages to conform to *People v. Jugueta*.²³

WHEREFORE, the petition is hereby **DENIED** for lack of reversible error in the June 8, 2018 Decision and the August 29, 2019 Resolution of the Court of Appeals-Cebu City in CA-G.R. CEB-CR-HC No. 02551.

SO ORDERED.” *Inting, J., additional member per Special Order No. 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

By:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²⁰ *People v. Callao*, G.R. No. 228945, March 14, 2018, 859 SCRA 308, 324, citing *People v. Gabrino*, 660 Phil. 485, 493 (2011).

²¹ *People v. Dayaday*, 803 Phil. 363, 371 (2017), citing *People v. Gahi*, 727 Phil. 642, 658 (2014).

²² *Adlawan v. People*, G.R. No. 197645, April 18, 2018, 861 SCRA 548, 565-566, citing *People v. Zafra*, 712 Phil. 559, 576 (2013) and *Alonte v. Savellano, Jr.*, 350 Phil. 700, 752 (1998).

²³ 783 Phil. 806 (2016).

