



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 5, 2020** which reads as follows:*

“G.R. No. 248872 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus CORNELIO CARABBAY y ESTARDO AND VICTOR BAYOT y FURAGGANAN, accused-appellants.

After a careful review of the records of the case and the issues submitted by the parties, the Court affirms the Decision¹ dated January 17, 2019 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09948, finding accused-appellants Cornelio Carabbay y Estardo (Carabbay) and Victor Bayot y Furagganan (Bayot) guilty of the crime of Murder with modification as to the penalty and civil liability *ex delicto*.

The elements of the crime of Murder are as follows: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) that the killing is not parricide or homicide.²

The Regional Trial Court (RTC), as affirmed by the CA, found that all the elements of Murder were established in this case. In the absence of facts or circumstances that would affect the result of the case, the Court finds no cogent reason to overturn the RTC’s appreciation of the evidence on this matter.³


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96-A

¹ *Rollo*, pp. 3-16. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court) with Associate Justices Fernanda Lampas Peralta and Rodil V. Zalameda (now a member of this Court), concurring.

² *People v. Dayaday*, G.R. No. 213224, January 16, 2017, 814 SCRA 414, 425.

³ *People v. Gerola*, G.R. No. 217973, July 19, 2017, 831 SCRA 469, 478.



Here, the prosecution presented two (2) eyewitnesses, Rowell Arellano and Paul Terrence Birion, who notably testified years apart but gave the same account regarding the commission of the crime and identified the accused-appellants as the perpetrators thereof. Both eyewitnesses saw the victim, Norberto Acang (Acang), get shot after Carabbay ordered Bayot to shoot Acang.⁴ They were able to positively identify the accused-appellants as the perpetrators of the crime since they were standing only several meters away, and the crime was committed in an adequately lit street.⁵ More importantly, as residents of the same municipality, both eyewitnesses had known Carabbay and Bayot prior to the incident.⁶ They were, therefore, familiar with the identities of the accused-appellants.

The manner by which Acang was killed likewise showed that there was treachery. 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. The essence of treachery is a deliberate and sudden attack, offering an unarmed and unsuspecting victim no chance to resist or to escape.⁷

In this case, the records show that as Acang was about to leave his residence, the accused-appellants suddenly appeared outside and blocked his path. Acang then asked them what their problem was, after which Carabbay knocked him with a punch. Carabbay motioned to Bayot and said: "*tirain mu na.*" Bayot then pulled the trigger and shot Acang.⁸

By deliberately punching Acang to knock him down and then using that moment to shoot him while he was caught unaware of the attack, the accused-appellants consciously employed means to carry out the crime without affording the unarmed victim the opportunity to repel the attack, or to escape, or retaliate. This holds true even if the accused-appellants attacked Acang from the front. What is decisive in treachery is that the execution of the attack made it impossible for the victim to defend himself or to escape.⁹

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96-A

⁴ *Rollo*, pp. 5, 10; see also TSN, September 28, 2011, pp. 8-10; TSN, October 5, 2016, pp. 7-8.

⁵ TSN, September 28, 2011, pp. 13-14; TSN, October 5, 2016, p. 18.

⁶ *Rollo*, p. 10.

⁷ *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 748.

⁸ *Rollo*, p. 5; TSN, September 28, 2011, pp. 9-10; TSN, October 5, 2016, pp. 7-8.

⁹ *People v. Bugarin*, G.R. No. 224900, March 15, 2017, 820 SCRA 603, 616-617.

However, as regards the finding that there was evident premeditation in this case, the Court disagrees that this circumstance was correctly appreciated. Evident premeditation is present when the following elements concur: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.¹⁰

In *People v. Racal*,¹¹ the Court ruled out the presence of evident premeditation in the absence of proof showing that the accused had previously planned to kill the victim. There should be evidence on when and how the accused planned and prepared the commission of the crime, together with a showing that a sufficient time had lapsed between this determination and execution.

The Court's ruling in *People v. Maglente*¹² similarly held that:

Moreover, the CA correctly deviated from the RTC's finding regarding the existence of evident premeditation. According to the CA, the records did not show sufficient evidence to support the existence of the "time when appellants determined to commit the crime and that sufficient lapse of time existed between such determination and execution to allow them to reflect upon the circumstances of their act." To properly appreciate evident premeditation as an aggravating circumstance, it is indispensable that the fact of planning the crime be established. Particularly, evidence must show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. Absent such proof, evident premeditation cannot prosper. In this case, the records are bereft of evidence proving how and when the plan to attack the victims was hatched up.¹³

Here, the prosecution was only able to establish the circumstances surrounding the night of June 7, 2010 – the time when Acang was killed. There is no evidence on record showing that the accused-appellants planned and prepared to commit the crime. The accused-appellants' conduct of blocking Acang's path as he was about to leave his house is not sufficient proof of an overt act that the crime was planned.¹⁴ Furthermore, neither the CA nor the RTC amply explained the justification for their appreciation of evident

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96-A

¹⁰ *People v. Gayon*, G.R. No. 230221, April 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65153>>.

¹¹ G.R. No. 224886, September 4, 2017, 838 SCRA 476, 494.

¹² G.R. No. 201445, November 27, 2013, 711 SCRA 142.

¹³ *Id.* at 158.

¹⁴ *Rollo*, p. 14.

premeditation. What is clear from the records, however, is the dearth of evidence establishing the accused-appellants' decision to kill Acang prior to the moment of its execution, or that the commission of the crime was a result of meditation, calculation, reflection or persistent attempts.¹⁵ Evidently, the presence of evident premeditation in this case was not proven beyond reasonable doubt.

Finally, the Court affirms the finding of conspiracy. Conspiracy does not need direct evidence in order to be established. It may be inferred from the conduct of the accused-appellants prior to, during, and after the commission of the crime. Their conduct should evince a joint purpose, concerted action, and concurrence of sentiments.¹⁶ In this case, while it was Bayot who actually shot Acang, Carabbay was not a mere bystander or observer. He was responsible for throwing the punch on the victim, which ensured that the victim was defenseless at the time Bayot pulled the trigger. The eyewitnesses likewise saw Carabbay direct Bayot to shoot Acang at that point in time, and after Bayot did as he was told, they fled the crime scene together.¹⁷ Their concerted actions explicitly exhibit an agreement to jointly execute the killing of Acang. Both accused-appellants, therefore, were correctly held liable as principals.

Proper Penalty and Award of Damages

The Court finds it proper to clarify that had the prosecution sufficiently proven the presence of evident premeditation in addition to treachery, the proper imposable penalty would have been death, following Article 63 of the RPC. In such case, the penalty would be reduced to *reclusion perpetua* without eligibility for parole, pursuant to Republic Act No. 9346 prohibiting the imposition of death. In this manner, the CA's modification of the award of damages, which increased the amount to ₱100,000.00 each as civil indemnity, moral damages, and exemplary damages, would have been correct.

But in this case, the prosecution was only able to prove the qualifying circumstance of treachery. With treachery having qualified the crime to Murder, and there being no other aggravating circumstance that would warrant the application of a greater penalty, the proper imposable penalty is *reclusion perpetua*. Following *People v. Jugueta*,¹⁸ the award of civil indemnity, moral damages, and exemplary damages

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96-A

¹⁵ *People v. Kalipayan*, G.R. No. 229829, January 22, 2018, 852 SCRA 311, 324.

¹⁶ *People v. Las Piñas*, G.R. No. 191723, July 23, 2014, 730 SCRA 571, 596-597.

¹⁷ *Rollo*, p. 5; TSN, September 28, 2011, pp. 10-12; TSN, October 5, 2016, pp. 7-8.

¹⁸ G.R. No. 202124, April 5, 2016, 788 SCRA 331.

should be reduced to ₱75,000.00 each. In addition, there being no evidence of burial or funeral expenses in this case, the additional amount of ₱50,000.00 should be awarded as temperate damages.

WHEREFORE, premises considered, the appeal¹⁹ is **DISMISSED** for lack of merit. The assailed Decision dated January 17, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09948 is **AFFIRMED with MODIFICATIONS**. Accused-appellants Cornelio Carabbay y Estardo and Victor Bayot y Furagganan are found **GUILTY** beyond reasonable doubt for the crime of Murder punishable under Article 248 of the Revised Penal Code. Accused-appellants are sentenced to suffer the penalty of *reclusion perpetua* and ordered to indemnify the heirs of the victim with the following amounts: (1) ₱75,000.00 as civil indemnity; (2) ₱75,000.00 as moral damages; (3) ₱75,000.00 as exemplary damages, and (4) ₱50,000.00 as temperate damages.

All monetary awards shall earn 6% interest per annum from the finality of judgment until fully paid.

SO ORDERED.” *Peralta, C.J., no part; Carandang, J., designated additional member per Raffle dated February 19, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
96-A

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¹⁹ *Rollo*, pp. 17-18.



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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09948)

The Hon. Presiding Judge
Regional Trial Court, Branch 12
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(Crim. Case No. 3405-S[10])

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