



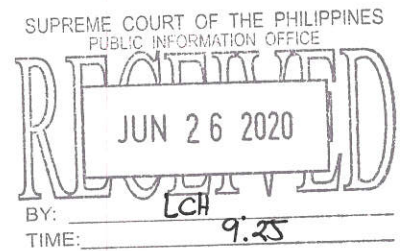
Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

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

**“G.R. No. 234285 – (People of the Philippines, Plaintiff-Appellee, v. Bonifacio Generalao, Accused-Appellant) –** In this appeal, accused-appellant Bonifacio Generalao (accused-appellant) assails the Decision<sup>1</sup> dated 29 June 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07961, which affirmed his conviction for murder with modification on the award of damages in favor of the heirs of the victim, Wennie Layson y Cusay (victim).

**Antecedents**

In an Information dated 29 October 2004, accused-appellant was charged with murder, the accusatory portion of which reads:

That on or about the 26<sup>th</sup> day of October 2004, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with intent to kill, and by means of treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously hack WENNIE LAYSON Y CUSAY, thereby inflicting upon the latter fatal single wound/injury on the head which instantaneously caused his death.

Contrary to law.<sup>2</sup>

Accused-appellant pleaded not guilty to the charge.<sup>3</sup> After pre-trial,<sup>4</sup> trial on the merits ensued.

<sup>1</sup> *Rollo*, pp. 2-9; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh of the Fifteenth Division, Court of Appeals, Manila.

<sup>2</sup> *Id.* at 2; Records p. 1.

<sup>3</sup> Records, pp. 27 and 29.

<sup>4</sup> *Id.* at 33-35.

### Version of the Prosecution

On 26 October 2004, Armando Recana<sup>5</sup> (Recana) was walking at Sitio Salvacion, Tunasan in Muntinlupa City, with the victim who was seven (7) meters in front of him. Suddenly, accused-appellant emerged from an alley, tiptoed behind the unsuspecting victim and forcefully hacked him at the back of his head with a 24-inch bolo. Frightened, Recana fled from the scene and rushed to the police station to report the incident. He identified accused-appellant, his neighbor since 1990, as the perpetrator.<sup>6</sup>

Dr. Voltaire Nulud (Dr. Nulud) also testified in court as the physician who conducted the post mortem and autopsy examination on the victim's body. Based on the medico-legal report,<sup>7</sup> the victim sustained several injuries including a hack wound on the left ear extending to the back of the neck, which resulted to his death. The cause of the victim's death was "[h]emorrhagic shock secondary to a hacked wound of the head."<sup>8</sup>

According to Candelaria Layson (Candelaria), the victim's widow, she spent ₱25,000.00 as funeral expenses. She also incurred other expenses, but was unable to present official receipts in support of her claim.<sup>9</sup>

### Version of the Defense

According to accused-appellant, he had a fist fight with the victim two (2) days prior the hacking incident. However, they both agreed to end their dispute before the *barangay* officials and gave ₱500.00 to the victim as settlement.<sup>10</sup>

On 26 October 2004, while accused-appellant was tending a fish store in front of his house, the victim suddenly appeared, threatened to kill him, and stabbed him with a stainless knife. While accused-appellant parried the blow, he still sustained a wound on his right arm.<sup>11</sup> Meanwhile, out of nowhere, Recana and an unidentified man arrived, holding a one (1) foot knife and a two (2) feet bolo, respectively. When the unidentified man hacked him, accused-appellant held the victim on the stomach and used him as a shield to ward off the attack. As a result, the victim was hit on the right side of his neck, while Recana and the unidentified man ran away.<sup>12</sup>

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<sup>5</sup> Spelled as Recaña in *Rollo*, p. 3 and Recania in *CA rollo*, p. 41

<sup>6</sup> *Rollo*, p. 3.

<sup>7</sup> Records, p. 113.

<sup>8</sup> *Id.* at 7; *CA rollo*, p. 42.

<sup>9</sup> *Id.*; *CA rollo*, p. 41.

<sup>10</sup> *CA rollo*, p. 43.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Accused-appellant averred that he asked people to bring the victim to a hospital while he went home to tend to his own injury. The same day, he learned that the victim died and claimed that he was only arrested in 2005 as he sought refuge with someone whom he can trust.<sup>13</sup>

### Ruling of the RTC

On 16 November 2005, the RTC found accused-appellant guilty of murder and was sentenced to suffer the penalty of *reclusion perpetua*, to wit:

WHEREFORE, the Court finds the accused, Bonifacio Generalao[,] GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code and sentences him to *reclusion perpetua* and to indemnify the heirs of Wennie Layson the amounts of ₱75,000.00 as death indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages, and ₱25,000.00 for funeral expenses, all with interest at the rate of six percent (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.<sup>14</sup>

The RTC found accused-appellant's version of the events bereft of credibility. The testimony of Recana, who witnessed the hacking incident, is straightforward and forthright in identifying Bonifacio as the perpetrator. The trial court also appreciated the qualifying circumstance of treachery considering accused-appellant's unexpected emergence from an alley and his stealthy approach from the victim's back ensuring the fatal hacking of the victim.<sup>15</sup>

### Ruling of the CA

The CA affirmed accused-appellant's conviction through the assailed decision, *viz*:

**WHEREFORE**, the Decision appealed from is hereby **AFFIRMED** with **MODIFICATION** in that the award of moral damages is reduced to PHP50,000.00, PHP25,000.00 is additionally awarded as temperate damages and an interest at the legal rate of six percent (6%) is hereby imposed on all the monetary awards for damages and interest, from the finality of this decision until fully paid.

SO ORDERED.<sup>16</sup>

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<sup>13</sup> *Id.* at 43-44.

<sup>14</sup> *Id.* at 52.

<sup>15</sup> *Id.* at 44-50.

<sup>16</sup> *Rollo*, p. 9.

The appellate court ruled the positive identification of accused-appellant as the perpetrator superior over the latter's defense of denial. Further, Recana's testimony was corroborated by the victim's wife and Dr. Nulud, who explained the nature and variety of the hack wound that caused the death of the victim. The attack was also ruled as treacherous for being sudden and unexpected, precluding opportunity for the victim to defend himself.<sup>17</sup>

Hence, this appeal.

### Issues

The issues raised by accused-appellant are as follows:

#### I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDULOUS TESTIMONIES OF THE PROSECUTION WITNESSES.

#### II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>18</sup>

### Ruling of the Court

The appeal lacks merit.

*The credible testimony of a single eyewitness is sufficient for the conviction of accused*

The determination of the credibility of a witness is within the peculiar province of the trial court because of its superior advantage in observing the conduct and demeanor of the witness while testifying. Absent any showing of a fact or circumstance of weight and influence, which would appear to have been overlooked and, if considered, could affect the outcome of the case, the factual findings and assessment on the credibility of witness made by the trial court, especially when affirmed by the Court of Appeals, remain binding on this Court.<sup>19</sup>

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<sup>17</sup> *Id.* at 6-8.

<sup>18</sup> *CA rollo*, p. 29.

<sup>19</sup> *People v. Ticalo*, 425 Phil. 912-919 (2002); G.R. No. 138990, 30 January 2002, 375 SCRA 278.

In this appeal, accused-appellant insists that Recana conspired with Candelaria, who did not even witness the incident, to falsely testify against accused-appellant to exculpate Recana.<sup>20</sup>

A closer scrutiny of the records reveals, however, that Candelaria never purported herself as an eyewitness to the hacking incident. Her knowledge of the identity of her husband's killer is based on the information given by Recana. Her testimony was offered merely to establish her relationship with the victim and to prove the expenses incurred due to his death.<sup>21</sup>

Meanwhile, Recana's testimony was undeniably clear, coherent and straightforward. Even during cross-examination, his answers were consistent and unwavering. Thus, his testimony as the lone eyewitness was properly given weight and credence, and is sufficient for the conviction of accused-appellant. Indeed, truth is established qualitatively, not quantitatively. Where there is nothing to indicate that the witness has been actuated by improper motives, such as in the present case, his positive and categorical statement under solemn oath on the witness stand deserves full faith and credence.<sup>22</sup>

Besides, We agree with both the RTC and the CA on the glaring inconsistency between accused-appellant's version of the events and the results of the medico legal examination on the victim. Accused-appellant even demonstrated how the victim was hacked by the unidentified assailant on the right side of the neck. In contrast, the medico legal report shows the victim's hacking injury on the left side of his ear. Confronted with the inconsistency of his statements and the result of the medico legal report, accused-appellant failed to offer any explanation other than denial of conformity to the report.<sup>23</sup> Accordingly, the lower courts correctly discredited accused-appellant's narration vis-à-vis Recana's testimony.

*The prosecution was able to prove the existence of all the elements for murder*

The Revised Penal Code (RPC) describes how the crime of murder is committed, viz:

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<sup>20</sup> CA rollo, pp. 30-33.

<sup>21</sup> TSN dated 18 May 2006, pp. 21-32.

<sup>22</sup> *Supra* at note 19.

<sup>23</sup> TSN dated 09 September 2015, p. 27.

ARTICLE 248. *Murder*. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Thus, the elements of murder are the following: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.<sup>24</sup>

As accused-appellant undeniably killed the victim, this Court will now resolve to determine whether or not the qualifying circumstances of treachery and/or evident premeditation, as alleged in the information, are obtaining in this case.

Treachery or *alevosia* is present when the offender, in the execution of the crime against a person, employs means, methods, or forms, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.<sup>25</sup> The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make. To be appreciated, the following elements must be present:

- (1) At the time of attack, the victim was not in a position to defend himself or to retaliate or escape; and

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<sup>24</sup> *People v. Gaborne*, G.R. No. 210710, 27 July 2016, 798 SCRA 657.

<sup>25</sup> THE REVISED PENAL CODE, Art. 14 .

- (2) The accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.<sup>26</sup>

Meanwhile, for evident premeditation to qualify the killing of a person to the crime of murder, the following must be established by the prosecution with equal certainty as the criminal act itself:

- (1) The time when the offender determined to commit the crime;
- (2) An act manifestly indicating that the offender clung to his determination; and
- (3) A sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.<sup>27</sup>

Hence, there must be evidence showing a plan or preparation to kill, or proof that accused meditated and reflected upon his decision to kill the victim. It must be established how and when the plan to kill was hatched or how much time had elapsed before it was carried out.<sup>28</sup>

In the case at bar, the lower courts ruled that treachery, and not evident premeditation, qualified the killing of the victim to murder. We see no reason to depart from such findings considering the overwhelming evidence that shows how accused-appellant consciously and deliberately adopted his plan to kill the victim without affording the latter an opportunity to defend himself. To recall, the victim who was unaware of any impending attack, had been walking ahead of Recana when accused-appellant emerged from an alley behind, tiptoed towards the unsuspecting victim and hacked him on his back using a bolo he brought. Clearly, the incident was not a chance encounter between the victim and his assailant, who purposely sought the means of the attack against the victim to deprive him of any chance to defend himself, retaliate or escape.

The lower courts correctly found the element of evident premeditation inapplicable. Verily, the prosecution failed to prove the time when accused-appellant supposedly determined to commit the crime. Nor was there evidence to demonstrate any manifest act showing how accused-appellant clung to his determination.

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<sup>26</sup> *People v. Ampo*, G.R. No. 229938, 27 February 2019.

<sup>27</sup> *People v. Ordona*, 818 Phil. 670-682 (2017); G.R. No. 227863, 20 September 2017.

<sup>28</sup> *Id.*

While the information failed to allege the particular acts and circumstances constituting treachery,<sup>29</sup> its appreciation as a qualifying circumstance cannot be ignored in the absence of any objection from accused-appellant against the defect. To recall, the lack of particular allegations as to the acts and circumstances of treachery is a ground for a motion to quash under Section 3(e), Rule 117 of the Rules of Court (Rules).<sup>30</sup> Similarly, it may also be the subject of a motion for a bill of particulars under Section 9, Rule 116 of the same Rules.<sup>31</sup> However, failure of the accused to assert any ground of a motion to quash or a motion for a bill of particulars before they plead to the complaint or information shall be deemed a waiver of their objection thereto.<sup>32</sup> More importantly, none of their rights, particularly the right to be informed of the nature and cause of the accusation against them, was violated.<sup>33</sup> Since accused-appellant never posed any objection to the information, he is considered to have waived his right to question its sufficiency.

Given the foregoing, accused-appellant's conviction for murder was proper. However, the Court modifies the award of moral damages and exemplary damages to ₱75,000.00 each to conform with the recent jurisprudence. The award of ₱30,000.00 as funeral expenses is also deleted in lieu of temperate damages amounting to ₱50,000.00.<sup>34</sup>

**WHEREFORE**, the instant appeal is hereby **DISMISSED**. The Decision dated 29 June 2017 by the Court of Appeals in CA-G.R. CR-HC NO. 07961 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Bonifacio Generalao is found **GUILTY** beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua*. He is further **ORDERED** to pay the heirs of Wennie Layson y Cusay the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The award of ₱30,000.00 as funeral expenses is also deleted in lieu of temperate damages amounting to ₱50,000.00. These amounts shall then earn 6% interest per annum from the date of finality of this resolution until full payment.<sup>35</sup>

<sup>29</sup> *People v. Valdez*, 679 Phil 279 (2012); G.R. No. 175602, 18 January 2012, 663 SCRA 272.

<sup>30</sup> SEC. 3. *Grounds*. – The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(e) That it does not conform substantially to the prescribed form;

x x x x

<sup>31</sup> *People v. Solar*, G.R. No. 225595, 06 August 2019.

<sup>32</sup> *Id.*

<sup>33</sup> *People v. Caoile*, 710 Phil 564 (2013); G.R. No. 203041, 05 June 2013, 697 SCRA 638.

<sup>34</sup> *People v. Jugueta*, G.R. No. 202124, 05 April 2016, 788 SCRA 331.

<sup>35</sup> *See Eastern Shipping v. Court of Appeals*, G.R. No. 97412, 12 July 1994. “Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially.” *See also Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, where the Court held that when the judgment of the court becomes final and executory, the principal amount shall earn an interest of six percent (6%) *per annum* from the finality of the decision until full payment, the interim period being “deemed to be by then an equivalent to a forbearance of credit.”



**SO ORDERED.”**

Very truly yours,

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
*gmd*  
*2/11/20*

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The Presiding Judge  
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