



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 September 2020** which reads as follows:*

“G.R. No. 197820 (*People of the Philippines v. Elmer Roman, Tirso Tianes, and Adelino Balagat alias “Ebot,” accused; Elmer Roman, accused-appellant*) -This is an appeal¹ from the February 3, 2011 Decision² of the Court of Appeals (CA) in CA-G.R. CR HC No. 03975 affirming the April 29, 2009 Judgment³ of the Regional Trial Court (RTC), Branch 37 of Iriga City in Criminal Case No. IR-6292 finding accused-appellant Elmer Roman (Roman) guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty *reclusion perpetua*.

The Case

On May 14, 2002, Roman, along with two other accused Tirso Tianes (Tianes) and Adelino “Ebot” Balagat (Balagat), was charged with the crime of Murder for the death of Florencio Basagre (Basagre) in an Information⁴ which alleged:

That on or about 5:00 P.M. of May 16, 2002 in Brgy. Cabungan, Balatan, Cam. Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, and with treachery while armed with a gun, did then and there, wilfully, unlawfully and feloniously attack, assault, and shot for several times, one Florencio Basagre, thereby inflicting gun shot wounds which

¹ *Rollo*, pp. 15-16.

² *Id.* at 2-14; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dican and Jane Aurora C. Lantion.

³ *Records*, pp. 312-323; penned by Presiding Judge Rogelio Ll. Dacara.

⁴ *Id.* at 1.

resulted to his instantaneous death, to the damage and prejudice of the heirs of one Florencio Basagre.

CONTRARY TO LAW.

Roman was arrested, while Tianes and Balagat remained at large. When arraigned, Roman pleaded not guilty.⁵

Trial ensued after the pre-trial conference. In addition to its documentary evidence, the prosecution presented four (4) witnesses, namely: Lourdes A. Basagre (Lourdes), the wife of Basagre; Dr. Irmina N. Orbeta⁶ (Orbeta), Rural Health Physician of Balatan, Camarines Sur, Reynaldo A. Basagre (Reynaldo), the son of Basagre, and Jeanity A. Basagre (Jeanity), the daughter of Basagre. On the other hand, the defense likewise presented its documentary evidence and four (4) witnesses, namely: Edmundo C. Roman (Edmundo), Charlie R. Talagtag (Charlie), and Julio C. Roman (Julio), who are cousins of Roman.

Version of the Prosecution:

On May 16, 2002, at around 5 o' clock in the afternoon, victim Basagre was at the house of Isidro Abarera when suddenly, Tianes and Balagat arrived thereat and called out Basagre. Balagat invited Basagre to talk to Roman. The latter then arrived and demanded Basagre to produce his gun. Basagre asked Roman what the problem was so they could talk it over. When Basagre did not heed Roman's demand, the latter shot the former at his ankle, chest, and head. Basagre died instantly. Lourdes, Reynaldo, and Jeanity personally witnessed the shooting and attested to the circumstances of the killing.

Version of the Defense:

Roman interposed a defense of alibi and denial. He claimed that on May 16, 2002, he was at SBR Motor Shop located in Mandaluyong City where he stays and works as a car painter. He claimed that he could not have been at Cabungan, Balatan, Camarines Sur on May 16, 2002 since he was celebrating his birthday on May 17, 2002 in Mandaluyong City. He was surprised to learn about the criminal case against him because he has no misunderstanding with the Basagres. Roman's cousins and witnesses, Edmundo, Charlie, and Julio, corroborated his statements.

Ruling of the Regional Trial Court:

After trial, the RTC gave full credence to the evidence presented by the prosecution. The dispositive portion of the April 29, 2009 RTC Judgment reads as follows:

⁵ Id. at 51.

⁶ Spelled as Orbita in some parts of the records.

WHEREFORE, finding the accused guilty beyond reasonable doubt for the crime of murder defined and penalized under Art. 248 of the Revised Penal Code as amended by RA 7659, accused is sentenced to suffer the penalty of Reclusion Perpetua, and is ORDERED to pay the widow of the victim the amount of P30,000.00 as temperate damages for the wake and burial expenses of her husband, P50,000.00 for moral damages and another P50,000.00 as civil indemnity due to the death of her husband Florencio Basagre.

As regards accused Tirso Tianes and Adelino Balagat alias “[Ebot],” let their cases be sent to the archives to be revived upon their apprehension.

Issue alias warrant of arrest for their apprehension.⁷

The RTC found Roman criminally liable for the death of Basagre. It gave more credence to the testimonies of the victim’s wife and two children and their positive identification of Roman, which testimonies were further corroborated by the medical findings of Dr. Orbeta who conducted the *post-mortem* examination on Basagre's body, and remained unassailed by the defense. The RTC also held that alibi is an inherently weak defense that cannot prevail over the positive and categorical identification of the prosecution witnesses. Treachery also qualified the killing to murder, as Basagre was found to have been shot at his back such that he was rendered unable to resist any sudden attack or to retaliate.

Aggrieved, Roman appealed to the CA.⁸

Ruling of the Court of Appeals:

The CA, in its assailed February 3, 2011 Decision, found no reason to reverse the RTC Judgment convicting Roman for Basagre's murder. From its own examination of the records, the CA likewise discredited Roman's defense of alibi and sustained the existence of the elements of Murder attended by treachery.

The CA disposed Roman’s appeal in this wise:

WHEREFORE, the appealed Decision dated April 29, 2009 of the Regional Trial Court of Iriga City, Branch 37, that convicted accused-appellant Elmer Roman for the crime of **MURDER**, which is defined and penalized under Article 248 of the Revised Penal Code, is hereby **AFFIRMED**.

SO ORDERED.⁹

Now, this appeal by Roman before Us.¹⁰

⁷ Records, pp. 322-323.

⁸ Id. at 325.

⁹ *Rollo*, p. 13.

¹⁰ Id. at 15-17.

Issue

Roman seeks a reversal of the CA Decision affirming the RTC Judgment on the ground that it is contrary to facts, laws, and jurisprudence.¹¹

The Court's Ruling

The appeal lacks merit.

It is settled that the conviction of the accused must rest not on the weakness of his defense but on the strength of the evidence against him. Corollary to this is the mandate upon the prosecution to establish the accused's guilt by proof beyond reasonable doubt, or evidence evoking moral certainty that the accused, indeed, committed the crime in issue. Absolute impossibility of error is unnecessary. The proof must only attain such degree of moral certainty as to produce conviction in an unprejudiced mind.

Our review of the testimonies and the ratiocinations by the trial and appellate courts sustains the conviction of Roman for the murder of Basagre. The pertinent findings of the RTC are as follows:

This court is inclined to give more credence to the testimonies of the wife and two children of the victim in this case whose credibility was not assailed by the defense.

Their positive and categorical identification of the accused as the perpetrator of the crime is unwavering.

In this case Lourdes Abarera-Basagre, Reynaldo Basagre and Jeanity Basagre were present at the scene of the incident and they witnessed the shooting of Florencio Basagre. They also proved that they cannot be mistaken as to the identity of the perpetrator as they are all very much acquainted with the said accused Elmer Roman. Hence, their straightforward and candid narrations of the incident are sufficient evidence to convict accused Elmer Roman. Moreover, no evil motive had been imputed against these three witnesses for testifying against the accused. Lourdes Basagre testified that she does not know the motive of the accused in killing her husband. All she knows is that her husband is the brother of Teresita Pedro and there is a family feud between Pedro Family and Roman Family. The accused even confirmed that there is no bad blood between his family and the family of the victim. Hence, where there is no evidence that the principal witness for the prosecution was actuated by improper motives, the presumption is that [she] was not, and [her] testimony is entitled to full faith and credit.

Further, the testimonies of the prosecution witnesses as regards the gunshot wounds sustained by the victim were supported by the findings of Dr. Irmira N. Orbita, Rural Health Physician of Balatan, Camarines Sur, who

¹¹ CA *rollo*, pp. 48-61.

conducted the Post Mortem Examination on the body of Florencio Basagre.

In addition, the Supreme Court consistently held that alibi is a weak defense. Positive identification when categorical and consistent and without any ill-motive on the part of the eyewitness testifying on the matter at issue, prevails over sheer denial and alibi which are basically negative, self-serving and undeserving of any weight in law unless substantiated by clear and convincing proof.

In this case, aside from the testimony of the accused, two other witnesses, who are cousins of the accused, were presented to impress upon this court that the accused is working in Manila when the incident happened. The court however finds no clear and convincing proof as to the veracity thereof since aside from their testimonies, no other proof was presented such as the daily time record of the accused at that time. The court even entertains doubt as to the truthfulness of their testimonies as Julio C. Roman, despite being the supervisor of the accused in the Motor Shop stated he does not require Elmer Roman to submit his DTR because they are relatives.

Clearly, the defense of alibi of the accused cannot prevail over the positive and categorical identification of the witnesses for the prosecution.

As to the attending circumstances, this court finds the existence of treachery. For treachery to qualify the crime to murder the prosecution must prove that (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted.

In this case the qualifying circumstance of treachery was established by the prosecution because as testified to by witness Reynaldo [Basagre], his father was shot at the back such that he could not resist any sudden attack. This is the essence of treachery the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.

The fact that the accused before shooting the victim stated words that could have forewarned the victim will not negate the existence of treachery as the rule is well settled in this jurisdiction that treachery may still be appreciated even though the victim was forewarned of the danger to his person. What is decisive is the attack was executed in the manner that the victim was rendered defenseless and unable to retaliate.¹² (Citations omitted.)

The CA concurred with the RTC in convicting Roman:

x x x The testimonies of the eyewitnesses proffered before the court *quo*, which positively identified accused-appellant as one of the malefactors who shot Florencio Basagre to death, are not only complete to show a detailed story of what transpired that fateful day when victim-deceased Florencio Basagre was shot, but also sufficient to convict accused-appellant for the crime charged. We quote the testimony of eyewitness Lourdes Basagre (wife of victim-deceased):

¹² Records, pp. 320-322.

Q: What happened next after Adelino Balagat made a sign to Elmer Roman?

A: Elmer approached my husband.

Q. After Elmer Roman approached your husband what happened?

A. Elmer was asking from my husband a gun.

Q. What else happened?

A. My husband made a step, on his first step Elmer shot him [at] the ankle and then on the right side of his chest and on his head.

INTERPRETER:

Witness pointing to her right ankle.

PROS. RAMOS:

Q. By the way, can you demonstrate to the Honorable Court how Elmer Roman asked your husband to produce a gun?

WITNESS:

A. Elmer with his hand on his side with a gun was asking the gun of my husband but my husband did not have a gun and Elmer said that his gun will be her husband's. "Itao mo na kanako a badil mo kin diri mo kanako itatao a badil mo ading badil na adi kanimo."

INTERPRETER:

Witness demonstrating with her hand on her side and extending her right hand forward.

PROS. RAMOS:

Q. What was Elmer Roman extending with his right hand?

WITNESS:

A. A Gun.

Q. By the way, what did you do x x x when x x x Elmer Roman was asking your husband to produce a gun?

A. I told Elmer that we have no gun even if he look for it in the house.

Q. What else did you say, if any?

A. I told him that if he finds the gun then he can kill us all.

Q. What was the answer of Elmer Roman regarding your answer?

A. Since my husband could not give him a gun he shot my husband.

Q. What happened to your husband when he was shot x x x 3 times by the accused Elmer Roman with a gun?

A. He died instantly after being shot in the ankle, on his chest and on his head.

We further quote the testimonies of victim-deceased's children, Reynaldo and Jeanity Basagre, *et sequentia*:

Q. What happened to your father Florencio Basagre when he was shot by Elmer Roman with a cal. 45 handgun?

A. He [fell] on his knees.

Q. How about you, what did you do when Elmer Roman shot your father.

A. I ran away.

Q. Why did you run away?

A. Because I was afraid.

Q. That is why, why are you afraid?

A. For fear that I might be the next one to be shot.

x x x x

Q. And after that what happened next?

A. My father approached Balagat and raised his hands in [surrendering fashion]/.

Q. Do you know why your father Florencio Basagre raised his hands x x x ?

A. He said to Balagat that there was no problem.

Q. What else happened?

A. Then my father approached Elmer Roman and I requested Elmer Roman not to harm my father because if there was a problem we can resolve it, but Elmer Roman did not say anything.

Q. What happened next when you pleaded for the life of your father to Elmer Roman?

A. When I said to Elmer Roman there was no problem, he did not say anything and then he told my father to [produce] a gun, but we don't have a gun.

Q. What did Elmer Roman say [after] requesting your father to [produce] the gun?

A. Elmer Roman said, "If you cannot [produce] a gun this will be the equivalent."

INTERPRETER:

Witness demonstrating as if she is holding a gun.

PROS. RAMOS:

Q. And who is holding the gun?

WITNESS:

A. Elmer, sir.

Q. After that what happened?

A. Then he shot my father.

Obviously, the events narrated by the eyewitnesses point to the fact that victim-deceased could not have been aware that he will be shot to death by the malefactors. There was no opportunity for victim-deceased to defend himself. Aside from the fact that victim-deceased was unarmed at that time, he even raised his hands upwards when he was approached by the malefactors. xxx Moreover, the plea of Jeanity (daughter of victim-deceased) to the malefactors

to spare the life of her father fell on deaf ears. Instead, accused-appellant Elmer Roman shot to death Florencio Basagre not only once, but three times. Indubitably, treachery is present in the instant case.¹³

Three witnesses testified to the killing of Basagre by Roman. Indeed, the number of witnesses does not determine the weight of their testimony or their credibility; however, the fact that three persons present at the scene of the crime took the witness stand and unanimously pointed to Roman as the perpetrator of Basagre's murder amplifies its truth.

With all these, Roman forfeits his refuge under the *equipoise* rule. The said rule finds application if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, for then, the evidence does not fulfill the test of moral certainty, and does not suffice to produce a conviction.¹⁴

Here, the evidence on record is sufficient to convict Roman for Basagre's murder. The version of the prosecution is more than credible to debunk the presumption of innocence favoring the accused, and the testimonies of the prosecution witnesses have adequately established his culpability for the crime charged. Roman cannot tip the scales in his favor through the *equipoise* rule when the version of the prosecution stands on an overwhelmingly heftier weight than that of his own defense.

Thus, the Court finds that the CA correctly affirmed the RTC in finding Roman guilty beyond reasonable doubt of the crime of murder and accordingly sentenced him to *reclusion perpetua*.

Recent pronouncements, however, impel Us to modify the monetary awards granted to the heirs of the victim. Pursuant to *People v. Jugueta*¹⁵ and *People v. Racal*,¹⁶ the damages that may be awarded where the penalty imposed is *reclusion perpetua* are ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Moreover, the award of temperate damages is justified in lieu of actual damages when the actual damages proven by receipts during trial is less than the sum allowed by the Court as temperate damages. As the RTC initially granted the amount of ₱30,000.00 for the wake and burial expenses of the victim-deceased, We instead award the higher amount of ₱50,000.00 as temperate damages to comply with prevailing jurisprudence.

All amounts due shall further earn legal interest of six percent (6%) per *annum* from the date of finality of this Resolution until full payment,

¹³ *Rollo*, pp. 8-11.

¹⁴ *Dado v. People*, 440 Phil. 521, 537 (2002).

¹⁵ 783 Phil. 806 (2016).

¹⁶ 817 Phil. 665, 685-686 (2017).

following *Nacar v. Gallery Frames*.¹⁷

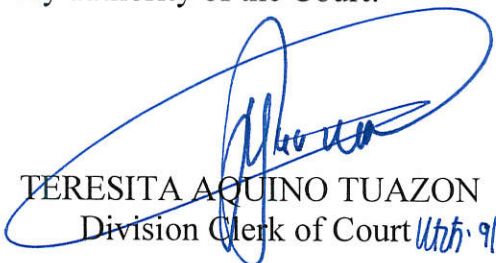
WHEREFORE, the appeal is **DISMISSED**. The February 3, 2011 Decision of the Court of Appeals in CA-G.R. CR HC No. 03975 upholding the April 29, 2009 Judgment of the Regional Trial Court, Branch 37 of Iriga City is **AFFIRMED with MODIFICATIONS**. Accused-appellant Elmer Roman, in view of his conviction for Florencio Basagre's Murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby **ORDERED** to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the following:

- (1) ₱50,000.00 as temperate damages in lieu of actual damages;
- (2) ₱75,000.00 as civil indemnity;
- (3) ₱75,000.00 as moral damages; and
- (4) ₱ 75,000.00.00 as exemplary damages.

The foregoing amounts shall be subject to an interest of six percent (6%) *per annum* from finality of this Resolution until its full satisfaction.

SO ORDERED." (Inting, J., on official leave; Baltazar-Padilla, J., on leave.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *Utah 9/23*

¹⁷ 716 Phil. 267, 281-282 (2013).

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 37
Iriga City
(Crim. Case No. IR-6292)

THE DISTRICT JAIL WARDEN (reg)
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*with copy of CA Decision dated 3 Feb. 2011
Please notify the Court of any change in your address.
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