



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 199713

Present:

- *versus* -

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
ABAD,* and
VILLARAMA, JR., *JJ.*

**MARK JOSEPH ZAPUIZ Y
RAMOS @ "JAYMART,"**
Accused-Appellant.

Promulgated:

FEB 20 2013

X ----- X

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision¹ dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03983, which affirmed with modification the Decision² dated June 3, 2009 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 41, Manila, in Criminal Case No. 06-242758, finding accused-appellant Mark Joseph Zapuiz y Ramos *aka* Jaymart (Jaymart) guilty of murder, as defined under Article 248 of the Revised Penal Code.

The Information filed before the RTC on March 23, 2006 charged Jaymart with murder, committed as follows:

That on or about OCTOBER 10, 2005, in the City of Manila, Philippines, the said accused with intent to kill, evident premeditation and treachery and taking advantage of superior strength, did then and there

* Per Raffle dated February 20, 2013.

¹ *Rollo*, pp. 2-12; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Antonio L. Villamor and Elihu A. Ybañez, concurring.

² *Records*, pp. 129-133; penned by Acting Presiding Judge Teresa P. Soriaso.

wilfully, unlawfully and feloniously attack, assault and use personal violence upon one EMMANUEL RAMIREZ y ARELLANO, by then and there shooting the latter once at the back of his head exiting through his right eye, thereby inflicting upon the said EMMANUEL RAMIREZ y ARELLANO mortal gun shot wound, which was the direct and immediate cause of his death thereafter.³

When arraigned on April 17, 2006, Jaymart pleaded not guilty to the crime charged.⁴

During trial, the prosecution presented three witnesses.

Edwin Patente y Salcedo (Edwin)⁵ claimed to have personally witnessed the shooting incident. On October 10, 2005, at around seven o'clock in the evening, victim Emmanuel Ramirez y Arellano (Emmanuel) was at his house, located at Area B, Gate 12, Parola, Tondo, Manila, sitting before a table, writing something. Emmanuel's house was well lighted since Avon products were being sold there. Edwin was just standing around on the street, about five steps away from Emmanuel, when Edwin noticed a man, later identified as Jaymart, walk past him. Jaymart positioned himself behind Emmanuel, and poked and fired a gun at the back of Emmanuel's head. Emmanuel fell from where he was sitting. Jaymart walked away still holding the gun. Although frightened, Edwin managed to bring Emmanuel to the Gat Bonifacio Hospital where Emmanuel was pronounced dead on arrival. Thereafter, Edwin informed Emmanuel's mother, Olivia A. Ramirez (Olivia), about the shooting. The very next day, on October 11, 2005, Edwin executed a Sworn Statement before Senior Police Officer (SPO) 3 Diomedes A. Labarda (Labarda), in which he averred that the man who shot Emmanuel is called Jaymart and that he would be able to recognize Jaymart if he sees him again. Several months later, on March 16, 2006, police operatives brought Edwin to the Ospital ng Maynila where Edwin was able to identify Jaymart. Jaymart was then confined at said hospital for a gunshot wound. On even date, Edwin executed a second Sworn Statement explicitly identifying Jaymart as the one who shot Emmanuel on October 10, 2005.

Dr. Romeo T. Salen (Dr. Salen),⁶ Medico-Legal Officer of the Western Police District (WPD), conducted an autopsy of Emmanuel's body on October 11, 2005, upon the request of the Homicide Section of the Manila Police District (MPD). Dr. Salen prepared and signed Medico-Legal Report No. W-2005-572 containing the following findings:

³ Id. at 1.

⁴ Id. at 24.

⁵ TSN, August 2, 2006.

⁶ TSN, November 13, 2006.

POSTMORTEM FINDINGS:

Fairly developed, fairly nourished male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD AND TRUNK:

1. Gunshot wound, thru and thru, point of entry, occipital region, measuring 0.4 by 0.3 cm, inferiorly, directed anteriorwards, upwards and medialwards, fracturing the occipital bone, lacerating both cerebral hemispheres of the brain, making a point of exit at the right supra-orbital region, measuring 1 by 0.6 cm, 4 cm. right of the anterior midline.

2. Abrasion, left shoulder, measuring 5 by 4 cm, 10 cm from the posterior midline.

The occipital and frontal bones are fractured with massive subdural and subarachnoidal hemorrhages.

The rest of the visceral organs are markedly pale.
Stomach contains small amount of grayish sticky liquid.

CONCLUSION:

Cause of death is Gunshot Wound, Head.⁷

Dr. Salen further described for the RTC the gunshot wound sustained by Emmanuel, to wit:

Q Can you more or less describe this gunshot wound?

A The gunshot wound is a thru [and] thru gunshot wound meaning there is an entry and there is an exit and it is located on the occipital region. The occipital region is the back portion of the head and the bullet goes thru, it is directed anteriorwards or going to the front from the back, it is upward and going to the middle. And the gunshot wound of exit was located at the right eye, just above the eyes and in doing so, the bullet fractured the skull and it lacerates both cerebral hemispheres of the brain and it cause[d] severe bleeding on the cranial cavity, sir.⁸

Dr. Salen additionally testified that the barrel of the gun was fired at Emmanuel's back, about two or more feet away from the gunshot entry wound as there was no tattooing (unburnt gunpowder) on said wound. During his cross-examination, Dr. Salen stated that given the trajectory of

⁷ Records, p. 14.

⁸ TSN, November 13, 2006, pp. 9-10.

the bullet, it was possible that the person who fired the gun was in a lower position or that the victim was in an elevated position.

SPO3 Labarda⁹ of the Crimes Against Persons Section of the MPD narrated that Emmanuel's mother, Olivia, filed a complaint for murder at their office on October 10, 2005. SPO3 Labarda took the Sworn Statement of eyewitness Edwin the following day, on October 11, 2005, during which, Edwin identified a certain Jaymart as the gunman. Despite follow-up investigation, the police failed to locate Jaymart. On March 16, 2006, a confidential agent informed the police that Jaymart was confined at the Ospital ng Maynila for a gunshot wound. A police team, which included SPO3 Labarda, fetched and brought Edwin to the Ospital ng Maynila, wherein Edwin positively identified Jaymart as the person who shot Emmanuel. The police team arrested Jaymart after informing him of his constitutional rights. Jaymart was then subjected to inquest investigation.

Olivia's testimony on the civil aspect of the crime was dispensed with after the parties voluntarily stipulated that Emmanuel's heirs incurred expenses amounting to ₱42,600.00 for Emmanuel's wake and burial.¹⁰

For its part, the defense presented as sole witness accused-appellant Jaymart himself.

According to Jaymart, Emmanuel was his friend (*kabarkada*). On October 10, 2005, he was with his parents selling hairpins and combs in front of KP Tower in Divisoria, Manila beginning 7:00 a.m. until he went home at around 9:00 p.m. Once home, Jaymart was informed by Kagawad Teddy Cinco that police officers went to Jaymart's house. The police officers were accompanied by Emmanuel's sister who identified Jaymart as the suspect in the shooting of Emmanuel. Jaymart maintained that he did not know anything about Emmanuel's shooting. Jaymart also claimed that he did not leave home and was just around the area from October 2005 to March 2006. On March 12, 2006, Jaymart was shot by a certain Roger, Emmanuel's friend, who blamed Jaymart for Emmanuel's death. Jaymart was confined at the Ospital ng Maynila for about a week due to the gunshot wound on the right portion of his body, below his chest. While Jaymart was sleeping on the hospital bed, he was handcuffed by police officers and placed under arrest. Jaymart was then guarded by police officers from said date until he was discharged on March 17, 2006. After his discharge from the hospital, Jaymart was detained at the police station along U.N. Avenue, Manila. Jaymart averred that he was forced by the police officers to admit to the shooting of Emmanuel. Jaymart was transferred to the Manila City Jail

⁹ TSN, March 22, 2007.

¹⁰ TSN, September 10, 2007, pp. 3-5.

on April 19, 2006.¹¹ During his cross-examination, Jaymart admitted that Divisoria (where he purportedly was on October 10, 2005) was only five minutes away by tricycle from Parola (where Emmanuel was shot).

The RTC promulgated its Decision on June 3, 2009, giving full faith and credit to the testimony of the eyewitness, Edwin, who positively identified Jaymart as the one who shot the victim, Emmanuel. Given the presence of the qualifying circumstance of treachery, the RTC convicted Jaymart of murder, thus:

WHEREFORE, in view of all the foregoing, the Court finds accused **MARK JOSEPH ZAPUIZ y RAMOS @ JAYMART GUILTY** beyond reasonable doubt of the crime of **Murder**, the qualifying circumstance of treachery having attended the killing, and hereby sentences him to suffer the penalty of Reclusion Perpetua.

Accused is ordered to indemnify the heirs of the victim in the amount of ₱50,000.00, to further pay them the additional sum of ₱50,000.00 as moral damages and ₱42,600.00 as actual damages.

Costs against the accused.¹²

Upon appeal, the Court of Appeals affirmed the foregoing RTC judgment, only modifying the damages awarded to Emmanuel's heirs. The dispositive portion of the Decision dated March 31, 2011 of the appellate court reads:

WHEREFORE, in view of the foregoing, the Decision rendered by the RTC on June 3, 2009, finding appellant guilty beyond reasonable doubt of murder and ordering the payment of civil indemnity and actual and moral damages to the heirs of the victim, is **AFFIRMED with modifications** that civil indemnity is increased to Php75,000.00 and exemplary damages in the amount of Php30,000.00 is further awarded.¹³

Hence, the present appeal.

Both Jaymart and the People (represented by the Office of the Solicitor General) did not file any supplemental brief as there was no new issue to discuss before the Court. Jaymart raises the same assignment of errors earlier passed upon by the Court of Appeals, *viz*:

¹¹ TSN, September 3, 2008.

¹² Records, p. 133.

¹³ *Rollo*, p. 11.

I

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ON THE UNRELIABLE TESTIMONY OF ALLEGED PROSECUTION EYE-WITNESS EDWIN PATENTE.

III

THE COURT A *QUO* GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY DESPITE THE DEARTH OF EVIDENCE PROVING THE SAME.¹⁴

Jaymart asserts that his guilt has not been proven beyond reasonable doubt. He argues that Edwin's testimony is inconsistent with the physical evidence, particularly, the location of Emmanuel's wounds. Edwin testified that Jaymart shot Emmanuel at the back of the head while Emmanuel was sitting down, writing something; yet Dr. Salen reported that the trajectory of the bullet was upward so that the gunman, when he fired the fatal shot, must have been in a position lower than Emmanuel.

The Court is not persuaded.

Article 248 of the Revised Penal Code, as amended, provides:

Art. 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 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[.]

To hold the accused liable for murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing is neither parricide nor infanticide.¹⁵ All elements were established beyond reasonable doubt by the prosecution in the present case.

¹⁴ CA rollo, pp. 44-45.

¹⁵ *People v. Medice and Dollendo*, G.R. No. 181701, January 18, 2012, 663 SCRA 334, 342.

First, it is undisputed that Emmanuel died from a gunshot wound sustained on October 10, 2005.

Second, Jaymart was positively identified by eyewitness Edwin as the one who shot and killed Emmanuel. Although Jaymart attempts to attack Edwin's credibility, it is not lost upon the Court that both the RTC and the Court of Appeals gave full faith and credence to Edwin's testimony. It is a fundamental rule that factual findings of the trial courts involving the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.¹⁶ There is no reason herein for the Court to depart from the general rule.

As the RTC and the Court of Appeals observed, Edwin was positive and steadfast in his identification of Jaymart as the man who shot and killed Emmanuel. Edwin clearly saw Jaymart shoot Emmanuel at the back of the head because the *locus criminis* was well lighted and Edwin was just a few steps away from both Jaymart and Emmanuel at the time of the shooting. Edwin also had an opportunity to take a good look at Jaymart when Jaymart passed by him before the shooting.

Edwin's testimony was actually not in conflict with Dr. Salen's autopsy report. The upward trajectory of the bullet was logically explained by the OSG as follows:

In the case at bar, it must be noted that the victim was sitting while he was writing something on the table. What accused-appellant failed to consider was that when a person writes while seated, his head is naturally bowing down. Consequently, the path of the bullet, that is – entering from the back portion of the head and exiting on top of the right eye, will take an upward trajectory. Thus, contrary to the argument advanced by accused-appellant, that the assailant must have positioned himself lower than his victim, the posture of the victim's head caused the upward trajectory of the bullet.¹⁷

Jaymart's alibi deserves little weight in the face of Edwin's categorical and positive identification of Jaymart as the one who shot Emmanuel, especially as there is no showing that Edwin was harboring any ill motive to falsely testify against Jaymart. Indeed, alibi is an inherently

¹⁶ *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 440.
¹⁷ *CA rollo*, p. 72.

weak defense, and it becomes weaker in the face of the positive identification made by the prosecution witness.¹⁸ It is likewise well-settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.¹⁹

In addition, for his alibi to prosper, Jaymart must prove that not only was he somewhere else when Emmanuel was killed, but also that it was physically impossible for him to have been at the scene of the crime. “Physical impossibility” refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.²⁰ Although Jaymart claimed that he was in Divisoria from 7:00 a.m. to 9:00 p.m. on October 10, 2005, Jaymart himself admitted that it would only take a five-minute tricycle ride to get from Divisoria to Parola, where Emmanuel was shot.²¹

Moreover, Jaymart’s alibi was uncorroborated. Jaymart’s mother, father, or any of the other vendors at Divisoria could have vouched for his presence in Divisoria at the time Emmanuel was shot, but other than Jaymart himself, no one else took the witness stand for the defense. Jaymart’s bare assertions cannot prevail over the positive testimony of the prosecution’s principal witness, Edwin. Between Jaymart’s self-serving testimony and Edwin’s positive identification of Jaymart as the gunman, the latter deserves greater credence.²²

Third, the killing of Emmanuel was attended by treachery. The law provides that an offender acts with treachery when he “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.” Thus, there is treachery when the attack against an unarmed victim is so sudden that he had clearly no inkling of what the assailant was about to do.²³ In this case, Emmanuel was sitting down before a table, busily writing, when Jaymart came up behind him and, without warning, shot him at the back of the head. Evidently, Emmanuel, who was unarmed and unaware, had no opportunity at all to defend himself.

¹⁸ *People v. Bromo*, 376 Phil. 877, 897 (1999).

¹⁹ *Velasco v. People*, 518 Phil. 780, 797 (2006).

²⁰ *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 510-511.

²¹ TSN, September 2, 2008, p. 19.

²² *People v. Iligan*, 369 Phil. 1005, 1036 (1999).

²³ *People v. Medice and Dollendo*, supra note 15 at 343.

And finally, the killing of Emmanuel constitutes neither parricide nor infanticide.

All told, the prosecution proved beyond reasonable doubt that Jaymart was responsible for the murder of Emmanuel.

Anent the award of damages, the Court of Appeals properly ordered Jaymart to pay Emmanuel's heirs the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages,²⁴ and ₱42,600.00 as actual damages. In crimes, interest may be adjudicated in a proper case as part of the damages in the discretion of the court. The Court considers it proper to now impose interest on the civil indemnities, moral damages, and exemplary damages being awarded in this case, considering that there has been delay in the recovery. The imposition is declared to be also a natural and probable consequence of the acts of the accused complained of. The interest imposed is the legal rate of 6% per annum reckoned from the finality of this judgment.²⁵

WHEREFORE, the appeal is **DENIED**. The Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03983 is **AFFIRMED with the MODIFICATION** that Mark Joseph Zapuiz y Ramos *aka* Jaymart is further **ORDERED** to pay to the heirs of Emmanuel Ramirez y Arellano interest on all amounts awarded as damages at the legal rate of six percent per annum from finality of this judgment until fully paid.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

²⁴ *People v. Malicdem*, G.R. No. 184601, November 12, 2012; *People v. Laurio*, September 13, 2012.

²⁵ *People v. T...*, G.R. No. 189487, October 5, 2011, 658 SCRA 685, 684.

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



LUCAS P. BERSAMIN

Associate Justice


ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.

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.



MARIA LOURDES P. A. SERENO

Chief Justice