



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 192183

Present:

- versus -

CARPIO, *Chairperson,*  
BRION,  
DEL CASTILLO,  
PEREZ, *and*  
PERLAS-BERNABE, *JJ.*

ANDY ZULIETA a.k.a. "Bogarts,"  
*Accused-Appellant.*

Promulgated:

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*Har Cabalod Perfecto*

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DECISION

DEL CASTILLO, J.:

On appeal is the August 13, 2009 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00568-MIN which affirmed with modification the October 24, 2007 Judgment<sup>2</sup> of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 38, finding appellant Andy Zulieta a.k.a. "Bogarts" guilty beyond reasonable doubt of the crime of Murder.

*Factual Antecedents*

On July 21, 2006, an Information<sup>3</sup> was filed charging appellant with the crime of Murder, the accusatory portion of which reads:

That on June 13, 2006, at around 10:00 o'clock in the evening, more or less, at Sto. Niño, Lapasan, Cagayan de Oro City, Philippines, and within the

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<sup>1</sup> CA rollo, pp. 77-95; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson.

<sup>2</sup> Records, pp. 77-83; penned by Judge Maximo G.W. Paderanga.

<sup>3</sup> Id. at 3.

jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously stab one Armand Labando, with the use of a Batangas knife, hitting on the chest x x x the latter thereby inflicting mortal wounds which [caused] his immediate death.

Contrary to Art. 248 of the Revised Penal Code, in relation to RA 7659, as amended.

When arraigned on November 3, 2006, appellant pleaded not guilty.<sup>4</sup> During the pre-trial, no stipulation of facts was made hence trial on the merits ensued.<sup>5</sup>

### *Summary of Facts*

The facts as summarized by the trial court are as follows:

The first witness for the prosecution was SPO1 Apolinario Ubilas who testified that on June 13, 2006, at about 10:00 o'clock in the evening, Police Precinct Commander Police Inspector Ladao directed him to verify and investigate x x x a stabbing incident x x x which took place in Sto. Niño, Lapasan, Cagayan de Oro City. [The victim was no longer at the crime scene] as [he] was reportedly brought to the Northern Mindanao Medical Center (NMMC) so he made inquiries as to possible witnesses of the incident and learned that Bryan Pascua witnessed the incident. He then proceeded to NMMC and saw the body of the victim, which was declared dead-on-arrival. Per order of their Precinct Commander, [a police team] conducted a pursuit operation and was able to arrest, on the following day, Jonathan Zaporteza and Rey Sabado, companions of the accused Andy Zulieta.

The next witness was Bryan Pascua who testified that on June 13, 2006, at about 10:30 in the evening, he and deceased Armand Labando[,] Jr. were outside their boarding house, seated at the bench just outside the store of Jimmy Saura. While they were eating bananas, Bogarts, Rey and Tantan approached them. Bogarts, who had with him a pitcher, dropped it in front of them so they immediately stood up. He then heard Tantan shout, "birahi na na" (hit him now), then saw Bogarts pull a batangas knife and stab the deceased, hitting him on his chest. He ran towards their boarding house, afraid that he will be attacked next.

The next witness for the prosecution was Dr. Francisco Romulo C. Villafior, a Medico-Legal Officer of the Philippine National Police, who testified that he conducted an autopsy of the deceased Armand Labando[,] Jr. and found that the stab wound was inflicted on the anterior chest hitting the most vital organ of the body, the right ventricle of the heart. Based on his analysis, the instrument used in inflicting the wound [was] a bladed, pointed instrument, which could be a knife and by the location of the wound, the assailant was in front of the victim.

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<sup>4</sup> Id. at 24.

<sup>5</sup> Id. at 27.

After the testimony of Dr. Villaflor, the prosecution offered their exhibits: exhibit “A”, the Death Certificate of Armand Labando[, Jr.] and exhibit “B”, the Autopsy Report of Dr. Villaflor, which were admitted by the defense. The prosecution then rested its case.

Accused set up denial and alibi as [his] defense claiming that on June 13, 2006 at 10:00 o’clock in the evening, he was asleep in his house in Gingoog City with his wife and in-laws. Sometime in November, 2006, he was arrested by Police Officer Radam and companions at his house in Gingoog City for being accused of killing the deceased Armand Labando[, Jr.]. Accused claimed that he does not know the deceased Armand Labando[, Jr.], Rey Sabando, Jonathan Zaporte[z]a or witness Bryan Pascua. When cross-examined by the Court, accused claimed that his nickname is Andy as his real name is Zandy and he is not known in Sto. Niño as Bogarts. He, however, admitted that he was born in Sto. Niño, Lapasan, Cagayan de Oro City in 1985, lived and stayed with his parents in Sto. Niño, Lapasan, until he got married in x x x 2005. He then transferred residence with his own family [to] Gingoog.

The next witness for the defense was Maryflor Mamba Zulieta, wife of the accused, who testified that she married the accused [o]n August 28, 2005 in Nazareno Parish, Cagayan de Oro City. They resided in Gingoog City from the time they got married until the day that her husband was arrested. Her husband works at the farm of Mr. Lugod, in Cabuyuan, Gingoog City, planting, weeding and harvesting rice, from 7:00 o’clock in the morning until 4:00 o’clock in the afternoon, but goes home at noontime to eat lunch. On July 13, 2006, at around 10:00 o’clock in the evening, they were asleep in their house in Gingoog City. Sometime in October or November, 2006, at around 4:00 o’clock in the morning, while they were still sleeping, they were surprised when some men entered their house, went upstairs and handcuffed [her] husband as [he] is said to be under arrest.<sup>6</sup>

### ***Ruling of the Regional Trial Court***

On October 24, 2007, the RTC rendered its Judgment finding appellant guilty of killing the victim Armand Labando, Jr. (Labando) with the attendant qualifying circumstance of treachery. The dispositive portion of the Judgment reads as follows:

Accordingly, the Court finds accused Andy Zulieta guilty beyond reasonable doubt of the crime of murder and he is hereby sentenced to suffer the penalty of *reclusion perpetua*, with accessory penalties provided by law. He is also liable to pay the heirs of Armand Labando[, Jr.] civil damages in the amount of Php50,000.00, moral damages of Php50,000.00 and costs of suit.

SO ORDERED.<sup>7</sup>

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<sup>6</sup> Id. at 79-80.

<sup>7</sup> Id. at 83.

Aggrieved, appellant filed his Notice of Appeal<sup>8</sup> which was approved by the RTC.

### ***Ruling of the Court of Appeals***

In its Decision dated August 13, 2009, the CA affirmed with modification the Judgment of the RTC, viz:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 38 in Cagayan de Oro City finding appellant Andy Zulieta guilty beyond reasonable doubt of Murder, is AFFIRMED WITH MODIFICATION, in that appellant is further ORDERED to pay the heirs of Armand Labando, Jr., the amount of ₱25,000.00 as exemplary damages, in addition to the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.<sup>9</sup>

Hence, this present appeal.

### ***Assignment of Error***

Appellant seeks his acquittal by assigning the lone error that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>10</sup>

Appellant insists on his alibi that on June 13, 2006, at around 10 o'clock in the evening, he was sleeping at his house in Gingoog City. He argues further that even assuming his presence at the scene of the crime at Sto. Niño, Lapasan, Cagayan de Oro City, and that he killed Labando, the killing could not have been attended by the qualifying circumstance of treachery. He posits that the prosecution failed to show that he employed means or methods to ensure that Labando would not be able to defend himself.

### **Our Ruling**

The appeal lacks merit.

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<sup>8</sup> Id. at 85.

<sup>9</sup> CA *rollo*, p. 72.

<sup>10</sup> Id. at 16.

Appellant's alibi, being inherently weak, deserves no credence at all especially when measured up against the positive identification by the prosecution witness, Bryan Pascua (Pascua), pointing to appellant as the perpetrator of the crime. Besides, nobody corroborated appellant's alibi other than his wife who is obviously biased in his favor thus making her testimony self-serving. Moreover, appellant failed to prove that it was physically impossible for him to be present at the crime scene at the time of its commission. As observed by the CA, Cagayan de Oro City could be traversed from Gingoog City within two hours;<sup>11</sup> hence, it is not physically impossible for appellant to commit the crime in Cagayan de Oro City and still go home to Gingoog City after its commission.

Aside from having been positively identified by prosecution witness Pascua, appellant failed to impute any ill motive to Pascua. Thus, the trial court correctly lent credence to Pascua's testimony:

The testimony of witness Bryan Pascua is clear, spontaneous and straightforward when he said that accused Andy Zulieta stabbed the deceased. When asked if he can identify the accused, the witness pointed his finger at the accused Andy Zulieta who was in the courtroom. Asked how he knew of such fact, he categorically said that he knew the accused long before the incident, recognized his face that night because the place was lighted and at the time of the stabbing incident, he was one (1) meter away from the assailant and the victim. He further testified that he was surprised when the accused, together with his companions, approached them, dropped the pitcher in front of them and suddenly stabbed the deceased on his chest when in fact there was no prior heated argument or statement made by deceased Armand Labando[,] Jr. which could have caused the ire of accused Andy Zulieta.<sup>12</sup>

We likewise affirm the findings of both the RTC and the CA that treachery attended the killing. "There is treachery when the offender commits any of the crimes against the 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."<sup>13</sup> "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."<sup>14</sup> Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery. In this case, the victim Labando was totally unaware of the threat. He was merely sitting on the bench in front of a *sari-sari* store eating bananas when appellant, without any provocation or prior argument, suddenly stabbed him on his chest, piercing the right ventricle of his heart thus causing his instantaneous death. The stabbing was deliberate,

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<sup>11</sup> Id. at 86.

<sup>12</sup> Records, p. 80.

<sup>13</sup> REVISED PENAL CODE, Article 14(16).

<sup>14</sup> *People v. Jalbonian*, G.R. No. 181281, July 1, 2013, citing *Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

unexpected, swift and sudden which foreclosed any escape, resistance or defense coming from the victim. This is a classic example of treachery.

Settled is the rule that factual findings of the trial court and its assessment on the credibility of witnesses deserve utmost respect by this Court. In this case, we find no reason to deviate from the findings or assessment of the trial court there being no showing that it has overlooked or mis-appreciated some facts which if considered would materially impact on or change the outcome of the case. On the contrary, we find that the trial court meticulously studied the case and properly weighed the evidence presented by the parties. Thus, we stand by its pronouncement that-

After a careful review and analysis of the evidence for the prosecution and the defense and recalling the mien and manner of testimony by the witnesses, especially the positive testimony and identification by eyewitness Bryan Pascua of the accused, the Court is convinced that it is accused Andy Zulieta a.k.a. “Bogarts” who suddenly stabbed the deceased, resulting in his instantaneous death.<sup>15</sup>

Article 248 of the Revised Penal Code provides that the penalty for the crime of murder is *reclusion perpetua* to death. Both the trial court and the CA correctly found appellant guilty of murder and imposed upon him the penalty of *reclusion perpetua*, the lower of the two indivisible penalties, due to the absence of an aggravating circumstance attending the commission of the crime.<sup>16</sup>

“When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.”<sup>17</sup> Both the RTC and the CA properly awarded civil indemnity to the heirs of the victim but the same must be increased to ₱75,000.00 in line with prevailing jurisprudence.<sup>18</sup> The heirs of the victim are likewise entitled to moral damages which the trial court and the CA properly awarded in the amount of ₱50,000.00. The award of exemplary damages in view of the aggravating circumstance of treachery is likewise correct however the same must be increased to ₱30,000.00 in line with prevailing jurisprudence.<sup>19</sup> “Moreover, while actual damages cannot be awarded since there was no evidence of actual expenses incurred for the death of the victim, in lieu thereof, the sum of ₱25,000.00 may be granted, as it is hereby granted, by way of temperate damages as it cannot be denied that the heirs of the [victim] suffered pecuniary loss

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<sup>15</sup> Records, p. 80.

<sup>16</sup> *People v. Jalbonian*, supra note 14.

<sup>17</sup> *People v. Dela Rosa*, G.R. No. 201723, June 13, 2013. Citations omitted.

<sup>18</sup> *People v. Jalbonian*, supra note 14.

<sup>19</sup> *Id.*

although the exact amount was not proved.”<sup>20</sup> In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until fully paid.<sup>21</sup>

**WHEREFORE**, the August 13, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00568-MIN is **AFFIRMED with MODIFICATIONS** as follows: a) the award of civil indemnity is increased to ₱75,000.00; b) the award of exemplary damages is increased to ₱30,000.00; c) temperate damages in the amount of ₱25,000.00 is awarded in lieu of actual damages; and d) all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

  
**ARTURO D. BRION**  
*Associate Justice*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

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<sup>20</sup> Id.

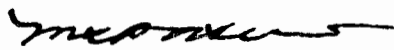
<sup>21</sup> Id.

**ATTESTATION**

I attest 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.

**ANTONIO T. CARPIO***Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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*