



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G. R. No. 190862**

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
REYES, and  
LEONEN,\* *JJ*.

**RICARDO DEARO, PAULINO  
LUAGUE and WILFREDO  
TOLEDO,**

Promulgated:

Accused-Appellants.

**OCT 09 2013**

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**DECISION**

**SERENO, *CJ*:**

This is an appeal from the Decision<sup>1</sup> of the Court of Appeals (CA) Cebu City affirming the Judgment<sup>2</sup> of the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 34 (RTC), finding appellants guilty of three counts of murder and sentencing them to suffer the penalty of *reclusion perpetua* for each count.

On the evening of 26 February 1996, Jose Jaro (Jose), Emeterio Santiago (Emeterio) and his son Rolly, as well as Porferia Luague Guardario (Porferia) and her daughter Analiza, were attending a *fiesta* celebration at Bugay, Bayawan, Negros Oriental.<sup>3</sup> Around midnight, Emeterio asked Jose whether they might be able to spend the night in the latter's house, which was only about 500 meters away from the dancing area. Jose acceded and told Emeterio, Porferia and Analiza to proceed to his house while he looked for Rolly. Jose eventually found Rolly, and both of them followed the three others to Jose's home.

\* Designated member in lieu of Associate Justice Martin S. Villarama, Jr. as Acting Member of the First Division per S.O. No. 1545 dated 16 September 2013

<sup>1</sup> *Rollo*, pp. 2-21. The Decision dated 7 July 2009 of the Court of Appeals (CA) Cebu City Eighteenth Division in CA-G.R. CR-HC. No. 00035 was penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Rodil V. Zalameda concurring.

<sup>2</sup> *CA rollo*, pp. 64-81; in Criminal Case Nos. 12521, 12522 and 12526 dated 30 July 2004.

<sup>3</sup> *Rollo*, p. 7.

When Jose and Rolly were about 10 meters away, they heard a single gunshot coming from the house.<sup>4</sup> The two went down on the ground for safety as they saw Paulino Luague (Luague) coming down from Jose's house, saying "*Ti, tapos ka man!*" (There, now you are finished!). Immediately after, they heard cries of women from inside the house asking for help, followed by a rapid series of gunfire from the back of the house.

When the firing stopped, they saw appellants Ricardo Dearo (Dearo) and Wilfredo Toledo (Toledo), both carrying long firearms, walk with Luague from the back of the house towards the road.<sup>5</sup> The three had other companions, but Jose and Rolly were not able to identify them.

After appellants left, Jose and Rolly went inside the house and saw Emeterio on the floor, already dead.<sup>6</sup> Porferia was lying nearby, also dead, while Analiza was still moaning in pain. Rolly wasted no time in looking for a vehicle to bring the victims to the hospital, but Analiza was later also pronounced dead.

Authorities from the Bayawan police station arrived in the house on the afternoon of 27 February 1996 to investigate.<sup>7</sup> Both Jose and Rolly opted not to divulge any information to them.<sup>8</sup> Instead, Rolly sought the help of the elements of the Criminal Investigation System (CIS) of Dumaguete City for investigation.<sup>9</sup>

In the course of the investigation, it was found that the Luague family owned a vast tract of land in Bayawan, Negros Oriental. It was the subject of a sharing dispute between the heirs, including Luague and his sister Porferia.<sup>10</sup> Part of the dispute involved the appointment of Emeterio as overseer of the land, a move that angered Luague. The animosity deepened when Emeterio padlocked the old house of Aquilino Luague (Aquilino), father of Luague and Porferia.

A few days before the incident, or on 24 February 1996, at around 10:00 a.m., Luague and appellants Dearo and Toledo asked Jose Santiago, brother of Emeterio, to accompany them to the old house to remove the padlock.<sup>11</sup> While there, Jose Santiago heard appellant Dearo berating Aquilino's tenants in this wise: "You tenants, you believe everything Emeterio tells you. He is not from here. There is no Emeterio Santiago living in Bugay. If only he was here, I would show you how I'd kill him. Before the end of three days, I'll finish him!"<sup>12</sup>

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. at 8.

<sup>7</sup> CA *rollo*, p. 68

<sup>8</sup> Id. at 67-68.

<sup>9</sup> Id. at 68.

<sup>10</sup> Records (Criminal Case No. 12521), p. 66.

<sup>11</sup> *Rollo*, p. 8-9.

<sup>12</sup> Id. at 9.

Marcelo Guardario, husband of Porferia and father of Analiza, confirmed the existence of a land dispute between his wife and her siblings.<sup>13</sup> They used to reside in Bugay, Bayawan, Negros Oriental, but decided to relocate to Cebu when Luague threatened that they would lose a family member if they returned to Bugay. There was even a time when Luague pointed a gun at Porferia with the same threats.<sup>14</sup> The latest confrontation between brother and sister was on 26 February 1996, a day before the shooting, when the police advised Luague that he could not prevent Porferia from attending to the farm.<sup>15</sup>

On 4 June 1996, in three Informations, appellants were charged with murder, all committed by conspiracy and attended by treachery and evident premeditation.<sup>16</sup>

During trial, appellant Dearo interposed the defenses of denial and alibi. He stated that he was at the *fiesta* celebration until 1:00 a.m. of 27 February 1996 and arrived home about 2:00 a.m. together with his family.<sup>17</sup> He denied being with Luague and Toledo and stated that he only learned about the incident from Senior Police Officer 2 (SPO2) Georgin Sefe and Police Officer 3 (PO3) Napoleon Tuble of the Bayawan police station on the afternoon of 27 February 1996. He heard the police officers ask Jose and his wife Larry about the details regarding the incident, and they categorically answered that they could not say anything, because they were not present when it happened.

This statement was corroborated by the police officers, who said that they failed to file a case concerning the incident, because nobody could give them any information.<sup>18</sup> When SPO2 Sefe and PO3 Tuble went to the house of Jose on the afternoon of 27 February 1996, they only saw bullet holes in the wall of the house and three empty shells of an M-16 rifle. When they sought the other members of the victims' family, they could not name any suspect.

### **RULING OF THE RTC**

On 30 July 2004, the RTC rendered a Judgment<sup>19</sup> finding Luague and appellants Dearo and Toledo guilty of the three counts of murder and sentenced them to suffer the penalty of *reclusion perpetua* for each count.<sup>20</sup> For each of the three counts of murder, appellants were also ordered to pay the victims' heirs in the amounts of ₱70,000 as civil indemnity, ₱25,000 as temperate damages and ₱20,000 as moral damages.

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<sup>13</sup> Id.

<sup>14</sup> Id. at 10.

<sup>15</sup> Records (Criminal Case No. 12521), p. 18.

<sup>16</sup> *Rollo*, pp. 3-5.

<sup>17</sup> Id. at 10.

<sup>18</sup> Id. at 11.

<sup>19</sup> *CA rollo*, pp. 64-81.

<sup>20</sup> Id. at 80-81.

The RTC found that while none of the prosecution witnesses saw the actual shooting of the three victims, the attendant circumstantial evidence in the case are all consistent with the conclusion that Luague and appellants Dearo and Toledo are responsible for the death of the three victims.<sup>21</sup> Conspiracy was also shown by the closeness and coordination of their acts a few days before and immediately after the shooting.<sup>22</sup>

The RTC appreciated the qualifying circumstances of treachery and evident premeditation. According to the trial court, treachery was evident when the victims were fired upon while they were inside the house sleeping.<sup>23</sup> Evident premeditation was also present, since appellant Dearo had already boisterously announced his intention to kill Emeterio a few days before.<sup>24</sup> Luague was likewise shown to have threatened the life of Porferia a number of times.<sup>25</sup>

On appeal to the CA, Luague and appellants Dearo and Toledo decried the alleged violation of due process due to supposed partiality and vindictiveness of Judge Rosendo B. Bandal, Jr. (Judge Bandal).<sup>26</sup> They also pointed out the lack or insufficiency of evidence, which did not satisfy the standard of proof beyond reasonable doubt.

#### **RULING OF THE CA**

On 7 July 2009, the CA rendered a Decision<sup>27</sup> affirming the Judgment of the RTC, with modification in that the civil indemnity was increased to ₱75,000 and the moral damages to ₱50,000, and exemplary damages in the amount of ₱25,000 were added. The award of temperate damages in the amount of ₱25,000 was maintained.

According to the CA, the pieces of evidence presented by the prosecution were of such nature that these would lead to a conviction that Luague and appellants Dearo and Toledo had acted in concert to kill the victims. Thus, it affirmed the finding of the RTC that the attendant circumstantial evidence in the case was sufficient to support a finding of guilt on their part. The appellate court also affirmed the finding of the RTC that treachery and evident premeditation had attended the crime.<sup>28</sup>

The CA found no showing that the decision of Judge Bandal was affected at all by the letter of Teodora Luague, wife of Luague, sent to this Court seeking his inhibition and pointing out that the case had remained unacted upon for eight years by the trial court.<sup>29</sup> The CA ruled that the

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<sup>21</sup> Id. at 75-79.

<sup>22</sup> Id. at 75.

<sup>23</sup> Id. at 79.

<sup>24</sup> Id. at 80.

<sup>25</sup> Id. at 79-80.

<sup>26</sup> Id. at 86-110.

<sup>27</sup> *Rollo*, pp. 2-21.

<sup>28</sup> Id. at 18-19.

<sup>29</sup> Id. at 17-18.

evidence on record was clear that Luague and appellants Dearo and Toledo were the perpetrators of the crimes.

Hence, this appeal. On 20 February 2012, we considered the case closed and terminated insofar as Luague was concerned in view of his death on 15 September 2011.

### ISSUE

Whether the guilt of appellants Dearo and Toledo was proven beyond reasonable doubt

### OUR RULING

We deny the appeal.

Section 4, Rule 133 of the Rules of Court, applies when no witness has seen the actual commission of the crime.<sup>30</sup> It states:

SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Under the rule on circumstantial evidence, the circumstances shown must be consistent with each other. They should all support the hypothesis that the accused is guilty and, at the same time, be inconsistent with the hypothesis that the accused is innocent.<sup>31</sup> “Thus, to justify a conviction based on circumstantial evidence, the combination of circumstances must be interwoven in such a way as to leave no reasonable doubt as to the guilt of the accused.”<sup>32</sup>

We agree with the RTC and the CA in their finding that the following circumstances, proven by the prosecution and uncontroverted by the defense, combine to leave no reasonable doubt that the appellants conspired to kill the victims:

- a) Luague was at odds with Porferia regarding the sharing of their inherited tract of land, as a result of which Luague had threatened her life a few times before.
- b) Emeterio was the overseer of the land.
- c) Three days before the killing, appellant Dearo vowed to kill Emeterio.

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<sup>30</sup> *People v. Deocampo*, G.R. No. 185212, 15 February 2012, 666 SCRA 288.

<sup>31</sup> *People v. Abdulah*, G.R. No. 182518, 20 January 2009, 576 SCRA 797.

<sup>32</sup> *Bastian v. CA*, 575 Phil. 42, 56 (2008).

- d) About 10 meters away from the house, Jose and Rolly heard the sound of a gunshot coming from inside the house, after which they saw Luague come out saying, “*Ti, tapos ka man!*” (There, now you are finished!).
- e) Jose and Rolly heard women’s cries for help immediately followed by a series of rapid gunfire coming from the back of the house.
- f) Appellants Dearo and Toledo emerged from the back of the house carrying long firearms.
- g) Jose and Rolly found the victims with gunshot wounds inside the house, with Emeterio and Porferia already dead, and Analiza still moaning in pain.
- h) A ballistic examination of the recovered metallic fragments and cartridge cases showed that they were fired from an M-16 rifle, a long firearm.<sup>33</sup>

Appellants try to make much of the alleged insufficiency of lighting at the scene of the incident and argue that it is not enough to make a positive identification of appellants as the assailants. We entertain no doubt regarding their identification immediately after the shooting. Both Jose and Rolly testified that there was sufficient illumination for them to recognize appellants.<sup>34</sup> Furthermore, they were all well-known to one another, since appellant Dearo was the *barangay* captain, appellant Toledo was a known Citizen Armed Force Geographical Unit (CAFGU) member, and Luague was Jose’s close friend.<sup>35</sup>

Appellants allege that Jose never mentioned the name of any suspect when the Bayawan police interviewed him, and only came up with one when the CIS came into the picture. However, we note with approval the observation of the CA that Jose initially did not want to get involved and only told his relatives about what he saw.<sup>36</sup> In fact, he was so scared for his life, considering that the killing took place in his house, that he moved from Bugay, Bayawan, Negros Oriental, after the incident.

The weakness of appellants’ position is in their reliance on the alleged finding of the Bayawan police that the assailants were “unknown,” and that the result of its investigation was “negative.”<sup>37</sup> Rather than focusing their energies on contradicting the evidence proven by the prosecution, appellants insisted that the Bayawan police had not filed a case against anybody because of lack of information.

It is well to point out that Jose and Rolly both admitted that they chose not to divulge any information to the Bayawan police. On his part, Jose was so scared for his life that he initially did not want to get involved. On the other hand, Rolly cannot be faulted for choosing to put his trust on the

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<sup>33</sup> *CA rollo*, p. 70.

<sup>34</sup> *Rollo*, p. 14.

<sup>35</sup> *Id.* at 14-15.

<sup>36</sup> *Id.* at 16.

<sup>37</sup> *Id.* at 53.

elements of the CIS from Dumaguete City to conduct the investigation, instead of relying on the authorities from Bayawan.

We also find that the qualifying circumstance of treachery was properly appreciated by the RTC and the CA. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to himself arising from the defense that the offended party might make.<sup>38</sup> We have ruled that treachery is present when an assailant takes advantage of a situation in which the victim is asleep,<sup>39</sup> unaware of the evil design, or has just awakened.<sup>40</sup>

It has been established by the prosecution, and even confirmed by the defense,<sup>41</sup> that the victims were sleeping when they were shot. To be precise, it was Emeterio who was asleep when he was shot, considering that the women were able to cry for help before the rapid firing that silenced them. In any case, it was clear that the women were in no position to defend themselves, having been rudely awakened by the shooting of their companion. The fact that they shouted for help also showed their loss of hope in the face of what was coming – rapid gunfire from long firearms.

Evident premeditation further aggravates the crime of murder committed by appellants. “The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.”<sup>42</sup> Evidence shows that Luague had a grudge against Porferia, and that their last confrontation occurred a day before the shooting. The involvement of appellants Dearo and Toledo was shown by the testimony of Jose Santiago that the two were with Luague three days before the shooting. Appellant Dearo then vowed to kill Emeterio. These uncontroverted pieces of evidence clearly showed the instances when appellants resolved to commit the felony. The space of time from the resolution to the actual execution allowed them to contemplate on the matter, or maybe even reconsider. That they did not reconsider is shown by the case before us now.

Thus, it has been established that appellants killed Emeterio, Porferia and Analiza. Appreciating treachery as a qualifying circumstance, the crime is properly denominated as murder. Article 248 of the Revised Penal Code (RPC) punishes murder with *reclusion perpetua* to death. With the further appreciation of evident premeditation as generic aggravating circumstance,

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<sup>38</sup> REVISED PENAL CODE, Art. 14(16).

<sup>39</sup> *People v. Sally*, G.R. No. 191254, 13 October 2010, 633 SCRA 293; *People v. Melendres*, 450 Phil. 333 (2003); *People v. Necerio*, G.R. No. 98430, 10 July 1992, 211 SCRA 415.

<sup>40</sup> *People v. Barcimo*, 467 Phil. 709 (2004).

<sup>41</sup> *Rollo*, p. 48.

<sup>42</sup> *People v. Belga*, 328 Phil. 93, 114 (1996).

the greater penalty shall be applied, pursuant to Article 63<sup>13</sup> of the RPC. However, since the imposition of the death penalty has been prohibited by Republic Act No. 9346,<sup>14</sup> the penalty that shall be imposed on appellants is *reclusion perpetua* without eligibility for parole.<sup>45</sup>

As to the award of damages to the heirs of each victim, we find that the awards of civil indemnity and temperate damages made by the CA in the amounts of ₱75,000 and ₱25,000, respectively, are in keeping with prevailing jurisprudence.<sup>46</sup> However, considering that the penalty imposed should have been death but was reduced to *reclusion perpetua* without eligibility for parole, the amount of moral damages is increased from ₱50,000 to ₱75,000, and the award of exemplary damages from ₱25,000 to ₱30,000.<sup>47</sup> These awards shall earn interest at the rate of 6% from the finality of this Decision until fully paid.<sup>48</sup>

**WHEREFORE**, the Decision of the Court of Appeals Cebu City in CA-G.R. CR-HC No. 00035 is **AFFIRMED** with **MODIFICATION**. Appellants Ricardo Dearo and Wilfredo Toledo are hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* without eligibility for parole for each of the three counts of murder, and **ORDERED** to pay the heirs of each of the victims Emeterio Santiago, Porferia Luague Guardario and Analiza Guardario the amounts of ₱75,000 as civil indemnity, ₱75,000 as moral damages, ₱30,000 as exemplary damages, and ₱25,000 as temperate damages, plus the legal interest at the rate of 6% from the finality of this Decision until fully paid.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**

Chief Justice, Chairperson

<sup>13</sup> Article 63. *Rules for the application of indivisible penalties.* – x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

<sup>14</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on 24 June 2006.


<sup>15</sup> Section 3 of Republic Act No. 9346 states that “Person convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

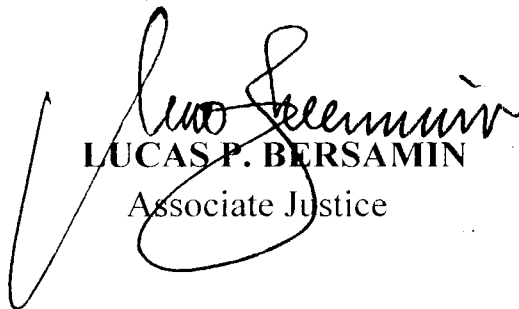
<sup>16</sup> *People v. Malicdem*, G.R. No. 184601, 12 November 2012, 685 SCRA 193; *People v. Laurio*, G.R. No. 182523, 13 September 2012, 680 SCRA 560.

<sup>17</sup> *People v. Regalario*, G.R. No. 174483, 31 March 2009, 582 SCRA 738.



WE CONCUR:

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

  
LUCAS P. BERSAMIN  
Associate Justice

  
BIENVENIDO L. REYES  
Associate Justice

  
MARVIC MARIO VICTOR F. LEONEN  
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