



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191060

- versus -

TOMAS DIMACUHA, JR.,
EDGAR ALLEN ALVAREZ,
RODEL CABALLERO,
LUIS EVANGELISTA,
RICKY BARRIAO,
LITO GUALTER,
TESS GUALTER,
BOGS EVANGELISTA,
alias THEO, alias NONONG,
alias JOHNY and JOHN DOES,
Accused,

Present:

CARPIO, *Chairperson,*
VELASCO, JR.,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

EDGAR ALLEN ALVAREZ and
RODEL CABALLERO,
Accused-Appellants.

Promulgated:

FEB 02 2015

X-----

RESOLUTION

DEL CASTILLO, J.:

Appellants Edgar Allen Alvarez (Alvarez) and Rodel Caballero (Caballero), together with the accused who remain at-large, were charged with the crime of murder¹ for the fatal shooting of Nicanor Morfe Agon (Agon).² During the

* Per Special Order No. 1910 dated January 12, 2015.

¹ The accusatory portion of the Information reads as follows:
That on or about the 22nd day of February 2004, at Sta. Rita, Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, confederating, mutually helping each other and with conspiracy and with intent to kill, did then and there willfully, unlawfully and feloniously killed [sic] NICKANOR MORFE AGON in the following manner, to wit: They planned to kill Nickanor Morfe Agon as they followed him first from the cockpit, while his [P]ajero was about to turn, it slowed down and at that juncture, and taking advantage of superior strength armed with several guns, they fired at him for many times and on the different parts of his body thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW with qualifying and/[or] aggravating circumstances of evident premeditation, treachery, with aid of armed men, for consideration or reward and with use of motor vehicles. (Records, pp. 1-2)

² Sometimes spelled as Nickanor Morfe Agon and Nicanor Morpe Agon in the records.

arraignment, appellants entered separate pleas of not guilty.³ After trial, the Regional Trial Court (RTC) of Batangas City, Branch 2, rendered a Decision⁴ dated May 11, 2007 finding the appellants guilty beyond reasonable doubt of the crime charged, *viz*:

WHEREFORE, in view of all the foregoing, accused EDGAR ALLEN ALVAREZ and RODEL CABALLERO, are hereby found guilty of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, with the qualifying and/or aggravating circumstance of treachery and evident premeditation and both accused are hereby sentenced to suffer the penalty of RECLUSION PERPETUA. They are further ordered to pay the heirs of Nicanor Agon y Morpe jointly and severally the amount of ₱100,000.00 as civil liability and to pay the costs.

Considering that accused Tomas Dimacuha, Jr., Luis Evangelista, Ricky Barriao, Alias Joey, Alias Theo, Alias Nonong, Alias Johny and John Does are still at large, let the charges against them be archived subject to revival upon their apprehension.

Let a copy of this decision be furnished the Secretary of Justice for his information of the procedural lapses in the selection of George Vitan as prosecution witness and for his appropriate action.

SO ORDERED.⁵

Aggrieved, appellants appealed to the Court of Appeals (CA). In a Decision⁶ dated October 8, 2009, the CA affirmed with modifications the ruling of the RTC, *viz*:

WHEREFORE, the appeal is DENIED. The assailed decision is AFFIRMED insofar as the Accused-Appellants Edgar Allen Alvarez and Rodel Caballero are found guilty beyond reasonable doubt of Murder and are penalized with imprisonment of *reclusion perpetua*. However, the award of civil indemnity is REDUCED from One Hundred Thousand Pesos (Php100,000.00) to Fifty Thousand Pesos (Php50,000.00). In addition, the Accused-Appellants are ORDERED to pay, jointly and severally, the heirs of Nicanor Morfe Agon the amounts of Fifty Thousand Pesos (Php50,000.00) as moral damages and Twenty Five Thousand Pesos (Php25,000.00) as exemplary damages. Costs against the Accused-Appellants.

SO ORDERED.⁷

Hence, this appeal.

³ Id. at 106.

⁴ Id. at 314-329; penned by Presiding Judge Maria Cecilia I. Austria.

⁵ Id. at 328.

⁶ CA *rollo*, pp. 170-195; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon R. Garcia.

⁷ Id. at 194.

In a Resolution⁸ dated August 16, 2010, the Court directed the parties to file their respective supplemental briefs, if they so desire. Both, however, opted to adopt the briefs they submitted before the CA as their supplemental briefs.⁹

Appellants insist that the evidence was insufficient to warrant their conviction. First, the witnesses for the prosecution did not testify on the material allegations stated in the complaint sheet and the sworn statements, thereby depriving them of the opportunity to cross-examine said witnesses. Second, there was no proof that Agon and the person referred to in the death certificate are one and the same. Third, the prosecution failed to present in court the murder weapons, as well as the slugs. Fourth, there was no testimony proffered on the caliber of the gun used in shooting Agon. And lastly, appellants maintain that they were denied due process when the RTC ordered the discontinuance of their presentation of additional witnesses.

The Court is not convinced.

The elements of the crime of murder are: (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 Revised Penal Code (RPC); and (4) that the killing is not parricide or infanticide.¹⁰ These requisites have been established by the prosecution.

The gunman himself who testified for the prosecution, George Vitan (Vitan), testified that his group “*Black Shark*” killed Agon. One of the responding policemen PO2 Arnold Abdon, for his part, testified that he went to the hospital where Agon was taken and the latter was already dead when he arrived. Further, the Medico-Legal Officer, Dr. Antonio S. Vertido, testified on the post-mortem examination he conducted upon Agon which showed that the latter sustained six gunshot wounds, two of which were fatal. The element therefore that a person was killed is obtaining in this case.

That appellants killed Agon was established through the prosecution witnesses composed of Vitan and two other self-confessed former members of “*Black Shark*”, Arnel Balocon and Romulo Gasta. Their testimonies pointed to appellants as among those who planned and executed the killing of Agon.

The fatal shooting of Agon was attended by treachery, a qualifying circumstance listed under Article 248 and notably, alleged in the Information. For treachery to be properly appreciated, two conditions must be present: (1) at the time of the assault, the victim was not in a position to defend himself; and (2) the

⁸ *Rollo*, p. 38.

⁹ *Id.* at 39-41 and 44-47.

¹⁰ *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.

offender consciously adopted the particular means, methods, or forms of attack employed by him.¹¹ These conditions were present in the killing of Agon. The assault upon Agon was deliberate, swift and sudden, denying him the opportunity to protect or defend himself. He was unarmed and unaware of the plot of appellants to kill him. Moreover, the means, method or manner of execution of the attack was deliberately and consciously adopted by appellants, the same being in accordance with their group's plan to liquidate Agon. As aptly ruled by the RTC:

The prosecution evidence show that herein accused, together with their group deliberately executed their aggression without any risk arising from their victim, who was caught unaware, helpless and defenseless. At the time the group commenced their aggression, Nick Agon was entirely unsuspecting, as he was on board his Mitsubishi Pajero traversing a narrow street leading to the highway. He (Agon) was surprised when Theo and George Vitan suddenly approached from the right side of his vehicle and promptly fired at him successively. This manner purposely adopted by the duo coupled with the help given by their comrades to ensure the commission of the crime clearly constitutes treachery; x x x.¹²

Finally, the killing of Agon was neither parricide nor infanticide.

All the elements of the crime of murder being present in this case, the RTC and the CA thus correctly ruled in finding appellants guilty of the said crime.

It must be noted as well that the evidence adduced by the prosecution is also sufficient to establish the presence of the aggravating circumstance of evident premeditation, which has the following elements: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.¹³ Vitan testified that the plan to kill Agon was conceived a day before the victim was fatally shot. Appellants and their cohorts therefore, had adequate time to reflect on the consequences of their contemplated crime prior to its execution. The period of time when appellants planned to kill Agon and the time when they implemented such plan afforded them the opportunity for meditation and reflection on the consequences of the murder they committed.

The lower courts' finding of conspiracy must also be sustained. There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it."¹⁴ Here, the evidence is sufficient to prove that appellants conspired to

¹¹ Id. at 524.

¹² Records, pp. 325-326.

¹³ *People v. Nimuan*, G.R. No. 182918, June 6, 2011, 650 SCRA 597, 604-605.

¹⁴ *People v. Amodia*, 602 Phil. 889, 911-912 (2009).

murder Agon. Vitan testified that on February 21, 2004, he, the accused and appellants agreed to murder Agon. In accordance with their plan, they proceeded the next day, February 22, 2004, to the cockpit arena, a place which they knew that Agon would be at on that particular day. Upon their arrival thereat, the members of the group which included appellants positioned themselves according to their plan and waited for Agon to leave. Later on, Caballero signaled Vitan and the other alleged gunman, accused Theo (Theo), that the target had left the arena and that his vehicle was already approaching their position. When Agon's vehicle came, Vitan and Theo fired at him. Vitan, Caballero, Alvarez, who acted as one of the back-ups, and the rest of the group then fled the scene of the crime. Clearly, there was unity of action and purpose among the members of "*Black Shark*," which include appellants in killing Agon.

Conspiracy having been established, evidence as to who delivered the fatal blow is no longer indispensable. Hence, it is immaterial if Caballero's role was merely to signal the gunmen and Alvarez's, to act as back-up. Each of the offender is equally guilty of the criminal act since in conspiracy the act of one is the act of all.¹⁵

Anent appellants' claim of denial of due process since their presentation of additional witnesses was disallowed by the RTC, the Court finds that the CA had already amply and correctly addressed this issue, thus:

x x x We find that the RTC had every reason to discontinue the presentation of evidence by the Accused-Appellants. They sought postponements, to reiterate, not only once or twice, but on many instances. Considering that the RTC and its entire staff had to travel outside the province of Batangas, and the fact that the Accused-Appellants intended to present other witnesses, they should have therefore been more discerning in seeking the resetting of the trial proceedings to avoid unreasonable delay.

As the RTC correctly held, the concept of speedy trial is available not only to the accused but also the State because, while an accused does have rights, let it not be forgotten that the aggrieved also have the same rights. Thus, the Accused-Appellants were not denied due process considering that they were able to testify on their own behalf and that it is within their power, which they miserably failed, to ensure that they are able to present their case without delay¹⁶

In the same vein, appellants' other arguments, *i.e.*, that there was no testimony respecting the complaint sheet; that the murder weapons and the slugs were not presented in evidence; and that the medico-legal officer who conducted the post-mortem examination on Agon did not testify on the identity and caliber of the firearms used in the killing, do not deserve credence. The non-presentation of such items and testimonies is not indispensable to the successful prosecution of the

¹⁵ *People v. Agacer*, G.R. No. 177751, December 14, 2011, 662 SCRA 461, 472.

¹⁶ *CA rollo*, pp. 183-184.

appellants since they are not elements of the crime of murder.¹⁷

As to the alleged failure of the prosecution witnesses to testify on their sworn statements, suffice it to say that the failure of the prosecution witnesses to reiterate the contents of their sworn statements during trial does not affect their credibility and render the sworn statements useless and insignificant, as long as they are presented as evidence in open court. The sworn statements and the open court declarations must be evaluated and examined together to obtain a thorough determination of the merits of the case. The presentation of these sworn statements during the trial and the attestation of the prosecution witnesses thereto render the same admissible in evidence. Moreover, appellants' contention that they were denied the opportunity to cross-examine the prosecution witnesses on the contents of their *sinumpaang salaysay(s)* has no factual basis. The records reveal that they cross-examined the witnesses after the prosecution's direct examination.

It must be noted that in the face of the glaring evidence against them, appellants could only muster the defenses of denial and alibi. As consistently ruled by the Court, denial and alibi are disfavored on account of the facility with which they can be concocted to suit the defense of an accused. Being negative defenses, they must be corroborated and substantiated by clear and convincing evidence; otherwise, they would merit no weight in law and cannot be given greater value in evidence than the testimony of credible witnesses who testified on affirmative matters.¹⁸ In this case, appellants failed to proffer corroborative evidence in spite of the opportunities provided to them. Hence, their self-serving testimonies of denial and alibi cannot prevail over Vitan's positive identification of them as perpetrators of the crime. Indeed, their defenses do not deserve any weight in evidence.

Going now to the imposable penalty, the crime of murder is punished by *reclusion perpetua* to death. The RTC and the CA were correct in ruling that the attendant circumstance of treachery qualified the killing to murder. However, with the aggravating circumstance of evident premeditation also found to be present, the greater penalty of death is the imposable penalty pursuant to Article 63¹⁹ of the RPC. Nevertheless, in lieu of death penalty, the imposition upon appellants of the penalty of *reclusion perpetua* in this case is proper pursuant to Republic Act No. 9346.²⁰ It must also be added that appellants are not eligible for parole.²¹

¹⁷ *People v. Nicolas*, 448 Phil. 253, 264-265 (2003).

¹⁸ *People v. Dela Paz*, 569 Phil. 684, 700 (2008).

¹⁹ Article 63. *Rules for the application of indivisible penalties.* – x 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.

x x x x

²⁰ AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

²¹ *People v. Tolentino*, 570 Phil. 255, 284 (2008).

With respect to damages, the amounts of civil indemnity, moral damages and exemplary damages awarded by the CA must be increased to ₱100,000.00 each in line with prevailing jurisprudence.²² Moreover, temperate damages in the amount of ₱25,000.00 must also be awarded in view of the absence of evidence of burial and funeral expenses. Lastly, interest of 6% *per annum* shall be imposed on all the awards of damages from the date of finality of this judgment until fully paid.²³

WHEREFORE, the October 8, 2009 Decision of the Court of Appeals in CA-GR. CR-H.C. No. 03048 affirming the conviction by the Regional Trial Court of Batangas City, Branch 2 of appellants Edgar Allen Alvarez and Rodel Caballero of the crime of murder for which they were sentenced to suffer the penalty of *reclusion perpetua*, is **AFFIRMED** with **MODIFICATIONS** that (1) appellants are not eligible for parole; (2) the awards of civil indemnity, moral damages and exemplary damages to the victim's heirs are each increased to ₱100,000.00; (3) appellants are further ordered to pay the victim's heirs temperate damages in the amount of ₱25,000.00; and, (4) 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


PRESBITERO J. VELASCO, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

²² *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 535.

²³ *People v. Lagman*, supra note 10 at 529.



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

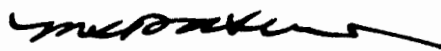
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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 Resolution 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

