



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 185005

Present:

- versus -

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

DANTE DEJILLO and GERVACIO
"Dongkoy" **HOYLE, JR.**,
Accused-Appellants.

Promulgated:

DEC 10 2012

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DECISION

LEONARDO-DE CASTRO, J.:

On appeal is the Decision¹ dated February 22, 2008 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00510, which affirmed with modification the Decision² dated September 20, 2000 of the Regional Trial Court (RTC), Branch 52 of Talibon, Bohol, in Criminal Case No. 96-267, finding accused-appellants Dante Dejillo (Dante) and Gervacio "Dongkoy" Hoyle, Jr. (Gervacio) guilty beyond reasonable doubt of the murder of Aurelio "Boy" Basalo (Aurelio).

¹ Rollo, pp. 5-24; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring.

² Records, pp. 265-265O; penned by Presiding Judge Irma Zita V. Masamayor.

Aurelio is a 22-year-old *Sangguniang Kabataan* (SK) *Kagawad* of Barangay Bugang, San Miguel, Bohol. On or about 3:00 a.m. of July 29, 1996, in Barangay Bugang, Aurelio was stabbed below his left rib. Aurelio was pronounced dead on arrival at the infirmary in San Miguel. The incident was entered in the police blotter of the Philippine National Police (PNP) of San Miguel on July 29, 1996 at about 4:10 a.m. According to said entry in the PNP police blotter, Aurelio was stabbed by one Romeo Puracan (Romeo), 30 years old and a resident of Ong Farm, Ubay, Bohol. Romeo was identified by accused-appellant Gervacio, who executed a Sworn Statement dated July 29, 1996 before the PNP of San Miguel. The police picked up Romeo by 6:00 a.m. of July 29, 1996. Thereafter, Romeo was charged with the crime of homicide.

In two letters dated September 3, 1996, Germana Basalo (Germana), Aurelio's mother, requested the PNP Chief of San Miguel to initiate the filing of a criminal complaint for murder against herein accused-appellants, plus one Jonathan Sodio (Jonathan) and Petronilo Dejillo, Sr. (Petronilo, Sr.), the father of accused-appellant Dante. In support of her request, Germana submitted the affidavits executed by several witnesses, including Germana herself and Romeo, mostly executed on August 31, 1996, with one executed on September 3, 1996. Germana and her family believed that Romeo was not the culprit and they had already referred the matter to the National Bureau of Investigation (NBI).

Acting favorably on the complaint for murder against accused-appellants, the Provincial Prosecution Office of Bohol eventually filed an Information charging accused-appellants, thus:

That on or about the 29th day of July, 1996, in the Municipality of San Miguel, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to kill and without justifiable motive, conspiring, confederating and helping one another and with treachery and abuse of superior strength, the accused being then armed with a sharp pointed weapon while the victim was unarmed and was not given an opportunity to defend himself, and with evident premeditation, as accused Dante Dejillo had a grudge against the victim when the latter testified in a Robbery case filed against Dante Dejillo's younger brother, Petronillo Dejillo, Jr., did then and there willfully, unlawfully and feloniously attack, assault and stab one Aurelio Basalo, with the use of the said sharp pointed weapon, hitting the victim on the vital part of his body which resulted to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the Provision of Article 248 of the Revised Penal Code, as Amended by Republic Act 7659.³

Accused-appellants pleaded not guilty during their arraignment.⁴ Thereafter, trial ensued.

The prosecution called to the witness stand Florenda Dolera (Florenda),⁵ Elias Aurestila (Elias),⁶ Amelita Basalo (Amelita),⁷ Gemima Dolera (Gemima),⁸ Romeo,⁹ and Germana.¹⁰ The prosecution dispensed with the testimony of Dr. Gil Macato (Gil),¹¹ NBI Medico-legal Officer, Region VII, after the defense admitted the genuineness and veracity of Dr. Gil's exhumation report on Aurelio's cadaver, which determined Aurelio's cause of death as a "stab wound of the chest." The prosecution also subsequently presented Senior Police Officer (SPO) 3 Victor Gubat,¹² Saul Curiba (Saul),¹³ and again Elias¹⁴ as rebuttal witnesses.

³ Id. at 28-28A.

⁴ Id. at 47-48.

⁵ TSN, January 30, 1997 and March 6, 1997.

⁶ TSN, April 4, 1997 and April 18, 1997.

⁷ TSN, April 18, 1997 and June 5, 1997.

⁸ TSN, July 3, 1997 and August 14, 1997.

⁹ TSN, October 22, 1997, October 30, 1997, December 10, 1997, and January 9, 1998.

¹⁰ TSN, February 20, 1998 and March 6, 1998.

¹¹ TSN, July 3, 1997.

¹² TSN, June 14, 1999 and July 15, 1999.

¹³ Id.

¹⁴ TSN, July 29, 1999 and February 18, 2000.

The testimonies of the prosecution witnesses presented the following version of events:

In the evening of July 28, 1996, Aurelio and accused-appellants were engaged in a drinking spree at Germana's house in Barangay Bugang. About 40-50 meters away in the same Barangay, Celso Nuera (Celso) was celebrating his birthday at his house where Saul and his nephew Romeo were in attendance as guests. By midnight, Romeo fell asleep on a bamboo bed outside Celso's house. At around 3:30 a.m. of July 29, 1996, Romeo was awakened by the crowing of a rooster. While still lying down, Romeo saw clearly Aurelio and accused-appellants on the *barangay* road, just four meters away. Accused-appellant Gervacio, *alias* Dongkoy, had his left arm on Aurelio's right shoulder and with his right hand, held and raised Aurelio's left hand to shoulder level. Accused-appellant Dante then stabbed Aurelio with a knife at the left side of the latter's body. Accused-appellants ran away leaving Aurelio behind. Aurelio was still standing but already staggering. Romeo was about to help Aurelio but he was chased away by three men, one armed with a knife. Romeo went home to Ong Farm at Sitio Caong, San Francisco, Ubay, Bohol, where he was arrested later that morning.

In the meantime, Florenda, Aurelio's sister, was asleep at her residence when she was awakened at around 3:30 a.m. of July 29, 1996 by the sound of running feet. Remembering accused-appellant Dante's threat against Aurelio's life six days earlier, Florenda started looking for Aurelio. She met accused-appellant Gervacio along the way, who pretended to help in searching for Aurelio. Florenda subsequently heard Aurelio shouting for help. Florenda found her brother at a road canal, leaning against the canal wall. Thinking that her brother was only drunk, Florenda asked accused-

appellant Gervacio to help her carry Aurelio home but accused-appellant Gervacio pulled up Aurelio's T-shirt and said, "So, he was hit because he was stabbed by Ramie Puracan." Yet, as Florenda was embracing Aurelio, Aurelio was able to whisper in Florenda's left ear that, "I was stabbed by Dante while Dongkoy held me." By this time, Saul, Petronilo, Sr., and Amelita (Florenda's niece) had arrived at the scene. As Florenda ran home to get her husband, Amelita heard Saul asking her uncle Aurelio who stabbed him and Aurelio answering that it was accused-appellants Dante and Dongkoy. Petronilo, Sr., father of accused-appellant Dante, went near Aurelio and covered Aurelio's mouth.

Florenda and her husband took Aurelio to the San Miguel Infirmary where Aurelio was pronounced dead on arrival. Aurelio's Death Certificate stated that his cause of death was cardiopulmonary arrest secondary to hypovolemia (internal hemorrhage) secondary to stab wound.

Accused-appellant Dante had already been threatening to kill Aurelio days prior to the stabbing. Accused-appellant's brother, Petronilo Dejillo, Jr. (Petronilo, Jr.) committed robbery against Gemima, Florenda's mother-in-law. Aurelio was the star witness in the robbery case against Petronilo, Jr. Petronilo, Jr. had since been in hiding and was unable to come home even for his grandmother's death and wake. Elias, related to both accused-appellants through his father-in-law, personally witnessed accused-appellant Dante making such threats against Aurelio, and Gemima was already warned of accused-appellant Dante's threats against her son-in-law, Aurelio, days before July 29, 1996.

Following Aurelio's death, his family had been requesting the police to file complaints against accused-appellants. When the police failed to act upon their request, Aurelio's family already sought the help of the NBI.

According to Germana, Aurelio was the one supporting her so his death was beyond compensation. Germana also claimed that she had already spent ₱67,000.00 for Aurelio's wake and burial, ₱5,000.00 for the exhumation of Aurelio's body, and ₱38,500.00 for court expenses, for a total of ₱110,500.00. Germana, however, did not present any receipt.

The defense countered with the testimonies of accused-appellants Gervacio/Dongkoy¹⁵ and Dante,¹⁶ SPO1 Dario Nuez,¹⁷ Jonathan,¹⁸ SPO1 Paulino Boñor,¹⁹ Dr. Hamilcar Lauroy Saniel (Hamilcar),²⁰ Nerio Quisto,²¹ Lorenzo Orevillo,²² Petronilo, Sr.,²³ Letecia Torreon Dejillo (Letecia),²⁴ and Hospicia Eliadora Hoyle.²⁵ The defense also presented Police Officer (PO) 1 Desiderio Garcia²⁶ as a sur-rebuttal witness.

Taken together, the defense witnesses' testimonies give the following account of events of July 28-29, 1996:

On July 28, 1996, accused-appellants, with Jonathan and several other companions, were hopping from one *barangay* to another to play basketball, to visit accused-appellant Gervacio's girlfriend, and to eat supper at the house of accused-appellant Gervacio's uncle. Their group finally got back to Barangay Bugang past 11:30 p.m. and had a drinking spree at Aurelio's house. They were later joined by Saul and Romeo.

¹⁵ TSN, May 21, 1998 and June 5, 1998.

¹⁶ TSN, October 2, 1998 and December 4, 1998.

¹⁷ TSN, July 10, 1998 and July 24, 1998.

¹⁸ TSN, July 24, 1998.

¹⁹ TSN, August 21, 1998.

²⁰ TSN, September 4, 1998.

²¹ Id.

²² TSN, September 18, 1998.

²³ Id.

²⁴ TSN, December 28, 1998.

²⁵ TSN, May 7, 1999.

²⁶ TSN, March 30, 2000 and May 29, 2000.

During the drinking spree, Saul pulled Aurelio's hair and Aurelio retaliated by boxing Saul. Accused-appellant Gervacio separated Saul from the group and brought Saul to the Bugang public market, about 25 meters away. While accused-appellant Gervacio and Saul were at the market, Romeo was boxed by Aurelio and hit by Dante with a belt. Romeo ran away, past accused-appellant Gervacio and Saul at the public market. Accused-appellant Gervacio eventually returned to his group at Aurelio's house.

Thereafter, Celso invited the group to his house. Only Aurelio and accused-appellant Dante entered Celso's house, while the rest of the group remained outside to sleep on the bamboo bed outside said house. That was the last time accused-appellants saw each other.

Finding Saul also inside Celso's house, Aurelio confronted Saul about the hair-pulling incident. The two were pacified by Petronilo, Sr., who then advised his own son, accused-appellant Dante, to just go home. Following his father's advice, accused-appellant Dante left for home at around 2:00 a.m. of July 29, 1996. Accused-appellant went to sleep and woke up at around 6:00 a.m., whereupon he learned from his mother Letecia that Aurelio had been stabbed.

It was around 3:00 a.m. of July 29, 1996 when Aurelio woke up accused-appellant Gervacio, who was sleeping on the bamboo bed outside Celso's house. Aurelio and accused-appellant Gervacio began walking towards Aurelio's house only 25 meters away. But then, they heard a commotion and Romeo appeared from the left side of the road, carrying a hunting knife. Romeo stabbed Aurelio on the latter's left side. Aurelio and accused-appellant Gervacio both ran away with Romeo chasing after them.

Accused-appellant Gervacio first hid himself before going home, where he got a scythe for protection. He then went back to check on Aurelio.

Along the way, accused-appellant Gervacio met Florenda who asked about the persons running. Accused-appellant Gervacio told Florenda that Romeo was chasing him and Aurelio and that Aurelio was stabbed. He helped in looking for Aurelio who was found lying face up at the right side of the road, breathing with difficulty, and unable to talk. When Florenda and her husband brought Aurelio to the hospital, accused-appellant Gervacio accompanied them.

After Aurelio was received at the hospital at around 4:00 a.m. of July 29, 1996, accused-appellant Gervacio proceeded to the municipal hall to report the incident to the police. Thus, Romeo was arrested around two hours later.

Dr. Hamilcar, the municipal health officer of San Miguel, conducted a post mortem examination of Aurelio's body and found only one fatal wound and no other contusions or abrasions. Aurelio suffered from massive internal hemorrhage, causing his death. When Dr. Hamilcar examined Aurelio at 4:00 a.m. on July 29, 1996, rigor mortis had not yet set in. However, Dr. Hamilcar admitted that because of the lack of facilities, he was not able to perform a real autopsy on Aurelio. Dr. Hamilcar only conducted a surface anatomy, including poking Aurelio's wound with a blunt instrument. Hence, Dr. Hamilcar qualified that he could only testify on possibilities, *i.e.*, that it is possible to inflict such a wound as was found on Aurelio without having to intentionally lift Aurelio's left hand, provided, that the left arm is not obstructing the location, such as when the arms are swung or are raised; that it is possible that Aurelio's speech power was

affected because of lack of blood supply to the brain; and that it is possible that Aurelio was still able to talk about who inflicted his injury.

On September 20, 2000, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of the crime of murder, with the qualifying circumstance of taking advantage of superior strength. Said verdict reads:

WHEREFORE, the Court finds the accused Dante Dejillo and Gervacio Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder defined and penalized under Art. 248 of the Revised Penal Code, as amended by RA No. 7659. There being no mitigating nor aggravating circumstances adduced and proven during the trial, the Court hereby sentences each of the accused to suffer the penalty of Reclusion Perpetua, with all the accessory penalties of the law and to pay the costs.

Further, each of the accused shall pay jointly and severally to the heirs of Aurelio Basalo civil indemnity for the death of the victim in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00.

As the heirs of the victim clearly incurred funeral expenses although no receipts were presented[,] the amount of ₱10,000.00 by way of temperate damages is hereby awarded. No actual damages representing unearned income of the victim can be awarded, the same not having been sufficiently proven.

The period during which the accused were detained shall be credited in their favor as service of sentence in conformity with Article 29 of the Revised Penal Code, as amended.²⁷

Pursuant to the Commitment on Final Sentence²⁸ issued by the RTC on September 27, 2000, accused-appellants were committed to and received at the New Bilibid Prison, Muntinlupa City.²⁹

²⁷ Records, pp. 265N-265O.

²⁸ Id. at 266-267A.

²⁹ *Rollo*, pp. 36 and 39.

Accused-appellants appealed their conviction by the RTC directly before this Court,³⁰ but conformably with its ruling in *People v. Mateo*,³¹ the Court transferred the case to the Court of Appeals for appropriate action.

The Court of Appeals promulgated its Decision on February 22, 2008 dismissing accused-appellants' appeal and affirming the RTC judgment with the modification of increasing the award of temperate damages, thus:

WHEREFORE, the **APPEAL** is **DISMISSED**. The Decision dated September 20, 2000 of the Regional Trial Court (RTC), Talibon, Bohol, Branch 52, in Criminal Case No. 96-267, finding Dante Dejillo and Gervacio Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder and sentencing them to Reclusion Perpetua is **AFFIRMED** with **MODIFICATION** awarding temperate damages of ₱25,000.00 to the heirs of Aurelio "Boy" Basalo, in lieu of actual damages.³²

Hence, the present appeal by accused-appellants.

In their original Brief, accused-appellants pleaded for their acquittal based on the following assignment of errors:

[I]

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE BELATED CLAIM OF PROSECUTION WITNESSES FLORENDA DOLERA, AMELITA BASALO AND SAUL CURRIBA THAT THE DECEASED UTTERED DYING DECLARATION POINTING TO THE ACCUSED AS THE ASSAILANTS.

[II]

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROMEO PURACAN DESPITE THE FACT THAT HE WAS THE ONE ORIGINALLY CHARGED FOR KILLING THE VICTIM, HENCE, POSSESSED WITH (SIC) PROPENSITY TO FABRICATE LIES IF ONLY TO EVADE CRIMINAL PROSECUTION.

³⁰ Records, p. 268.

³¹ G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

³² *Rollo*, p. 24.

[III]

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF GERVACIO HOYLE POSITIVELY IDENTIFYING ROMEO PURACAN AS THE PERSON WHO STABBED AND KILLED BOY BASALO OR CONSIDERING THE SAME AS PART OF RES GESTAE WITH THE TESTIMONIES OF SPO III DARIO NUEZ, SPOI APOLONIO BONOR, BRGY. CAPTAIN NERIO QUISTO, JONATHAN SODIO AND DANTE DEJILLO.³³

In their Supplemental Brief, accused-appellants present additional grounds in support of their acquittal:

[IV]

THE LOWER COURT GRAVELY ERRED IN NOT APPRECIATING THE PHYSICAL EVIDENCE WHICH COULD HAVE LEAD TO THE ACQUITTAL OF THE ACCUSED; AND

[V]

THE LOWER COURT SERIOUSLY OVERLOOKED THE MATERIAL CIRCUMSTANCES THAT CAST GRAVE SHADOW OF DOUBT TO THE THEORY OF THE PROSECUTION.³⁴

Accused-appellants assert that there was no dying declaration made by Aurelio and that the same was a mere afterthought of the prosecution witnesses which must not be given any evidentiary weight. Accused-appellants further point out that defense witness Petronilo, Sr. was likewise present when Aurelio was found wounded and he categorically testified that Aurelio was not able to answer when asked who stabbed him. Moreover, none of the prosecution witnesses mentioned anything to police about Aurelio's dying declaration during the initial investigation. It was only a month after Aurelio's stabbing and death that prosecution witnesses Florenda and Amelita executed affidavits relating Aurelio's dying declaration; while prosecution witness Saul executed no such affidavit; and

³³ CA rollo, p. 72.

³⁴ Rollo, p. 46.

he disclosed Aurelio's purported dying declaration only during the rebuttal stage of the trial.

Accused-appellants also highlight Dr. Hamilcar's testimony. Accused-appellants argue that Aurelio was stabbed in the area of his body where his spleen could have been hit. As explained by Dr. Hamilcar, this could cause so much bleeding that Aurelio's speech power would be affected for the first five minutes and his brain would be seriously damaged for the next five minutes. Considering that Aurelio was stabbed at around 3:00 a.m., that Florenda woke up only 30 minutes later, and that it still took Florenda some time before she was able to locate Aurelio, it would already be incredible for Aurelio to still be able to utter his alleged dying declaration.

Lastly, accused-appellants urge the Court not to believe Romeo's inconsistent testimony and instead, to give probative value to accused-appellant Gervacio's testimony, which was supported by other defense witnesses' testimonies, that it was Romeo who assaulted Aurelio.

Plaintiff-appellee, for its part, maintains that the guilt of accused-appellants for the crime charged was duly established beyond reasonable doubt.

The Court finds the appeal devoid of merit.

The RTC has aptly based its factual findings and conclusions from a judicious scrutiny and assessment of all the evidence presented.

The RTC admitted Aurelio's dying declaration to prove the identity of his assailants and the circumstances that led to his death because it qualifies

as an exception to the hearsay rule with the concurrence of all four essential requisites, to wit:

One of the most reliable pieces of evidence for convicting a person is the dying declaration of the victim. Courts accord credibility of the highest order to such declarations on the truism that no man conscious of his impending death will still resort to falsehood. (*People v. Garma*, 271 SCRA 517, 1997)

The requisites for admitting such declaration as evidence – an exception to the hearsay rule – are four, which must concur, to wit: a.) the dying declaration must concern the crime and the surrounding circumstances of the declarant's death; b.) at the time it was made the declarant was under a consciousness of an impending death; c.) the declarant was competent as a witness; and d.) the declaration was offered in a criminal case for homicide, murder, or parricide in which the decedent was the victim. (*People v. Sacario*, 14 SCRA 468; *People v. Almeda*, 124 SCRA 487)

The four requisites are undoubtedly present in this case.

About thirty minutes or so before his death, the slain victim in this case, Aurelio "Boy" Basalo, uttered a statement identifying the two accused, Dante Dejillo and Gervacio "Dongkoy" Hoyle, as his assailants. The statement was testified to by three prosecution witnesses, namely: 1.) Florenda Basalo Dolera, the victim's sister; 2.) Amelita Basalo, the victim's niece[,] and 3.) rebuttal witness, Saul Curiba.

Florenda Dolera clearly, positively, and convincingly testified that she was the first person to arrive at the spot where her wounded brother lay on the ground, after she heard his faint cries for help; that when she realized he was not just drunk but was wounded because Hoyle, Jr. then pulled up her brother's shirt, telling her he was stabbed by Ramy Puracan, she embraced her brother, who, with his lips near her ear, whispered, "I was stabbed by Dante while Dongkoy held me."

Amelita Basalo, arriving at the scene when Saul Curiba and Petronilo Dejillo, Sr. were also there heard the victim say "Dante and Dongkoy" in answer to Saul Curiba's question on who stabbed him.

Saul Curiba, rebuttal witness, confirmed that he was present soon after the victim was found on the ground, wounded; that in answer to his third question, "who stabbed you?" the victim said in a low voice that could still be heard one meter away, "Dante Dejillo."

The dying statement of Aurelio Basalo is a statement of the surrounding circumstances of his death as the same refers to the identity of his assailants; thus, the first requisite is present.

The second requisite is also present. Aurelio Basalo gave such declaration under the consciousness of an impending death as shown by the serious nature of his wound which in fact resulted in his death thirty minutes or so after he was found with a stab wound on his left chest.

Further, the fact that Aurelio Basalo at the time he gave the dying declaration was competent as a witness is too obvious to require further discussion.

Finally, Basalo's dying declaration is offered as evidence in a criminal prosecution for murder in which he was himself, the victim.³⁵ (Italicization added.)

The RTC also appreciated that prosecution eyewitness Romeo positively identified accused-appellants as Aurelio's assailants, thus:

It was not only the dying declaration of Aurelio Basalo that positively identified his assailants. The prosecution also offered Romeo "Ramy" Puracan's testimony as an eyewitness account of the incident.

While lying on the bamboo bed outside the store of Hermogina Nilugao and having just awakened, the prosecution witness saw, only four meters away, on the barangay road, Gervacio Hoyle, Jr., placing his left arm on the shoulder of Aurelio Basalo and with his right hand, hold the left hand of Basalo raising it to shoulder level, while Dante Dejillo stabbed the left side of the chest of Basalo. Puracan's detailed description of how the crime was committed confirms that he was, in truth, an eyewitness.³⁶

The RTC additionally observed that Romeo's account of the stabbing incident was consistent with the NBI Exhumation Report submitted by the prosecution, as well as the testimony of Dr. Hamilcar, a defense witness:

The NBI exhumation report describes the stab wound as elliptical, edges clean cut, located at the chest, left side, infero lateral to the left nipple at the level of the 7th rib, 25.0 cm. from the anterior midline. x x x The aforesaid description of the nature (edges clean cut) and location (chest, left side, level of the 7th rib) of the wound is consistent with Dr. [Hamilcar]'s testimony that the assailant had inflicted the stab wound on the said location, while it was unobstructed by the victim's left arm. The description of the stab wound is likewise consistent with [Romeo]'s testimony.

³⁵ Records, pp. 265I-265J.

³⁶ Id. at 265K.

Moreover, Dr. Hamilcar also testified that he found no abrasions or contusions on other parts of the victim's body – this again, is consistent with [Romeo's] testimony. Had the left arm of the victim not been held abrasions or at least scratches on the nearby parts of the victim's body would have been more likely.³⁷

The RTC even noted that through the testimony of prosecution witness Elias, it was established that revenge was the motive behind the crime, even though motive was no longer essential for a conviction as the identity of the culprits have already been established.

In contrast, the RTC found accused-appellant Gervacio's narration of events incredible while accused-appellant Dante's defense a mere alibi, both of which could not prevail over the prosecution witnesses' positive testimonies. The trial court ratiocinated that:

Between the account of Romeo Puracan and the conflicting testimony of Gervacio Hoyle, Jr., both claimed to be eyewitness accounts, the Court finds [Romeo]'s narration to be the more credible one because it jibes with the testimony of Dr. [Hamilcar] as well as with the post mortem findings in the exhumation report of the NBI doctor (Exh. "B").

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The testimony therefore of Gervacio Hoyle, Jr. that the aforescribed stab wound on Aurelio Basalo was inflicted by Romeo Puracan who had suddenly materialized from behind and on the left side of the victim while the victim and [accused-appellant Gervacio] were walking is contrary to the physical evidence (See also Exh. "C," the picture of the slain victim showing the stab wound).

That [Romeo] saw no struggle coming from the victim as [accused-appellant Gervacio] put his arm around his shoulder and held and raised the left victim's arm finds an explanation in the fact that [accused-appellant Gervacio] was supposed to be a friend of the victim.

The Court also finds [accused-appellant Gervacio]'s statement – that after the stabbing, he ran away and hid, then went home to get a scythe to protect himself (not telling his parents or anybody else) before coming back to the scene of the crime to check on the victim – to be contrary to human experience. Why didn't he instead hide and protect not

³⁷

Id.

only himself but also the victim in the houses near the scene of the crime, namely, at the house of Aurelio Basalo, where just that night he had been drinking together with Aurelio himself or at the neighboring house of Basalo's sister, [Florenda] Dolera? (See Exh. "11," the sketch of Romeo Puracan.)

Stranger still is the fact that in going back to the scene of the crime and in meeting [Florenda] Dolera he did not at once tell her that her brother had been stabbed. This was the reason why [Florenda] Dolera upon finding her brother lying on the ground thought that he was drunk; it was only then that [accused-appellant Gervacio] told her that her brother had been stabbed by Ramy Puracan.

Accused Gervacio Hoyle, Jr.'s version of the incident is highly improbable. The cardinal rule in the law of evidence is that to be believed, the testimony must not only proceed from the mouth of a credible witness; it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. (*People v. Nabayra*, 203 SCRA 75 [1991]).

X X X X

The other accused, Dante Dejillo, interposed the defense of alibi saying that at 2:00 o'clock dawn of July 29, 1996 he had gone home, upon the advice of his father, because of the altercation involving him, Saul Curiba, and Ramy Puracan. His testimony was corroborated by his mother who said that she opened the door for her son when he arrived at 2:00 o'clock that morning and that she woke him up at 6:00 o'clock to inform him that Boy Basalo had died.

Alibi is the weakest defense an accused can concoct. In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of the commission. (*People v. Lacao, Sr.*, 201 SCRA 317) This circumstance is not obtaining in the instant case. As testified to by [accused-appellant Dante]'s father their house is only 200 meters from Celso Nuera's house and Celso Nuera's house is evidently only a few meters distant from the scene of the crime as indicated in the testimonies of both the prosecution and the defense witnesses. Moreover, an alibi cannot prevail over the positive identification of the accused made by a credible witness, besides the fact that the defense of alibi is inherently weak as it can easily be fabricated or contrived.³⁸ (*Italicization added.*)

As for the circumstances that qualify Aurelio's killing as murder, the RTC held that the prosecution failed to produce evidence of treachery and evident premeditation. Nonetheless, the prosecution was able to establish

³⁸

Id. at 265K-265M.

the qualifying circumstance of superior strength, evident in the two accused-appellants using their combined strength, as well as a bladed weapon, to ensure the execution and success of the crime.

The Court gives great weight and respect to the foregoing RTC findings and conclusions which were chiefly based on its evaluation of the credibility of the witnesses, and the veracity and probative value of said witnesses' testimonies. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth.³⁹

Accused-appellants make much of the alleged failure of the prosecution witnesses Florenda, Amelita, and Saul to immediately inform the police about Aurelio's dying declaration that it was accused-appellants who stabbed him. However, the Court of Appeals was not persuaded for the following reasons:

To begin with, contrary to accused-appellants' claim, prosecution witnesses [Florenda] Dolera, Amelita Basalo and Saul Curiba did not delay in reporting to the police the killing of Aurelio "Boy" Basalo and the identities of the killers themselves. [Florenda] personally asked the PNP of San Miguel, Bohol, right on the following day, to arrest Dante Dejillo and Gervacio Hoyle, Jr. as her brother's murderer[s]. The police, however, declined allegedly because they did not have evidence against them [TSN, March 6, 1997, p.13]. The victim's mother wrote the Chief of

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People v. Ramirez, 409 Phil. 238, 245 (2001).

Police of San Miguel, Bohol to indict accused-appellants, but again, the police refused her request. It took them more than a month to finally lodge their complaint against Dante Dejillo and Gervacio Hoyle, Jr. which happened only after they sought the aid of the NBI in Cebu and exhumed [Aurelio] Basalo's body. On top of these, they had to attend to the victim's wake and burial. Surely, the victim's family would not have gone through such tedious process just to convict the wrong persons and set the real killers free. Suffice it to state that accused-appellants did not mention any ulterior motive that could have impelled the victim's family and other witnesses to falsely testify against them.

At any rate, well-settled is the rule that delay in reporting the crime, the assailants' identity or even the victim's *ante mortem* or *dying* declaration does not render the prosecution's testimony doubtful nor impair the credibility of the witnesses.⁴⁰

The Court completely agrees with the aforequoted ruling of the Court of Appeals.

The Court also concurs with the appellate court in giving scant consideration to the testimonies of the other defense witnesses, such as the hospital security guard who saw accused-appellant Gervacio accompany Florenda and her husband in bringing Aurelio to the hospital, the police officers in-charge of the investigation and arrest of Romeo, and the friends and parents of accused-appellants. These witnesses had no personal knowledge of the stabbing incident, and some of them are easily suspect and biased given their close relations to accused-appellants.

Finally, the Court finds highly specious and speculative accused-appellants' contention that Aurelio would have already lost too much blood from his stab wound, rendering him unable to talk, and even unconscious, by the time Florenda found him. Defense witness Dr. Hamilcar repeatedly stated before the trial court that during his post-mortem examination of Aurelio's cadaver, he did not actually see whether Aurelio's spleen was hit or punctured. He even admitted that because of the lack of facilities at the

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Rollo, pp. 11-12.

infirmary, he merely conducted a “surface anatomy” of Aurelio’s cadaver,⁴¹ going only so far as probing Aurelio’s wound with a blunt object.

In view of all the foregoing, the Court sustains the conviction of accused-appellants for the crime of murder, qualified by abuse of superior strength.

Article 248 of the Revised Penal Code, as amended, provides that the penalty for murder is *reclusion perpetua* to death. In conjunction, Article 63 of the same Code provides that when the law prescribes two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. Hence, accused-appellants were correctly imposed the penalty of *reclusion perpetua*.

The Court, however, adds that accused-appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, “[p]ersons convicted of offenses **punished 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. 4180, otherwise known as the Indeterminate Sentence Law, as amended.”⁴²

As to the damages awarded, the Court affirms the grant of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The Court likewise affirms the award of ₱25,000.00 as temperate damages, which are awarded when the Court finds


⁴¹ TSN, September 4, 1998, pp. 9 and 16.

⁴² *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.


that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.⁴³ The Court further awards ₱30,000.00 as exemplary damages, because of the presence of the qualifying circumstance of abuse of superior strength in the commission of the crime, and to set an example for the public good.⁴⁴

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated February 22, 2008 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00510. The Court finds accused-appellants Dante Dejillo and Gervacio “Dongkoy” Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder, qualified by abuse of superior strength, and sentences them to suffer the penalty of *reclusion perpetua*, without the possibility of parole; and to pay the heirs of Aurelio “Boy” Basalo the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

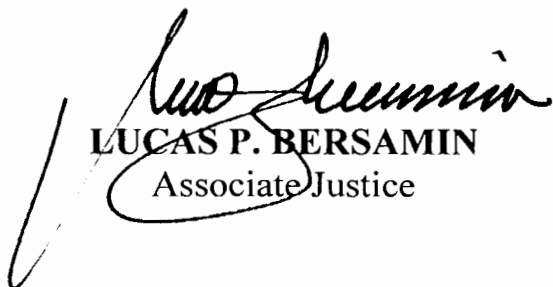

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁴³ *People v. Salcedo*, G.R. No. 178272, March 14, 2011, 645 SCRA 248, 267.

⁴⁴ *Id.*



LUCAS P. BERSAMIN
Associate Justice



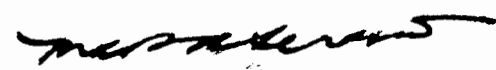
MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
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