



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 201723

Present:

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

- versus -

PERCIVAL DELA ROSA y BAYER,  
Accused-Appellant.

Promulgated:

JUN 13 2013

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RESOLUTION

**REYES, J.:**

This is an appeal from the Decision<sup>1</sup> dated November 3, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03742, which affirmed the Decision<sup>2</sup> dated November 19, 2008 of the Regional Trial Court (RTC) of Caloocan City, Branch 129, in Criminal Case No. C-64944 finding Percival Dela Rosa y Bayer (Dela Rosa) guilty of the crime of Murder.

Accused-appellant Dela Rosa and his co-accused Jaylanie Tabasa (Tabasa) were charged in an Information<sup>3</sup> for Murder, which reads:

<sup>1</sup> Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring; *rollo*, pp. 2-20.

<sup>2</sup> CA *rollo*, pp. 9-19.

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

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That on or about the 18<sup>th</sup> day of November, 2001 in Caloocan City[,] Metro Manila and within the jurisdiction of this Honorable Court, the above named accused, conspiring together and mutually aiding with one another, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, hit on the face with fistic blow and stab with a bladed weapon one JOJIE MAGDUA hitting the latter on the chest, thereby inflicting upon him serious physical injuries, which caused his death (DOA) at Nodado Gen. Hospital this City.

Contrary to law.<sup>4</sup>

During arraignment, Dela Rosa, assisted by counsel *de officio*, pleaded not guilty to the charge. Tabasa remains at large.

During trial, the prosecution presented witnesses Marcelino Samson, Jr. (Samson), Dr. Jose Arnel Marquez (Dr. Marquez) and Zoilo Magdua (Zoilo). Samson testified on the surrounding circumstances of the incident; Dr. Marquez, on the autopsy he conducted and his post-mortem report; and Zoilo, the victim's father, on the events immediately after the incident and the damages suffered by the bereaved family of the victim.

The defense, on the other hand, presented Dela Rosa as its lone witness.

Based on the parties' respective evidence, it was established that on the night of November 18, 2001, prosecution witness Samson was talking to the victim Jojie "Jake" Magdua (Magdua) along Phase 9, Package 7, Block 31, Lot 30 in *Barangay* Bagong Silang, Caloocan City. They were then approached by Dela Rosa and Tabasa and without warning, the latter boxed Magdua while the former pulled out a knife and stabbed Magdua on the chest. Magdua ran towards the upper portion of the path where they were talking while Samson shouted for help. Dela Rosa and Tabasa, however, chased Magdua and were able to overtake him. Tabasa, again, boxed Magdua and Dela Rosa stabbed Magdua on the nape.<sup>5</sup>

Magdua was later brought by friends to Nodado General Hospital. Unfortunately, he was already dead upon arrival at the hospital. Samson, meanwhile, informed Magdua's uncle of the incident. He also went to the police station to report the incident.<sup>6</sup>

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<sup>4</sup> Id.

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

<sup>6</sup> Id. at 5-6.

Dr. Marquez, Medico Legal Officer of the Philippine National Police Crime Laboratory of Caloocan City, conducted the autopsy and reported that Magdua's cause of death is hemorrhagic shock as a result of a stab wound on the neck.<sup>7</sup>

The RTC convicted Dela Rosa for Murder, as follows:

WHEREFORE, in view of the foregoing, the Court finds accused **PERCIVAL DELA ROSA**, guilty of Murder, qualified by treachery, and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**, to indemnify the heirs of the victim in the amount of Php50,000.00, as indemnity ex-delicto, to pay exemplary damages in the amount of Php100,000.00.

The period of his preventive imprisonment shall be credited in the service of his sentence.

Costs de officio.

Let an alias Warrant of arrest be issued against **JAYLANIE TABASA Y MABUEL**.

In the interim, this case with respect to said accused is ordered **Archived**.

SO ORDERED.<sup>8</sup>

In convicting Dela Rosa, the RTC found that Dela Rosa and Tabasa conspired with each other in treacherously assaulting Magdua with the common criminal intent of killing him. Evidence showed that Magdua was unarmed when Tabasa boxed him and Dela Rosa stabbed him on the chest and thereafter, at the back of his neck. The RTC also found that treachery attended the commission of the crime as Magdua was merely conversing with his friend Samson at the time he was attacked by Dela Rosa and Tabasa, catching him unarmed and off-guard. The RTC gave weight and credence to the positive identification made by Samson, pointing at Dela Rosa as one of the assailants. According to the RTC, Samson's testimony was categorical and consistent and there was no badge of any evil motive that would prevail over Dela Rosa's defense of alibi. The RTC, however, found lack of evident premeditation as the prosecution failed to establish that Dela Rosa and Tabasa planned the crime before it was committed.<sup>9</sup>

On appellate review, Dela Rosa assailed the credibility of the eyewitness Samson. He argued that the lighting condition of the *locus crimini* made it impossible for Samson to positively identify Magdua's

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<sup>7</sup> Id. at 6-7.

<sup>8</sup> CA *rollo*, p. 18.

<sup>9</sup> Id. at 16-18.

assailants and that Samson could not even recall how many times the victim was stabbed. He also contended that the material inconsistencies in Samson's testimony place his guilt in serious doubt. His argument was that while Samson testified that it was him who stabbed Magdua, Dr. Marquez testified that it was possible that two (2) different persons inflicted the stabbed wounds on Magdua's chest and back. Finally, he questioned the RTC's appreciation of the qualifying circumstance of treachery.<sup>10</sup>

Despite these protestations, the CA gave full weight and credit to Samson's testimony. The CA ruled that Dela Rosa failed to show that the lighting conditions made it impossible for Samson to identify him and, in fact, Samson stated that the light coming from the Meralco post enabled him to see the face of Dela Rosa.<sup>11</sup> The CA further ruled that the totality of the evidence adduced by the prosecution, both testimonial and documentary, clearly established the elements of murder<sup>12</sup> — the autopsy and post-mortem report established the fatal injuries sustained by Magdua; the positive identification made by Samson pointed to Dela Rosa as one of the perpetrators of the crime and the one who inflicted the fatal injury on Magdua; and that treachery attended the commission of the crime.<sup>13</sup> The CA agreed with the RTC that Magdua was defenseless when Dela Rosa and Tabasa ganged up on him. Thus, the CA affirmed Dela Rosa's conviction as follows:

**WHEREFORE**, premises considered, the Decision dated November 19, 2008 of the Regional Trial Court of Caloocan City, Branch 129 in Criminal Case No. C-64944 is hereby **AFFIRMED IN TOTO**.

No costs.

**SO ORDERED.**<sup>14</sup>

Dissatisfied, Dela Rosa brought his conviction for review to this Court, anchored on the sole issue of whether the CA erred in affirming the RTC's judgment convicting Dela Rosa for Murder.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. An appeal, however, throws the whole case open for review such that the Court may, and generally does, look into the

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<sup>10</sup> Id. at 36-41.

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

<sup>12</sup> Id. at 11-12.

<sup>13</sup> Id. at 12-17.

<sup>14</sup> Id. at 19.

entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.<sup>15</sup>

In this case, the CA did not commit any error in affirming the RTC's conclusion that the prosecution was able to establish Dela Rosa's guilt beyond reasonable doubt.

It has been consistently held that factual findings of the trial court are, except for compelling or exceptional reasons, conclusive to the Court especially when fully supported by evidence and affirmed by the CA.<sup>16</sup> The Court finds no cogent reason in this case to disturb the findings and conclusions of the RTC, as affirmed by the CA, including their assessment of the credibility of the witnesses.

Records show that Samson, a friend of the victim who was with him at the time of the incident, straightforwardly testified that it was Dela Rosa who pulled out the bladed weapon during the assault and who stabbed the victim on his chest and at the back of his neck.<sup>17</sup> As aptly stated by the CA, the positive, categorical and unequivocal declaration of Samson identifying Dela Rosa as one of the assailants deserves more consideration than the defense's speculation on the state of darkness of the *locus crimini* or the number of times the victim was stabbed. During the trial, Samson also vividly described the manner by which Dela Rosa committed the crime, giving the RTC a clear picture of how Dela Rosa and Tabasa ganged up on the victim. Indeed, it is evident that the totality of the evidence for the prosecution, coupled with the defense's failure to discredit Samson's testimony, established Dela Rosa's guilt beyond reasonable doubt. As held in *People of the Philippines v. Welvin Diu y Kotsesa and Dennis Dayaon y Tupit*:<sup>18</sup>

[T]he issue raised by accused-appellant involves the credibility of witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.<sup>19</sup>  
(Citation omitted)

<sup>15</sup> *People v. Ulat*, G.R. No. 180504, October 5, 2011, 658 SCRA 695, 701-702.

<sup>16</sup> *People v. Nazareno*, G.R. No. 196434, October 24, 2012, 684 SCRA 604.

<sup>17</sup> *Rollo*, p. 14.

<sup>18</sup> G.R. No. 201449, April 3, 2013.

<sup>19</sup> *Id.*, citing *People v. Maxion*, 413 Phil. 740, 747-748 (2001).

Moreover, Dela Rosa's denial of conspiracy and participation in the crime lacks merit.

Conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated; or inferred from the acts of the accused when those acts point to a joint purpose and design, concerted action, and community of interests. Proof of a previous agreement and decision to commit the crime is not essential, but the fact that the malefactors acted in unison pursuant to the same objective suffices.<sup>20</sup>

In this case, the evidence on record established that Dela Rosa and Tabasa shared a community of criminal design. Together, they approached Magdua while the latter was busy talking to Samson; Tabasa then boxed Magdua while Dela Rosa pulled out a knife and stabbed the latter on the chest. When Magdua managed to run away, the two perpetrators ran after him and were able to overtake him. Tabasa, again, threw fist blows to Magdua who still tried to retreat. From behind, Dela Rosa then pulled his knife and stabbed Magdua at the nape. Such acts, taken altogether, show how Dela Rosa and Tabasa jointly accomplished killing Magdua. Consequently, Dela Rosa's denial is not supported by convincing evidence and deserves scant consideration. Such self-serving denial, therefore, cannot overthrow the positive identification made by Samson that he was one of the perpetrators of the crime.<sup>21</sup>

In addition, denial is intrinsically a weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. To be sure, it is negative, self-serving evidence that cannot be given evidentiary weight greater than that of credible witnesses who testify on affirmative matters. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight.<sup>22</sup>

The Court also finds that the treachery was correctly appreciated by the RTC and affirmed by the CA.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.<sup>23</sup> In this case, Magdua was clearly pre-occupied in his conversation then on

<sup>20</sup> *People of the Philippines v. John Alvin Pondivida*, G.R. No. 188969, February 27, 2013.

<sup>21</sup> *People v. Dela Cruz*, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 720.

<sup>22</sup> *Id.* at 720-721, citing *Ferrer v. People*, 518 Phil. 196, 218 (2006).

<sup>23</sup> *People of the Philippines v. Ramil Rarugal alias "Amay Bisaya"*, G.R. No. 188603, January 16, 2013.

going with Samson when Dela Rosa and Tabasa suddenly attacked him. Magdua was obviously helpless to defend himself or even retaliate. There is no doubt that Dela Rosa and Tabasa consciously took advantage of Magdua's pre-occupation and their joint force and effort in employing such form of attack ensured Magdua's death. That, is treachery.

As to the penalty, the Court also agrees with the CA that having been found guilty of Murder, Dela Rosa must suffer the penalty of *reclusion perpetua* without eligibility for parole.<sup>24</sup>

As to the award of damages, the Court finds that modifications are in order to conform to prevailing jurisprudence. "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>25</sup>

Thus, the amount of ₱50,000.00 as civil indemnity is increased to **₱75,000.00**. Also, moral damages in the amount of **₱75,000.00** must be awarded as it is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.<sup>26</sup>

The award of **₱25,000.00** as temperate damages is likewise in order. Temperate or moderate damages avail when the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case, be proved with certainty.<sup>27</sup> In this case, it cannot be denied that the heirs of Magdua suffered pecuniary loss, although the exact amount was not proved with certainty.

The Court, however, deems it proper to reduce the amount of exemplary damages from ₱100,000.00 to **₱30,000.00**.<sup>28</sup>

**WHEREFORE**, the Decision dated November 3, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03742 is **MODIFIED** as follows:

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<sup>24</sup> Article 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death. With treachery having been proven and correctly appreciated to have attended the commission of the crime, the maximum imposable penalty, therefore, should be death. Republic Act No. 9346 or An Act Prohibiting the Imposition of Death Penalty in the Philippines, however, prohibits the imposition of the death penalty. Thus, the penalty for crime was correctly reduced to *reclusion perpetua*.

<sup>25</sup> *People v. Yanson*, G.R. No. 179195, October 3, 2011, 658 SCRA 385, 398, citing *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 636.

<sup>26</sup> *People v. De Jesus*, G.R. No. 186528, January 26, 2011, 640 SCRA 660, 677-678.

<sup>27</sup> *Republic of the Philippines v. Tuvera*, 545 Phil. 21, 58-59 (2007).

<sup>28</sup> *Supra* note 20.

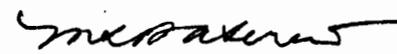
- (1) The amount of civil indemnity is increased to ₱75,000.00;
- (2) Moral damages in the amount of ₱75,000.00 and temperate damages in the amount ₱25,000.00 are hereby awarded; and
- (3) The award of exemplary damages is reduced to ₱30,000.00.

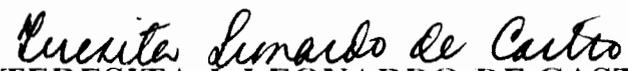
In all other respects, the assailed decision is **AFFIRMED**.

**SO ORDERED.**

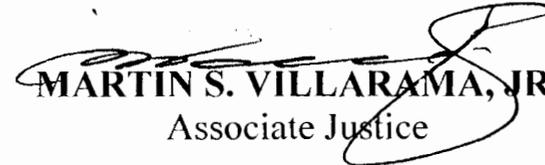
  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above 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