



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 188710

Present:

- versus -

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

MATIMANAY WATAMAMA  
a.k.a. AKMAD SALIPADA,  
Accused-Appellant,

TENG MIDTIMBANG  
(at large),

Promulgated:

Accused.

JUN 02 2014

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DECISION

SERENO, *CJ*:

This is an appeal from the Court of Appeals (CA) Decision<sup>1</sup> dated 30 January 2009 in CA-G.R. CRHC No. 00133, which affirmed with modification the Decision<sup>2</sup> dated 9 June 2005 issued by the Regional Trial Court (RTC) of Kabacan, Cotabato, Branch 22, finding accused-appellant Matimanay Watamama a.k.a. Akmad Salipada guilty beyond reasonable doubt of the crime of murder for the killing of Aoubakar Calim (Calim).

FACTS

Appellant and his co-accused Teng Midtimbang were charged under an Information<sup>3</sup> for murder docketed as Criminal Case No. 99-06. Upon arraignment, appellant pleaded not guilty. Based on the records, Midtimbang remained at large as of the date of promulgation of the RTC Decision.<sup>4</sup>

<sup>1</sup> *Rollo*, pp. 3-14; penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson.

<sup>2</sup> *CA rollo*, pp. 25-33; penned by Acting Presiding Judge Regolio R. Narisma.

<sup>3</sup> Records, pp. 3-4.

<sup>4</sup> *Id.* at 86.

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The evidence for the prosecution established the following: Around eight in the morning on 26 October 1998, Francisco Arobo, Jr. (Arobo), Calim, and five other farmers were at the farm of Ali Samad (Samad) located in Sitio Matingao, Malapag, Carmen, Cotabato. They were ploughing the unplanted area, while Samad was tending his corn plants. Arobo was five meters ahead of Calim when the former heard gunfire coming from behind. Arobo immediately looked to the rear and saw Midtimbang and appellant firing garand rifles at Calim, who was then slumped near his plow. Midtimbang and appellant were positioned ten (10) meters apart and five meters obliquely behind Calim. Because of the successive gunshots, Arobo and the rest of their group scampered to take cover in the shrubbery, while Samad ran towards the nipa hut at the other side of the farm where his children were staying.<sup>5</sup> Appellant and Midtimbang also fired at Samad, but he was not hit. Thereafter, the two fled. Samad then reported the incident to a *barangay kagawad*.<sup>6</sup>

The postmortem examination by the local municipal health officer showed that Calim sustained multiple gunshot wounds in the head, chest, right and left thighs, and right elbow.<sup>7</sup>

The version of the defense was that appellant was simply mistaken for Teng Midtimbang because of their physical and facial resemblances. Appellant claimed that his real name was Akmad Salipada, not Matimanay Watamama.<sup>8</sup> Allegedly, on that fateful morning of 26 October 1998, he was at their house in Sitio Maitum, Malapag, Carmen, Cotabato. He had just eaten breakfast with his wife, Guianila Salipada (Guianila), when they heard seven gunshots. Guianila peeped through their window and, after a while, Teng Midtimbang and Ali Sampo Midtimbang passed by their house. The two were carrying rifles. Guianila asked them where they had come from, and they supposedly told her that they came from the house of Calim and that they shot him because he had stolen a carabao. After appellant was criminally charged with the killing of Calim, Guianila allegedly saw a letter from the wife of Teng Midtimbang addressed to Atty. Tabosares, appellant's counsel.<sup>9</sup>

Zaid Tayuan (Tayuan), a detention prisoner, also testified for the defense. The gist of his testimony was that he had witnessed the Midtimbang brothers kill Calim, and that appellant was nowhere in the vicinity of the crime. Tayuan claimed that he easily recognized them because they were comrades in the Moro National Liberation Front. Tayuan further said that when the incident happened, he was resting at his farm in Sitio Maitum, which was just adjacent to Samad's farm in Sitio Matingao. He claimed that he was about six meters from the Midtimbang brothers when they shot Calim to death.<sup>10</sup> On cross-examination, however, Tayuan admitted that

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<sup>5</sup> TSN, 11 August 2009, pp. 6-15.

<sup>6</sup> TSN, 9 September 1999, p. 9, Direct examination of Ali Samad.

<sup>7</sup>Records, p. 10.

<sup>8</sup>TSN, 19 April 2001, pp. 9-10.

<sup>9</sup>TSN, 7 June 2000, pp. 4-7.

<sup>10</sup> TSN, 11 January 2001, pp. 7-8, 10.

Sitio Maitum was about five kilometers away from Sitio Matingao, and that their common boundary was a mountain.<sup>11</sup>

### **RULING OF THE RTC**

The RTC found appellant guilty beyond reasonable doubt of the crime of murder and ordered him to indemnify the heirs of Calim in the amount of ₱50,000.

The RTC noted that if indeed appellant was not acquainted with his co-accused, he would not have known that they looked alike. Thus, his defense of mistaken identity was belied by his own testimony and, more important by the testimonies of the prosecution witnesses positively identifying him as one of Calim's assailants. Moreover, the trial court ruled that evident premeditation and treachery attended the commission of the crime, as the evidence showed that the assailants had planned to kill Calim, a known cattle rustler, and that their attack was so sudden that it foreclosed any defense by the victim.<sup>12</sup>

The dispositive portion of the RTC Decision reads:

WHEREFORE, this Court finds and so holds that [the] prosecution was able to prove the guilt of the accused beyond reasonable doubt. Accused Matimanay Watamama (Akmad Salipada) is guilty beyond reasonable doubt of the crime of murder as defined and penalize[d] under Article 248 of the Revised Penal Code. Without mitigating or aggravating circumstances attending to the commission of the crime accused Matimanay Watamama (Akmad Salipada) is directed to serve the penalty of reclusion perpetua and its accessories [sic] penalties. The detention of Matimanay Watamama from May 17, 1999 is counted in full in his favor.

Accused Matimanay Watamama is directed to indemnify the heirs of Abubakar Kalim the amount of P50,000.00. Let Warrant of Arrest be issued against Teng Midtimbang with no amount of bail fixed.

SO ORDERED.<sup>13</sup>

### **RULING OF THE COURT OF APPEALS**

Appellant filed an appeal<sup>14</sup> raising the following errors: (1) he was convicted even if the prosecution had failed to prove his guilt beyond reasonable doubt; and (2) the trial court erroneously disregarded his and Tayuan's testimonies and, thus, it wrongly concluded that appellant was Matimanay Watamama.<sup>15</sup>

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<sup>11</sup> Id. at 13-15.

<sup>12</sup> CA *rollo*, pp. 30-31.

<sup>13</sup> Id. at 32.

<sup>14</sup> Records, pp. 88-88.

<sup>15</sup> CA *rollo*, pp. 8-9.

The CA affirmed appellant's conviction for the crime of murder in view of the presence of treachery but ruled that evident premeditation was not sufficiently proven by the prosecution. It modified the damages awarded by the RTC and ruled that appellant should also be made to pay ₱50,000 as moral damages in addition to the civil indemnity that the trial court had awarded to the heirs of Calim.<sup>16</sup>

The CA sustained the RTC's appreciation of the testimonies of the prosecution witnesses in relation to appellant's denial and Tayuan's assertions. It held that appellant's defense of mistaken identity was lame compared to the positive and categorical testimonies of the two eyewitnesses presented by the prosecution. Moreover, it ruled that the prosecution's failure to prove that the real name of appellant was Matimamay Watamama was not crucial, since he was positively identified by eyewitnesses. On the other hand, it found the version of Tayuan incredible, given that his farm was five kilometers away from the farm of Samad, and that the common boundary of their farms was a mountainous area. It also ruled that the letter from the wife of Teng Midtimbang, in which Ali Sampo Midtimbang allegedly owned up to the killing of Calim, was hearsay and self-serving and, hence, inadmissible.<sup>17</sup>

The CA, however, overturned the trial court's finding that there was evident premeditation. It found no evidence showing when the accused decided to commit the crime; whether they clung to their determination to commit the crime; and whether a sufficient period of time had lapsed from the time they decided to commit the crime until they carried it out, thus giving them enough opportunity to reflect upon the consequences of their intended act.<sup>18</sup>

The dispositive portion of the CA Decision reads thus:

**WHEREFORE**, the Decision convicting appellant for Murder and imposing on him the penalty of *Reclusion Perpetua*, is hereby **AFFIRMED, with the MODIFICATION** that in addition to the amount of ₱50,000.00 the accused is ordered to pay the heirs of Abubakar Calim as Civil Indemnity, he is ordered to pay them the amount of ₱50,000.00 as Moral Damages.

**SO ORDERED.**<sup>19</sup>

Without filing a motion for reconsideration with the CA, appellant filed the instant appeal.<sup>20</sup> The Court directed the parties to file their respective supplemental briefs.<sup>21</sup> Both manifested that they were dispensing

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<sup>16</sup> *Rollo*, p. 13.

<sup>17</sup> *Id.* at 9-11.

<sup>18</sup> *Id.* at 11-12.

<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 15 and 18.

<sup>21</sup> *Id.* at 20; Resolution dated 24 August 2009.

with the filing thereof, since they had exhaustively discussed their arguments in their respective briefs filed with the CA.<sup>22</sup>

### ISSUE

The ultimate issue presented for the resolution of this Court is whether respondent was correctly convicted of the crime of murder.

In his Brief,<sup>23</sup> appellant argued that the prosecution failed to prove beyond reasonable doubt his participation in the killing of Calim. He maintained that the testimonies of the prosecution witnesses placing him at the scene of crime were mere conjectures, which did not amount to positive identification. He pointed out that both witnesses admitted that they ran to take cover after seeing the shooting incident. Therefore, their testimonies were unreliable, since they were based on perceptions that were tainted with fear and tension. He also argued that the fallibility of the witnesses' supposed positive identification of him was heightened by the defense evidence proving that he and Midtimbang looked alike, but that the trial court erroneously disregarded that evidence. Moreover, he maintained that the prosecution failed to establish treachery and evident premeditation, since none of its witnesses testified on how the attack on Calim commenced and in what mode.<sup>24</sup>

The Office of the Solicitor General (OSG), in its Brief,<sup>25</sup> maintained that the fact that the prosecution witnesses did not see the precise moment when Calim was shot to death did not create any doubt as to the appellant's identity as one of the assailants. The OSG also maintained that the prosecution sufficiently established treachery, since the witnesses' testimonies clearly showed that Calim was engrossed in farm work when appellant and Midtimbang attacked him.<sup>26</sup>

### OUR RULING

***We find appellant guilty beyond reasonable doubt of homicide, rather than murder, as the prosecution failed to sufficiently establish treachery in the killing of Calim.***

The factual findings of the trial court, as well as its calibration of the witnesses' testimonies and its conclusions, are accorded by this Court with high respect – especially so if the same are affirmed by the CA.<sup>27</sup> An exception to this rule is when, as in this case, there exists a fact or circumstance of weight and influence that has been ignored or misconstrued by the court.<sup>28</sup>

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<sup>22</sup> Id. at 22-24, 28-31.

<sup>23</sup> CA rollo, pp. 6-24.

<sup>24</sup> Id. at 15-22.

<sup>25</sup> Id. at 38-50.

<sup>26</sup> Id. at 44-48.

<sup>27</sup> *Ortega v. People*, G.R. No. 177944, 24 December 2008, 575 SCRA 519.

<sup>28</sup> *People v. Fucio*, 467 Phil. 327, 336 (2004).

For the charge of murder to prosper, the prosecution must prove the following: (1) the offender killed the victim, and (2) the killing was done through treachery, or by any of the five other qualifying circumstances, duly alleged in the Information.<sup>29</sup> There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make. The mere suddenness of the attack does not amount to treachery. The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape. Thus, even frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.<sup>30</sup>

Appellant argues that treachery cannot be appreciated in this case, because no evidence was presented showing how the attack commenced. The OSG, on the other hand, claims that the testimonies of the prosecution witnesses showed that appellant and Midtimbang managed to sneak up on Calim and position themselves behind him to avoid risk of any retaliation. In fact, according to the OSG, the attack was so sudden and fast that neither Calim nor the others present even noticed the arrival of the assailants.<sup>31</sup>

We agree with appellant.

For treachery to be considered, it must be present and seen by the witness right at the inception of the attack. Where no particulars are known as to how the killing began, the perpetration of an attack with treachery cannot be presumed.<sup>32</sup> A case in point is *People v. Rapanut*,<sup>33</sup> in which this Court ruled out treachery as the eyewitness saw the accused only after the initial sound of gunshots, as obtained in this case. Circumstances that qualify criminal responsibility cannot rest on mere conjecture, no matter how reasonable or probable, but must be based on facts of unquestionable existence. These circumstances must be proved as indubitably as the crime itself.<sup>34</sup>

We cannot simply assume that at its inception, Calim was unable to parry the attack, as he was caught unaware. Both Arobo and Samad admitted that they did not see how the attack commenced, and that it was the initial gunfire that caught their attention. Thus, it cannot be said with certainty that the victim was engrossed in his farm work when he was initially attacked.

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<sup>29</sup> *People v. Gabrino*, G.R. No. 189981, 9 March 2011, 645 SCRA 187.

<sup>30</sup> *People v. Tomas, Sr.*, G.R. No. 192251, 16 February 2011, 643 SCRA 530.

<sup>31</sup> *CA rollo*, pp. 47-48.

<sup>32</sup> *People v. Opuran*, 469 Phil. 698, 718 (2004), citing *People v. Ancheta*, G.R. Nos. 13806-07, 21 December 2001, 372 SCRA 753.

<sup>33</sup> 331 Phil. 830 (1996).

<sup>34</sup> *Supra* at 836-837; See also *People v. Barcelon*, G.R. No. 144308, 24 September 2002, 389 SCRA 556, in which the eyewitness did not see how the attack on the victim commenced. The attention of the eyewitness was caught by the victim's plea for help and when she saw the attack it was already in full progress. Thus, this Court refrained from concluding that there was treachery even if the eyewitness' depiction of the attack was supported by the medical findings on the location and extent of wounds suffered by the victim.

Neither can we conclusively say that there was no chance or opportunity for Calim to defend himself from aggression.

However, we are not persuaded by appellant's theory of mistaken identity. Notably, he did not object to the Information, which identified him as "Matimanay Watamama" when he entered his plea.<sup>35</sup>

Witnesses need not know the names of the assailants, as long as they recognize the latter's faces. What is imperative is that, on the basis of their personal knowledge, the witnesses are positive as to the physical identification of the perpetrators, as obtained in this case.<sup>36</sup> Thus, it was sufficient that Arobo and Samad were able to identify respondent in the crime scene and when they took the witness stand.<sup>37</sup>

Indeed, the testimonies of the prosecution witnesses varied on few points. The inconsistencies in their accounts were minor, and did not make their identification of appellant any less credible. Arobo stated that Midtimbang was obliquely behind Calim,<sup>38</sup> whereas Samad claimed that Midtimbang shot the victim from the front.<sup>39</sup> Still, both Arobo and Samad categorically stated that appellant was positioned behind Calim. Moreover, the location of Calim's wounds, as found by the examining physician, corroborated their description of appellant's position in relation to the victim.

In the light of the positive identification by both witnesses, the alibi of appellant must fail.<sup>40</sup> Besides, he was not able to prove that it was physically impossible for him to have been at the scene of the crime when it happened. It appears, rather, that he lived near Samad's farm, and that he was at his house when the crime was committed. Thus, we are constrained to reject his alibi.

Without evident premeditation, and without any evidence to appreciate the aggravating circumstance of treachery in the killing of Calim, respondent can only be held liable as principal for the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code.

**WHEREFORE**, the 30 January 2009 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00133 is hereby **AFFIRMED WITH MODIFICATION**. Appellant Matimanay Watamama a.k.a. Akmad Salipada is found guilty beyond reasonable doubt of the crime of homicide and is sentenced to an indeterminate penalty of ten (10) years of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum.

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<sup>35</sup> Records, p. 15.

<sup>36</sup> *People v. Sorila, Jr.*, 578 Phil. 931 (2008).

<sup>37</sup> Records, p. 6, TSN, 11 August 1999, pp. 5-6; records, p. 28, TSN, 9 September 1999, p. 5.

<sup>38</sup> TSN, 11 August 1999, p.10.

<sup>39</sup> TSN, 9 September 1999, p. 8.

<sup>40</sup> *People v. Andales*, 371 Phil. 659, 669 (1999).

**SO ORDERED.**



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

WE CONCUR:

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

*Bienvenido L. Reyes*  
**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