



Republic of the Philippines
Supreme Court
Manila

BY: 75A
TIME: 1:30

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **November 27, 2019**, which reads as follows:*

“G.R. No. 234166 (*People of the Philippines v. Eduardo Abendan, Jr.*) – This appeal¹ assails the Resolutions dated 07 September 2015² and 07 March 2016³ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07130. The CA deemed the appeal filed by accused-appellant Eduardo Abendan, Jr., (accused-appellant) abandoned and dismissed for failure to file the required brief for an unreasonable length of time. Accused-appellant seeks to reinstate the appeal and reverse the Judgment⁴ dated 04 June 2014 of Branch 20, Regional Trial Court (RTC) of Malolos City, Bulacan, in Criminal Case No. 1205-M-2002 finding him guilty beyond reasonable doubt of murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

Antecedents

An Information was filed before the RTC charging accused-appellant, Rey Abendan Santos (Rey), Michael Abendan (Michael), and Emilio Lucena y Solmiano (Emilio) with murder. The accusatory portion of the said Information states:

That on or about the 3rd day of March, 2002, in the municipality of Meycauayan, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapons and with intent to kill one Conrado Acuna Jr. y Llenado, with evident premeditation, treachery and taking advantage of superior strength, in conspiracy with one another, did then and there wil[l]fully, unlawfully and feloniously attack, assault, hit and stab with the said deadly weapons said Conrado Acuna Jr. y Llenado, hitting the latter on his head, thereby inflicting on him mortal wounds which directly caused his death.

¹ *Rollo*, pp. 8-10; see Notice of Appeal dated 30 March 2016;

² *Id.* at 2-3; penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez, concurring.

³ *Id.* at 4-7.

⁴ *CA rollo*, pp. 60-80; penned by Presiding Judge Mirasol O. Dychingco.

Contrary to law.⁵

Initially, only Emilio was arrested, arraigned, and tried. In a Decision⁶ dated 02 May 2006, the Presiding Judge of Branch 11, RTC-Malolos City, the Hon. Basilio R. Gabo, Jr., (Judge Gabo), acquitted Emilio of the crime. The RTC ordered that the case be sent to the archives with respect to Rey, Michael, and accused-appellant, who all remained at large.⁷

On 04 June 2006, accused-appellant was arrested. In an Order⁸ dated 04 July 2006, Judge Gabo voluntarily inhibited himself from the case. The case was raffled to Branch 20, RTC-Malolos City.⁹ Upon arraignment, accused-appellant pleaded not guilty to the charge. After pre-trial, trial ensued.

Version of the Prosecution

At about 6:30 o'clock on the evening of 03 March 2002, prosecution witnesses Rose Lopez and Mirasol Gallo saw the victim, Conrado Acuna, Jr., (Conrado) having an altercation with Rey, Michael and accused-appellant. Conrado got mad so he tried to punch Rey but missed. Accused-appellant left, along with Rey and Michael, but they all came back after thirty (30) minutes, this time accompanied by Emilio, and visibly armed with two (2) lead pipes.¹⁰

Rey then got hold of a *kiba* (a bladed weapon). He stabbed Conrado ten (10) times in the middle portion of his back using the *kiba*. Michael hit Conrado with a lead pipe on the head while accused-appellant, also using a lead pipe, hit the victim on different parts of his body. Not contented, accused-appellant stabbed Conrado several times on his side and throat using a sharp-pointed knife while Rey and Michael held the victim.¹¹ Conrado fell to the ground but Rey, Michael and accused-appellant continuously hit him on the head. After that, the said assailants ran away.¹²

Conrado's Certificate of Death states that the cause of death is "[h]emorrhagic shock as a result of stab wounds, trunk and traumatic injuries, head."¹³

⁵ Records, p. 1.
⁶ *Id.* at 193-198.
⁷ *Id.* at 80.
⁸ *Id.* at 201.
⁹ *CA rollo*, p. 61.
¹⁰ *Id.* at 63.
¹¹ *Id.*
¹² *Id.*
¹³ *Id.* at 67.

Version of the Defense

For his part, accused-appellant admitted that Rey and Michael are his older brothers. However, he denied the charges against him and claimed that he was at home watching television when the incident happened. According to accused-appellant, the last time he saw his brothers was on 02 March 2002. On cross-examination, accused-appellant admitted that the incident occurred just at the back of their house.¹⁴

Shirley Abendan (Shirley), the mother of accused-appellant, Rey, and Michael, testified that she saw her sons on the early morning of 03 March 2002. She alleged that accused-appellant stayed in the house the whole day watching television. Meanwhile, Rey was inside his room and Michael left for work at about 7:30 o'clock in the morning.¹⁵ When Michael came back around 5:00 in the afternoon, he told Shirley he was going to buy food at the back of their house. After a few minutes, Shirley's niece came by and informed her that Rey was stabbed on the face. Later, Rey arrived and told Shirley that Michael stabbed another person. Shirley wanted to bring her son to the hospital but Rey left. She never saw Michael and Rey again.¹⁶

On the other hand, Melanie Gutierrez (Melanie) testified that on 03 March 2002, she was at the bakery and saw Conrado and Rey arguing. Conrado went home then returned to the bakery with a sharp weapon. She saw Conrado strike Rey under his eye. Michael then arrived and punched Conrado several times. Someone then handed a bladed weapon to Michael. The latter wrestled with Conrado and ended up sprawled on the ground. Melanie rushed to tell Shirley about the incident and found accused-appellant and Shirley at their house.¹⁷

Ruling of the RTC

In its Judgment dated 04 June 2014, the RTC found accused-appellant guilty beyond reasonable doubt of murder and sentenced him to suffer the penalty of *reclusion perpetua*. The court likewise ordered him to pay the heirs of Conrado the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and P25,000.00 as temperate damages.¹⁸

The RTC found the prosecution to have established the elements of murder as Conrado was killed and it was accused-appellant, together with Rey and Michael, who killed the victim. The court also found that Conrado's killing was attended by the qualifying circumstance of taking advantage of

¹⁴ *Id.* at 64.

¹⁵ *Id.*

¹⁶ *Id.* at 65.

¹⁷ *Id.*

¹⁸ *Id.* at 80.

superior strength when Rey, Michael and accused-appellant purposely took advantage of their combined superiority in strength and took turns stabbing the victim and hitting him with lead pipes. The RTC did not give credence to accused-appellant's alibi and denial because it was not physically impossible for him to be at the crime scene which was located at the back of their house. Lastly, the prosecution was not able to prove actual damages since the receipts were not properly authenticated.¹⁹

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

By Resolution²⁰ dated 07 September 2015, the CA denied accused-appellant's Second Motion for Extension of Time to File Appellant's Brief because of the unsubstantiated explanation for extension offered by accused-appellant's counsel *de officio*. It deemed his appeal abandoned and dismissed for failure to file his brief for an unreasonable period of time.²¹

Accused-appellant, through counsel, filed a motion for reconsideration.²² However, it was denied by the CA in its Resolution²³ dated 07 March 2016. The CA dismissed the appeal for the non-filing of the required brief because the counsel *de officio* filed unmeritorious motions for extension of time without filing the required appellant's brief.²⁴

Hence, this appeal seeking to overturn accused-appellant's conviction.

Ruling of the Court

The appeal is without merit.

The Court notes that the CA correctly dismissed the appeal for non-filing of the required appellant's brief. As held in *Sibayan v. Costales*,²⁵ the failure to file appellant's brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause of its dismissal. As the right to appeal is a statutory privilege, and not a natural right, it may be exercised only in accordance with the provisions of the law. Nevertheless, the Court will resolve accused-appellant's appeal on the merits.

¹⁹ *Id.* at 66-80.

²⁰ *Id.* at 35-36.

²¹ *Rollo*, pp. 2-3.

²² *CA rollo*, pp. 84-92.

²³ *Id.* at 104-107.

²⁴ *Rollo*, pp. 4-6.

²⁵ G.R. No. 191492, 04 July 2016, 795 SCRA 387, 396.

An appeal in criminal cases throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²⁶

It is settled that the findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses and has the unique opportunity to observe the witness first-hand and note his or her demeanor, conduct and attitude under grueling examination. Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.²⁷

In this case, accused-appellant is charged with the crime of murder. Murder, as defined and penalized under Article 248 of the RPC, as amended, provides:

ART. 248. Murder. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

²⁶ *People v. Miranda*, G.R. No. 229671, 31 January 2018, 854 SCRA 42.

²⁷ *People v. Santuile*, G.R. No. 214772, 21 November 2016, 809 SCRA 373, 379.

Stated differently, the elements of murder are: "1) that a person was killed; 2) that the accused killed him; 3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and 4) that the killing is not parricide or infanticide."²⁸

Here, the prosecution witnesses positively identified accused-appellant as one of Conrado's assailants. They testified that they saw accused-appellant hit the victim with a lead pipe and later stab him several times with a sharp-pointed knife. The multiple stab wounds, numerous abrasions, and various incised and lateral wounds on the head, trunk and lower extremities suffered by Conrado caused hemorrhagic shock leading to his death.²⁹

Anent the qualifying circumstance of abuse of superior strength, We find the ruling in the case of *People v. Beduya* instructive:

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two (2) persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.³⁰

Here, the prosecution was able to establish and prove the qualifying circumstance of abuse of superior strength. Accused-appellant, together with his brothers, Michael and Rey, excessively and forcefully attacked the unarmed victim with bladed weapons and lead pipes. The trio deliberately took advantage of their numerical superiority and strength, and even held Conrado so as to deprive him of any chance to retaliate and parry the blows and stabs that came his way. Further, the brothers even left the vicinity to purposely seek for deadly weapons to be used against Conrado. When accused-appellant and his brothers came back, they took turns in using excessive force by stabbing the unarmed victim using bladed weapons, and hitting him with lead pipes. This continued even after Conrado had fallen to the ground. To the mind of the Court, all these show that accused-appellant and his brothers purposely used force excessively out of proportion to the

²⁸ *People v. Aquino*, G.R. No. 203435, 11 April 2018, 860 SCRA 64, 74.

²⁹ Criminal Case No. 1205-M-2002, Records, p. 369.

³⁰ G.R. No. 175315, 09 August 2010, 627 SCRA 275, 284.

means of defense available to the unarmed victim which eventually led to his tragic death.³¹

Lastly, accused-appellant raises denial and alibi as defenses. However, for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime during its commission. "Physical impossibility refers to distance and the facility of access between the [crime scene] and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the [crime scene] and its immediate vicinity when the crime was committed."³²

In this case, accused-appellant failed to satisfy these requisites. For one, he admitted that the crime scene was just at the back of his house. His denial and alibi did not prove the impossibility of his physical presence at the time and at the scene of the crime. For another, he was positively identified by the prosecution witnesses as one of Conrado's assailants. It is settled that positive identification prevails over alibi since the latter can be easily fabricated and is inherently unreliable.³³ Positive identification that is categorical and consistent, and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over a denial. Denial being a negative evidence, which is self-serving in nature, cannot prevail over the positive identification of prosecution witnesses.³⁴

However, in light of prevailing jurisprudence, particularly *People v. Jugueta*,³⁵ the Court finds that the awards of damages imposed upon accused-appellant for the charge of murder must be modified, as follows: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; and (c) P75,000.00 as exemplary damages, with legal interest at six percent (6%) per annum on all damages awarded from the date of finality of this judgment until full payment. The Court notes that the RTC awarded P25,000.00 as temperate damages since the prosecution was only able to prove P20.00 as burial permit. As such, the Court modifies the award of temperate damages to P50,000.00 pursuant to prevailing jurisprudence.³⁶

WHEREFORE, the appeal is hereby **DISMISSED**. Accordingly, the Judgment dated 04 June 2014 of Branch 20, RTC-Malolos City in Criminal Case No. 1205-M-2002, finding accused-appellant Eduardo Abendan, Jr. **GUILTY** beyond reasonable doubt of murder, is **AFFIRMED WITH**

³¹ *People v. Revillame*, G.R. No. 100714-15, 03 March 1994, 230 SCRA 650; *See also People v. Hermo*, G.R. No. 135026, 15 February 2002, 377 SCRA 148.

³² *People v. Ramos*, G.R. No. 190340, 24 July 2013, 702 SCRA 204, 217.

³³ *People v. Bugna*, G.R. No. 218255, 11 April 2018, 861 SCRA 137, 151.

³⁴ *Medina, Jr. v. People*, G.R. No. 161308, 15 January 2014, 713 SCRA 311, 322.

³⁵ G.R. No. 202124, 05 April 2016, 788 SCRA 331.

³⁶ *Id.*

MODIFICATION. Accused-appellant is **SENTENCED** to suffer the penalty of *reclusion perpetua*, and is **ORDERED** to pay the heirs of victim Conrado Acuna, Jr., the amounts of: (a) P75,000.00 as civil indemnity; (b) P75,000.00 as moral damages; (c) P75,000.00 as exemplary damages; and (d) P50,000.00 as temperate damages, with legal interest of six percent (6%) *per annum* for all amounts due from the date of finality of this Resolution until fully paid.

SO ORDERED.” (Gesmundo, J., *on wellness leave*)

Very truly yours,

Misael D C Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court *gm 2/5/20*

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