

SECOND DIVISION

[G.R. No. 238120, February 12, 2020]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICO
DELA PEÑA, * ACCUSED-APPELLANT.**

D E C I S I O N

INTING, J.:

Treachery attends the killing where the accused attacks the victim while the latter is asleep and unable to defend himself. Absolutely, a sleeping victim is not in a position to defend himself, take flight or otherwise avoid the assault, thus ensuring that the crime is successfully executed without any risk to the attacker.^[1]

The Court is now asked to decide on Appeal^[2] the Decision^[3] dated October 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02163, which affirmed the Judgment^[4] dated October 28, 2015 of Branch 45, Regional Trial Court (RTC), Bais City, in Criminal Case No. 11-94-MY, finding Rico Dela Peña (accused-appellant) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The case arose from an Information^[5] charging accused-appellant with the crime of Murder committed as follows:

That on or about 5:30 o'clock in the afternoon of December 14, 2006 , at Barangay Samak, Mabinay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, without any just motive, with treachery, and with intent to kill his brother in law, OLIPIO GOMEZ AMAHIT, assault, attack, and stab said Olipio Gomez Amahit with a "*pinuti*", thereby inflicting upon him multiple stab wounds on his body, which directly caused the death of said Olipio Gomez Amahit, to the damage and prejudice of his heirs.

Contrary to Article 248 of the Revised Penal Code, with the qualifying circumstance of treachery, and aggravated by relationship under Article 15 of the RPC, the accused being the brother in law of the victim.^[6]

The antecedents as culled from the CA Decision and records of the case are summarized as follows:

Ernie D. Amahit (Ernie), son of the victim Olipio G. Amahit (Olipio), testified that in the afternoon of December 14, 2006, he went to their *nipa* hut after tending to their carabaos. When he was a few meters away, he saw accused-appellant enter the *nipa*

hut where his father was sleeping. Olipio was lying face down when accused-appellant stabbed him at the back with a *bolo* locally known as "*pinuti*." He heard his father shout for help while he watched accused-appellant stab the former several times. Accused-appellant then threatened to kill Ernie prompting him to run towards home to tell his mother about the incident.^[7]

For his part, accused-appellant alleged that at around 5:30 p.m. of December 14, 2006, while he was walking on the road on his way home, Olipio called and motioned him to come near him. Olipio then told accused-appellant about the banana plants that were uprooted. Accused appellant inquired as to the reason for Olipio's action, but the latter simply told him not to get angry otherwise he would kill him. When accused-appellant answered "no," Olipio pulled out his *bolo* and thrust it towards him. They wrestled for the *bolo* and when accused-appellant got hold of it, he stabbed Olipio. He narrated that Olipio was first hit in the stomach but when they continued to grapple with each other, he continued to stab the latter. Thereafter, accused-appellant went to the house of his cousin.^[8]

On October 28, 2015, the RTC rendered a Judgment^[9] finding accused-appellant guilty of Murder. It decreed:

WHEREFORE, premises considered, the prosecution having ably proven the guilt of accused RICO DE LA PEÑA for the crime of MURDER beyond reasonable doubt, he is hereby sentenced to RECLUSION PERPETUA with the accessory penalties of the law, and is ordered to pay the heirs of the victim the sum of P20,000.00 as actual damages, and P50,000.00 as death indemnity.

SO PROMULGATED IN OPEN COURT this 28th day of October, 2015 at Bais City, Philippines.^[10]

The RTC gave credence to the testimony of Ernie who actually saw appellant stab his father with a *pinuti* several times at his back while the latter was sleeping lying face down on the floor. According to the RTC, it is an act of treachery to the highest form when one attacks a person who was sleeping. It gives no chance to the victim to defend himself thereby ensuring the evil motive of killing the victim.^[11]

On appeal, the CA affirmed the conviction by the RTC:

WHEREFORE, the 28 October 2015 Decision of the Regional Trial Court (RTC), Branch 45, Bais City in Criminal Case No. 11-94-MY finding accused-appellant RICO DE LA PEÑA, guilty of Murder is AFFIRMED. With respect to the penalty of *reclusion perpetua* imposed upon him, accused-appellant shall be ineligible for parole pursuant to RA No. 9346. The accused-appellant is ordered to pay the heirs of the victim, P100,000.00 as civil indemnity, P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6%

per *annum* from the date of the finality of this Decision until fully paid.

With costs against accused-appellant.

SO ORDERED.^[12]

The CA concluded that the physical evidence presented including the location of the stab wounds contradict accused-appellant's claim that Olipio was the unlawful aggressor. The depth and seriousness of the wounds suffered by the victim prove that the stabbing blows were not inflicted by accused-appellant as a matter of defense but more to be taken as acts of aggression towards Olipio.^[13]

Hence, this appeal.

After a careful review of the records of the case and the issues submitted by the parties, the Court finds that the CA committed no error in concluding that accused-appellant is indeed guilty of the crime of Murder. The issues and matters before the Court are the same issues raised in the CA, there being no supplemental briefs filed. They were sufficiently addressed and correctly ruled upon by the CA.

First, it has been held that when the issue involves matters like credibility of witnesses, the calibration of their testimonies as well as the assessment of the probative weight thereof, findings of the trial court and its conclusions anchored on said findings are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to closely monitor the demeanor of witnesses during the trial and is in the best position to discern whether they are telling the truth.^[14] There being no showing that the RTC misconstrued or misapprehended any relevant fact in this case, the Court gives full respect to its findings and conclusion, which were sustained on appeal by the CA, supporting accused-appellant's conviction for Murder.

Second, credence is accorded to the testimony of Ernie, who positively identified accused-appellant as the one who stabbed his father. The alleged inconsistency between Ernie's affidavit and his testimony in open court does not affect his credibility as it does not detract from the fact that he saw and identified accused-appellant as the assailant of his father. Verily, a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken *ex parte* are generally considered to be inferior to the testimony given in open court.^[15]

Third, by invoking the justifying circumstance of self-defense, accused-appellant thus admits committing the acts constituting the crime for which he was charged and the burden of proof is on him to establish, by clear and convincing proof, that (1) there was unlawful aggression on the part of the victim; (2) the reasonable necessity of the means employed to prevent or repel it; and (3) the lack of sufficient provocation on the part of the person defending himself.^[16]

The prosecution's material witness, Ernie, clearly described how accused-appellant

stabbed his father to death. He recalled:

PROS. YBANEZ:

x x x x

Q: While approaching the said nipa hut was there any unusual incident that you observe or witness?

A: Yes.

Q: What is that unusual incident?

A: He stabbed my father.

Q: When you say he stabbed your father, who stabbed your father?

A: Referring to Rico.

Q: May we know the family name of this Rico?

A: Dela Peña.

Q: Is he inside this courtroom?

A: Yes.

Q: Can you please point to him.

A: (Witness pointing to a person who when asked of his name answered Rico Dela Peña).

Q: How far were you when you see this Rico Dela Peña stabbed you. father?

A: Just near.

x x x x

Q: And, when this Rico Dela Peña stabbed your father where was your father situated and what was he doing?

A: My father was asleep during that time.

Q: Where was he sleeping?

A: Inside the nipa hut.

Q: And, what was the position of your father while he was sleeping?

A: He was lying face down.

x x x x

Q: Can you recall how many times this Rico Dela Peña stabbed your father?

A: Many times.

x x x x

Q: And, what weapon did Rico Dela Peña use in stabbing your father?

A: A long bolo locally known as "*pinuti*".

Q: The first time that your father was stabbed by Rico [,] what happened to your father?

A: My father shouted.

Q: And, can you remember what was the shout of your father?

A: He shouted for help.

Q: And, what did you do after seeing that your father was stabbed by Rico?

A: I was just watching.

Q: You said a while ago that your father was stabbed by Rico many times. After that what happened if any?

A: He said that he will include us.

Q: After hearing this, what did you do?

A: We ran away.^[17] (Emphasis supplied.)

This narration was corroborated by the result of the Post-Mortem Examination^[18] showing that Olipio sustained several wounds on his back, to wit:

Location	Findings
Right upper chest.	Five inches long, diagonal anterior ribs open to four inches long, heart and other internal organs can be seen through the wound.
Along anterior axillary line or three inches below the nipple.	Two inches long, vertical, deep and penetrating.
Anterior side of the right forearm.	Cutting up to subcutaneous tissue.
Below right scapula	Five inches long with one inch abrasion tail, widely gaping, width about two inches, posterior ribs open to two inches long, deep and penetrating.
Above left iliac crest along posterior axillary line.	Four inches long, vertical, deep, large intestine partly herniated.
V-shaped wound on the posterior side of left thumb.	Cutting tissue up to muscles.
One inch below shoulder blade.	Four inches long, deep reaching muscles.
Along right posterior axillary line.	One inch long, superficial.
Posterior side of Right forearm.	Horizontal, two inches long, reaching muscles and tendon.
Posterior side of hand.	$\frac{3}{4}$ inch long diagonal, cutting up to