

## THIRD DIVISION

[ G.R. No. 220721, December 10, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NADY  
MAGALLANO, JR. Y FLORES AND ROMEO TAPAR Y CASTRO,  
ACCUSED-APPELLANTS.**

### DECISION

**LEONEN, J.:**

"The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part."<sup>[1]</sup> For treachery to be appreciated as a qualifying circumstance, two (2) things must be proven: (1) that during the attack, the victim could not have defended himself or herself from the offender; and (2) that the offender deliberately chose a form of attack which would render him or her immune from risk or retaliation by the victim.<sup>[2]</sup>

For this Court's resolution is an Ordinary Appeal from the December 12, 2014 Decision<sup>[3]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 06160, which affirmed the conviction of Nady F. Magallano, Jr. (Magallano) and Romeo C. Tapar (Tapar) for the crime of murder.

In an Information, Magallano and Tapar were charged with murder punished under Article 248 of the Revised Penal Code:

The undersigned Asst. Provincial Prosecutor accuses Nady Magallano [Jr.] y Flores and Romeo Tapar y Castro of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, as amended by RA 7659, committed as follows:

That on or about the 1<sup>st</sup> day of October 2005, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the [abovenamed] accused, armed with a hard object and bladed weapon and with intent to kill one [1] Ronnie Batongbakal with evident premeditation[,] treachery[,] and conspiring with each other, did then and there willfully, unlawfully, and feloniously attack[,] assault, hit with a hard object[,] and stab with the said bladed weapon they were then provided (sic) the said Ronnie Batongbakal, hitting the latter in different parts of his body, thereby inflicting upon him serious physical injuries which directly caused his death.

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

Magallano and Tapar, assisted by counsel, pleaded not guilty to the crime charged against them. Pre-trial and trial soon followed.<sup>[5]</sup>

The prosecution presented three (3) witnesses: (1) Rogelio Batongbakal (Rogelio); (2) Dr. Edgar S. Ernie (Dr. Ernie); and (3) Miguel Angelo Pineda, Jr. (Pineda).<sup>[6]</sup>

Pineda testified that at around 1:00 a.m. of October 1, 2005, he was at home sleeping beside his wife when loud voices outside roused him from sleep. He then heard a woman shout, "*Romy, bakit mo s[i]ya sinasaktan, inaano ba kayo[?]*"<sup>[7]</sup>

Pineda peeked through his window and saw two (2) men, whom he later identified as Magallano and Tapar, ganging up on Ronnie Batongbakal (Batongbakal), who was by then lying on the ground. He testified that he saw Magallano repeatedly strike Batongbakal with a "*dos por dos*," while Tapar watched.<sup>[8]</sup>

As Magallano was hitting Batongbakal, a woman suddenly bolted from the fray. Magallano and Tapar then jumped inside a tricycle and chased the woman. By then, a still-conscious Batongbakal began to crawl slowly towards a gate.<sup>[9]</sup>

Magallano and Tapar returned after a few minutes carrying several stones, each about a volleyball's size. Magallano threw the stones on Batongbakal's head and body, while Tapar prevented him from crawling away.<sup>[10]</sup>

Pineda attested that he wanted to help Batongbakal, but his wife stopped him out of fear. He then shouted at Magallano and Tapar, but his wife covered his mouth to muffle his voice. However, Magallano and Tapar still heard him, so they stopped attacking Batongbakal, loaded him into the tricycle, and sped off towards Poblacion.<sup>[11]</sup>

Pineda testified that he knew Magallano and Tapar since they both worked at the nearby National Food Authority warehouse. He also stated that the street outside their house, where Batongbakal was mauled, was well-lit by a streetlight, and that there was a second streetlight near his house.<sup>[12]</sup>

Pineda explained that he did not immediately give his statement to the police officers because the day after the incident, he was informed by a police officer that a woman had already given her statement; thus, his statement was no longer needed.<sup>[13]</sup>

The prosecution dispensed with the testimony of Rogelio, Batongbakal's father, after both parties stipulated that before his death, Batongbakal worked as a tricycle driver and earned around P200.00 to P300.00 per day. They also stipulated that Rogelio spent P60,000.00 on his son's wake and funeral expenses.<sup>[14]</sup>

The prosecution also dispensed with the testimony of Dr. Ernie, a Municipal Health Officer of San Miguel, Bulacan, who was presented as an expert witness. Both parties stipulated that Dr. Ernie examined Batongbakal and signed his Postmortem Certificate. They also stipulated that Dr. Ernie concluded that Batongbakal died due to a skull fracture caused by a heavy blow to the head, and that he had multiple stab wounds.<sup>[15]</sup>

For its part, the defense presented the testimonies of Tapar and Magallano, and their employers, Edgar Valdez and Monette Valdez.<sup>[16]</sup> Lourdes Bonus was also

presented as a witness, but her testimony was stricken out for lack of cross-examination.<sup>[17]</sup>

Tapar testified that he worked the whole day of September 30, 2005 and went home directly after his shift, arriving at his house in Sta. Rita, San Miguel, Bulacan at around 5:10 p.m. He rested, ate dinner, and fell asleep at about 10:00 p.m.<sup>[18]</sup>

At about 6:30a.m. the following day, Tapar claimed that police officers woke him up, saying a certain Cristina accused him of killing someone. They then ordered him to come with them to the municipal hall.<sup>[19]</sup>

There, Tapar repeatedly proclaimed his innocence, but nobody believed him and he was beaten up. The police officers pressed him to tell them where he threw the victim's body, but he denied doing this, let alone killing anybody.<sup>[20]</sup>

Tapar admitted knowing Magallano since they both worked at the National Food Authority, but denied being with him in the early morning of October 1, 2005 since he was home at that time and the night before.<sup>[21]</sup>

For his part, Magallano testified that on October 1, 2005, he was at Tyson Plant in Barangay Guyong, Sta. Maria, Bulacan with his brother and their helper, waiting for their truck to be loaded with feeds. While he was at Tyson Plant, Nardo Varilla Santos (Nardo), the brother of his former common-law wife Cristina Santos (Santos), borrowed money because he supposedly ran into an accident with Batongbakal. Magallano gave money to Nardo, who then hurriedly left for Lucena City.<sup>[22]</sup>

On July 3, 2006, while Magallano was sleeping at a garage in Sta. Maria, Bulacan, two (2) police officers shot him on his thigh. They said that Santos pointed to him as Batongbakal's killer. They brought him to the police station for questioning and treated his gunshot wound.<sup>[23]</sup>

During trial, Magallano denied knowing Batongbakal, much more killing him. He claimed that Santos falsely accused him of murder to get back at him since he had custody of their three (3) children. However, he could not explain why Pineda would point to him as Batongbakal's killer.<sup>[24]</sup>

Both Edgar Valdez and Monet Valdez testified that Magallano worked as their truck driver at the time of the incident. However, they both admitted that they could not remember if Magallano was deployed to deliver cargo on October 1, 2005.<sup>[25]</sup>

In its May 3, 2013 Decision,<sup>[26]</sup> the Regional Trial Court found Magallano and Tapar guilty of murder. They were sentenced to suffer the penalty of *reclusion perpetua* and were ordered to indemnify Batongbakal's heirs.

The Regional Trial Court gave much weight to Pineda's testimony pointing to Magallano and Tapar as Batongbakal's killers. It found Pineda's testimony to be "straightforward, credible[,] and consistent."<sup>[27]</sup> Additionally, the Regional Trial Court found that his testimony was backed by the medicolegal officer's findings on the location of Batongbakal's injuries. Moreover, it found no improper motive on

Pineda's part that would motivate him to concoct tales against them.<sup>[28]</sup>

The dispositive portion of the Regional Trial Court May 3, 2013 Decision read:

**WHEREFORE**, the foregoing considered, this Court hereby finds accused Nady Magallano[, Jr.] y Flores and Romeo Tapar y Castro **GUILTY** of the crime of Murder penalized under the provisions of Art. 248 of the Revised Penal Code. Accordingly, they are hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** and to indemnify the heirs of Ronnie Batongbakal: a. P75,000.00 as civil indemnity for his death; b. P50,000.00 as moral damages; and c. P60,000.00 representing the funeral and burial expenses incurred by the family.

In the service of their sentence, accused who are detention prisoners shall be credited with the entire period they have undergone preventive imprisonment.

**SO ORDERED.**<sup>[29]</sup> (Emphasis in the original)

Magallano<sup>[30]</sup> and Tapar<sup>[31]</sup> filed separate Appeal Briefs before the Court of Appeals.

In his Appeal Brief, Magallano dwelt on the supposed inconsistencies<sup>[32]</sup> in Pineda's testimony. He insinuated that the prosecution, after failing to produce its principal witness, belatedly brought Pineda as a witness and merely manufactured his testimony.<sup>[33]</sup> He further posited that the prosecution failed to prove the elements of murder, particularly treachery and conspiracy.<sup>[34]</sup>

Tapar also stressed in his Appeal Brief that Pineda's testimony contained "serious inconsistencies and contradictions[.]"<sup>[35]</sup> He pointed out that Pineda's late revelation to police investigators that he witnessed the attack on Batongbakal was contrary to human nature, since the natural tendency is to immediately disclose what one knew.<sup>[36]</sup>

For its part, the Office of the Solicitor General<sup>[37]</sup> maintained that the prosecution proved beyond reasonable doubt that Magallano and Tapar conspired to kill and actually killed Batongbakal.<sup>[38]</sup> It emphasized that the Regional Trial Court's ruling that Pineda was a credible witness should be respected by the Court of Appeals since it was the trial court that personally observed Pimentel's demeanor as a witness. It further pointed out that the supposed inconsistencies adverted to by Magallano and Tapar focused on collateral matters that had no bearing on the nature of the offense.<sup>[39]</sup>

The Office of the Solicitor General also underscored that Pineda's failure to immediately execute a sworn testimony did not detract from his credibility. It likewise stated that Magallano and Tapar failed to allege that Pineda had an improper motive to testify against them.<sup>[40]</sup>

In its December 12, 2014 Decision,<sup>[41]</sup> the Court of Appeals upheld the findings of the Regional Trial Court.

The Court of Appeals gave much weight to the Regional Trial Court's assessment of Pineda's testimony, justifying that the trial court had a front row seat in observing him and his demeanor while testifying. Hence, it "can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve."<sup>[42]</sup>

As for Pineda's late submission of his sworn statement and failure to aid the victim, the Court of Appeals again concurred with the Regional Trial Court's ruling, and affirmed that different people react differently. Moreover, it held that there was no standard response to a strange or frightening experience such as witnessing a murder. It pointed out that since Pineda explained his delay in reporting the crime to law enforcers, he remained a credible witness.<sup>[43]</sup>

Moreover, the Court of Appeals stated that Magallano and Tapar's defense of denial and alibi crumbled in light of Pineda's categorical and straightforward testimony pointing to them as Batongbakal's killers.<sup>[44]</sup>

The Court of Appeals further upheld the Regional Trial Court's findings that Magallano and Tapar conspired to kill Batongbakal, and that treachery attended his killing.<sup>[45]</sup>

The dispositive portion of the Court of Appeals Decision read:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 3 May 2013 of the Regional Trial Court of Malolos[, ] Bulacan, Branch 78 in Criminal Case No. 89-M-2006 is hereby **AFFIRMED** with **MODIFICATIONS** in so far as exemplary damages in the amount of P30,000.00 is **AWARDED**. All damages awarded herein shall earn interest at the rate of 6% per annum from date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>[46]</sup> (Emphasis in the original)

On January 12, 2015, Magallano and Tapar filed a Notice of Appeal.<sup>[47]</sup>

On October 21, 2015, the Court of Appeals elevated the case records to this Court.<sup>[48]</sup>

This Court, in its December 9, 2015 Resolution,<sup>[49]</sup> noted the records forwarded by the Court of Appeals. It required accused-appellants Nady F. Magallano, Jr. and Romeo C. Tapar, and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, to submit their supplemental briefs. Both parties manifested that they would no longer file supplemental briefs.<sup>[50]</sup>

The sole issue for this Court's resolution is whether or not the prosecution proved accused-appellants' guilt for murder beyond reasonable doubt.

## I

Trial courts have the advantage of personally scrutinizing the conduct and attitude of witnesses when giving their testimonies. Thus, "assignment of values to the