

## THIRD DIVISION

[ G.R. No. 218205, July 05, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARCIAL D. PULGO, ACCUSED-APPELLANT.**

### DECISION

**TIJAM, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated October 28, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01494, which affirmed accused-appellant Marcial D. Pulgo's conviction for Murder as rendered by the Regional Trial Court (RTC) of Cebu City, Branch 18, in its Judgment<sup>[2]</sup> dated February 20, 2012 in Criminal Case No. CBU-82443.

#### The Antecedents

In an Information dated October 24, 2007, accused-appellant was charged with murder committed as follows:

That on or about the 21<sup>st</sup> day of July 2007 at about 5:00 in the afternoon, at Barangay Lorega, San Miguel, Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and stab one ROMEO S. LAMBO, with the use of a bladed weapon, hitting the latter on his abdomen, which caused his death thereafter.<sup>[3]</sup>

When arraigned, accused-appellant entered a plea of not guilty. After the pre-trial conference, trial on the merits ensued.

According to the prosecution, at around 5:00 p.m. on July 21, 2007, Aurelio Sindangan (Aurelio) was standing at Lorega, San Miguel, Cebu City, when his cousin, Romeo Lambo (Romeo), approached him, asking to be accompanied to a certain place. As he stood side by side with Romeo, accused-appellant suddenly pulled out a knife and stabbed Romeo on his side. Shocked by the sudden turn of events, Aurelio was not able to make any move. Romeo managed to run away but accused-appellant chased him. Aurelio himself chased accused-appellant, throwing an empty bottle at him but failing to hit him. After the incident, Aurelio went home without knowing where accused-appellant went. Summoned by a neighbor to verify whether it was her husband who had been stabbed by a certain Shalou, Romeo's wife, Rosalia Lambo, rushed outside and found Shalou standing on the street. She immediately proceeded to the hospital where her husband had been brought and where he eventually expired.<sup>[4]</sup>

Accused-appellant denied any involvement in the stabbing. He claimed that he was

with his mother, Violeta Pulgo (Violeta), in Moalboal, Cebu at about 4:00 p.m. of July 21, 2007, to buy a goat from his aunt for their fiesta, and at around 5:30 p.m., he was surprised to receive a call from his brother, Rosvil Pulgo (Rosvil) in Lorega, informing him that Romeo had been stabbed and that he was the prime suspect. His *alibi* was corroborated in its material points by Violeta and Rosvil.<sup>[5]</sup> He stayed in Moalboal for about a year before returning in Lorega to clear his name. He was, however, arrested upon reaching Lorega.<sup>[6]</sup>

Giving credence to Aurelio's testimony and positive identification of accused-appellant as the assailant, the RTC rendered its Judgment<sup>[7]</sup> dated February 20, 2012, the dispositive portion of which reads:

WHEREFORE, on the basis of all the foregoing consideration, judgment is rendered finding accused Marcial Pulgo GUILTY of the crime of Murder by treachery penalized under Article 248<sup>[8]</sup> of the Revised Penal Code and hereby sentences him to *reclusion perpetua* with all its accessory penalties.

He is likewise directed to pay the heirs of the victim Romeo Lambo the amount of Seventy Five Thousand Pesos (P75,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages.

SO ORDERED.<sup>[9]</sup>

Dissatisfied with the RTC's Judgment, accused-appellant elevated the case to the CA.

On October 28, 2014, the CA rendered the assailed Decision<sup>[10]</sup> affirming the RTC's Judgment with modification in the award of damages. The dispositive portion of the Decision reads:

**WHEREFORE**, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated February 20, 2012, of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 18, Cebu City, in Criminal Case No. CBU-82443, finding accused-appellant Marcial D. Pulgo guilty beyond reasonable doubt of the crime of Murder is **AFFIRMED with MODIFICATION** in that the heirs of Romeo Lambo are entitled to the award of **Php75,000.00** as civil indemnity, moral damages increased to **Php75,000.00**, **Php30,000.00** as exemplary damages and **Php25,000.00** as temperate damages.

All damages shall be subject to interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>[11]</sup>

### **The Court's Ruling**

The appeal has no merit.

We sustain the RTC's assessment of the credibility of the prosecution's eyewitness, as affirmed by the CA.

It is jurisprudentially settled that when the credibility of the eyewitness is at issue, due deference and respect shall be given to the findings of the trial court, its calibration of the testimonies, its assessment of the probative weight thereof, and its conclusions anchored on said findings, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.<sup>[12]</sup> This is so because the trial court has the unique opportunity to observe the demeanor, conduct and attitude of witnesses under grueling examination.<sup>[13]</sup> 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.<sup>[14]</sup> Hence, it is a settled rule that appellate courts will not overturn the factual findings of the trial court unless there is a showing that the latter overlooked facts or circumstances of weight and substance that would affect the result of the case. The foregoing rule finds an even more stringent application where the findings of the RTC are sustained by the CA.<sup>[15]</sup>

Under oath, eyewitness Aurelio positively and unequivocally identified accused-appellant as Romeo's assailant. As the CA found, Aurelio was candid, unambiguous and categorical in declaring that while he was with Romeo, he saw accused-appellant suddenly pull out a knife and immediately stab the victim, viz.:

Direct examination

x x x x

FISCAL MACABAYA

Q: Mr. Witness, on July 21, 2007 at around 5:00 o'clock in the afternoon, do you still recall where were you? [sic]

A: I was standing at Lorega, San Miguel, Cebu City.

Q: While standing at said place, what happened next?

A: I was approached by my cousin.

Q: What is the name of your cousin?

A: Romeo Lambo.

Q: Why did he approach you?

A: He requested me to accompany him to a certain place.

Q: What place Mr. Witness?

A: He did not mention the place, sir but he just invited me to go with him to a certain place.

**Q: While with your cousin Romeo Lambo, what happened next?**

**A: We met Marcial Pulgo, sir.**

**Q: Then what happened next?**

**A: Marcial Pulgo pulled something and immediately stabbed.**

**Q: Who was the person that was stabbed by Marcial Pulgo?**

**A: It was Romeo Lambo.**

**Q: What instrument did he use in stabbing the victim?**

**A: Somewhat Rambo knife, sir.**

**Q: How did he stab the victim?**

**A: He just suddenly stabbed the victim, sir.**

**Q: Was the victim hit?**

**A: Yes.**

**Q: Which part of the body?**

**A: On his side, sir.**

**Q: Then after Marcial Pulgo stabbed the victim what happened next?**

**A: I did nothing, sir because the incident was so sudden.**

**Q: What happened to the victim?**

**A: After Marcial Pulgo stabbed the victim, the victim runaway [sic] and then Marcial Pulgo chased the victim and then myself chased Marcial Pulgo and throw an empty bottle and then Marcial Pulgo turned left.**

**Q: Why did you throw Marcial Pulgo with the bottle? [sic]**

**A: That was my immediate reaction in order that my cousin would not be stabbed again.**

**Q: Were you able to hit Marcial Pulgo?**

**A: He was not hit, sir.**

**Q: Why?**

**A: He was not hit because he was able to turn left.**

x x x x

**Q: You mentioned that Marcial Pulgo stabbed the victim herein, if you will be able to see Marcial Pulgo will you be able to identify him?**

**A: Yes, sir.**

**Q: Kindly look around and please tell the Honorable Court if he is present in the courtroom now?**

**A: He is around.**

**Q: Can you pinpoint to this person?**

**A: Yes.**

**Q: Kindly step down from that witness stand and kindly point to him?**

**A: Yes.**

INTERPRETER:

The Witness step [sic] down from the witness stand and approach [sic] the accused row and pointed to a person who stood up and identified himself as Marcial Pulgo.<sup>[16]</sup> (Emphasis ours)

Accused-appellant, however, argues that Aurelio's testimony cannot be given credence because it allegedly suffers from a glaring inconsistency. Accused-appellant asserts that while Aurelio initially testified that he saw accused-appellant stab the right side of the victim's body, he later demonstrated, while under cross-examination, that it was the left side of the victim's body that was stabbed by accused-appellant.<sup>[17]</sup>

The argument is unavailing. The inconsistency cited by accused-appellant refers to a minor detail which will not impinge on the integrity of Aurelio's testimony in its material whole.<sup>[18]</sup>

As this Court consistently held, inconsistencies on minor details do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant.<sup>[19]</sup> Such inconsistencies reinforce rather than weaken credibility.<sup>[20]</sup> What is vital is that Aurelio was unwavering and consistent in identifying accused-appellant as Romeo's assailant.<sup>[21]</sup>

Thus, in *People v. Galvez*,<sup>[22]</sup> this Court held:

It may be noted that while Danilo Julia and Loreto Palad testified that Romen Castro had been stabbed on the right side of his back, the autopsy report stated that the stab wound was located at the left lumbar area of the victim. This single lapse on a minor detail cannot, however, undermine the credibility of these prosecution witnesses. Inconsistencies in the testimonies of prosecution witnesses are not an uncommon event, and acquittals have resulted in cases where the inconsistencies and self-contradictions dealt with material points as to altogether erode the witnesses' credibility. But when such inconsistencies are minor in character, not only do they not detract from the credibility of the witnesses but they in fact enhance it for they erase any suggestion of a rehearsed testimony.

x x x Their mistake concerning the location of the stab wound does not mean that they did not actually see the stabbing incident. Such mistake may be attributed more to the fickleness of human memory than to any attempt of the prosecution witnesses to perjure themselves.<sup>[23]</sup>

Furthermore, there is no evidence to show any dubious or improper motive on Aurelio's part to falsely testify against accused-appellant.<sup>[24]</sup> It is settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.<sup>[25]</sup>

To convict an accused for murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any