

THIRD DIVISION

[G.R. No. 210616, November 25, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE
SALIBAD Y DILO, ACCUSED-APPELLANT.**

D E C I S I O N

VILLARAMA, JR., J.:

On appeal is the Decision^[1] dated June 25, 2013 of the Court of Appeals (CA) in CA-G.R. CR HC No. 05247 convicting accused-appellant Eddie Salibad y Dilo of the crime of murder.

We state the antecedents based on the findings of the lower courts hereunder quoted:

Appellant was indicted for Murder in an Amended Information^[2] dated October 3, 2008, the accusatory portion of which reads:

"That on or about the 1st day of June 2008, at Lepanto, Municipality of Mankayan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with deliberate intent to kill, using an unlicensed caliber .45 firearm, did then and there willfully, unlawfully and feloniously shoot one RAYMUNDO DACUYAN Y CABANNAG thereby inflicting a gunshot wound on his abdomen that caused his death, to the damage and prejudice of the heirs of RAYMUNDO DACUYAN Y CABANNAG.

That in the commission of the crime, the qualifying aggravating circumstance of use of unlicensed firearm is present. The qualifying circumstance of treachery is also present because the attack was so sudden and without any provocation on the part of the victim thereby making him totally defenseless and ensuring no risk on the part of the accused.

CONTRARY TO LAW."

During the arraignment on October 7, 2008, appellant pleaded "not guilty" to the crime charged. Pre-trial conference was terminated on January 13, 2009. Thereafter, trial on the merits ensued.

The evidence for the prosecution as summarized in the People's Brief are hereby adopted as follows:

"On June 1, 2008, at about 2:00 in the afternoon, Manuel Binwag (Manuel) and Diego Aclibon (Diego) went to the 1030 level of the mine site of Lepanto Mining Company at Paco, Mankayan, Benguet and asked permission from Raymundo Dacuyan (Raymundo), the security guard of the place, to allow them to dig scrap iron near the river. Raymundo allowed them to dig but only until 3:00 in the afternoon. They collected scrap iron until Raymundo ordered them to stop at about 3:30 in the afternoon. After talking to them, Raymundo turned around to go back to his post. At that moment, appellant Eddie Salibad [accused-appellant] suddenly appeared in front of Raymundo and instantaneously shot him hitting him in the middle right portion of his abdomen. Raymundo was able to prevent a second shot from being fired at him but fell to the ground in that instant. The second shot hit the wall. Manuel and Diego ran away after they saw Raymundo fall down. While running, they heard another gunshot. Manuel and Diego were only about thirty (30) feet^[3] x x x from where the shooting incident occurred.

Acting on a text message forwarded by the Chief of Police of Mankayan Police Station that a man with a gun was running down the UCCP Compound, Aurora St., Mankayan, Benguet, two (2) teams were immediately formed and dispatched by SPO3 Oliver Paleng (SPO3 Paleng) in response to the said report. Before the teams could leave the police station, a certain Myrick Campos (Myrick) arrived and informed them that his brother-in-law stole his gun from him. Together with Myrick, the team of PO1 Robert Velasco (PO1 Velasco) reached San Roque, Paco, Mankayan, Benguet at about 4:00 in the afternoon and waited for the person described in the message. At about 4:45, the team saw a person with an object bulging on his waist walking towards them. The said person - who turned out to be [accused appellant] - was identified by Myrick as his brother-in-law who took his gun. The police officers then frisked appellant and found the gun on his waist, with two (2) live ammunitions in the magazine and one (1) empty shell in his pants pocket. [Accused-appellant] was brought to the police station and the confiscated gun, ammunitions and empty shells were marked and brought to the crime laboratory for examination. It was subsequently confirmed that [accused-appellant] was not a licensed or registered firearm holder.

Meanwhile, the lifeless body of Raymundo was brought to the Lepanto Chapel where an autopsy was conducted on June 3, 2008 by Dr. Jaime Rodrigo Leal (Dr. Leal) of the PNP Crime Laboratory upon the request of the Mankayan Police Station. Dr. Leal found that Raymundo sustained one gunshot [wound] at the right upper quadrant of the abdomen; that the bullet penetrated the abdomen but did not make an exit; and that the bullet was recovered at the level of the tenth thoracic vertebra. It was concluded that the cause of Raymundo's

death was bleeding secondary to the gunshot injury."

Appellant presented a different version of the events, to wit:

"On June 1, 2008, Eddie Salibad was at a drinking place known as 'Uwaynasdi' with his cousin and brother. They spent most of the day imbibing bottles of 4x4 and 2x2 from nine o'clock in the morning (9:00 am) until two o'clock in the afternoon (2:00 p.m.); the hour when the curfew or ban against drinking alcohol takes effect. Salibad and his companions left the drinking place to go to the Plaza but along the way, three (3) men blocked the path of his younger brother. In an attempt to diffuse the situation and prevent the possible mauling of his brother, Salibad tried to pacify the men only to receive some punches and be mauled himself. He suffered a black eye from the encounter. He went to the Municipal Hall to report the incident but instead of being assisted by the police, he was again boxed and physically maltreated by a police officer. So, he went to his camp in Mankayan where he took his gun intent on protecting himself as he walked his way home to Cabiten.

He ha[d] not gone far when someone came and chased him. Fearing for his life, he fled. He intended to go to Aurora but did not know the way so he took the route going down to the river and followed the river's flow. It Was this path that lead him to the compound of Lepanto where the security guard, Raymundo Dacuyan, stood sentry at the portal of 1030 Level. Salibad sought permission from the guard that he be allowed to enter the compound but the latter forbade him. Determined to go home via San Roque, he went about his way passing through the portal and approaching the guard. The latter grabbed his hand in an attempt to get his gun that was, at that time, tucked on his back right underneath his white shirt. To prevent losing his only source of protection, Salibad turned his back away and face[d] the guard. He held on to the gun but the guard stopped his move by clasping his hand that was holding the firearm. They began to grapple and fight for the possession of the weapon. At this point, their brawl caused the gun to get cocked and when Salibad inadvertently pulled the trigger, the gun went off. The first shot did not hit anyone. They continued to fight and for the second time, the gun was cocked, the trigger pulled and a second shot was fired.

Somehow, the guard was able to press the release button and [the] gun's magazine fell on the ground. But the fighting ensued and for the third time, the gun went off. By this time, Salibad's fear was overwhelming and so at the first chance of escape, he took the gun and ran towards what he perceived as the way home. At San Roque, by the waiting shed, he was approached by several men who introduced themselves as police officers. He was frisked and his gun was confiscated

together with the empty shell found in his pocket and the magazine with three (3) bullets. They took him up a mountain and in the woods, they mauled him until he lost consciousness. When he woke up, he was a[t] the police station.

The accused admitted that he did not have a license to carry or to possess a firearm. He, however, denied having shot the deceased guard and of seeing and knowing any of the witnesses who positively identified him, namely[:] Manuel Binwag and Diego Aclibon. When [asked] why he did not report the incident to any authorities, the accused expressed his fear of the policemen who boxed him and threatened to silence him."

After trial on the merits, the trial court rendered a Judgment^[4] dated May 18, 2011, the dispositive portion of which reads:

"WHEREFORE, the court finds the Accused, guilty beyond reasonable doubt of the crime of murder. He is hereby sentenced to suffer *Reclusion Perpetua*.

On the civil aspect of the case, the Accused is hereby ordered to pay the Heirs of the victim Raymundo Dacuyan, represented by his widow, Tomasa Dacuyan, the amount of One Hundred [Thousand] (P100,000.00) Pesos, as actual damages and One Hundred Thousand (P100,000.00) Pesos, as moral damages.

SO ORDERED."

Upon appellant's motion, the trial court rendered the assailed Amended Judgment dated June 16, 2011 x x x.^[5]

The dispositive portion of the RTC Amended Judgment^[6] reads:

WHEREFORE, the Court finds the Accused, guilty beyond reasonable doubt of the crime of Murder. He is hereby sentenced to suffer *Reclusion Perpetua*.

On the civil aspect of the case, the Accused is hereby ordered to pay the Heirs of the victim Raymundo Dacuyan, represented by his widow, Tomasa Dacuyan, the amount of One Hundred Sixty[-]Two Thousand Five Hundred Sixty[-]Four (P162,564.00) Pesos, as actual damages and One Hundred Thousand (P100,000.00) Pesos, as moral damages.

SO ORDERED.^[7]

Accused-appellant filed an appeal before the CA which affirmed the RTC Decision convicting accused-appellant and giving credence to the testimonies of Manuel Bin

wag (Manuel) and Diego Aclibon (Diego) who saw the killing of Raymundo. The CA pointed out that accused-appellant was validly arrested without a warrant and that the search incidental thereto was lawful. More, the CA ruled that accused-appellant could not question his arrest at that point as failure to question the validity of an arrest before entering a plea constitutes a waiver thereof. The CA lowered the moral damages awarded from P100,000.00^[8] to P50,000.00 and awarded temperate damages in the amount of P25,000.00 in lieu of actual damages for failure of the prosecution to present receipts as proof of actual damages. The CA also awarded the additional amounts of P75,000.00 as civil indemnity and P30,000.00 as exemplary damages. The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Amended Judgment dated June 16, 2011 in Criminal Case No. 555-CR-08 is hereby **AFFIRMED with MODIFICATION**. Appellant Eddie Salibad y Dilo is hereby ordered to indemnify the heirs of Raymundo Dacuyan y Cabannag the amounts of (a) P75,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P30,000.00 as exemplary damages; and (d) P25,000.00, as actual damages,^[9] all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

SO ORDERED.^[10]

Hence, this appeal.

The issues raised for the consideration of the Court are:

1. Whether the testimony of prosecution witnesses Manuel and Diego that accused-appellant killed the victim, employing treachery, was sufficient for a conviction of murder.
2. Whether there is a need to present the firearm itself for the appreciation of the special aggravating circumstance of the use of an unlicensed firearm; and
3. Whether the amounts of civil indemnity and damages awarded were proper.

We affirm accused-appellant's conviction.

Accused-appellant is guilty of murder.

The elements of murder are: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of *any* of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code, as amended; (4) the killing neither constitutes parricide or infanticide.^[11]

In this case, Raymundo was killed and it was established by the prosecution, through the testimony of eyewitnesses Manuel and Diego and that accused-