

SECOND DIVISION

[G.R. No. 184050, May 08, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
BIENVENIDO MARA Y BOLAQUEÑA ALIAS "LOLOY," ACCUSED-
APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

This is an appeal from the Decision dated December 19, 2007^[1] in CA-G.R. CR-H.C. No. 00163 of the Court of Appeals (CA), which affirmed the Decision dated July 16, 2002^[2] in Criminal Case No. 9594-99 of the Regional Trial Court (RTC), Branch 8 in Malaybalay City.

Accused-appellant was charged in an information dated March 29, 1999, which reads:

That on or about the 27th day of February 1999, in the evening, at CMU, Musuan, [M]unicipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill by means of treachery and evident premeditation with the use of a sharp bladed instrument with which he was conveniently provided, did then and there willfully, unlawfully and criminally attack, assault and hack GAUDENCIO PERATER, mortally wounding the latter which injury caused the instantaneous death of GAUDENCIO PERATER; to the damage and prejudice of the legal heirs of GAUDENCIO PERATER in such amount as may be allowed by law.

CONTRARY TO and in violation of Article 248 of the Revised Penal Code, as amended by R.A. 7659.^[3]

On July 16, 2002, the trial court found accused-appellant guilty of murder, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the court finds the accused Bienvenido Mara y [Bolaqueña] guilty beyond reasonable doubt of the crime of murder. Accused is hereby sentenced to the penalty of reclusion perpetua. Accused is ordered to indemnify the heirs of Gaudencio Perater the amount of Seventy Five Thousand (P75,000.00) Pesos; and further to pay Twenty Six Thousand and Four Hundred (P26,400.00) Pesos as actual expenses and to pay the costs.

The accused is hereby given full credit for his preventive detention.

SO ORDERED.^[4]

Accused-appellant filed a Notice of Appeal dated August 2, 2002, from the aforementioned decision to this Court. The case was transferred to the CA in a resolution dated September 20, 2004, following the ruling in *People v. Mateo*.^[5]

The CA modified the trial court's decision, the dispositive portion of which reads:

WHEREFORE, the appealed Decision finding appellant Bienvenido Mara y Bolaqueña guilty of the crime of Murder, and to suffer the penalty of *Reclusion perpetua*, is hereby **AFFIRMED, WITH THE MODIFICATION** that appellant is directed to pay the heirs of the victim the following amounts: P 50,000.00 as civil indemnity; P 26,400.00 as actual damages; P 50,000.00 as moral damages, and; P 25,000.00 as exemplary damages.

SO ORDERED.^[6]

The Facts

The facts, as found by the RTC and reaffirmed by the CA, were culled from the testimonies of witnesses Marcelino Balos and his nephew, Ramel Balos. Marcelina Perater, widow of Gaudencio Perater, the victim, was presented to prove the amount of actual damages from burial expenses.

Marcelino testified that the victim and accused-appellant were among the visitors in his house on February 27, 1999. He said they were seated at the table, he being seated at the right side of the victim, and a certain Mario Mara seated at the left side of the victim, when suddenly accused-appellant hacked the victim on the right side of his neck with a bolo. Marcelino wrested the bolo from accused-appellant and gave it to his wife. He also testified that there were no words exchanged between accused-appellant and the victim prior to the attack.

Ramel testified that he was in the house of his uncle on the night of February 27, 1999 along with several other guests to celebrate his birthday. He confirmed that Mario was seated at the left side of the victim and his uncle at the victim's right side. He testified that accused-appellant had been going in and out of the house. Ramel stated that he heard a snapping sound and when he looked, he saw accused-appellant holding a bolo, and the sound was the hacking done by accused-appellant on the victim's neck. Ramel then saw his uncle take away the bolo from accused-appellant.

In his defense, accused-appellant states that the trial court erred in appreciating the qualifying circumstance of treachery, and reiterates that he acted in self-defense.

As to his version of events, accused-appellant claimed he had been drinking with Marcelino and Ramel when the victim arrived and asked where Mario, brother of accused-appellant, was. When accused-appellant replied that he had not yet returned from work, the victim then told him, "This is your yard, are you going to side with your elder brother [referring to Mario] whose teeth I have broken?" The victim then pulled a knife and pointed to accused-appellant and his companions, saying, "Who among you here is offended, let him stand." Ramel then punched the victim, knocking him down. Marcelino then ran to the kitchen, telling the victim, "So you want killing?" and got hold of a bolo. Accused-appellant then grappled with