

SECOND DIVISION

[G.R. No. 233205, June 26, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO2
EDGARDO MENIL Y BONGKIT, ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J:

Before the Court is an appeal^[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision^[2] dated April 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01266-MIN, which affirmed the Judgment^[3] dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City (RTC) in Criminal Case No. 6048, finding herein accused-appellant SPO2 Edgardo Menil y Bongkit (Menil) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Menil was charged with the crime of Murder under the following Information:^[4]

That at or about 1:30 o'clock in the morning of December 28, 1993 at the ground floor of Sing-Sing Garden and Restaurant, Villanueva Street, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, by means of force and violence and with treachery and evident premeditation, did then and there willfully, unlawfully[,] and feloniously attack, assault[,] and shot with the use of a handgun one Edwin B. Bagaslao [(victim)] thereby inflicting upon him [a] gunshot wound on his head which caused his subsequent death.

CONTRARY TO LAW: (Art. 248 of the Revised Penal Code)^[5]

Upon arraignment, Menil pleaded not guilty.

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

The prosecution presented three (3) witnesses, namely: Cynthia Rose Coloma, the victim's common-law wife, Ricardo Oracion Torralba and Dr. Renato Salas Munez.

Coloma testified that on December 28, 1993 at around 1:00 o'clock in the morning, she and the victim Edwin B. Bagaslao were about to leave the Christmas party held at Tip-Topp Disco in Sing-Song Garden Restaurant and organized by the Butuan Bet Takers Association, of which

victim Bagaslao was a member. As they were on their way downstairs, accused-appellant Menil pushed Coloma. A heated argument ensued. It appeared that accused-appellant was looking for the girl who left him on the dance floor and had mistaken Coloma to be that girl. Dodoy^[6] Plaza [(Dodoy)], who was also a member of the organization, pacified the victim and accused-appellant.

When the two were already on their path on the sidewalk of the Sing-Sing Garden, accused-appellant suddenly came from behind and shot the victim. Prosecution witness Toralba, who was also leaving the party, was approximately one (1) meter away from the victim and accused-appellant. He saw the latter shoot the victim. Torralba also testified that accused-appellant ran away after the shooting incident.

The victim fell on the shoulders of Coloma. Dodoy Plaza and the other friends of the victim brought him to the hospital on board a police car. Coloma reported the incident to the police station and had the incident blotted. Thereafter, she went to the hospital where the victim was admitted. However, at around 3:00 o'clock in the afternoon of the same day, the victim died.

Dr. Muñoz, who signed the Medical Certificate, testified that the victim was admitted due to "a gunshot wound point of entry right zygomatic area, point of exit left parietal region[.]"^[7]

Version of the Defense

The version of the defense, as summarized by the CA, is as follows:

As for accused-appellant, he vehemently denied the accusations hurled against him.

He testified that on December 27, 1993, he was strolling along Montilla Boulevard at about 9:00 o'clock in the evening. There, he saw some friends namely Armando de Castro and Jose Tadyamon, who invited him to join them at Sing-Sing Garden where they sat themselves and had beer.

At around 11:00 o'clock in the evening, Bagaslao and some of his companions, who were seated two tables away from accused-appellant, allegedly got very rowdy. Accused-appellant admonished them to behave themselves.

At 1:20 o'clock in the morning of the next day, accused-appellant and his companions decided to call it a night and went downstairs. On the way down, Bagaslao blocked his path. By the time accused-appellant was [on] the last step of the stairs, Bagaslao grabbed his revolver. Accused-appellant had no choice but to grapple with Bagaslao in order to regain possession of the revolver. Bagaslao then said to him, "*patuo-tuo ka*" which translates to English as "*you 're pretending to be someone[.]*"

After the grappling, a shot was fired. Bagaslao fell. Accused-appellant denies having killed Bagaslao.^[8]

Ruling of the RTC

After trial on the merits, in its Judgment dated November 26, 2013, the RTC convicted Menil of the crime of Murder. The dispositive portion of said Judgment reads:

WHEREFORE, the foregoing considered, accused **EDGARDO B. MENIL** is found **GUILTY** beyond reasonable doubt of the crime of Murder, for the death of Edwin B. Bagaslao, as defined under **Article 248 of the Revised Penal Code**, as amended by **Republic Act No. 7659**, qualified by treachery and **evident premeditation**. The accused **EDGARDO B. MENIL** is hereby sentenced to suffer a penalty of **Reclusion Perpetua** without **possibility of parole**.

Furthermore, the accused **EDGARDO B. MENIL** is ordered to indemnify the heirs of Edwin B. Bagaslao, the following sums:

- a. Fifty Thousand **(P50,000.00)** Pesos, as ***civil indemnity ex delicto***;
- b. Fifty Thousand **(P50,000.00)** Pesos, as ***moral damages***; and
- c. Twenty Five Thousand **(P25,000.00)** Pesos, as ***exemplary damages***.

SO ORDERED.^[9]

The RTC ruled that the prosecution was able to establish beyond reasonable doubt the guilt of the accused.^[10] The accused freely admitted regarding the shooting, which resulted to the death of the victim.^[11] In fact, he testified under oath that the firearm that was used to shoot the victim was his service firearm.^[12] Further, the RTC held that treachery and evident premeditation attended the killing of the victim.^[13] There was clear showing that the accused deliberately and consciously employed a specific form or plan of attack, which would ensure the commission of the crime.^[14]

Aggrieved, Menil appealed to the CA.

Ruling of the CA

On appeal, in its assailed Decision dated April 28, 2017, the CA affirmed the conviction by the RTC with modifications:

WHEREFORE, the appeal is hereby DENIED. The assailed Judgment dated November 26, 2013 of the Regional Trial Court, Branch 3, Butuan City in Criminal Case No. 6048 is AFFIRMED with MODIFICATION. Accused-appellant EDGARDO B. MENIL is found GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *reclusion [p]erpetua* without possibility of parole.

Accused-appellant is also ORDERED to pay the heirs of Edwin B. Bagaslao the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P75,000.00 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 date of finality of this Decision until fully paid.

SO ORDERED.^[15]

The CA ruled that the prosecution witnesses positively identified Menil as the perpetrator of the crime.^[16] It further ruled that the fact that the witnesses' testimonies were given only fourteen (14) years after the incident is of no moment.^[17] Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses can remember with high degree of reliability the identity of criminals at any given time.^[18] Furthermore, the CA noted that after the warrant of arrest for Menil was first issued, the return thereof provided that he could no longer be found in his indicated residence, thus the case was temporarily archived by the trial court.^[19] In fact, it took eleven (11) years before Menil was finally apprehended.^[20] Flight, in jurisprudence, has always been a strong indication of guilt, betraying a desire to evade responsibility.^[21] Lastly, it ruled that treachery attended the killing of the victim.^[22] However, the prosecution failed to prove the presence of the aggravating circumstance of evident premeditation.^[23]

Hence, this appeal.

Issues

Whether the CA erred in affirming Menil's conviction for Murder.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.^[24] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.^[25] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.^[26]

The accused should only be convicted of the crime of Homicide, not Murder.

In the assailed Decision, the CA held that treachery attended the commission of the crime, thus Menil should be convicted of the crime of Murder. The CA ruled: