

SECOND DIVISION

[G.R. No. 232649, November 28, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MARIO
BULUTANO Y ALVAREZ, ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J:

Before this Court is an ordinary appeal^[1] filed by the accused-appellant Mario Bulutano y Alvarez (Bulutano) assailing the Decision^[2] dated May 23, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06502, which affirmed the Decision^[3] dated July 11, 2013 of the Regional Trial Court (RTC) of Makati City, Branch 144 in Criminal Case No. 98-920, finding Bulutano guilty beyond reasonable doubt of the crime of murder.

The Facts

An Information was filed against the accused-appellant and Jhun Serad (Serad) for the murder of Wilbert Augusto (Wilbert), the accusatory portion of which reads:

That on or about the 16th day of February 1998, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with wooden clubs, conspiring and confederating together with Vermel "Panot" Cablores[,], Pengpeng Estrella[,], and Dennis Cabangon[,], whose exact addresses remain uncertain and all of them mutually helping and aiding one another, with intent to kill and with treachery and evident premeditation, and superior strength did then and there willfully, unlawfully and feloniously struck with wooden clubs one WILBERT AUGUSTO Y ERA hitting the latter's head thereby inflicting mortal wounds which directly caused his untimely death.

CONTRARY TO LAW.^[4]

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

On February 16, 1998 at around 11:30 in the evening, Reynaldo Astrolavio (Reynaldo) and his friend Mark Gil Desono (Mark Gil) were at M. Aquino comer M.H. Del Pilar Streets, Barangay Rizal, Makati City. Reynaldo saw Abeng Tabeng (Abeng), Jeremy, and another person known as alias "Panot" as well as three (3) other persons buying at a nearby store. Abeng stared at Reynaldo and said "*Why are you staring at me*" to which the latter replied "*You are not the person I am looking at*". Abeng then turned to Mark Gil and said "*Ikaw, papalag ka ba? Ang sama mo makatingin ah* ", but Mark Gil did not respond.

Reynaldo urged Mark Gil to just leave the place but as soon as Mark Gil stepped forward, Abeng boxed him. Mark Gil retaliated and the two engaged in a fist fight. Reynaldo tried to pacify them but Abeng's brother, known as alias "Kulot", arrived. "Kulot" also boxed Reynaldo which made the latter fall [into] the canal. When Reynaldo stood up, he saw the group of Mario Bulutano [Bulutano] and Jhun Serad [Serad] rushing towards them.

Sensing danger, Reynaldo ran away and hid at a nearby street which was seven (7) to eight (8) meters away from the place of the incident. From where he was hiding, he saw [Serad] hit Wilbert on his head. Afraid, Reynaldo went home.

Around the same time of that fateful night, Allan Ramos (Allan) was at his house in Blk. 137, Lot 10, A. Bonifacio Street, Zone 3, Barangay Rizal, Makati City. He was then having a drinking spree with some of his friends when he suddenly heard a commotion. Afraid that his friends were involved, he immediately went outside the house and proceeded to M. Aquino corner M.H. Del Pilar Streets which was just five hundred (500) meters away from his house.

Upon reaching the place, Allan saw [Bulutano], [Serad], Dennis Cabangon (Dennis), Pengpeng Estelera (Pengpeng) and Vermel, also known as "Panot", rushing towards the same place. He suspected that the group was there to take revenge because of an earlier fight with another group. He also noticed that [Bulutano] and his group were drunk and carrying bladed weapons, stones, and pieces of wood.

Allan inquired from the group what the problem was and tried to talk them into settling it. Allan was then facing the group while Wilbert, who was just passing by after making a phone call at a nearby site, stood next to him. At that moment, Vermel told his group members not to hurt Allan because the latter was his classmate. Suddenly, [Serad] surreptitiously went behind Wilbert and hit the latter with a piece of wood. Wilbert fell on the ground, shaking. Allan was shocked and his immediate reaction was to punch [Serad]. However, [Serad] was able to parry Allan's fist with the same piece of wood he had used to hit Wilbert. Thereafter, a fight ensued. Allan was pulled away by one of his companions while the others retreated upon seeing that their adversaries were armed with weapons.

While Allan was retreating from the place, he looked back and there he saw [Bulutano] hit Wilbert on the head even if the latter was already lying on the ground gasping for breath. Pengpeng, Vermel and Dennis likewise kicked and mauled the hapless Wilbert.

Meanwhile, Gerald Manaog, who was standing at a post in M. Aquino corner M.H. Del Pilar Streets, also witnessed the brawl as he was only five (5) or six (6) meters away. Before the affray, Gerald saw Wilbert just standing and doing nothing. But then, [Serad] suddenly hit Wilbert on the right side of the latter's face. As a result, Wilbert fell on the ground. But despite Wilbert's state, [Bulutano] still hit him with a piece of wood. Gerald shouted at [Bulutano] to stop hitting Wilbert but [Bulutano] just

replied "*Bakit, papalag ka ba?*"[⁵]. Gerald then could only warn them that if something happened to Wilbert, they will all be held responsible.

At that point, operatives from Bantay Bayan arrived. Allan then rushed to the bloodied Wilbert. With the assistance of concerned citizens, they carried Wilbert's body and boarded him on a vehicle. Wilbert was brought to the hospital where he was subsequently pronounced dead.^[5]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

In his defense, accused-appellant Mario Bulutano presented a different version of the facts. To disprove the charge filed against him, he denies participation in the crime yet points at his co-accused, Jhun Serad, as the sole perpetrator thereof. He thus claims that he was in front of his house taking some fresh air when [Serad], Delfin Tabing (Delfin), Raffy Estillero (Raffy) and Gerry Solima (Gerry), happened to pass by and invited him for a drink in celebration of having found a new job. On their way to the store, they chanced upon Endy Tabing (Endy), Vermel Cablores, Edwin Candichoy (Edwin) and Dennis Cabangon who volunteered to purchase the liquor for the group. Thus, the rest proceeded to the house of Endy.

Upon arrival thereat, Cabangon returned and informed them that the members of the group known as "No Fear" were ganging up on Endy. When they rushed to help him, they saw Endy already sprawled on the ground but was still being mauled by the group. He and his companions were likewise stoned by members of another group who hid themselves in the shadows.

[Bulutano] was able to carry Endy to the latter's house and told him to rest. He then went back to the place of the melee in an attempt to pacify the brawl but before he can reach the place, stones were again thrown at him thus he shouted at the perpetrators and told them to stop. When he finally reached the site of the incident, he saw a man sprawled on the ground. He instructed his group to stand down. When everything was peaceful, he brought Endy to the Barangay Hall to have the incident blotted. After which, Endy was brought to the hospital by his mother. At the hospital, he revealed that it was [Serad] who struck the victim during the melee and that he was unable to pacify him at that time because the latter was very angry.

Also, [Bulutano] avers that he has no bad blood with the prosecution witnesses but the only reason which he sees as the possible explanation for them in testifying against him was because of their basketball rivalry.

^[6]

Bulutano was arraigned on October 30, 2006, in which he pleaded "not guilty" to the crime charged, while his co-accused Serad remained at large.^[7] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Decision^[8] dated July 11, 2013, the RTC convicted Bulutano of the crime of murder. The dispositive portion of the said Decision reads:

WHEREFORE, in the light of all the foregoing, the Court finds accused MARIO BULUTANO **GUILTY Beyond Reasonable Doubt** for the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code and is hereby imposed with the penalty of **Reclusion Perpetua**.

In addition, Bulutano is ordered to pay the heirs of the late Wilbert Augusto y Era, the amount of **Fifty Thousand Pesos (P50,000.00)** as civil indemnity, **One Hundred Thousand Pesos (P100,000.00)** as exemplary damages and **One Hundred Thousand Pesos (P100,000.00)** as moral damages and **Twenty-five Thousand Pesos (P25,000.00)** as temperate damages considering that it was reasonable and understandable that the family incurred expenses for his hospitalization and burial only that the mother failed to present receipts to substantiate her claim.

x x x x

SO ORDERED.^[9]

The RTC found the positive identification by the prosecution witnesses Allan Ramos (Ramos) and Gerald Manaog (Manaog) that Serad hit Wilbert on the head first, and that Bulutano also hit the said victim on the head subsequently as he was sprawled on the ground, sufficient to convict Bulutano of the crime charged. The RTC did not believe Bulutano's allegation that the foregoing witnesses only testified because they harbored ill feelings against him for their supposed basketball rivalry. Thus, as the witnesses were not found to have been motivated by ill will, the RTC held that there was therefore no doubt that Bulutano perpetrated the crime in light of their positive identification.^[10]

The RTC also found that treachery attended the killing of Wilbert. The RTC reasoned that Bulutano continued to hit the victim when the latter was already on the ground, thus rendering him defenseless.^[11] Hence, Bulutano was liable for murder instead of homicide.

Aggrieved, Bulutano appealed to the CA.

Ruling of the CA

In the assailed Decision^[12] dated May 23, 2016, the CA affirmed the RTC's conviction of Bulutano, and held that the prosecution was able to sufficiently prove the elements of the crime charged and the element of treachery were present in the killing of Wilbert.

The CA held that the supposed inconsistencies in the prosecution witnesses' testimonies that Bulutano was harping on involved only trivial matters that were, by themselves, insufficient to affect the finding of guilt as to the commission of the crime.^[13] The CA also upheld the findings of the RTC as to the credibility of the eyewitnesses, thereby establishing Bulutano's guilt beyond reasonable doubt. The CA likewise ruled that treachery attended the killing as the victim was already in a hapless state when Bulutano continued to strike him.^[14]

The appellate court, however, modified the award of damages to be paid to the heirs of Wilbert to conform to recent jurisprudence.^[15]

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by accused-appellant Bulutano:

- (1) Whether the CA erred in convicting Bulutano despite the prosecution's failure to prove his guilt beyond reasonable doubt;
- (2) Whether the CA erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of accused-appellant Bulutano but for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not present in the killing of Wilbert.

First Issue: Whether the CA erred in finding Bulutano guilty beyond reasonable doubt

In questioning his conviction, Bulutano stresses that there were inconsistencies in the testimonies of the prosecution witnesses – Ramos, Manaog, and Reynaldo Astrolavio (Astrolavio) – that supposedly tarnish their credibility. He avers that their testimonies were inconsistent in that they differ as to when he and Serad arrived to join the melee. Bulutano maintains that while he was at the scene of the crime, he did not hit the victim and that it was only Serad who did so.

The argument deserves scant consideration.

It is well settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.^[16] Thus, when the case pivots on the issue of the credibility of the witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.^[17] Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence, particularly on the credibility of the eyewitnesses, which was also affirmed *in toto* by the CA.

In any event, the inconsistencies pointed out by Bulutano refer to trivial matters which would not cast reasonable doubt on the finding of his guilt. In this connection, the Court quotes with approval the following disposition of the CA:

While there appears some inconsistencies in the relevant portions of the testimonies of the prosecution witnesses, which accused-appellant claims to have impaired their credibility, a simple review of the transcripts reveal that the alleged inconsistencies are trivial matters pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue.