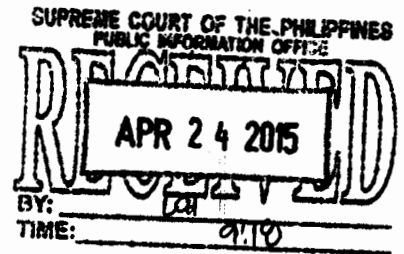




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 18, 2015, which reads as follows:

G.R. No. 212564 (People of the Philippines vs. Fermin Cawaren y Chakiwag alias "Aray"). – This is an appeal from the Decision¹ dated November 29, 2013 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05472 which affirmed with modification the Judgment² dated January 26, 2012 of the Regional Trial Court (RTC) of Bontoc, Mountain Province, Branch 35, in Criminal Case No. 2010-12-16-88. The RTC convicted Fermin Cawaren y Chakiwag alias "Aray" (Cawaren) of the crime of Murder and sentenced him to suffer *reclusion perpetua* without pronouncement as to civil damages which was amicably settled and paid to the heirs of Salvador T. Padya-os (Salvador), the victim.

On December 16, 2010, an information was filed charging Cawaren with the crime of murder defined and penalized under Article 248 of the Revised Penal Code (RPC), the accusatory portion of which reads:

That on or about December 14, 2010, in the afternoon thereof, at Sitio Fangek, Poblacion, Sadanga, Mountain Province, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and x x x with the use of a six[](6) inches blade knife stab **SALVADOR T. PADYA-OS**, thereby inflicting upon the latter, stab wound, **4th ICS PARAVERTEBRAL ARFP** right and which caused the death of the aforementioned victim, all to the damage and prejudice of the aforementioned victim, all to the damage and prejudice of his heirs.

CONTRARY TO LAW[.]³

When arraigned on April 13, 2011, Cawaren admitted the crime charged but claimed retaliation as a defense. His admission was considered as a conditional plea. Hence, a plea of "not guilty" was entered.⁴

¹ Pinned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring; CA *rollo*, pp. 83-104.

² Id. at 47-52.

³ Id. at 47.

⁴ Id. at 88-89.

March 18, 2015

During pre-trial on May 17, 2011, the RTC allowed Cawaren to change his conditional plea to “guilty” after his counsel manifested his client’s willingness to do so. The RTC directed the prosecution to adduce additional evidence.⁵

Trial on the merits ensued. The prosecution presented the testimonies of: (1) George Poc-oran (Poc-oran), Vincent Tecag, and David Simangen (Simangen), residents of Poblacion and Sacasacan, Sandanga, Mountain Province who were present during the stabbing incident; (2) Medical Officer III Helen Tic-chap (Tic-chap); (3) Police Officer 3 Bretz Chewacheo of the Sadanga Municipal Police Station; (4) Anacita Padya-os, the wife of the victim; and (5) Police Inspector Juliet Albon of the Provincial Crime Laboratory, Bontoc, Mountain Province.⁶

The defense, on the contrary, did not present any evidence.

The facts are undisputed.

[T]he victim, [Salvador], was stabbed at the back by a knife, with a blade measuring six (6) inches, causing his death. The stabbing incident was witnessed by [Poc-oran] who later pointed to herein accused [Cawaren], also known as “Aray”, to be the culprit.

The stabbing occurred on or about 12:45 in the afternoon of December 14, 2010 at Sitio Fangek, Poblacion Sadanga, Mountain Province. Both accused and the victim together with the community of Fangek were at the wake of one Patil-ak Pasking. The eye witness, [Poc-oran], was there to help build the tomb of the deceased Pasking. Poc-oran was then resting, together with a group of people, and was waiting for lunch to be served when he saw the victim [Salvador] arriving at the vicinity of the incident carrying with him a 4x4 Ginebra San Miguel and a 1.5 Liter of Coke which the latter gave to a group of elders likewise sitting within the vicinity. [Salvador] then sat down, joining another group sitting about three meters or seven steps away from Poc-oran.

While Poc-oran was putting chili in his soup, [Cawaren] passed in front of him holding pieces of sliced meat in his left hand. Poc-oran’s attention was caught because Cawaren placed the meat inside his pocket without putting it inside a cellophane while trying to conceal something with his right hand. Cawaren was then moving towards the group where the victim was seated. Finished with the chili, Poc-oran set his plate on the ground and turned to his left side. It was then that to his shock, he saw [Cawaren] stab [Salvador] once at the back then immediately jumped over a rip rap and ran away.

⁵ Id. at 89.

⁶ Id.

Poc-oran shouted to get the attention of the people near the victim, who seemed not to notice the stabbing incident until the victim uttered "Ana Ana" (an expression of pain), then went to the aid of the victim who was lying with copious blood coming out of his mouth and nose.

[Simangen] was seated beside the victim and heard a sound "BLAG" then he saw [Cawaren] standing at the back of the victim. Cawaren then quickly ran in front of Simangen, jumped over a riprap and ran away. Simangen was shocked to see [Salvador] trying to reach with his hand the knife embedded at his back and uttering the words "Ana Ana" with blood coming from his mouth and nose. He also heard someone say in a loud voice "Sinaksak Aray si Salvador (Aray stabbed Salvador).

Thinking that the victim was already dead, Poc-oran ordered someone to pull out the knife embedded at the back of the victim. [Simangen], also known as Tue Adiocan/Adyocan, pulled the knife from the victim's back. Poc-oran got the knife from Simangen then together with four (4) others gave chase but failed to capture Cawaren. Poc-oran turned over the knife to [PO3 Bretz Chewacheo] who was then on duty at the Sadanga Police Station.

The victim was rushed to the Bontoc General Hospital but was declared "Dead on Arrival" by Medical Officer III Helen Tic-chap who certified in her Medico-Legal Certificate that the patient had no vital signs when brought to the hospital and was subjected to cardiac resuscitation but was not revived. She likewise issued a certificate of death citing as underlying cause of death, the stab wound at the back of the victim.

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Accused was apprehended at the house of his mother in Sitio Maatong, Sadanga. [PO3 Bretz Chewacheo] informed the accused of the nature and cause of his arrest as well as his constitutional rights to which the accused responded that he understood said rights and voluntarily went with the police.⁷ (Citations omitted)

On January 26, 2012, the RTC rendered Judgment,⁸ the *fallo* of which reads:

WHEREFORE, finding that the guilt of the accused Fermin Cawaren has been proved beyond reasonable doubt as principal by direct participation of the crime of murder, he is hereby sentenced to suffer the penalty of reclusion perpetua. No pronouncement as to civil damages as the same were amicably settled and paid.

So Ordered.⁹

In convicting Cawaren of the crime of murder, the RTC ratiocinated that treachery attended the commission of the crime because Salvador was suddenly stabbed with the six-inch bladed knife from behind and without

⁷ Id. at 48-50.

⁸ Id. at 47-52.

⁹ Id. at 51-52.

any opportunity for him to put up any defense in order to evade the attack against him. Moreover, the written extrajudicial confession of Cawaren, his judicial confession of guilt and overwhelming evidence adduced by the prosecution all solidly demonstrate his guilt beyond moral certainty.¹⁰

On appeal, the CA affirmed the decision of the RTC in its Decision¹¹ dated November 29, 2013 with the modification “that the penalty of *reclusion perpetua* is without eligibility for parole.”¹²

In its affirmance, the CA made the following findings and conclusions, to wit: (1) Cawaren’s unqualified entry of a plea of guilt is tantamount to an admission that he treacherously killed Salvador;¹³ (2) that no evidence was adduced to prove that Cawaren stabbed Salvador on impulse and/or the latter was sufficiently warned of an impending danger;¹⁴ (3) that treachery attended the commission of the crime as vividly featured by Poc-oran’s testimony which recanted how Cawaren stabbed Salvador;¹⁵ (4) that Simangen’s testimony corroborated the statement of Poc-oran because he was the one who removed the six-inch knife from the back of Salvador;¹⁶ and (5) that the post-mortem findings of Tic-chap corroborated the witnesses’ testimonies that Salvador was stabbed at the back because of the location of the wound (2 to 3 centimeters wide and 8 to 9 cm deep) and the absence of any external lesion that would indicate that the attack was frontal.¹⁷

The CA affirmed the penalty of *reclusion perpetua* pursuant to Article 248 of the RPC and added Cawaren’s non-eligibility for parole in view of the Indeterminate Sentence Law. The CA further concurred with the non-payment of civil damages to the heirs of Salvador due to the Memorandum of Agreement between them and Cawaren as manifested by the community meeting wherein the heirs were paid P500,000.00.¹⁸

Ruling of the Court

The Court affirms the conviction.

In order to secure a conviction for murder, the following must be established by the prosecution, to wit: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances under Article 248 of the RPC; and (4) the killing neither

¹⁰ Id. at 51.
¹¹ Id. at 83-104.
¹² Id. at 103.
¹³ Id. at 91.
¹⁴ Id.
¹⁵ Id. at 94-97.
¹⁶ Id. at 97-99.
¹⁷ Id. at 99-101.
¹⁸ Id. at 101-103.

ℓ.

constitutes parricide nor infanticide. Here, such elements have been successfully established by the prosecution.

It bears to stress that Cawaren never denied that he killed Salvador. The Court, however, cannot consider his bare allegation of retaliation because there was no clear and convincing evidence to prove it. As aptly ratiocinated by the CA, “[b]are allegations, unsubstantiated by evidence, are not equivalent to proof.”¹⁹

It is well-settled that “the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts — and when his findings have been affirmed by the [CA], these are generally binding and conclusive upon this Court.”²⁰ Here, the unwavering testimonies of the prosecution witnesses are worthy of belief for having positively and categorically identified Cawaren as the perpetrator of the crime. Poc-oran witnessed the entire incident especially when Cawaren actually stabbed Salvador from behind while the latter was eating his lunch; Simangen saw Salvador in severe pain which necessitated him to pull out the knife that was deeply embedded on the victim’s back. Their testimonies were corroborated by the findings of Tic-chap who examined the cadaver of the victim and by the knife used in the crime. Significantly, Cawaren never imputed any ill motive against such witnesses to falsely testify against him.

The Court further finds merit in the appreciation of the qualifying circumstance of treachery. “The essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or repel the aggression, thus, insuring its commission without risk to the aggressor and without any provocation on the part of the victim.”²¹

In the case at bench, the prosecution was able to sufficiently establish the presence of treachery during the commission of the crime. Based on the evidence adduced, Cawaren stabbed Salvador at the back with the six-inch knife while the latter was preoccupied in taking his lunch. The stabbing was so quick that even the people near Salvador was unaware thereof. If not for Poc-oran, the folks beside Salvador would not notice the latter aching in pain considering that the stab wound was about 2 to 3 cm wide and 8 to 9 cm deep.²² The wound was too severe and even required Simangen to pull out the knife embedded on Salvador’s back. The circumstance surrounding the commission of the crime rendered it impossible for Salvador to put up any defense as he was busy eating lunch at that time. Cawaren inflicted a mortal

¹⁹ Id. at 91.

²⁰ *People v. De los Santos, Jr.*, G.R. No. 186499, March 21, 2012, 668 SCRA 784, 799, citing *Vidar, et al. v. People*, 625 Phil. 57, 71-72 (2010).

²¹ *People v. Esquibel*, G.R. No. 192465, June 8, 2011, 651 SCRA 679, 686.

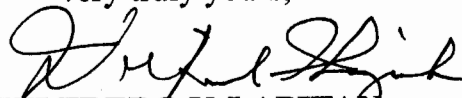
²² CA rollo, p. 101.

wound on Salvador. Evidently, he had no means to put up any defense when Cawaren stabbed him from the rear. Such aggression on the part of Cawaren insured the commission of the crime without any risk to himself which Salvador would have made.

The Court also affirms the penalty of *reclusion perpetua* imposed by the RTC, as affirmed by the CA, including the non-eligibility for parole in view of Section 3²³ of Republic Act No. 9346. The civil aspect of the case has already been settled and duly passed upon by the CA in view of the Memorandum of Agreement between Cawaren and the heirs and relatives of Salvador wherein the latter were paid P500,000.00 as full satisfaction thereof.²⁴

WHEREFORE, in view of the foregoing premises, the Decision dated November 29, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 05472 is **AFFIRMED.**" (Jardeleza, J., no part in view of participation in the Office of the Solicitor General; Carpio, J., designated additional member per Raffle dated October 27, 2014; Peralta, J., no part in view of relation to the *ponente* of the assailed CA decision; Perez, J., designated additional member per Raffle dated March 5, 2015.)

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court

PUBLIC ATTORNEY'S OFFICE
Special & Appealed Cases Service
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1101 Quezon City

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

COURT OF APPEALS
CA G.R. CR HC No. 05472
1000 Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 35, Bontoc
2616 Mt. Province

The Chief Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Fermin C. Cawaren
c/o The Chief Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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²³ Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. [4103], otherwise known as the Indeterminate Sentence Law, as amended.

²⁴ CA rollo, pp. 51, 102-103.