

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELVIN PEREIRA Y MONTALBO, ACCUSED-APPELLANT.

Ponente: CASTILLO, M., J.

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CASTILLO, M., J.:

On appeal before Us is the Decision dated February 5, 2013[1] rendered by the Regional Trial Court, Branch 217, Quezon City finding the accused Melvin Pereira y Montalbo guilty of the offense of murder.

On March 30 21, 2009, the accused Melvin Pereira y Montalbo a.k.a “Bulik” was charged in an Amended Information[2] for Murder, the accusatory portion of which reads:

“That on or about the 18[th] day of January 2009, at Quezon City, Philippines, the above-named accused, with intent to kill and with the qualifying aggravating circumstances of evident premeditation and treachery as well as the generic aggravating circumstance of dwelling, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ARNEL BAGAN y SIMPLINA, by then and there barging into the home of the victim and then repeatedly stabbing the victim therein in the chest with the use of a kitchen knife, thereby inflicting upon the said ARNEL BAGAN y SIMPLINA, serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said victim.

The above attendant circumstances were present in the commission of the crime because accused planned the commission of the crime prior to its execution until its commission consciously adopting the means or methods of attack, done suddenly and unexpectedly in order that the victim will not be able to defend himself and to ensure the commission of the crime without risk to the accused.

Contrary to law.”

On July 27, 2009, the accused, assisted by his counsel, pleaded “not guilty” to the offense charged during the arraignment.[3] On August 18, 2009, the pre-trial conference was terminated and trial on the merits ensued.[4]

The prosecution, in support of the allegations in the information, presented four (4) witnesses, namely; Virgie Bagan, PNP Medico-legal officer, P/CInsp. Paul Ed Ortiz, Florencio Cabalquinto, and P/Insp. Joseph Carlos Madrid. The defense presented the accused, Melvin Pereira, and his mother, Leonila Pereira.

The version of the prosecution is summarized as follows:

Virgie Bagan, the wife of the victim, testified[5] that on January 18, 2009, at around 7:00 o'clock in the evening, she was inside their house at 49 Sto. Cristo St., Balignasa, Balintawak, Quezon City with her husband, their ten year old daughter and their neighbor, Rhea, watching a show on TV, Rumble in the Bronx starring Jackie Chan.[6] They were focused on the movie when the screen door, which was unlocked, suddenly opened and accused Melvin Pereira entered the house. Pereira approached Virgie's husband who was seated on the floor. Virgie testified that the door was located at the right side of her husband, around five steps away while she was seated at the left side of her husband. She demonstrated in court how accused approached her husband from behind, placed his left hand on her husband's neck and stabbed her husband with his right hand which was

underhandedly holding the knife. She stated that her husband was stabbed around seven (7) times.[7] After she witnessed accused stab her husband, accused poised to stab her but she lifted a chair to cover herself.[8] Then, Carlo Delgado entered their house and accused also stabbed Delgado on the left portion of his abdomen. Thereafter, accused ran away. Virgie ran outside their house and sought the help of her neighbors. Her neighbors and her brother-in-law, Noli Bagan, came and brought her husband to the Quezon City General Hospital where he was declared dead on arrival.[9] Virgie also testified that at the time of his death, her husband was 39 years old, an employee of MMDA earning a monthly salary of P6,000.00. She spent P20,000.00 for the funeral of her husband.[10]

P/CInsp. Paul Ed Ortiz,[11] the medico-legal officer of the PNP Crime Lab who conducted an autopsy examination on the victim, testified that Arnel Bagan died of stab wounds to the thorax. Based on his records, there were three (3) stab wounds. He testified that one stab wound was 12 cm deep and was caused by a sharp object such as a knife. The thrust of that stab wound perforated the heart and penetrated the upper part of the left lung, which was sufficient to cause the death of the victim.[12] Another stab wound was more or less located in the area just below the ribcage in the upper right abdominal part, 7 cm deep. The thrust was from the front to the back and upward and to the middle of the body, penetrating the heart at the level of the 7th rib. Ortiz testified that the blade used was about 11 cm in length.[13] The last stab wound was at the left upper arm and was superficial. Ortiz also noted abrasions on both knees of the victim and on the right pectoral region of the right upper breast.[14]

Florencio Cabalquinto testified that he was the Barangay Executive Officer of Brgy. Balingasa, Quezon City and he was one of the arresting officers who apprehended the accused.[15] He averred that on January 18, 2009, Pedro Tayao, one of the tanods, reported a stabbing incident at Sitio Sto. Cristo involving Melvin Pereira alias “Bulik”. He, together with BPSO Rommel Dayat and Roberto Dy, went to the place of the incident. When they reached the place, they were told by the neighbors that the accused already fled to Sitio Tibagan. They proceeded to Sitio Tibagan where the cousin of the accused, Dorothea Macaraeg, informed them that the accused was at No. 1076 A. Bonifacio. When they went to the said house, the accused voluntarily surrendered to them. Cabalquinto testified that from where accused was sitting on the rooftop, the latter went down, approached them and handed them the knife used in the stabbing incident. They brought the accused to Police Station 1.[16] Cabalquinto also testified that the knife surrendered by the accused was more or less 11 inches long, including the handle. It was made of stainless metal and had a yellow colored handle.[17]

P/Insp. Joseph Carlos Madrid testified that on January 18, 2009, he was assigned as a homicide investigator at the CIDU based at Camp Karingal, Quezon City. He conducted the investigation on the stabbing incident involving Melvin Pereira which resulted in the death of Arnel Bagan.[18] He interviewed the wife of the victim, Virgie Bagan and other witnesses. He took the statements of Virgie Bagan and Rhea Masalunga.[19] He testified that the accused was turned over to him by the arresting team.[20] After preparing all the documents, they went to the Fiscal's Office for inquest. He also testified that based on his investigation, the accused used a bladed weapon to stab the victim and that the knife used was turned over to him by Cabalquinto. He placed the initial of the accused “MP” on the knife handle.[21] On cross-examination, he testified that the investigation showed that there were two victims of the stabbing incident, Arnel Bagan and Carlo Delgado. He took the statement of Delgado and a frustrated case was filed against accused by Delgado.[22]

In the Appellant's Brief[23], the version of the defense is summarized as follows:[24]

The mother of the accused, Leonila Pereira, testified that the victim, Arnel Bagan, was their neighbor in Sto. Cristo Street, Balintawak, Quezon City. Their house is only five (5) meters away from that of the victim, or nine (9) houses away.

On 18 January 2009 about late in the afternoon, her son Melvin Pereira went out of their house to confront their neighbor Caloy Bagan (victim herein), whose wife Virgie hit her (Leonila) with a coffee mug in the head.[25] She does not know of any reason why Virgie hit her. When she was hit, she felt dizzy which caused her to lean on the wall. Her neighbor named Nelia helped her and brought her home. She then called her sister and she was brought to Quezon City General Hospital for treatment. After which, she went home and rested.

Her children, accused Melvin and daughter Melissa, learned about what happened to her and became very angry. The accused kept on shouting and was very mad because of what was done to her by Virgie.

Thereafter, she proceeded to the barangay to report the incident and because she was worried about the accused who was very angry during that time. When she returned home, there were already police officers and she was told by Virgie Bagan that her husband was stabbed by the accused.

Upon learning it, she asked the assistance of the barangay to find her son Melvin. She found her son at the house of her cousin and she surrendered him to the barangay. Her son had a stab wound on his forearm and was brought to the hospital for treatment. The latter was not armed with any knife at the time he left their house.

When she was able to talk to her son, the latter admitted that the incident was brought about by what was done to her by Virgie. The accused further told her that when he confronted the victim, Virgie was not there but only Arnel who was armed with a gun. According to her son, he was constrained to use a knife in order to defend himself.[26]

On 18 January 2009, the accused, Melvin Pereira, was at home sleeping. At around 5:00 o'clock in the afternoon, he woke up and saw his mother's head wrapped with bandage. He asked his mother what happened and learned that Ate Virgie Bagan hit her with a glass. He had no knowledge of any reason why his mother was hit.

Upon learning it, he got angry and after about fifteen (15) minutes, told his mother that he was going to see Virgie to talk to her. His siblings warned him of what might happen if he would go to Virgie, but he told them that he would only talk to Virgie.

Upon reaching the house of Virgie, the latter and her husband Arnel were there. He asked why she (Virgie) did that to his mother. Virgie answered him in a loud voice and angrily told him that what happened was just right for his mother. Arnel also told him that it was not even enough and he might as well include him. After hearing this, he went home to avoid further trouble.

At around 6:40 o'clock in the evening of the same date, he went out of their house to buy some bath soap. When he was on his way home, he was surprised when Arnel suddenly appeared in front of the latter's house from the sidecar of his motorcycle. Arnel was hiding a kitchen knife with a length of more or less fourteen (14) inches.[27]

Suddenly, Arnel stabbed him. He was not hit during the first thrust, however, he was hit in his left hand during the second thrust. After which, he was able to hold the right hand of Arnel, which was holding the knife. He embraced Arnel from behind to stop him. They slipped and fell on the concrete pavement. Because of that, Arnel lost hold of the knife and he was able to get it. Thereafter, he felt dizzy because of blood loss and lost his senses and stabbed the victim.[28]

After the incident, he went to Edubas Compound at Sitio Tibagan, Barangay Balingasa to see his aunt who was working thereat and to ask for help. It took him fifteen (15) minutes of walking to reach the said area.

He did not intend to evade liability of prosecution by going to Edubas Compound. He merely went there to seek help from his tita for his surrender. In fact, when the barangay officials arrived, he went with them peacefully and surrendered the knife used in stabbing the victim.

The accused did not have any intention to kill the victim, nor did he plan to kill him. He also did not intend to employ force and violence upon the victim. In fact, he was not carrying any weapon during that time.[29]

On February 5, 2013, the trial court promulgated the assailed Decision[30], the dispositive portion of which reads:

“WHEREFORE, accused Melvin Pereira y Montalbo @ “Bulik” is found guilty beyond reasonable doubt of Murder, and is sentenced to suffer the penalty of reclusion perpetua with a duration of Twenty (20) Years and One (1) Day to Forty (40) Years, and the said accused shall suffer Perpetual Absolute Disqualification as an accessory to the principal penalty. Accused is further ordered to pay the heirs of Arnel Bagan y Simplina, the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages, P25,000.00 as exemplary damages and P25,000.00 as temperate damages.

In the service of his sentence, accused is ordered credited with four-fifths (4/5) of the preventive imprisonment undergone by him, there being no showing that he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.”[31]

On February 6, 2013, the accused, through counsel, filed a Notice of Appeal.[32] The trial court granted the same in its Order dated February 21, 2013.[33] In his appeal, accused-appellant raised the following issues:

- The court a quo gravely erred in not giving credence to accused-appellant's claim of self-defense;
- Assuming that his defense is unavailing, the court a quo gravely erred in convicting the accused-appellant of the crime charged despite failure of the prosecution to prove his guilt; and
- Granting that the accused-appellant is guilty thereof, the court a quo gravely erred in not appreciating the mitigating circumstance of voluntary surrender and incomplete self-defense.

Accused-appellant argues that the trial court gravely erred in disregarding his straightforward testimony as well as that of his witness, and in solely basing its decision on the prosecution's assertion that he committed the crime charged.[34] Accused-appellant maintains that the testimonies of the prosecution witnesses are insufficient to prove his guilt beyond reasonable doubt.[35]

Accused-appellant's defense centers on self-defense. He asserts that there was unlawful aggression on the part of the victim. Prior to the incident, Virgie and Arnel Bagan initiated the trouble when Virgie hit the head of accused-appellant's mother with a coffee mug. Instead of asking for an apology, Arnel, suddenly and out of nowhere, attacked accused-appellant with a knife, which prompted the latter to defend himself from such aggression.[36]

Accused-appellant argues further that the prosecution failed to establish motive on his part in supposedly attacking and eventually killing the victim.[37] He argues that his testimony clearly showed that he did not intend to employ force and violence on the victim and during that time, he was not in possession of a knife. Consequently, it was the victim who had the motive to harm accused-appellant, and not the other way around.[38]

We affirm accused-appellant's conviction.

The trial court ruled that accused-appellant's plea of self-defense deserved scant consideration.[39] In order for self-defense to be considered in favor of the accused, the same should be corroborated by independent and convincing evidence. Apart from his own self-serving testimony, which is uncorroborated by any evidence, the

testimony of his mother Leonila suffers from inconsistencies, thus of doubtful veracity.[40]

The elements of self-defense are outlined in Article 11, par. 1 of the Revised Penal Code, to wit:

Art. 11. Justifying Circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Accused-appellant alleges that there was unlawful aggression on the part of the victim when his wife Virgie hit the head of accused-appellant's mother with a coffee mug and, instead of asking for an apology, the victim suddenly and out of nowhere, attacked accused-appellant with a knife, which prompted the latter to defend himself from such aggression.[41]

Accused-appellant maintains that it was Arnel Bagan who attacked first. In fact, accused-appellant sustained a wound on his hand about 1½ inches long which required 5 stitches as a result of grappling with Arnel Bagan for the knife. He contends that the findings of Dr. Ortiz with respect to the abrasions on the victim's knees and chest area corroborate the testimony of accused-appellant that while they were grappling for the knife, they slipped and fell on the concrete pavement which caused the abrasions on the body of the victim. The wounds sustained by the victim only show that he put up a fight during the struggle between him and accused-appellant. Further, accused-appellant argues that the existence of defense wounds corroborates his testimony that he and the victim wrestled, and directly contradicts the testimony of Virgie that her husband was attacked from behind and sustained seven (7) stab wounds, which was contrary to the findings of the doctor that the victim sustained only three (3) stab wounds.[42]

Accused-appellant argues that while he and the victim were wrestling, he was able to get hold of the knife and because he felt dizzy and was bleeding profusely, he was able to lunge the knife at the victim. Under such situation, accused-appellant had no other reasonable means of protecting himself, considering the suddenness of the incident. Stabbing was the only reasonable means to repel the victim's unlawful attack. Thus, the means accused-appellant employed to repel the aggression was reasonable under the circumstances.[43]

Accused-appellant avers that certainly, there was no provocation on his part considering that at the time he arrived at the place of the incident, a period of time had already elapsed from the time Virgie hit accused-appellant's mother.[44]

On the other hand, plaintiff-appellee, through the OSG, argues that the unlawful aggression contemplated by law was not established by sufficient evidence. For self-defense to be appreciated, it must appear very clearly that the accused was so situated that there was reasonable probability of real danger to his life or limb because of the aggressive acts or menacing attitude of the offended party.[45]

The OSG asserts that the record reflects only accused-appellant's uncorroborated declaration of sudden and unexpected attack or imminent danger from the victim. Accused-appellant has conveniently omitted the presence of any one in the street on that particular night who might have witnessed the incident. Indeed, accused-appellant was unbelievably nonchalant in pursuing possible witnesses who could have helped in his defense despite his own allegation that the attack happened at around 6:40 on a Sunday evening. If accused-appellant's story was true, the commotion consisting of a long drawn out physical confrontation between him and the victim would surely have caught the attention of the people around. Certainly, accused-appellant's version of the events that transpired during the killing of the victim had all the hallmarks of a fabrication.[46]

The OSG maintains that accused-appellant failed to prove reasonable necessity of the means employed to prevent or repel the unlawful aggression. Assuming for the sake of argument that an unlawful aggression existed prior to the killing, accused-appellant's act of stabbing the victim several times plainly demonstrated the use of excessive force to repel the unlawful aggression. The extent and nature of the fatal wounds inflicted by accused-appellant on the victim were clearly testified on by P/CInsp. Ortiz, whose testimony validated the prosecution's version as to how the attack on the victim was carried out by accused-appellant.[47]

As to the third element of lack of sufficient provocation on the part of the person defending himself, the OSG avers that accused-appellant failed to present any testimonial evidence showing that prior to the stabbing incident, he did not engage in any provocative act himself. His own testimony shows that he had an altercation with the victim hours before he allegedly confronted the victim's wife. Such an admission lends itself to the reasonable assumption that the victim and accused-appellant were provoking each other.[48]

We agree with the OSG. Accused-appellant failed to sufficiently establish all the elements of self-defense.

By invoking self-defense, accused-appellant admitted inflicting the fatal stab wounds that caused the death of the victim. It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability.[49] The burden is placed on the accused to prove its elements clearly and convincingly. While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded.[50]

Accused-appellant failed to prove unlawful aggression on the part of the victim. The character of the element of unlawful aggression has been aptly described in *People v. Nugas*,[51] as follows:

Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

Accused-appellant testified that there was unlawful aggression on the part of the victim. However, his testimony was not corroborated by any other evidence and was found by the trial court to be less credible than that of the prosecution witness. Accused-appellant insisted that the abrasions on the body of the victim corroborated his testimony that the victim attacked first. He alleged that the abrasions were caused while they were grappling for the knife. They slipped and fell on the concrete pavement which caused the abrasions on the body of the victim.

We are not persuaded. The abrasions on the body of the victim do not establish who attacked first. The said abrasions and the wound sustained by accused-appellant merely established that there was a struggle during the

stabbing incident.

Moreover, the testimony of accused-appellant was not supported by the testimony of his mother, Leonila. He testified that he went to the house of spouses Bagan to confront them about the incident between Virgie and his mother. He was able to see and talk to both Virgie and Arnel (also known as Carlos or Caloy Bagan to accused-appellant).[52] He also testified that he went home after the confrontation to avoid further trouble.[53] He testified further that when he went out to buy bath soap, the victim suddenly appeared from the sidecar of his motorcycle holding a knife,[54] stabbed him twice and hit him on the hand on the second thrust of the knife.[55] On the other hand, his mother testified that accused-appellant told her that Virgie Bagan was not at home when the incident occurred and that the victim had a gun and that he needed to defend himself so he was constrained to use a knife, to wit:

Q:

I do not understand why is it that your son allegedly attacked Arnel Bagan when you said it was Virgie Bagan who hit you with a mug?

A:

Because I was told by my son that Virgie Bagan was not there when he went to confront her but it was Arnel Bagan who was around, Sir.

Q:

So, Madam Witness, when you met your son did he admit to you that he was the one who stabbed Arnel Bagan?

A: According to my son Caloy had a gun so he needed to defend himself and so he was constrained to use a knife.[56]

On the other hand, the victim's wife testified that there was no unlawful aggression on the part of the victim. In fact, the victim was with his wife, their daughter and their neighbor watching television. The attack was unexpected and sudden that the victim was caught unaware.

The credibility of the prosecution witnesses had been weighed by the trial court, and it found their testimonies to be more convincing. As a rule, the matter of appreciating evidence and assessing the credibility of witnesses rests primarily with the trial court. In the absence of a clear showing that the court has ignored, overlooked or failed to properly appreciate matters of significance or substance likely to affect the eventual outcome of the case, its findings thereon are entitled to great respect and accorded the highest consideration by the appellate courts.[57] The appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses, since the trial judge has the best opportunity to observe their demeanor. While this rule admits of exceptions, none of such exceptions obtains in this case.[58]

On the issue of treachery, accused-appellant maintains that he only acted in self-defense.[59] He argues that the prosecution failed to prove treachery and evident premeditation. The prosecution's evidence is insufficient to show that treachery accompanied the killing. The trial court merely concluded that the killing was unexpected and accused-appellant suddenly attacked the victim, rendering the victim unable to defend himself by reason of the

suddenness and severity of the attack.[60] He argues that suddenness of the attack does not always equate to treachery.[61] Thus, in the absence of treachery, accused-appellant asserts that he cannot be convicted of murder, but only homicide.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[62] The qualifying circumstance of treachery attended the killing in this case as the two conditions for the same are present, i.e. that at the time of the attack, the victim was not in a position to defend himself; and that the offender consciously adopted the particular means, method or form of attack employed by him. The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the part of the victim.[63]

We agree with the trial court when it ruled that the prosecution was able to establish that the unexpected and sudden attack by accused-appellant rendered the deceased unable to put up a defense.[64] Deceased Arnel Bagan was sitting on the floor and his attention was focused on the TV. Accused-appellant suddenly entered the house, approached the victim while holding a knife with his right hand, placed his left hand around the neck of the victim and purposely struck the victim's chest several times. The victim was unarmed and unaware of the impending danger. He could not have defended himself against the attack from his back. Accused-appellant deliberately adopted the means to ensure the consummation of his objective – to kill the victim. Undoubtedly, accused-appellant is guilty of the crime of murder, qualified by treachery.[65]

On the issue of voluntary surrender, accused-appellant argues that the trial court failed to appreciate the mitigating circumstance of voluntary surrender under par. 7, Article 3 of the Revised Penal Code. Accused-appellant avers that the testimony of Barangay Executive Officer Florencio Cabalquinto clearly shows that when accused-appellant saw the latter, accused-appellant approached him and surrendered the knife that was used in stabbing the victim.[66]

In *De Vera v. De Vera*,[67] the Supreme Court ruled:

For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[68] The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[69] Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[70]

Petitioner is correct in saying that in *People v. Cagas*[71] and in *People v. Taraya*,[72] the Court added a fourth requisite before "voluntary surrender" may be appreciated in favor of the accused – that there is no pending warrant of arrest or information filed. Since the warrant of arrest had been issued, petitioner insists that arrest was imminent and the "surrender" could not be considered "voluntary."

The trial court correctly ruled that accused-appellant has not proven that he is entitled to the mitigating circumstance of voluntary surrender in view of the fact that accused-appellant did not surrender voluntarily to the law enforcers. He actually had no choice but to come out of the house of his aunt when the barangay tanods arrived.[73] Accused-appellant's arrest was inevitable so his surrender was not spontaneous. Thus, it cannot be considered as voluntary surrender.

The RTC correctly sentenced accused-appellant to suffer the penalty of reclusion perpetua in accordance with Art.

248 of the Revised Penal Code. Art. 63 of the Revised Penal Code provides that “in all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstance that may have attended the commission of the deed.”

In cases of murder and homicide, civil indemnity of PhP75,000.00 and moral damages of PhP50,000.00 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide.[74] Thus, in line with prevailing jurisprudence,[75] We affirm the award of P75,000.00 as civil indemnity and P50,000.00 as moral damages.

An award of exemplary damages is proper when the qualifying circumstance of treachery is firmly established.[76] The trial court correctly awarded P25,000.00 as exemplary damages.

In lieu of actual damages, the trial court awarded temperate damages amounting to P25,000.00. In *People v. Del Castillo, et al.*, [77] the Supreme Court ruled:

However, the Court has held that when actual damages proven by receipts amount to less than P25,000.00, as in the case of *Sabino and Graciano*, the award of temperate damages amounting to P25,000.00 is justified in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair that the heirs of the victim who tried and succeeded in proving actual damages of less than P25,000.00 only would be put in a worse situation than others who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages. (Citations omitted.)

We affirm the said award. Virgie Bagan testified that she spent P20,000.00 for funeral expenses but she was unable to produce the original receipts in court. Thus, the award of P25,000.00 as temperate damages is justified.

WHEREFORE, in view of the foregoing, the instant appeal is DENIED. The assailed Decision dated February 5, 2013 rendered by the Regional Trial Court, Branch 217, Quezon City finding the accused Melvin Pereira y Montalbo guilty of the offense of murder is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Lazaro-Javier, A.C., and [*]Barrios, M.M., JJ., concur.

[*] Acting Junior Member, vice Justice Laguilles, per Office Order No. 243-14-ABR dated May 23, 2014.

[1] Rollo, pp. 43-53, Records, pp. 184-194.

[2] Records, pp. 28-31.

[3] Records, p. 41.

[4] Records, pp. 45-47.

[5] TSN dated November 23, 2009, pp. 3-24.

[6] TSN dated November 23, 2009, pp. 6-7.

[7] TSN dated November 23, 2009, pp. 9-11.

- [8] TSN dated November 23, 2009, p. 12.
- [9] TSN dated November 23, 2009, p. 14.
- [10] TSN dated November 23, 2009, pp. 15-16.
- [11] TSN dated February 24, 2010, pp. 3-31.
- [12] TSN dated February 24, 2010, pp. 13-16.
- [13] TSN dated February 24, 2010, pp. 17-19.
- [14] TSN dated February 24, 2010, pp. 20-22.
- [15] TSN dated April 5, 2010, p. 3.
- [16] TSN dated April 5, 2010, pp. 5-8.
- [17] TSN dated April 5, 2010, p. 9.
- [18] TSN dated April 5, 2010, pp. 26-27.
- [19] TSN dated April 5, 2010, pp. 31-32.
- [20] TSN dated April 5, 2010, p. 33.
- [21] TSN dated April 5, 2010, p. 34.
- [22] TSN dated April 5, 2010, p. 47-48.
- [23] Rollo, pp. 27-41.
- [24] Rollo, pp. 33-35.
- [25] TSN dated April 25, 2011, pp. 3-6.
- [26] TSN dated May 16, 2011, pp. 2-17.
- [27] TSN dated June 29, 2011, pp. 3-18.
- [28] TSN dated October 17, 2011, pp. 3-17.
- [29] TSN dated March 26, 2012, pp. 3-12.
- [30] Rollo, pp. 43-53, Records, pp. 184-194.
- [31] Rollo, p. 53.
- [32] Records, p. 198.
- [33] Records, p. 204.
- [34] Rollo, p. 36.
- [35] Rollo, p. 36.
- [36] Rollo, p. 37.
- [37] Rollo, p. 38.
- [38] Rollo, p. 39.

- [39] Records, p. 191.
- [40] Records, p. 192.
- [41] Rollo, p. 37.
- [42] Rollo, pp. 37-38.
- [43] Rollo, p. 38.
- [44] Rollo, p. 38.
- [45] Appellee's Brief, Rollo, p. 75.
- [46] Rollo, p. 75.
- [47] Rollo, p. 75.
- [48] Rollo, p. 76.
- [49] Cabuslay v. People, G.R. No. 129875, September 30, 2005.
- [50] People of the Philippines v. Bienvenido Mara y Bolaqueña alias "Loloy," G.R. No. 184050, May 8, 2009 cited in People v. Ford Gutierrez, G.R. No. 188602, February 4, 2010.
- [51] G.R. No. 172606, November 23, 2011 cited in People v. Melanio Del Castillo, et al., G.R. No. 169084, January 18, 2012.
- [52] TSN dated June 29, 2011, pp. 11-13.
- [53] TSN dated June 29, 2011, p. 14.
- [54] TSN dated June 29, 2011, pp. 14-18.
- [55] TSN dated October 17, 2011, p. 5-6.
- [56] TSN dated May 16, 2011, p. 17.
- [57] People v. Latasa, G.R. No. 144331, August 19, 2003 citing People v. Sumalpong, G.R. No. 124705, 20 January 1998, 284 SCRA 464; People v. Villaruel, G.R. Nos. 110803-04, 25 November 1994, 238 SCRA 408.
- [58] People v. Ford Gutierrez, G.R. No. 188602, February 4, 2010.
- [59] Rollo, p. 40.
- [60] Rollo, p. 40.
- [61] Citing People v. Ramirez, G.R. Nos. 80747-48, October 17, 1991.
- [62] Article 14, par. 16 of the Revised Penal Code.
- [63] People v. Gutierrez, G.R. No. 142905, March 18, 2002.
- [64] Records, p. 190.
- [65] Records, p. 191.
- [66] Rollo, p. 39.
- [67] G.R. No. 172832, April 7, 2009.

[68] Citing *People v. Oco*, 458 Phil. 815, 851 (2003).

[69] Citing *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616, 637; *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 668, 697-698.

[70] Citing *People v. Garcia*, *supra*, at 637-638.

[71] G.R. No. 145504, June 30, 2004, 433 SCRA 290.

[72] 398 Phil. 311 (2000).

[73] Records, p. 193.

[74] *People v. Rodriguez Lucero*, G.R. No. 179044, December 6, 2010.

[75] *People v. Laog*, G.R. No. 178321, October 5, 2011; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 457; *People v. Nazareno*, G.R. No. 180915, August 9, 2010, 627 SCRA 383, 393.

[76] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740 cited in *People v. Jesus Domingo*, G.R. No. 184343, March 2, 2009.

[77] G.R. No. 169084, January 18, 2012.

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