

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BONIAO, ACCUSED-APPELLANT.*G.R. No. 100800. January 27, 1993*

Ponente: DAVIDE, JR., J.

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In the morning of 1 February 1990, Adolfo Estampa, Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr. were shot to death in front of a sari-sari store in sitio Katigahan, Mat-i, Surigao City. Each sustained multiple gunshot wounds in various parts of their bodies.[1] The assailant, identified by witnesses as Romeo Boniao, a CAFGU[2] member stationed in Brazil, Malimono, Surigao del Norte, approached the victims from behind and fired his M-14 armalite service rifle at the four (4) who were then seated on a bench, facing the store and partaking of their snacks. Romeo Boniao (Appellant for short) voluntarily surrendered later on the same day of the shooting and declared that he killed the victims in self-defense.

After the appropriate preliminary investigation, the appellant was charged with four (4) separate crimes of murder in an Information[3] filed on 16 February 1990 with the Regional Trial Court (RTC) of Surigao del Norte. The accusatory portion thereof reads:

"That on or about February 1, 1990, in Sitio Katigahan, Barangay Mat-i, Surigao City, Philippines, 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 and armed with an M14 rifle, did then and there willfully, unlawfully and feloniously attack, assault and shoot Alfredo H. Llano, Cirilo S. Dispolo, Adolfo B. Estampa and Alfredo S. Llano, Jr. with the use of said M14 rifle, thereby inflicting upon them serious and mortal gunshot wounds which caused their instantaneous death (sic), to the damage and prejudice of the heirs of the deceased in such amount as may be allowed them by law."

Contrary to law with the qualifying circumstance of treachery.”[4]

The case was docketed as Criminal Case No. 3037 and was raffled off to Branch 30 thereof.

Appellant did not move to quash the information on the ground that it charges more than one (1) offense.

When arraigned on 22 March 1990, the appellant, assisted by counsel de oficio, pleaded not guilty. However, during pre-trial, he claimed responsibility for the killing, acknowledged that the weapon used in the shooting was the M-14 armalite rifle allegedly issued to him by virtue of his being a CAFGU member, asserted that all the bullets that hit the victims came from the same weapon and intimated that he would invoke self-defense to justify his acts.[5] On the first day of trial, the appellant, through counsel de parte, Atty. Wenceslao Ponferrada III, affirmed these admissions and reiterated the theory of self-defense.[6]

The prosecution presented seven (7) witnesses, namely: Virginita Estampa Llano, the owner of the store where the shooting occurred; Alfredo Estampa and Jessie Estampa, nephew and younger brother, respectively, of Virginita who were, at the time of the shooting, at the house where the store is located; Dra. Milagros T. Regaña, the

Municipal Health Officer of Surigao City who conducted the post-mortem examinations on the bodies of the victims; and the widows of three (3) of the victims. On the other hand, the appellant took the witness stand together with his witnesses -- the two (2) military men to whom he voluntarily surrendered.

The case for the prosecution is summed up by the trial court as follows:

"The gist of the evidence of the State is to the effect that on February 1, 1990, 6:00 (sic) A.M., Virginita Llano Estampa and her husband went to Brazil, Malimono, Surigao del Norte to report to the Cadre or CAFGU Team Leader, the loss of their fighting cock wherein one of the suspects for such loss was Romeo Boniao, a CAFGU member.

Romeo Boniao, was summoned by the 'Cadre' team leader, who (sic) denied any knowledge regarding the loss of the fighting cock of the Estampas. This being the result of their inquiry, the latter then proceeded home to Sitio Katigahan, Mat-i, Surigao City, a neighboring barangay of Brazil.

At 11:00 o'clock in the morning of the same day, while the four victims Adolfo Estampa, Cirilo Dispolo, Alfredo Llano, Jr. and Alfredo Llano, Sr., in that order, were having snacks in the store of Virginita Llano Estampa, accused Romeo Boniao arrived from behind and immediately gunned (sic) the victims with his M-14 rifle, hitting them in different parts of their bodies resulting to their untimely death (sic)."[7]

The Autopsy Reports prepared by Dr. Milagros T. Regaña describe in detail the gunshot wounds sustained by each of the victims and the causes of their deaths. A summary thereof follows:

a) Adolfo Estampa:

Twenty (20) gunshot wounds located anteriorly, at least thirteen of which are entrance wounds surrounded by gunpowder tattooing (sic) or contusion collar; and six (6) located posteriorly, at least four (4) of which are entrance wounds.

The cause of death is "Cardiopulmonary arrest. Secondary to cardiac injury and hemorrhage (3 multiple). Secondary to gunshot wounds chest."[8]

b) Cerito (sic) Dispolo:

Six (6) gunshot wounds located anteriorly, at least three of which are entrance wounds; and one entrance wound located posteriorly.

The cause of death is "Cardiopulmonary Arrest. Secondary to cerebral injury. Secondary to gunshot wound left temporal area."[9]

c) Alfredo Llano, Sr.:

Six (6) gunshot wounds located anteriorly, at least three (3) of which are entrance wounds; and three (3) entrance wounds located posteriorly.

The cause of death is: "Cardiorespiratory arrest. Secondary to cerebral injury. Secondary to gunshot wound left eye."[10]

d) Alfredo Llano, Jr.:

Eleven (11) gunshot wounds located anteriorly, at least four (4) of which are entrance wounds; and four (4) wounds located posteriorly.

The cause of death is: "Cardiopulmonary arrest. Secondary to cerebral injury. Secondary to gunshot wound (Head) [left occiput and] right face."[11]

The appellant offered the following version of the incident:

"x x x (t)hat on 31 January 1990, Adolfo Estampa with some companions offered to the accused, Romeo Boniao a fighting cock for P50.00. Short of cash, accused gave P25.00, with a promise to give the balance the following day. Early in the morning of February 1, 1990, he heard of rumors and it immediately registered into his mind and he surmised that the cock sold to him might be the stolen cock just to put him into (sic) shame and ridicule, the victims being notorious for crimes against property and are suspected NPA symphatizers (sic). Romeo Boniao, compared to the four victims was shorter, around 5 feet more or less. He is a good and doting forarm (sic) of his father from whom are (sic) dependent for support and subsistence. Alone, he brought the cock to Adolfo Estampa to return the same and demand for the return of his partial payment. But instead of giving an answer Adolfo Estampa snatched and grabbed the M-14 of accused Romeo Boniao. The three other victims tried to assault the accused by helping Adolfo Estampa. In the heat of the struggle for possession, the safety lock released, accused (sic) unknowingly pressed the trigger sending forth automatic (sic) burst of fire. Accused immediately left the scene and hiked along mountain trails to evade retaliations (sic) from relatives and comrades of the victims, reputed as NPA mass operatives, until he reach (sic) the Philippine Army Station at Pilar, Bad-as, Sison, Surigao del Norte, and surrendered voluntarily and narrated the events that transpired and was eventually brought to M/Sgt. Villaba, Chief of the CAGU cadre, to surrender again and finally to the Police Station of Sison, Surigao del Norte, to surrender for the 3rd time and final disposition. x x x"[12]

On 27 August 1990, the trial court promulgated its decision[13] finding the appellant guilty of four (4) separate crimes of murder and sentencing him in each to suffer the penalty of reclusion perpetua and to pay the heirs of the victims appropriate sums as moral damages and for funeral expenses.

It rejected the appellant's claim of self-defense and ruled that the killings were attended by the qualifying circumstances of treachery and evident premeditation. Thus:

"The allegation of self-defense comes from the lone testimony of the accused, without any collaborating evidence, like other witnesses to support the same.

In its (sic) memorandum accused harped on the wounds found in the anterior (front) part of the victims' bodies, ostensibly to support its (sic) theory that the victims were the aggressors.

Scrutinizing the description and location (sic) of the multiple wounds suffered by the four victims, it is noted however that several bullet wounds 'entrance' are also found at the back (posteriorly), of the bodies, to wit:

Adolfo Estampa:

'Posteriorly:

WOUND # 1: x x x

WOUND # 2: x x x

WOUND # 4: x x x

WOUND # 5: x x x'

[Exhibit B-1, p. 106, rec.;]

It is further noted that the bullet wounds were located on the right back portion of the victims. For instance Adolfo Estampa, among others was hit in the 'right buttocks' and 'mid sacrum', taking the blunt (sic) of the initial automatic fire, being seated on the bench on the extreme right from the direction of assailant (sic).

Cirilo Dispolo, who was seated next to Adolfo Estampa, suffered wounds in the 'right thighs' (sic) (wound No. 6, 7); 'right wrist'; and 'right hand' (wounds Nos. 3 and 4).

Alfredo Llano, Jr. seated after Dispolo, had his right side of the face blown off (wound No. 1); in (sic) the right nipple (wound No. 5); right upper and lower quadrant of abdomen (sic) (wound No. 6); right forearm (wound

No. 7); right thigh (wound No. 8). [Exhibit D, p. 110, rec.;]

Alfredo Llano, Sr. was seated next or at last of the four, had (sic) wounds found in 'right (sic) moxilla, right lower jaw' (wound No. 2); 'right thigh' (wound No. 3); right forearm' (wound No. 4); 'right ninth rib' (wound No. 5). [Exhibit C, p. 108, rec.;]

The hits on the right portion (sic) of the victims' bodies, in the forearm, thighs, face and buttocks, all point to the fact that the assailant fired from behind, obliquely to the right direction of the four victims who were seated side by side on a bench fronting the store of witness Virginita Llano.

The finding of the medico legal officer of wounds with gun powder burns (tatooing) (sic) and others without, indicate (sic) two things. Those without gun powder burns were fired from a distance while those with gun powder burns were fired at close range. This fact completely destroys the assertion that the shooting was accidental and at close range, while victims (sic) were grappling for the weapon.

It is safe to assume that the firing at close range was an insurance that no one will live to tell the tale.

There are three elements of (sic) self-defense, namely: unlawful aggression on the part of the victim; reasonable necessity of the means employed by the accused in order to prevent or repel the victim's unlawful aggression; and lack of sufficient provocation on the part of the accused. The most important element is unlawful aggression for without it, the other elements will not have any basis.

But who was the real unlawful aggressor in this case? Was the unlawful aggressor the accused who was armed with M-14 (sic) rifle or the four victims who were unarmed but who, according to the accused, were trying to grab his rifle?

By accused on (sic) admission he was aggrieved because allegedly a stolen cock was sold to him, to put him to shame and ridicule by the victims who are (sic) reputed to be NPA sympathizers. His mission that morning was not friendly.

In the absence of any evidence corroborating the testimony of the accused, it is difficult to believe that the victims, without any provocation at all, would just attack and try to disarm the accused, not unless if the gun was pointed to them and they are (sic) trying to defend themselves from a possible assassination (sic). In which case, the ones actually employing self-defense were the victims, only that they have failed.

The law requires that the unlawful aggression should be one causing not only an eminent (sic) danger but actual and immediate danger to the life of the person who is defending himself. Granting that the four victims were indeed trying to grab the M-14 rifle of the accused as testified to by him, will that warrant an outright shooting and killing of the victims? Of course, that is not the kind of self-defense contemplated by the law. The means of repelling it should only be commensurate to the degree of danger that a person may have on his life.

The accused is not firm in his plea for (sic) self-defense; otherwise, he could not have alleged that he only accidentally pressed the trigger of his M-14 rifle while they were at the height of grappling for the possession of his gun, and in the process hit four different moving targets.

Accused can not claim self-defense at (sic) the same time alleging (sic) that the killing of the victims were (sic) due to accidental (sic) firing of his gun. If there was really such a need to use his gun in order to preserve his life, the gun could not have been fired accidentally but deliberately used by him. [People v. Tapeno, G.R. 33573, August 25, 1988;].

It was established that the number of wounds sustained by the victims were: Cirilo Dispolo -- 7; Adolfo Estampa -- 26; Alfredo Llano, Sr. -- 9; and Alfredo Llano, Jr. 15. [Exhibits A to D, pp. 104-111, rec.;] Practically all the bullets contained in the magazine of the defendant's firearm have (sic) landed on the different parts of the bodies of the victims without a single miss, and yet, the accused has alleged that the firing was accidental and has (sic) occurred while the accused on one hand and the four victims on the other hand,

were rumbling, scrambling and grappling for the possession of the said firearm.

A plea of self-defense may be accepted only when it is established that the accused did not initiate the unlawful aggression. If unlawful aggression on the part of the victim has not been proved by the evidence for the defense because the accused was actually the aggressor, then his claim for self-defense can not be accepted. [People v. Montejo, G.R. 66857, November 21, 1988;]

From the foregoing, the court can not appreciate the plea of self-defense. On the other hand, it has been satisfactorily shown that the killing was attended by treachery, qualifying it to murder, and aggravated by evident premeditation.

What remains to be determined is whether the killing of the four constitutes a complex crime under Article 48 of the Revised Penal Code.

There is no question that several shots were fired by the accused all hitting fatally the four victims.

How the slaughter was consummated is aptly described by witness Alfredo Llano. That (sic) the accused approaching from behind the four persons seated on the bench immediately shot one (sic) after the other in successive shots followed by strapping or automatic firing. Seeing the massacre completed shouted (sic), 'all my enemies are dead.' [TSN, pp 14-28, May 17, 1990;]

The death (sic) of the four having been caused by distinct and several bullets fired from the M-14 rifle successively by the accused, the crime committed cannot be complex.

'Where the killing is not shown to have been committed by a single discharge of firearm (sic), the crime can not be complex'. [People v. Tilos, L2715, 30 SCRA 734;].

A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes. [People v. Pernida, 30 SCRA 748 citing People v. Macaso, 85 Phil. 819; People v. Daligdig, 89 Phil. 598; People v. Mones, 85 Phil. 331; People v. Dosirto, (CA 45 O.G. No. 10, p. 4542);]."[14]

The dispositive portion of the decision reads as follows:

"WHEREFORE, the Court FINDS the accused, ROMEO BONIAO, guilty beyond reasonable doubt of the crime of Murder, defined and penalized in Article 248 of the Revised Penal Code. Considering in his favor the mitigating circumstance of voluntary surrender, which is offset by the aggravating circumstance of evident premeditation, METES (sic) the medium penalty of RECLUSION PERPETUA, for the death of Adolfo Estampa; the SAME PENALTY of Reclusion Perpetua for the death of Cirilo Dispolo; the SAME PENALTY for the death of Alfredo Llano, Jr.; and the SAME PENALTY for the death of Alfredo Llano, Sr.

To indemnify the heirs of Adolfo Estampa, the sum of P30,000.00, plus funeral expenses of P5,000.00 and P10,000.00 moral damages;

To the heirs of Cirilo Dispolo, the sum of P30, 000.00, plus P5,000.00 funeral expenses and P10,000.00 moral damages;

To the heirs of Alfredo Llano, Jr., the sum of P30, 000.00, plus P5,000.00 funeral expenses and P10,000.00 moral damages; and

To the heirs of Alfredo Llano, Sr., the amount of P30,000.00, plus P5,000.00 funeral expenses and P10,000.00 moral damages; without any subsidiary imprisonment in case of insolvency;

To suffer the accessory penalties provided for by law and to pay the costs.

SO ORDERED."[15]

On 10 September 1990, the appellant filed his Notice of Appeal.[16]

In his Appellant's Brief, the appellant initially contends that he may not be held liable for murder as there was no proof of the qualifying circumstances of evident premeditation and treachery; hence, only homicide could have been committed. And even then, he asserts that he is not liable therefor because he acted in legitimate self-defense. He then submits the following assignment of errors: 1) the lower court erred in finding that the guilt of the accused has been proven beyond reasonable doubt; 2) the lower court erred in giving more weight to the testimonies of the prosecution witnesses who are all relatives of the victims and are therefore biased; and 3) the lower court erred in making its decision based on presumptions, surmises and inferences.[17]

After a painstaking review of the records of this case, We rule that except for its appreciation of the qualifying circumstance of evident premeditation with respect to the deaths of Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr., which We find to be erroneous, and the penalties imposed therefor which We likewise find to be incorrect, the trial court was correct in convicting the appellant for four (4) crimes of murder.

In the light of the appellant's defense, the errors imputed to the trial court deserve scant consideration.

By invoking self-defense, the appellant admitted killing the four (4) victims. The burden is, therefore, upon him to prove the existence, by clear and convincing evidence, of its essential requisites;[18] otherwise stated, the onus probandi was thus shifted to him.[19] He must rely on the strength of his own evidence and not on the weakness of that of the prosecution,[20] for even if the latter were weak, it could not be disbelieved after he himself admitted the killing.[21]

The three (3) requisites of self-defense are: 1) unlawful aggression on the part of the victim; 2) reasonable necessity of the means employed to prevent or repel it; and 3) lack of sufficient provocation on the part of the person defending himself.[22]

Appellant miserably failed to discharge such burden.

At the outset, it must be stated that the trial court's observation that the appellant is not firm in his plea of self-defense, is well founded. Indeed, while he invoked self-defense to justify the killings, he did not admit that he intentionally fired his weapon to repel the purported attack against him. Instead, he alleged that the shooting was merely accidental as he unknowingly pressed the trigger of his M-14 armalite, thereby sending forth automatic bursts of fire while he and Adolfo Estampa were grappling for its possession. Such vacillation betrays the weak foundation of his theory of self-defense. As correctly concluded by the trial court in its decision, the "(a)ccused can not claim self-defense at the same time alleging (sic) that the killing of the victims were (sic) due to accidental (sic) firing of his gun. If there was really such a need to use his gun in order to preserve his life, the gun could not have been fired accidentally but deliberately used by him." [23]

The record is bereft of any evidence of unlawful aggression on the part of the victims. In the first place, they were seated on a bench outside the store partaking of their snacks immediately before the shooting. Secondly, all of them were unarmed. Finally, none of them committed any act which could have even remotely posed any real danger to the life or personal safety of the appellant. Unlawful aggression presupposes an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.[24] In other words, there has to exist a real danger to the life or personal safety of the person claiming self-defense.[25]

In the case at bar, the appellant was clearly the unlawful aggressor. When he saw the victims with their backs towards him, he immediately opened fire, hitting Adolfo Estampa first then Cirilo Dispolo, Alfredo Llano, Jr. and finally, Alfredo Llano, Sr. That he was in a position obliquely to the right of the posterior sides of the victims at the time he fired at them is, as correctly determined by the trial court, adequately supported by the locations of the

gunshot wounds.

Appellant's claim that he initially confronted Adolfo Estampa about the cock but that the latter grabbed his armalite, is hardly credible. Prosecution witness Virginita Estampa, who was in the store at that time, did not witness any confrontation. On cross-examination of prosecution witness Alfredo Estampa, the defense counsel tried but miserably failed to establish the fact of confrontation. Thus:

"ATTY. PONFERRADA III:

x x x

Q.

So that the following morning as you said Boniao was there at the scene of the incident on February 1, at around 10:30 a.m., right?

A.

Yes, sir.

Q.

And you saw Boniao confronting the four persons why (sic) they accused him of stealing the chicken or cock?

A.

He did not because he immediate (sic) shot the four persons.

Q.

Do you mean to say you saw Boniao coming and approaching the store of Virginita?

A.

Yes, sir.

Q.

Where were you when you saw Boniao coming and approaching the store of Virginita?

A.

I was on the bench.

Q.

But you heard Boniao confronting Llano why (sic) he accused him, did you hear that?

A.

He did not because he directly shot the four persons."[26]

Neither are We convinced by the appellant's assertion that his claim of self-defense is supported by the presence of several wounds in the anterior or front side of the bodies of the victims, which indicates that the latter were hit in a face-to-face confrontation. While it is not disputed that such wounds existed, it is equally true that there were several entrance wounds found at the victims' backs, thereby supporting the eyewitnesses' account of the incident. Based on the autopsy reports of Dr. Regaña, Adolfo Estampa sustained at least four (4) entrance wounds in his back, Cirilo Dispolo had one (1), Alfredo Llano, Sr. had three (3) and Alfredo Llano, Jr. had four (4). Appellant

offered no credible evidence to explain how these entrance wounds were inflicted. Plainly taken, his argument that the anterior entrance wounds conclusively prove his theory of self-defense, is baseless and self-serving.

Considering that the appellant was the aggressor, his employment of any means in furtherance of the aggression cannot be considered as the rational means to repel an illegal aggression;^[27] moreover, since there was no unlawful aggression on the part of the victims, there can be no self-defense, complete or incomplete. "It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition sine qua non. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself."^[28] Simply put, unlawful aggression is indispensable for it is the main ingredient of self-defense.^[29]

And even assuming for the sake of argument that there was unlawful aggression on the part of any or all of the victims, there was, nevertheless, no reasonable necessity for the means employed to repel it. As the autopsy reports reveal, more than thirty (30) rounds were fired from the appellant's weapon, all of which hit the intended targets. The appellant admitted that one (1) magazine of his M-14 armalite rifle contains twenty (20) bullets.^[30] Obviously, therefore, he reloaded his weapon with a second magazine after using up the contents of the first magazine. Firing more than thirty (30) M-14 armalite bullets at unarmed victims was clearly unnecessary; it only highlighted the appellant's irrevocable decision to kill Adolfo and those who happened to be with him at that precise moment.

These acts further show that the killing of the victims was not merely accidental but deliberate. Having used more bullets than necessary, the appellant cannot now be heard to say that he wanted only to repel a purported attack by the victims; the multiple shots which he fired at them unmistakably manifested the calculated pursuit of a decision to kill. Indeed, the locations, number and gravity of the wounds inflicted on the victims belie the appellant's pretensions that he acted in self-defense. Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses.^[31]

There was sufficient provocation on the part of the appellant because it is obvious that he left his house with murder in his heart. He was certainly not on a mission of peace. In his version of the incident, the appellant reveals that he surmised that Adolfo Estampa sold him a stolen fighting cock to put him to shame and ridicule. Hence, he journeyed to return the same and recover his down payment of P25.00. He did not, however, express in his testimony his real feelings at that time. It is only in the Appellant's Brief that he first manifested the same in this wise:

"x x x He believed that the Estampas was (sic) trying to have one over him. He was maligned, humiliated and dishonored and shamed in the presence of his cadremán (sic) and neighbors. x x x"^[32]

Thus, armed with his fully loaded M-14 armalite rifle and a spare magazine -- also full of ammunition -- he started his hunt for Adolfo. If his intended business was merely to return the cock and recover the downpayment, it was not necessary for him to have toted his armalite: neither was it imperative for him to have brought two (2) fully loaded magazines. Besides, he could not have carried his armalite outside the territorial jurisdiction of his CAFGU unit (Malimono, Surigao del Norte) as he lacked the proper permission from his superiors. Furthermore, he did not show that he was in hot pursuit of members of the Communist Party of the Philippines-New People's Army (CPP-NPA) -- a circumstance which would have possibly excused him from obtaining the required permission.

He thus armed himself to kill the man who he believed maligned and dishonored him, and put him to shame and disrepute.

The appellant's other contentions, such as the charge of inconsistencies in the testimonies of the prosecution

witnesses and the alleged error committed by the trial court in giving credence to such testimonies, the witnesses who gave the same being related to the victims, are equally without merit. While witnesses Virginita Estampa Llano, Alfredo Estampa and Jessie Estampa were related in one way or another to the victims, save for Cirilo Dispolo, relationship does not by itself preclude the trial court from believing such testimonies or impair the witnesses' credibility. They are not disqualified by the Rules on that ground[33] alone; this Court has held that it is not to be lightly supposed that relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they believe to be innocent thereof.[34]

Anent the inconsistencies cited by the appellant, We find the same to refer to minor matters. In view of the settled rule that minor inconsistencies do in fact strengthen 'rather than weaken the witness' credibility,[35] as these discrepancies indicate that the responses given were honest and unrehearsed,[36] the appellant's challenge must fail.

Equally unfounded is the appellant's sweeping charge that the trial court based its decision on presumptions, conjectures and surmises. Both testimonial and physical evidence on record fully support the finding of guilt beyond reasonable doubt.

The killings in this case were clearly attended by treachery. It has been duly established that the appellant shot the unarmed and unsuspecting victims suddenly, without any warning and from behind to ensure that they would not put up any defense. That he purposely adopted this mode of attack to consummate the crime without any risk to himself is beyond doubt. There is treachery when the attack on the victim was sudden and unexpected and from behind and without warning, with the victim's back turned towards his assailant;[37] or when the attack was so sudden and unexpected that the victim was unable to defend himself, thus ensuring the execution of the criminal act without risk to the assailant.[38]

We likewise agree with the trial court that evident premeditation was duly established in this case. The following requisites must concur before evident premeditation may be appreciated: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[39]

The third requisite simply means that there must be a period sufficient in a judicial sense to afford a full opportunity for meditation and reflection -- sufficient time to allow the conscience of the actor to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings.[40]

In the instant case, Adolfo Estampa and his wife reported the loss of their fighting cock to the CAFGU Team Leader stationed in Brazil, Malimono, Surigao del Norte at 6:00 o'clock in the morning of 1 February 1990. Being one of the suspected authors of the loss, the appellant was summoned by the team leader and confronted about the same. The former, considering such accusation defamatory, denied the same; according to him, he was maligned, humiliated, dishonored and shamed in the presence of both his cadremen and neighbors. Some time after 10:00 o'clock that same morning, the appellant, armed with his M-14 armalite rifle with two (2) magazines of bullets, started his journey to Katigahan, Mat-i, Surigao City to look for Adolfo Estampa. As earlier noted, there was no reason for him to have carried his firearm if his only purpose was to return the cock and recover the alleged downpayment. We are morally convinced that in reality, the appellant had resolved to kill Adolfo Estampa to exact vengeance for the wrong the latter had supposedly committed; the appellant was out to vindicate his name, reputation and honor. Moreover, the nearly five (5) hours that had elapsed from the time the appellant was allegedly maligned, dishonored and shamed until the time he actually shot the hapless victims, was sufficient enough for meditation and reflection. This Court has ruled that the lapse of just two (2) hours from the inception

of the plan to the execution of the crime satisfies the last requisite for the appreciation of evident premeditation.[41]

However, evident premeditation cannot be appreciated against the appellant with respect to the shooting of Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr. There is no evidence on record to show that the appellant had these three (3) in mind before embarking on his sinister journey or at any time before seeing all the victims. Only Adolfo Estampa was his intended victim. Evident premeditation cannot be appreciated if the deceased was not the intended victim.[42]

Summing up, the qualifying circumstances of treachery and evident premeditation -- both alleged in the information -- attended the killing of Adolfo Estampa. Since treachery is enough to qualify the killing to murder,[43] evident premeditation should be considered only as a generic aggravating circumstance.[44]

The trial court correctly ruled that the appellant committed four (4) separate crimes of murder and not a complex offense under Article 48 of the Revised Penal Code. As he separately aimed at and fired upon each of the victims with different bullets, the appellant thus had a separate criminal intent for each of them. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[45]

Appellant, however, had successfully proved, and the trial court had properly credited in his favor, the mitigating circumstance of voluntary surrender.[46] Accordingly, with respect to the death of Adolfo Estampa, this mitigating circumstance offsets the generic aggravating circumstance of evident premeditation; applying paragraph 4, in relation to paragraph 1, Article 64 of the Revised Penal Code, the penalty prescribed by law for murder shall be imposed in its medium period. With respect to the deaths of the other three (3) victims, however, this mitigating circumstance, not being offset by any generic aggravating circumstance, shall, pursuant to paragraph 2 of said Article 64, warrant the imposition of the minimum period of the penalty prescribed by law for murder.

Article 248 of the Revised Penal Code prescribes the penalty of reclusion temporal maximum to death for the crime of murder. Following the doctrine laid down in *People vs. Muñoz*,[47] the imposable penalties should then be:

- a) for the murder of Adolfo Estampa, reclusion perpetua, and
- b) for each of the murders of Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr., reclusion temporal maximum.

However, the Indeterminate Sentence Law[48] benefits the appellant with respect to the deaths of the last three (3) victims. He could, therefore, be sentenced to a penalty the maximum of which should be within the range of reclusion temporal maximum and the minimum of which, in view again of *People vs. Munoz*,[49] should be within the range of prision mayor maximum to reclusion temporal medium. This Court hereby fixes it at ten (10) years and one (1) day of prision mayor maximum as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum in each of the murders of Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr.

Considering the current policy of this Court, the indemnity for the deaths of the victims should be increased to P50,000.00 in each case.

WHEREFORE, except to the extent as above modified, the challenged decision of Branch 30 of the Regional Trial Court of Surigao City in Criminal Case No. 3037 is hereby AFFIRMED in all respects. As modified, (a) with respect to the murders of Cirilo Dispolo, Alfredo Llano, Sr. and Alfredo Llano, Jr., the appellant is hereby

sentenced in each case to suffer the penalty of imprisonment of from ten (10) years and one (1) day of Prison Mayor Maximum as minimum to seventeen (17) years, four (4) months and one (1) day of Reclusion Temporal Maximum as maximum, and (b) the indemnity is hereby increased to P50,000.00 in each of the four (4) murders.

Costs against the appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Autopsy Reports; Original Records, 69-76.

[2] Citizens Armed Forces in Geographical Units.

[3] Original Records, 1-2.

[4] Id., 1.

[5] Pre-trial Order; Original Records, 33.

[6] TSN, 7 May 1990, 4.

[7] Decision 2; Original Records, 122 (reference to Exhibits omitted).

[8] Exhibits "B", "B-1" and "B-2"; Id., 70-72.

[9] Exhibits "A"; Id., 69.

[10] Exhibits "C" and "C-1"; Original Records, 73-74.

[11] Exhibits "D" and "D-1"; Id., 75-76.

[12] Appellant's Brief, 3-4.

[13] Per Judge Carlo H. Lozada; Original Records, 121-128.

[14] Decision, 4-7; Original Records, 124-127; Rollo, 15-18.

[15] Decision, 7-8; Original Records, 127-128; Rollo, 18-19.

[16] Id., 129.

[17] Appellant's Brief, 14; Rollo, 32, et seq.

[18] Ebajan vs. Court of Appeals, 170 SCRA 178 [1989]; People vs. Arroyo, 201 SCRA 616 [1991].

[19] People vs. Lacao, SR., 201 SCRA 317 [1991].

[20] Ortega vs. Sandiganbayan, 170 SCRA 38 [1989]; People vs. Delgado, 182 SCRA 343 [1990]; People vs. Sazon, 189 SCRA 700 [1990].

[21] People vs. Martija, 112 SCRA 528 [1982]; People vs. Valencia, 133 SCRA 82 [1984]; People vs. Alpetche, 168 SCRA 670 [1988]; People vs. Rey, 172 SCRA 149 [1989].

[22] Article 11(1), Revised Penal Code; People vs. Ordiales, 42 SCRA 238 [1971]; People vs. Aquino 54 SCRA 409 [1973]; People vs. Maliwanag, 58 SCRA 323 [1974]; Ortega vs. Sandiganbayan, supra.; People vs. Cañete, 175 SCRA 111 [1989]; People vs. Batas, 176 SCRA 46 [1989]; People vs. Nabayra, 203 SCRA 75 [1991]; People vs. Pinto, 204 SCRA 9 [1991].

- [23] Decision, 6; Original Records, 126; Rollo, 17 citing *People vs. Tapeno*, 164 SCRA 696, 701-702 [1988].
- [24] *People vs. Bayocot*, 174 SCRA 285 [1989].
- [25] *People vs. Sabio*, 19 SCRA 901 [1967]; *Andal vs. Sandiganbayan*, 179 SCRA 26 [1989]; *People vs. Cadalingan*, 188 SCRA 313 [1990].
- [26] TSN, 17 May 1990, 13; underscorings supplied.
- [27] AQUINO, R.C. *The Revised Penal Code*, vol I, 1987 ed., 151-152.
- [28] *People vs. Sazon*, supra., 704 citing *People vs. Batas*, supra., see also *People vs. Nulla*, 153 SCRA 471 [1987].
- [29] *Guevarra vs. Court of Appeals*, 187 SCRA 484 [1990].
- [30] TSN, 13 June 1990, 19-20.
- [31] *People vs. Sacabin*, 57 SCRA 707 [1974]; *People vs. Demeterio*, 124 SCRA 914 [1983].
- [32] Brief for Appellant, fourth paragraph, 10; Rollo, 32, et seq.
- [33] Under Section 20, Rule 130 of the Rules of Court, those who may be interested in the outcome of a case are not disqualified from testifying; those who are disqualified from testifying are enumerated under Sections 21, 22, 23 and 24 thereof.
- [34] *People vs. Demeterio*, supra.
- [35] *Medios vs. Court of Appeals*, 169 SCRA 838 [1989]; *People vs. Barros*, 122 SCRA 34 [1983].
- [36] *People vs. Mangalino*, 182 SCRA 329 [1990]; *People vs. Cantuba*, 183 SCRA 289 [1990]; *People vs. Palino*, 183 SCRA 680 [1990].
- [37] *People vs. Rellon*, 167 SCRA 75 [1988]; *People vs. Tachado*, 170 SCRA 611 [1989].
- [38] *People vs. Maravilla*, 167 SCRA 645 [1988].
- [39] *People vs. Narit*, 197 SCRA 334, 349 [1991], citing several cases.
- [40] *U.S. vs. Gil*, 13 Phil. 530 [1909]; *People vs. Torejas*, 43 SCRA 158 [1972]; *People vs. Canial*, 46 SCRA 634 [1972]; *People vs. Palacpac*, 49 SCRA 440 [1973]; *People vs. Renegado*, 57 SCRA 275 [1974]; *People vs. Narit*, supra.
- [41] *People vs. Mojica*, 10 SCRA 515 [1964].
- [42] *People vs. Guillen*, 85 Phil. 307 [1950]; *People vs. Guevarra*, 23 SCRA 58 [1968].
- [43] Article 248, Revised Penal Code.
- [44] *People vs. Diaz*, 55 SCRA 178 [1974].
- [45] *People vs. Pineda*, 20 SCRA 748 [1967].
- [46] Article 13(7), Revised Penal Code.

[47] 170 SCRA 107 [1989].

[48] Section 2, Act No. 4103, as amended.

[49] Supra.

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