

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL GALLEGO, ACCUSED-APPELLANT.

G.R. No. 130603. August 15, 2000

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-130603/>

PUNO, J.:

In a sea of nameless faces, can one's memory of an encounter or two with a stranger suffice to identify him as the assailant of one's kin?

Raul Gallego was charged with the crime of murder in an information that reads:

"That on or about the 8th day of February 1995 in the municipality of Jordan, Province of Guimaras, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with evident primiditation (sic) and treachery, taking advantage of night time (sic), armed with a knife did then and there willfully, unlawfully and feloniously assault, attack and stab one Wilfredo Lamata, hitting the said Wilfredo Lamata on the left breast which caused his instantaneous death.

CONTRARY TO LAW."[1]

The records show that at about 7:30 p.m. on February 8, 1995, Raul Gallego appeared at the residence of spouses Wilfredo and Lucia Lamata in Barangay Sebaste, Jordan, Guimaras. At that time, the Lamata spouses' 12-year old granddaughter, Avelyn Lamata, and their daughter, Lina Echavez, were watching television in the living room. A flourescent lamp lighted the living room. Lucia was also inside the house sewing clothes while Wilfredo was ill and in bed in a room upstairs. From outside the Lamata abode, Gallego called Avelyn's attention through a window. Avelyn asked him who he was and he replied that he was a relative from Negros.[2] Avelyn opened the main door of the house, but Gallego remained standing outside.[3] Avelyn informed Lucia that a relative of her grandfather was looking for him, then continued watching television.[4] Lucia stepped out and asked Gallego who he was. The latter replied that he was a military man named Col. Latumbo. He also said that he was Wilfredo's relative from Negros and he was eager to see Wilfredo whom he had not seen for seven years. Lucia invited him to come in and talk with Lina while she (Lucia) fetched Wilfredo upstairs. Gallego remained outside the house.[5] Lina opened the main door a bit wider. The light coming from the living room illuminated the area outside the main door where Gallego stood. Lina stepped out and talked to him. They were about two feet apart. She asked Gallego who he was, and the latter repeated that he was a relative from Negros and a military man. Lina invited him inside the house because he said he was a relative but he preferred to wait for Wilfredo outside.[6]

Meanwhile, Wilfredo, got up from bed and together with Lucia went downstairs and headed for the main door.[7] Lina and Gallego were still standing by the main door with Gallego facing the living room. As the Lamata spouses were approaching, Lina invited Gallego to come in and opened the door wider.[8] Upon seeing Wilfredo from a distance of about five feet, Gallego rushed to him saying, "(h)ere is my relative whom I am very anxious to see". With his left hand, Gallego embraced Wilfredo and held him on his right shoulder. All of a sudden, with his right hand, Gallego drew a knife and stabbed Wilfredo on the lower left chest.[9] Lucia, who was by Wilfredo's

left side, embraced her husband to protect him from Gallego but it was too late. She was slashed in the upper left arm when Gallego withdrew the knife from Wilfredo. Wilfredo uttered, "I have no fault, why did you do it to me?" and ran to the kitchen.[10]

Lina also saw Gallego stab her father. After opening the main door for Gallego to come in, she headed for the kitchen. But before she could reach the kitchen, she turned back towards the direction of her father. With Gallego to her left, she was standing at an angle in front of her father about one meter away. Suddenly, she saw Gallego stab Wilfredo on the left breast. Taken aback, Lina shouted, "Guinbuno si Tatay!" ("Tatay was stabbed!").[11] Gallego then ran out of the house and Lina immediately closed the door after him. He fled on a motorcycle.[12]

Lucia shouted for help from her neighbors. Her son from a neighbor's house arrived. Lina, her brother, her friend, and Lucia brought Wilfredo to the hospital. Unfortunately, when they got there, he was pronounced dead-on-arrival.[13] Policemen arrived in the hospital to investigate the stabbing incident.[14]

Dr. Edgardo Jabasa, medico-legal expert and Provincial Health Officer 1 of Guimaras, examined the cadaver of Wilfredo Lamata. As reflected in the Post-Mortem Findings he prepared, the cause of Wilfredo's death was the stab wound on his left chest which could have been inflicted by a sharp, bladed and pointed instrument.[15]

The following day, Lucia was informed by a relative that her husband's assailant had been caught. At about 1:30 p.m., she went to the Jordan police station. There she was asked to identify her husband's assailant. At that time, the accused was sitting at the porch of the police station along with other people.[16] She identified him as the culprit and later on found out that his name was Raul Gallego. She executed an affidavit narrating the killing of Wilfredo.[17]

Subsequently, Lina Echavez also went to the Jordan police station upon invitation of a relative named Ramon Galve. Raul Gallego was then already behind bars. She identified Gallego as the man who stabbed her father.[18] On February 10, 1995, Lina Echavez also executed an affidavit regarding the stabbing incident.[19]

Avelyn Lamata testified that while on a jeep headed for Iloilo, she passed by Gallego in his prison cell and also recognized him as Wilfredo Lamata's assailant. The jeep was about ten meters from the detention cell.[20] On February 22, 1995, Avelyn executed an affidavit regarding the killing of her grandfather.[21]

When Lina Echavez took the witness stand, she recalled that prior to that night when her father was stabbed, during the February 3, 1995 fiesta, she encountered Raul Gallego for the first time. Lina was in her brother's house with her cousin. Gallego rode on a motorcycle and stopped in front of the house of Lina's brother. Gallego asked Lina's cousin where Wildy (referring to Wilfredo Lamata) lived. Lina asked him who he was and he answered that he was a relative from Negros.[22]

Lucia Lamata, Lina Echavez, and Aveyn Lamata all positively identified Raul Gallego as Wilfredo Lamata's assailant when they took the witness stand.[23]

The accused Gallego posed the defense of denial and alibi.

Francisco Mesa, a good friend of Gallego, testified that Gallego is from Negros, but he has relatives in Barangay Dasal, Jordan, Guimaras. On February 5, 1995, Mesa met Gallego in the Barangay Dasal market. Gallego told him that he was in Barangay Dasal visiting his relatives.[24] Thereafter, during the whole day of February 8, 1995 up to 7:00 p.m., Mesa saw Gallego sitting alone outside the store of a certain Lydia Gallego at the Barangay Dasal market where Mesa was a fish vendor. The distance between Lydia Gallego's store and Mesa's vending place was about 30 meters. At 7:00 p.m., he walked with Raul Gallego to the house of the latter's cousin, Lorio Gallego. There were many people holding a family reunion in the said house in Barangay Dasal.[25] While there, Mesa

talked with Raul Gallego. He did not see him leave the house until he (Mesa) went home at past 11:00 p.m.[26]

Mesa also testified that Barangay Dasal and Barangay Sebaste (where Wilfredo Lamata lives) are about three kilometers, apart and are connected by a rough road where trucks, jeeps, cars, tricycles, and motorcycles can pass. By jeep, the distance can be traversed in ten minutes, and by motorcycle, about 30 minutes.[27]

Lorio Gallego testified for the defense. On February 8, 1995, he was at home hosting a dinner on the occasion of the first death anniversary of his daughter. There were about 50 people in his house, among whom were Raul Gallego and Francisco Mesa who arrived together at about 6:30 to 7:00 p.m. Raul did not leave his house until the next morning.[28] He likewise testified that the distance between Barangay Dasal and Barangay Sebaste is about eight kilometers. These barangays are connected by a road where a passenger jeepney plies once or twice a day. If a passenger misses the jeepney, motorcycles are available for hire to negotiate the distance. Otherwise, one would have to travel by foot to get to Barangay Sebaste.[29]

Reynaldo Gallego, brother of Raul Gallego, also saw Raul drinking at Lydia Gallego's store between 4:00 to 7:00 p.m.[30] At about past 7:00 p.m. on February 8, 1995, Raul went to the house of Lorio Gallego. Later that night, at around 10:00 p.m., the Chief of Police, two policemen named Rudy Ronzales and George Galon, along with two other unnamed policemen went to Reynaldo's house looking for Raul. Reynaldo informed them that he was in Lorio's house, then inquired why they were looking for him. Ronzales replied that Raul killed Wilfredo Lamata.[31]

Reynaldo also testified that Barangay Dasal is about seven kilometers away from Barangay Sebaste. They are connected by a good road which can be negotiated in 20 minutes by passenger motorcycle. A feeder road also connects the two barangays.[32]

Lydia Tanaleon corroborated the testimonies of the defense witnesses. She narrated that Raul Gallego was in her store drinking from 4:00 to 7:00 p.m. on February 8, 1995.[33] At past 7:00 p.m., Raul, Lydia and her sister Josa Elsana went together to have dinner at Lorio Gallego's house on the occasion of a death anniversary. From the time they arrived in Lorio's house until she left at past 10:30 p.m., she did not see Raul Gallego leave the said house.[34]

Raul Gallego took the witness stand. He testified that he was a resident of Binalbagan, Negros, Occidental, but was born in Barangay Dasal, Jordan, Guimaras[35] and grew up there until he was nine years old.[36] He returned to Guimaras in 1978 when his mother died then went back to Negros. On February 6, 1995, his brother from Mindanao, Rodolfo Gallego, fetched him to go to Guimaras for a vacation. They arrived in Guimaras on February 8, 1995.[37] On that day, at around 4:00 to 7:00 p.m., he was at Lydia Tanaleon's store in front of the Barangay Dasal market. He, along with his relatives including Francisco Mesa, had a drinking spree because his brother Rodolfo had just arrived from Mindanao. Mesa would, however, sometimes go out of the store because he was selling fish. Raul did not leave the store until past 7:00 p.m. when he, along with Lydia Tanaleon, Johnny Galon, his aunties Margarita Gallego and Rosario Gallego, and Francisco Mesa stopped by Rey Gallego's residence, then proceeded to Lorio Gallego's house to have dinner on the occasion of the first death anniversary of his child. Raul Gallego stayed there until 8:00 the following morning when he went to the market to have coffee. He then went back to Lydia Tanaleon's store to drink. Some policemen arrived and invited him to go with them to the police station because he was informed that he was a suspect in the killing of Wilfredo Lamata. He denied the killing and told them that he did not know Wilfredo Lamata, but nevertheless went with the policemen to the police station. There, he was investigated and asked whether he killed Wilfredo Lamata. He reiterated that he did not kill Wilfredo Lamata and that he did not even know him. He then stayed at the balcony of the police station at around 11:00 a.m. At around 12:00 noon, some women came and conversed with the police. The police pointed to

Gallego as the suspect. A woman then stood up and told Gallego, "So it was you who killed my husband. Why did you do it?" Gallego replied, "I did not kill your husband because I did not know you and I did not also know your husband." [38]

The trial court gave credence to the evidence of the prosecution. It convicted Raul Gallego of the crime of murder and sentenced him to suffer a penalty of imprisonment of reclusion perpetua with all its accessory penalties and to pay the heirs of Wilfredo Lamata the amount of P50,000.00 as damages plus the costs of suit. Hence this appeal with the lone assignment of error, viz:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT RAUL GALLEG0 GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

The bone of contention in the case at bar is the identity of Wilfredo Lamata's assailant. There is no doubt that a man mortally stabbed Wilfredo on the left chest on that fateful night in the Lamata abode. To establish the identity of Wilfredo's assailant, the prosecution relies on Lucia and Avelyn Lamata's and Lina Echavez' positive identification of Raul Gallego as the assailant. On the other hand, Raul Gallego cries foul and alleges that Lucia and Lina identified him as the culprit upon suggestion of the policemen at the police station. He has not adequately proven this allegation. The police investigators are presumed to have performed their duties regularly and in good faith, [39] and in the absence of adequate proof to overthrow this presumption, his positive identification remains free from any taint of irregularity.

In *People v. Teehankee, Jr.*, [40] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, viz:

"Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness identifies the suspect from a group of persons lined up for the purpose In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure."

Using the totality-of-circumstances test, we find that the identification of Raul Gallego as Wilfredo Lamata's assailant through a show-up is credible as borne out by the following salient facts.

Raul Gallego appeared at the house of the victim, Wilfredo Lamata, at around 7:30 p.m. At that time, prosecution witnesses Avelyn Lamata and Lina Echavez were watching television in the living room while Lucia Lamata was sewing clothes. A fluorescent lamp lighted the living room. With the main door of the house opened, the light from the living room also illumined the area immediately outside the main door where Raul Gallego stood. Prior to the stabbing incident, Lucia' and Lina spoke with Raul Gallego who stood right outside the main door. Both of them also saw Gallego stab Wilfredo in the brightness of their living doom. Lucia was right beside her husband when he was attacked, giving her a full frontal view of Gallego. Lina, for her part, was about one meter beside Gallego when he stabbed her father. Avelyn also identified Raul Gallego as her grandfather's assailant as she saw him standing by the door before the stabbing and also saw him running away from the scene of the crime right after the attack. There is no doubt that the prosecution witnesses were able to have a clear view of Raul Gallego on the night the dastardly act was committed in the sanctity of their abode.

Lucia Lamata went to the police station the day following the stabbing incident to identify her husband's assailant.

Even without knowledge of Raul Gallego's name and likewise without prodding from anybody, she identified Raul Gallego as the assailant from several men staying in the balcony of the police station. She identified him without hesitation, viz:

"Q: You said you saw the accused for the second time at the police station of Jordan? .

A: Yes, sir.

Q: What time more or less have you seen him (sic)?

A: In the Municipal Building around 1:30 in the afternoon of February 9, 1995.

Q: How did you happen to know that the accused Raul Gallego was in the Municipal Building?

A: I was notified, in my house that the person who stabbed my husband was already caught. So I went to the police station to identify him.

Q: That person you identified in the police station is the same person you have seen (sic) who stabbed your husband?

A: Yes, sir:

xxx

Q: You said that you were informed by the police that the person who stabbed your husband was in their custody. Is that correct?

A: Yes, sir.

Q: Who was that policeman who informed you?

A: It was not the police. They just sent somebody to notify me at home.

Q: Was that somebody also a policeman?

A: No. My relative.

Q: And that same day you went to the police station?

A: Yes, sir.

Q: And, it was in the police station of Jordan?

A: Yes, sir.

Q: And, when you arrived in, the police station of Jordan, was it in the morning or in the afternoon of February 9, 1995?

A: In the afternoon.

Q: And you were told upon arrival in the police station by a policeman that the person who stabbed your husband was in the police station?

A: When I arrived, he said that man was still outside. I identified him but I just kept quiet and when the investigator brought him inside the room and I was also around the room, he was investigated.

Q: When you arrived in the police station in the afternoon, you of course met some policemen there in the police station?

A: Yes, sir.

Q: And you mentioned that you were informed by the policemen that the person who stabbed your husband was there?

A: No.

Q: Nobody at the police station informed you that the man who stabbed your husband was there?

A: They told me also that the man who stabbed my husband was there, "can (sic) you identify him?"

Q: Who was that policeman?

A: I don't know him, and that man was sitting on the porch.

Q: And that man sitting on the porch was the only man sitting there aside from the police?

A: There were, some other persons.

Q: But those other persons were policemen?

A: No, there were other persons sitting there also.

Q: And in the porch of the police station?

A: Yes, sir.

Q: But you did (sic) not remember that policeman who told you about that man who killed your husband?

A: I cannot remember anymore. I don't know him.

Q: But that man whom you saw at the police station was wearing different attire?

A: Yes, sir."[41] (emphasis supplied)

On a separate occasion, Lina Echavez also went to the police station to identify the man who killed her father. Although by this time she had already heard that it was a certain Raul Gallego who stabbed her father, she identified Raul Gallego as the assailant without suggestion from anybody at the police station. She testified as follows:

"Q: Did you see Raul Gallego in the Police Station?

A: When I entered the investigation room, Raul Gallego was inside the prison. Then the policeman told me to set (sic) down to identify the man who stabbed my father "Wilfredo Lamata". When I saw Raul Gallego I felt nervous, cried, and was afraid.

Q: At that moment when you saw Raul Gallego you do (sic) not know his name?

A: No, sir.

Q: You did not know also that Raul Gallego was imprisoned at that time when you went to the police station?

A: I went home because I have also a house in Iloilo, I really don't believe (sic) that my father was already dead. My cousin told me that we will (sic) go to the Police Station because we will (sic) identify that man who stabbed my father.

Q: So you did not know how Raul Gallego was imprisoned?

A: Yes, Sir.

Q: Who was your relative who told you to go to the Police Station?

A: My cousin Ramon Galve.

xxx

Q: Did Ramon Galve identify the accused Raul Gallego when you went to the Police Station?

A: No, Sir.

Q: Who was your companion in going to the Police Station?

A: My relative, that is the son of my cousin.

Q: So, you do not know why and how Raul Gallego was imprisoned when you went there?

A: I know him he was imprisoned when he stabbed my father, later I identify that his name is Raul Gallego (sic). But I really know him when I saw him stabbing my father (sic).

Q: That is what you think that he was there because he stabbed your father?

A: Yes, Sir.

Q: That you did not know him in the prison while you were there at that. time?

A: Yes, Sir. That is when Raul Gallego was detained and my mother identify him, and I was the second who identify him as the accused (sic).

Q: Now you said that Raul Gallego was in prison or detained because he was a suspect according to the police?

A: Yes, sir.

Q: While you were going to the Police Station, you still did not know the name of Raul Gallego?

A: While I was there,, I heard them saying that he is (sic) Raul Gallego but it did not come to (sic) my mind.

Q: So, while you were on your way to the Jordan Municipal jail the name of Raul Gallego was already mentioned?

A: Yes, Sir.

Q: That is all for the witness.

PROS. NIELO:

That man which you said, you later knew as Raul Gallego?

A: Yes, Sir.

Q: That person you saw at the jail he was the same person which you saw already identified as Raul Gallego (sic), he was the same Raul Gallego who stabbed your father?

A: Yes, sir:"[42] (emphasis supplied)

It is not decisive that Lucia and Avelyn Lamata and Lina Echavez did not know Raul Gallego's name when he stabbed Wilfredo and when he was identified at the police station. This Court has previously held that identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person. One may be familiar with the face but not necessarily the name. Thus, it does not follow that to be able to identify a person, one must necessarily know his name.[43] "Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memory." [44] Relatives of the victim have a natural knack for remembering the face of the assailant for they, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor to face the law.[45] Even if Lucia, Avelyn,, and Lina did not initially know the name of the accused, the appearance of the accused Gallego was etched in their memory by the tragic death of their loved one. Thus, when Lucia Lamata executed her affidavit the day following the stabbing incident, she stated that she could identify the face, physical structure, and voice of the accused if she saw and heard him again.[46] Lina Echavez also stated in her affidavit executed two days after that fateful night that she could identify her father's assailant if she saw him again.[47] True enough, without batting an eyelash, both Lucia and Lina identified Raul Gallego as the assailant when they saw him in the Jordan police station on February 9, 1995 and February 10, 1995, respectively, as well as when they took the witness stand. Avelyn Lamata also recognized Raul Gallego as her grandfather's assailant when she passed by his detention cell on her way to Iloilo and also positively identified him in court.

Raul Gallego is a complete stranger to Lucia and Avelyn Lamata and Lina Echavez. No ill-motive can be ascribed against them to falsely testify against him. Absent any evidence showing any reason or motive for them to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith

and credit.[48]

In light of the positive identification of Raul Gallego as Wilfredo Lamata's assailant, the accused's defense of denial and alibi must fall. Time and again, this Court has ruled that positive identification of the accused will prevail over the defense of denial and alibi.[49] Moreover, for the defense of alibi to prosper, it must be shown that it was physically impossible for the accused to have been at the scene of the crime at the approximate time of its commission.[50] This, the accused failed to do. As borne out by the testimonies of the defense witnesses, Lorio Gallego's house (where Raul Gallego supposedly was at the time Wilfredo Lamata was stabbed) was only about three to four kilometers away from the scene of the crime - a distance which by motorcycle could be negotiated in ten minutes. As we have previously ruled in *People v. Jose*: [51]

"Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (*People v. Lumantas*, 28 SCRA 764 [1969]), or three (3) kilometers , *People v. Binsol*, 100 Phil. 713 [1957]) or even five (5) kilometers (*People v. Manabat*, 100 Phil. 603 [1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (*People v. Aparato*, 80 Phil. 199 [1948])."

Having established the guilt of Raul Gallego beyond reasonable doubt, we now come to the aggravating circumstances attending the crime.

The prosecution adequately proved that treachery qualified the killing of Wilfredo Lamata to murder. To prove treachery, the following must be shown: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the deliberate and conscious adoption of the means of execution.[52] In the case at bar, it cannot be gainsaid that Wilfredo was without any opportunity to defend himself and to retaliate, having been ill and made to rise from bed only to meet Raul Gallego. While the attack may have been frontal, it was so sudden and unexpected that the unsuspecting Wilfredo did not have time to defend himself. As soon as Lina Chavez opened the door and Raul Gallego saw Wilfredo, he (Gallego) rushed to the latter seemingly to embrace him while he said, "(h)ere is my relative whom I am anxious to see". Then Gallego suddenly stabbed Wilfredo on the left chest, thereby inflicting a wound that could cause instantaneous death.[53] Wilfredo had not given, any provocation and was thus taken by surprise so that upon being stabbed, he uttered, "(w)hat have I done? Why did you do this to me?" This Court has previously ruled that even a frontal attack can be treacherous when it is sudden and unexpected and the victim was unarmed.[54] It is also undisputed that Raul Gallego deliberately adopted the particular means, method or form of attack employed by him. He purposely went to the Lamata abode carrying with him the deadly bladed weapon.[55] He even introduced himself as a certain Col. Latumbo who was a relative from Negros eager to see Wilfredo whom he had not seen an several years presumably not to raise any suspicion that harm would befall Wilfredo Lamata.

With respect to the aggravating circumstance of evident premeditation, we find that it cannot be appreciated. There is evident premeditation when the following facts are shown: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to his determination to commit the crime; and (3) the lapse of sufficient period of time between the decision and, the execution of the crime; to allow the accused to reflect upon the consequences of his act.[56] There is a dearth of evidence, however, with respect to these facts.

Nighttime cannot also be appreciated because although the crime took place at about 7:30 in the evening, the fact alone that the crime was committed at night does not automatically aggravate the crime. Nighttime becomes an aggravating circumstance only when (1) it is specially sought by the offender; (2) the offender takes advantage of it; or (3) it facilitates the commission of the crime by insuring the offender's immunity from identification or

capture.[57] In the case at bar, no evidence suggests that the accused purposely sought the cover of darkness to perpetrate the crime or to conceal his identity as he stabbed Wilfredo in a well-lighted place.

Undeniably, however, the crime was committed in the dwelling of the Lamatas without provocation from the victim, Wilfredo Lamata. Dwelling may be appreciated as an aggravating circumstance when the crime is committed in the dwelling of the offended party and the latter has not given provocation.[58] "He who goes to another's house to hurt him or do him wrong, is more guilty than he who offends him, elsewhere." [59] We have previously ruled that this aggravating circumstance may be appreciated against the accused even if it was not alleged in the information when proved without any objection on his part [60] or even over his objection.[61] This brings us to a thorny issue in the case at bar.

Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659 [62] provides:

"Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery . . .

Article 63 of the Revised Penal Code also provides:

Art. 63. Rules for the application of indivisible penalties. -- In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied."

By mechanically applying these penal provisions to the case at bar, the appreciation of the aggravating circumstance of dwelling will result in the imposition of no less than the supreme penalty of DEATH upon the accused Gallego. It is worth noting that the aggravating circumstance of dwelling was not alleged in the information. Nor was it mentioned, much less appreciated, in the decision of the trial court convicting the accused Gallego of murder. Neither was it raised as an issue in the Briefs of the parties. It is only now that the issue of duelling, apparently overlooked from the inception of the case up to its elevation to this Court, has been unearthed. Considering that the accused Gallego was not apprised of the aggravating circumstance of dwelling at any stage of the judicial proceedings and the resulting penalty will be DEATH if dwelling is appreciated, do the previous rulings of the Court that an aggravating circumstance may be appreciated against the accused even if it was not alleged in the information when proved without any objection on his part or even over his objection, apply to the case at bar?

In *People v. Albert*, [63] we admonished courts to proceed with more care where the possible punishment is in its severest form -- death -- because the execution of such a sentence is irrevocable. Any decision authorizing the State to take life must be as error-free as possible, hence it is the bounden duty of the court to exercise extreme caution in reviewing the parties' evidence. [64] safeguards designed to reduce to a minimum, if not eliminate, the grain of human fault ought not to be ignored in a case involving the imposition of capital punishment [65] for an erroneous conviction "will leave a lasting stain in our escutcheon of justice." [66] the accused must thence be afforded every opportunity to present his defense on an aggravating circumstance that would spell the difference between life and death in order for the Court to properly "exercise extreme caution in reviewing the parties' essence." This, the accused can do only if he is apprised of the aggravating circumstance raising the penalty imposable upon him to death. Such aggravating circumstance must be alleged in the information, otherwise the Court cannot appreciate it. The death sentence being irrevocable, we cannot allow the decision to takeaway life to

hinge on the inadvertence or keenness of the accused in predicting what aggravating circumstance will be appreciated against him.

In a series of cases under the regime of Rep. Act No. 7659, the Court did not appreciate the aggravating circumstance of dwelling which would have increased the imposable penalty to death when such circumstance was not alleged in the information.[67] In *People v. Gaspar, et al.*, [68] the Court found that apart from treachery, dwelling also attended the killing of the victim. Despite this finding and the absence of any mitigating circumstance, the Court nonetheless did not appreciate dwelling and imposed the penalty of reclusion perpetua and not the greater penalty of death.[69] Hence, in the case at bar, considering that the aggravating circumstance of dwelling was not alleged in the information, we cannot appreciate it and raise the penalty imposed upon Raul Gallego from reclusion perpetua to death.

Anent the damages awarded to the heirs of the victim, there is sufficient evidence to warrant the award of P50,000.00 as moral damages.[70] Actual damages cannot, however, be awarded for lack of evidence to support the prosecution's claim.

IN VIEW WHEREOF, the impugned decision is AFFIRMED with the MODIFICATION that accused-appellant Raul Gallego is hereby adjudged to pay the heirs of the victim in the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, p. 11.

[2] TSN, Avelyn C. Lamata, October 24, 1995, p. 8.

[3] *Id.*, pp. 18-19.

[4] *Id.*, pp. 7-9; TSN, Lina L. Echavez, November 21, 1995, pp. 3-4.

[5] TSN, Lucia Lamata, June 30, 1995, pp. 5-6.

[6] TSN, Lina L. Echavez, November 21, 1995, pp. 4-7, 12.

[7] TSN, Lucia Lamata, June 30, 1995, p. 6.

[8] *Id.*, p. 20; TSN, Lina L. Echavez, November 21, 1995, p. 7.

[9] *Id.*, Lucia Lamata, pp. 6-8, 20, 24; *Id.*, Lina L. Echavez, pp. 8, 11.

[10] *Supra* note 7, pp. 8, 13, 26-27.

[11] *Supra* note 2, p. 11; TSN, Lina L. Echavez, *supra*, pp. 8, 18; TSN, Lucia Lamata, *supra*, pp. 25-26.

[12] *Supra* note 2, p. 12.

[13] TSN, Lucia Lamata, *supra*, pp. 8, 12-13, 27; TSN, Avelyn C. Lamata, *supra*, pp. 11-12; TSN, Lina Echavez, *supra*, p. 9.

[14] TSN, Lina Echavez, *supra*, p. 13.

[15] TSN, Dr. Edgardo Jabasa, July 18, 1995, pp. 3-10.

- [16] TSN, Lucia Lamata, *supra*, pp. 17, 27-30.
- [17] *Id.*, p. 15; Original Records, pp. 6-7; Exhibit “A”.
- [18] TSN, Lina L. Echavez, *supra*, pp. 13-16.
- [19] *Id.*, pp. 9-10; Original Records, pp. 8-9; Exhibit “E”.
- [20] TSN, Avelyn C. Lamata, *supra*, pp. 16-21.
- [21] *Id.*, pp. 12-13; Original Records, pp. 15-16; Exhibit “D”.
- [22] TSN, Lina L. Echavez, *supra*, p. 9.
- [23] TSN, Lucia Lamata, *supra*, p. 4; TSN, Lina Echavez, *supra*, p. 3; TSN, Avelyn Lamata, *supra*, p. 5.
- [24] TSN, Francisco Mesa, February 20, 1996, pp. 13-14.
- [25] *Id.*, pp. 28-32.
- [26] *Id.*, pp. 6-7.
- [27] *Id.*, pp. 21-23, 35-37.
- [28] TSN, Lorio Gallego, March 14, 1997, pp. 3-5.
- [29] *Id.*, pp. 15, 19-22.
- [30] TSN, Reynaldo Gallego, May 21, 1996, pp. 9-10.
- [31] *Id.*, pp. 3-5.
- [32] *Id.*, pp. 6-9.
- [33] TSN, Lydia Tanaleon, May 21, 1996, p. 13.
- [34] *Id.*, pp. 13-14, 16-20.
- [35] TSN, Raul Gallego, May 30, 1996, pp. 2-3.
- [36] *Id.*, pp. 9-12.
- [37] *Id.*, pp. 14-15.
- [38] *Id.*, pp. 6-9; 36-40; 42-44.
- [39] Sec. 3(m), Rule 131, Revised Rules of Court.
- [40] 249 SCRA 54 (1995), p. 95, citing *Neil v. Briggers*, 409 US 188 (1973); *Manson v. Brathwaite*, 432 US 98 (1977); *Del Carmen*, Criminal Procedure, Law and practice, 3rd Edition, p. 346. See also *People v. Verzosa, et al.*, 294 SCRA 466 (1998), citing *People v. Teehankee, Jr.*, *supra*.
- [41] TSN, Lucia Lamata, *supra*, pp. 27-30.
- [42] TSN, Lina Echavez, *supra*, pp. 13-16.
- [43] *People v. Verzosa, et al.*, 294 SCRA 466 (1998), citing *People v. Reception*, 198 SCRA 670 (1991). See also *People v. Barrientos*, 285 SCRA 221 (1998), citing *People v. Reception*, *supra*.
- [44] *People v. Teehankee, Jr.*, *supra*, citing *People v. Campa*, 230 SCRA 431 (1994) and *People v. Apawan*, 235

SCRA 355 (1994).

[45] *People v. Bundang*, 272 SCRA 641 (1997).

[46] Original Records, p. 7.

[47] *Id.*, pp. 7, 9.

[48] *People v. Quinciano Rendoque, Sr., et al.*, G.R. No. 106282, January 20, 2000, citing *People v. Ebrada*, 296 SCRA 353, 365 (1998); *People v. Ilao*, 296 SCRA 658, 669 (1998).

[49] *People v. Rojas*, G.R. No. 125292, April 12, 2000, citing *People v. Cortes*, G.R. No. 129693, January 24, 2000.

[50] *People v. Monieva*, G.R. No. 123912, June 8, 2000, citing *People v. Maguad*, 287 SCRA 535 (1998).

[51] G.R. No. 130666, January 31, 2000, citing *People v. Floro*, G.R. No. 120641, October 7, 1999, citing *People v. Payot*, 308 SCRA 43 (1999).

[52] *People v. Aquino*, G.R. No. 128887, January 20, 2000, citing *People v. Hubilla*, 252 SCRA 471, 481 (1996); *People v. Realin*, 301 SCRA 495 (1999).

[53] TSN, Dr. Edgardo Jabasa, *supra*, pp. 8-9.

[54] *People v. Chavez*, 278 SCRA 230 (1997), citing *People v. Saliling*, 249 SCRA 185 (1995) and *People v. Abapo*, 239 SCRA 469 (1996). See also *People v. Ronquillo, et al.*, 247 SCRA 793 (1995), citing *People v. Abapo*, *supra*.

[55] See *People v. Quinciano Rendoque, Sr., et al.*, *supra*, citing *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999).

[56] *People v. Virtucio, Jr.*, G.R. No. 130667, February 22, 2000, citing *People v. Armando Sarabia*, G.R. No. 106102, October 29, 1999.

[57] *People v. de la Cruz*, 291 SCRA 164 (1998), citing *People v. Cayabyab*, GR No. 123073, June 19, 1997. See also *People v. Amamangpang*, 291 SCRA 268 (1998).

[58] *People v. Feliciano, et al.*, 256 SCRA 706 (1996), citing Article 14, number 3, Revised Penal Code.

[59] *People v. Quinao, et al.*, 269 SCRA 495 (1997), citing Viada, 5th Ed., Vol. II, pp. 323-324, cited in Reyes, *The Revised Penal Code*, Twelfth Edition, Vol. I, p. 336.

[60] *People v. Estares*, 282 SCRA 524 (1997).

[61] *People v. Ramos*, 296 SCRA 559 (1998), citing *People v. Ang, et al.*, 139 SCRA 115 (1985).

[62] An Act to Impose Death Penalty on Certain Heinous Crimes.

[63] 251 SCRA 136 (1995).

[64] *People v. Rios*, G.R. No. 132632, June 19, 2000.

[65] See *People v. Godoy*, 250 SCRA 686 (1995).

[66] *People v. Alicando*, 251 SCRA 293 (1995).

[67] *People v. De Guzman*, 289 SCRA 470 (1998); *People v. Naguita, et al.*, G.R. No. 130091, August 30, 1999; *People v. Magno, et al.*, G.R. No. 134535, January 19, 2000; *People v. Enolva*, G.R. No. 131633-34, January 25,

2000.

[68] G.R. No. 131479, November 19, 1999.

[69] Article 63 of the Revised Penal Code provides:

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof;

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

xxx

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[70] TSN, Lucia Lamata, *supra*, p. 15.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.