PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON GADIA, ALIAS ALLONG, ACCUSED-APPELLANT.

G.R. No. 132384. September 21, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated October 16, 1997, of the Regional Trial Court, Branch 23, Candon, Ilocos Sur, finding accused-appellant guilty of the crime of murder and sentencing him (1) to suffer the penalty of reclusion perpetua and (2) to pay the heirs of the victim, Rodolfo Antonio Gadia, the sum of P50,000.00 as civil indemnity and P24,295.50 as actual damages.

The information against accused-appellant charges--

> That on or about the 25th day of November, 1987, in the municipality of Candon, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully, and feloniously assault, attack and stab one Antonio Rodolfo Gadia, thereby inflicting upon the latter mortal stab wounds on his body, which wounds necessarily produced the death of said Antonio Rodolfo Gadia several hours after.
>
> Contrary to law.[2]

As upon arraignment accused-appellant pleaded not guilty to the crime charged, he was tried.[3]

The prosecution presented five witnesses, namely: Roberto Gadia, Federico Gadia, Dr. Modesto Pacquing, Florencia Gadia, and Pfc. Alejandro Manzano. Their testimonies are as follows:

Roberto Gadia testified that at around 12:00 to 12:30 p.m. of November 25, 1987, in Parioc 1st, Candon, Ilocos Sur, he and the victim Rodolfo Antonio Gadia[4] were playing "dama." Another companion, Federico Gadia, watched the game. Roberto and Rodolfo sat opposite each other. While he and Rodolfo were playing, Roberto saw accused-appellant Marlon Gadia, together with Arnel Gallang and Rolando Gadia, approach Rodolfo from behind. At that time, Rodolfo was leaning forward, contemplating a move he was going to make. Accused-appellant sidled up to the side of Rodolfo Gadia and, without warning, stabbed the latter with a knife, hitting him in the chest. As Rodolfo tried to get up, he was again stabbed by accused-appellant in the abdomen. Rodolfo moved three steps away from accused-appellant and fell down. Accused-appellant then turned to Federico Gadia, but the latter drew his knife and tried to stab him. Accused-appellant then ran away with his companions. Roberto said he moved away from the scene, alarmed as the protagonists fought. He could not tell whether accused-appellant had been hit by Federico.[5] Roberto and Federico took the victim to the St. Martin de Porres Hospital.[6]

Pfc. Alejandro Manzano and Pfc. Prudencio Soliven also went to the hospital to investigate the stabbing of Rodolfo. According to Pfc. Manzano, the victim had difficulty breathing or talking and said that he might not live. Thus, Manzano asked his companion, Pfc. Soliven, to take the victim's ante-mortem statement, which the latter

did, with Manzano present. Rodolfo Gadia affixed his right thumb to the statement. Manzano identified the ante-mortem statement (Exh. F) in open court.[7]

The victim made the following declarations in the said statement:

1.

S

Ania ti nagan mo? (What is your name?)

S

Dolfo Garcia, Parioc 1st, Candon, Ilocos Sur.

2.

S

Apay nga adda ka ditoy Hospital? (Why are you in the hospital?)

S

Nabagsolak, sir. (I was stabbed, sir.)

3.

S

Sino ti nagbagsol kenka? (Who stabbed you?)

S

Allong Gadia oray ayan ni . . . (Allong Gadia in . . .)

4.

S

Sadino ti nagbasolan na kenka? (Who was at fault?)

S

Solan ni Ernesto Galdones. (It was the fault of Ernesto Galdones.)

5.

S

Apay nga binagsol? (Why were you stabbed?)

S

Awan ti ammok nga basolko, sir. (I know of no fault of mine.)

6.

S

Kayat mo ti agpirma? (Would you like to sign?)

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S

Agdeppellak laengen, sir. (I will just put my thumbmark.)

(Thumb print)

RODOLFO GADIA[8]

Rodolfo Antonio Gadia died the following day, November 26, 1987.[9] Dr. Modesto Pacquing conducted an autopsy on the body of the victim, the results of which are as follows:

SURGICAL FINDINGS:

- Stab wounds, right infraclavicular, 2 cm. long along the right lateral border of the manubrial bone, penetrating to the right thoracic cavity. Lung injury (Chest x-ray findings) with minimal hemopneumothorax, right.

- Stab wound, 2 cm. long at the left subcostal area, penetrating intra-abdominally.

OPERATIVE SURGICAL FINDINGS:

- Gastric subserosal hematomas, anterior portion of the stomach.

- Incised wound, perforating the stomach (or the anterior gastric wall) 3 cm[s.] long, just below the subserosal hematomas described above. Perforation is thru and thru to the posterior portion of the gastric wall entering the lesser sac and hitting or perforating the pancreas at its mid portion.

- Hematomas evacuated at the lesser sac area

- Stomach intraluminally is filled with about 200 cc blood.

CAUSE OF DEATH:

Hypovolemic and neurogenic shock, secondary to stab wounds.[10]

The defense admitted the stab wounds sustained by the victim and the authenticity of the medical certificate, thus dispensing with the need for the direct examination of Dr. Pacquing, who was, however, cross-examined. When asked about the relative positions of the victim and the assailant, Dr. Pacquing testified that it was possible that the victim was lower than the assailant considering that the trajectory of the wound was inward, downward, and backward. The victim could be sitting down at that time or, if both the victim and accused-appellant were standing, it was also possible that the assailant was taller than the victim. The assailant could be holding the knife downwards when he inflicted the wounds on the victim. Based on the location of the wounds, Dr. Pacquing concluded that the assailant was to the left of the victim when the wounds were inflicted. Dr. Pacquing stated that both stab wounds inflicted on the victim were fatal.[11]

Florecia Gadia, the victim's sister, testified on the civil liability of accused-appellant. She said the victim stayed in the hospital for two days and one night prior to his death. She identified the receipts of the expenses incurred for the victim's hospitalization (Exh. B) and funeral services (Exh. C). She also prepared a list of expenses for the victim's wake (Exh. D). Finally, she identified a receipt for P7,000.00 (Exh. E) which her family incurred in prosecuting this case in addition to the amount of P500.00 which they had to pay their lawyer for every appearance in court.[12]

For its part, the defense presented accused-appellant, Teresita Gadia, Arnel Gallang, and SPO2 Marvin Valdez. Their testimonies are as follows:

Accused-appellant testified that on the date and time in question, he, Rolando Gadia, Arnel Gallang, and Cristy, Rolando Gadia's daughter, were on their way to the house of his aunt in Parioc 1st, Candon, Ilocos Sur. They passed by the group of Roberto Gadia, Federico Gadia, the deceased Rodolfo Antonio Gadia, and Ernesto Gallang. The deceased[13] invited them to have drinks and play "dama." However, according to accused-appellant, Federico and Roberto Gadia suddenly stabbed him, as a result of which he was injured in the left arm. Accused-appellant said that he moved back, but Rodolfo Antonio Gadia and Ernesto Gallang encircled him. Roberto Gadia held his right hand even as Federico stabbed him. Accused-appellant said he retreated near the fence west of the irrigation canal, but Rodolfo Antonio tried to stab him. Accused-appellant claimed he evaded the thrust and used his own knife to stab Rodolfo Antonio. Accused-appellant said that Antonio tried to stab him again, but he (accused-appellant) again evaded the blow and stabbed the latter for the second time on the right side of the chest. Rodolfo Antonio Gadia fell down. Accused-appellant tried to help him, but Federico and Roberto approached them so accused-appellant and his companions ran away. Accused-appellant claimed that his brother took him to the Sta. Lucia District Hospital for treatment of a stab wound he sustained in his arm.[14] The following day, in the early morning of November 26, 1987, he surrendered to the Candon Police and executed an affidavit (Exh. 12),[15] in which he claimed he killed the victim after the latter tried to stab him.[16]

The testimony of Victorino Gadia was dispensed with as the prosecution admitted that accused-appellant was taken to the Sta. Lucia Hospital for medical treatment of a stab wound and that the latter surrendered to the police authorities on November 26, 1987. The prosecution likewise admitted the authenticity and genuineness of the medical certificate stating that accused-appellant was treated at the Sta. Lucia Hospital for a stab wound.[17]

On the other hand, Arnel Gallang was presented to corroborate accused-appellant's defense. He testified that at around 11:00 a.m. of November 25, 1987, he, Rolando Gadia, and Cristy[18] were invited by accused-appellant to the house of his (accused-appellant's) aunt. On their way, they passed by the irrigation canal where Rodolfo[19] Gadia, Roberto Gadia, Federico Gadia, and Ernesto Galdones[20] were having drinks. He said Rodolfo Antonio Gadia invited them for drinks, but as they came near the group, Federico attacked them and attempted to stab accused-appellant. Roberto Gadia stood up and held the left arm of accused-appellant, while Rodolfo Antonio charged accused-appellant and tried to stab the latter. Accused-appellant, however, was able to free himself and stab Rodolfo Antonio Gadia. As Rodolfo Antonio again tried to stab accused-appellant, the latter evaded the blow and stabbed the former a second time, hitting him in the chest. Rodolfo Antonio fell to the ground. Accused-appellant tried to help him up, but Roberto and Federico, who were armed with bolos, went to the rescue of Rodolfo Antonio. Fearing for their safety, accused-appellant and Arnel Gallang ran away.[21]

Teresita Gadia, the victim's widow, was also presented as a witness to prove that the victim and his companions were having a drinking spree on the day of the incident and to attest to facts and circumstances regarding the victim's character. She testified that on November 25, 1987, in Parioc Primero, Candon, Ilocos Sur, she was going east of Parioc Primero to gather vegetables when she saw her husband Rodolfo Gadia having drinks with Federico Gadia and Roberto Gadia. On her way back home, she again saw the victim and his companions still drinking gin and getting rowdy. Later, she was informed by her mother that her husband had been stabbed. Teresita Gadia also stated that she and her husband had separated just a month after their marriage. She claimed that her husband was often quarrelsome when drunk and would maltreat her. She said that the victim was once convicted for the stabbing of a certain Conrado Ganit. During cross-examination, Teresita said that she was married to the victim for only a month as the latter burned their marriage contract and maltreated her. She further stated that she was not happy in their marriage and that she hated her husband.[22]

The last witness for the defense was SPO2 Marvin Valdez, a member of the Candon PNP, who testified that at around 9 o'clock in the morning of November 26, 1987, accused-appellant, accompanied by the barangay tanod chief, surrendered to the Candon police for the killing of Rodolfo Antonio Gadia. He claimed that he was injured on the left arm for which he was treated at the Sta. Lucia District Hospital. SPO2 Valdez identified the certification (Exh. 15)[23] issued by the Candon Municipal Police Station stating that accused-appellant had surrendered in connection with the killing of Rodolfo Antonio Gadia.[24]

On October 16, 1997, the trial court rendered a decision, the dispositive portion of which states:

> IN VIEW OF ALL THE FOREGOING, the accused is hereby CONVICTED as charged and he is hereby ordered to suffer the penalty of RECLUSION PERPETUA. He is further ordered to indemnify the heirs of Antonio Gadia the amount of FIFTY THOUSAND (P50,000.00) PESOS for loss of life and to pay to the said heirs the amount of P24,295.50 as medical, funeral and burial expenses.
>
> SO ORDERED.[25]

Hence this appeal. Accused-appellant contends that-

> - THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMON[IES] OF ROBERTO GADIA AND FEDERICO GADIA WHO ARE BIASED WITNESSES AND [WHO] FABRICATED STORIES.
>
> - THE TRIAL COURT ERRED IN NOT FINDING THAT ACCUSED-APPELLANT ACTED IN SELF-DEFENSE.
>
> - THE TRIAL COURT ERRED IN NOT CONSIDERING THE VOLUNTARY SURRENDER OF THE ACCUSED-APPELLANT IN IMPOSING THE PENALTY.
>
> - THE TRIAL COURT ERRED IN FINDING THE EXISTENCE OF TREACHERY ON THE PART OF THE ACCUSED-APPELLANT.[26]

The Court finds accused-appellant's contentions to be without merit.

First. Accused-appellant questions the credibility of eyewitnesses Federico and Roberto Gadia, claiming that they are biased and that it was improbable for him to have stabbed the victim in the chest when the fact was that the victim was allegedly leaning forward as he was contemplating a move in the game of "dama."

Roberto Gadia's testimony is as follows:

> Q
>
> Mr. Witness, where were you on November 25, 1987 at around 12:00 o'clock noon?
>
> A
>
> We were playing chess at Parioc 1st, Candon, Ilocos Sur.
>
> Q
>
> Where in particular in that place Parioc 1st, Candon, Ilocos Sur?
>
> A
>
> Near the house of Ernesto Galdonez, sir.
>
> Q

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Who were your companions playing at that time?

A

Federico Gadia, my cousin; Antonio Gadia; [I], while Ernesto Galdones was inside his house.

Q

You mentioned that you were playing dama at that time. Who was your companion in playing dama at that time?

A

At the other side of the board, sir, was Rodolfo Gadia.

Q

Now, what direction were you facing at that time when you were playing dama with your uncle?

A

I was facing the north while my uncle Rodolfo was facing south.

Q

How about your companion Federico Gadia, where was he [seated] at that time?

A

At my right side, sir.

Q

Mr. Witness, while playing with your uncle and while Federico was watching the game, do you remember if there was anything unusual that happened?

A

There was, sir.

Q

Will you please tell to the Honorable Court what was that unusual incident?

A

While we were playing dama with my uncle Rodolfo, I saw the group of Marlon Gadia, Arnel Gallang and Rolando Gadia coming from the north, sir.

Q

Do you know to what direction they were proceeding, Mr. Witness?

A

They were going towards us, sir.

Q

Now, what happened next if any, Mr. Witness?

A

When we were playing chess, my uncle Rodolfo was a little bit bending because he will be the next to move, sir, and when Marlon Gadia reached us he immediately stabbed Rodolfo Antonio Gadia.

Q

Do you know the part of his body [that] was hit as a result of the stab or thrust?

A

He was hit first on his breast, sir, and the second thrust was on his abdomen.

Q

Now, Mr. Witness, you said that you were playing with your uncle Rodolfo Antonio Gadia and he was about to move when he was stabbed by the accused. Will you please illustrate how he was stabbed and the position of the deceased at that time when he was stabbed?

INTERPRETER:

The witness coming down from the witness stand and demonstrating how they were playing with Rodolfo Gadia. He was in a squatting position.

ATTY. FE:

Q

Now, while at that position, where did Marlon Gadia stand and stab your uncle Rodolfo Antonio Gadia?

INTERPRETER:

The witness moving to the right side of the deceased Rodolfo Gadia.

ATTY. FE:

Q

And how did he stab Rodolfo Antonio Gadia? Will you please show us Mr. Witness?

INTERPRETER:

And with his right hand swinging down with the action of stabbing somebody.

ATTY. FE:

. . . .

Q

How many times did Marlon Gadia hit your uncle?

A

He stabbed him twice, sir.

Q

After hitting your uncle twice, what happened next if any?

A

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My uncle Rodolfo moved three (3) steps away and then he fell down.

Q

And how about Marlon Gadia, what did he do next?

A

He tried to stab my cousin Federico Gadia.

Q

And what happened next when he tried to stab your cousin Federico Gadia?

A

He tried to stab my cousin Federico, sir, but he was able to evade and my cousin tried to draw his knife but I do not know if he was able to hit Marlon Gadia.

Q

How about yourself, what did you do upon seeing Marlon Gadia hit your uncle twice?

A

I moved a little farther, sir.

Q

And after stabbing your cousin Federico, what did Marlon do if any after that?

A

They ran away, sir.

Q

You said they ran away, who were his companions in running away?

A

His two (2) companions, sir.[27]

Federico Gadia likewise testified:

Q

What were you doing at that time while you were at Parioc Primero, Candon, Ilocos Sur?

A

I was watching a dama game, sir.

Q

Who were playing the dama game whom you were watching, Mr. Witness?

A

Antonio Gadia and Roberto Gadia, sir.

. . . .

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Q

While Rodolfo Antonio Gadia and Roberto Gadia were playing dama, what direction was Rodolfo facing at that time?

A

He was facing south, sir.

Q

And how about Roberto Gadia, what direction was he facing at that time also?

A

He was facing north, sir.

Q

How about you, Mr. Witness, what direction were you facing at that time?

A

I was facing north, sir.

Q

Will you please illustrate the position of the players of the dama at that time namely Rodolfo Antonio Gadia and Roberto Gadia?

INTERPRETER:

Witness going down from the witness stand and the witness taking the place of Roberto Gadia facing north. The witness is now squatting and facing north.

ATTY. FE:

Q

How about the other player Rodolfo Antonio Gadia, the deceased, what was the position of Rodolfo Antonio Gadia?

A

He placed himself facing south, sitting down.

Q

While you were watching the dama game being played by Rodolfo Antonio Gadia and Roberto Gadia, do you remember if there was any incident that happened, Mr. Witness?

A

There was, sir.

Q

And what happened next if any?

A

I saw Marlon Gadia and his two (2) companions came, sir.

. . . .

COURT:

Q

From what direction did they come from?

A

They came from the North, Your Honor.

ATTY. FE:

Q

Now, what happened next if any, Mr. Witness?

A

Upon reaching Roberto and Rodolfo Antonio Gadia, they stabbed immediately Rodolfo Gadia.

Q

Who stabbed Rodolfo Antonio Gadia, Mr. Witness?

A

Marlon Gadia, sir.

Q

Will you please illustrate how Rodolfo Antonio Gadia was stabbed by Marlon Gadia, Mr. Witness?

INTERPRETER:

Again the witness coming down from the witness stand and facing east standing and pointing the place of Rodolfo Antonio Gadia and swinging his right arm downwards as if holding something.

ATTY. FE:

Q

Did you notice how long was the knife used by Marlon Gadia, Mr. Witness?

INTERPRETER:

The witness indicating half foot of a knife.

ATTY. FE:

Q

How many times did Marlon Gadia stab your uncle Rodolfo Antonio Gadia, Mr. Witness?

A

Two (2) times, sir.

. . . .

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ATTY. FE:

Q

Now, when Marlon Gadia stabbed your uncle Rodolfo Antonio Gadia, what did the companions of Marlon Gadia do if any?

A

They ran away, sir.

Q

Do you know to what direction did they run away, Mr. Witness?

A

They ran to the north, sir.

Q

How about your cousin Roberto Gadia, what did he do?

A

He departed, sir.

Q

And how about the victim, your uncle Rodolfo Antonio Gadia, what did he do after Marlon Gadia stabbed him twice?

A

He moved a little forward, sir, but then he fell down.

Q

And how about you, what happened to you if any?

A

When my uncle Rodolfo fell down, Marlon Gadia ran after me and tried to stab me.

Q

And were you hit by Marlon Gadia, Mr. Witness?

A

No, sir, because I was able to evade the thrust.

Q

And what did you do when he stabbed you and you were able to evade the thrust?

A

I also drew my "balisong", my knife, and struck him but I do not know if he was hit.

Q

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And what did Marlon Gadia do after you thrust your knife at him?

A

He ran away, sir.[28]

The Court finds the foregoing testimonies of Roberto and Federico Gadia to be a credible and consistent narration of the killing of Rodolfo Gadia. Both give vivid accounts of how accused-appellant approached the victim, who was then sitting and playing "dama," went to the side of the latter, and stabbed him with a knife. The concerted and unequivocal testimonies of these prosecution witnesses are persuasive and cannot be simply disregarded on the flimsy excuse that the victim should have been stabbed in the back or the shoulder and not in the chest and stomach.

The testimonies of Roberto and Federico Gadia are confirmed by the findings of Dr. Modesto Pacquing. Dr. Pacquing testified that the trajectory of the wounds inflicted on the victim were inward, downward, and backward. He stated that the position of the victim at that time was lower than the assailant considering the trajectory of the wounds suffered by Rodolfo Gadia. This is consistent with the eyewitnesses' narration that the victim was sitting down when accused-appellant stabbed him in the chest and the abdomen. There is thus no merit in accused-appellant's contention that the eyewitnesses' story was improbable.

Indeed, the evaluation of the credibility of the witnesses and their testimonies is a matter best left to the discretion of the trial court which, having had the opportunity to observe the demeanor and conduct of witnesses while on the stand, was in the best position to assess their capacity for truth.[29] In the absence of evidence that the trial court overlooked, misapprehended, or misapplied some facts or circumstances of weight and substance which, if properly considered, would have altered the result of the case, its findings on the credibility of the witnesses shall be accorded respect by this Court.[30] We see no reason to overturn the findings of the trial court in this case.

Nor is there evidence that Roberto and Federico Gadia were impelled by ill-will toward accused-appellant to falsely testify against him. Although these witnesses referred to the victim as their uncle, it must be made clear that relationship of the witnesses to the victim per se does not necessarily render their testimonies unworthy of belief.[31] In fact, these witnesses may also have been relatives of accused-appellant considering that all of them bear the same surname.

The prosecution also presented as evidence the dying declaration of the victim himself pointing to accused-appellant as his assailant. Such declaration is admissible in evidence under Rule 130, §37 of the Rules on Evidence which provides that, "[t]he declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death." Thus, in People v. Bacunawa,[32] this Court not only upheld the admissibility of the written dying declaration which the victim signed with his own blood but also recognized the considerable probative value of such declaration. For, at the point of death, a person no longer has any motive to tell falsehood and his mind is moved to profess only that which is true. So it must be in this case.

In view of the positive and categorical identification made by the two eyewitnesses, coupled with the medical findings of Dr. Pacquing and the dying declaration of the victim, we hold that the prosecution evidence sufficiently proves the guilt of accused-appellant.

Second. Accused-appellant argues that he killed Rodolfo Antonio Gadia in self-defense. He says that the victim's companions, Roberto and Federico Gadia, started the fight during which the victim attempted to stab him.

Where an accused invokes self-defense, the burden is shifted to him to prove that he killed the victim to save his life. For this reason, he must rely on his own evidence and not on the weakness of the evidence for the

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prosecution,[33] for such can no longer be disbelieved after the accused admits the killing.[34] He must prove the presence of all the requisites of self-defense, namely: (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.[35] Of these requisites, the most decisive is that the victim was guilty of unlawful aggression. This is because the theory of self-defense is based on the necessity on the part of the person being attacked to prevent or repel the aggression.[36] Hence, absent evidence of a prior unlawful and unprovoked attack by the victim, the claim of self-defense cannot prosper.[37]

In this case, the defense failed to present clear and convincing evidence that the victim was the aggressor. To be sure, accused-appellant testified that Federico and Roberto Gadia stabbed him; that Rodolfo Gadia, the victim, also tried to do the same as he (accused-appellant) ran toward the irrigation canal; that he was able to evade Rodolfo Gadia and to stab the latter; that Rodolfo Gadia tried to stab him a second time but he was able to evade it; and that he stabbed Rodolfo Gadia again, hitting him on the right side of his chest.[38] On cross-examination, however, accused-appellant testified that he stabbed Rodolfo Antonio on the left side of his chest.[39] Such testimony is contrary to the medical findings of Dr. Pacquing that the victim suffered stab wounds on the right side of the chest and the abdomen. In any event, the discrepancy on accused-appellant's testimony as to whether he stabbed the victim on the left or the right side of his chest is of such a material character that it renders his entire testimony dubious at best.

The mere fact that accused-appellant suffered an injury does not prove his claim of self-defense. The mere exhibition of scars by the accused does not meet the required quantum of proof of unlawful aggression by his victim.[40] Furthermore, Roberto and Federico Gadia testified that it was Federico, not the deceased Rodolfo Antonio, who inflicted the injury on accused-appellant after the latter tried to stab him.

We cannot disregard the testimonies of the two credible eyewitnesses who pointed to accused-appellant as the aggressor. Considering the positive identification made by Roberto and Federico Gadia of accused-appellant as the killer of Rodolfo Gadia, accused-appellant's self-serving denial cannot be given credence.[41]

Third. Accused-appellant also contends that the prosecution failed to prove treachery as the eyewitnesses did not testify whether he was concealing the knife or whether the same was already drawn when accused-appellant approached the victim and his group. Thus, it was not shown that accused-appellant consciously and deliberately adopted the method of attack on the victim.

We likewise find no merit in this argument. There is treachery when the offender commits any of the crimes against the person, employing means, method, 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.[42] For treachery to qualify the killing to murder, the following must be proved: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (b) the said means of execution was deliberately or consciously adopted.[43]

The evidence for the prosecution shows beyond reasonable doubt that treachery attended the killing of Rodolfo Antonio Gadia. The testimonies of Roberto and Federico Gadia prove that the attack on the victim was sudden and unexpected and that the manner of such a attack was deliberately adopted by accused-appellant to ensure its execution. These eyewitnesses categorically stated that the victim was seated as he was about to make a move in the game of "dama" when accused-appellant approached him and, without warning, stabbed him. The victim was caught unaware and was not able to defend himself. In addition, it must be remembered that the companions of the victim were armed with knives. They could have successfully defended themselves had they not been taken by surprise. Treachery, having been properly appreciated by the trial court in this case, thus qualified the killing

committed by accused-appellant to murder.

We, however, agree with accused-appellant that the mitigating circumstance of voluntary surrender should have been appreciated in his favor. The requisites of voluntary surrender are: (a) that the offender has not been arrested; (b) that he surrendered himself to a person in authority or to an agent of a person in authority; and (c) that his surrender was voluntary.[44]

The defense in the case at bar established that accused-appellant voluntarily went to the Candon Police Station in the morning of November 26, 1987 to surrender in connection with the death of Rodolfo Antonio Gadia. It is evident that accused-appellant had a genuine desire to give himself up to the authorities. Although he was later released, this cannot detract from the fact that accused-appellant voluntarily surrendered. It was the police chief who ordered accused-appellant to be turned over to the custody of the chief barangay tanod pending the filing of criminal charges against him. At any rate, the fact remains that accused-appellant, by surrendering, saved the State the time and trouble of searching for him.[45]

As to the penalty to be imposed on accused-appellant, we hold that the trial court erred in applying R.A. No. 7659, which amended Art. 248 of the Revised Penal Code, and in imposing the penalty of reclusion perpetua on accused-appellant. This statute took effect on December 31, 1993, after the commission of the crime in this case on November 25, 1987. At that time, murder was punishable by reclusion temporal in its maximum period to death. The amendment, which imposes a heavier penalty for the crime, cannot be given retroactive effect without violating the constitutional injunction against ex post facto law.

Considering the presence of the mitigating circumstance of voluntary surrender, under Art. 64(2) of the Revised Penal code, the maximum of the penalty to be imposed on accused-appellant is the minimum period of the imposable penalty, i.e., reclusion temporal maximum, which has a range of seventeen (17) years, four (4) months, and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed on accused-appellant should be within the range of prision mayor maximum to reclusion temporal medium as the penalty next lower in degree than the imposable penalty for murder.[46]

With respect to the award of damages, we find the trial court's award of P24,295.50 to be excessive. Of this amount, only the hospitalization and funeral expenses in the respective amounts of P2,500.00 (Exh. B)[47] and P2,800.00,[48] or a total of P5,300.00, were covered by receipts. Thus, only these amounts, which appear to have been actually incurred in connection with the death of the victim, represent the actual damages to be awarded in favor of his heirs.[49] Accused-appellant should likewise be ordered to pay P7,000.00 as attorney's fees[50] since the victim's sister testified that such amount was paid by her family for the prosecution of this case and the same is duly evidenced by a receipt issued by counsel.[51] The award of P50,000.00 as indemnity for the wrongful death of the victim must be upheld as it is in accord with current case law.[52] In addition, the amount of P50,000.00 as moral damages should be given to the heirs of the victim as fixed by our recent rulings. The purpose of making such an award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[53]

WHEREFORE, the decision of the Regional Trial Court, Branch 23, Candon, Ilocos Sur, finding accused-appellant guilty of the crime of murder is hereby AFFIRMED, with the MODIFICATION that accused-appellant is sentenced to suffer imprisonment for a period of fourteen (14) years and eight (8) months of reclusion temporal minimum, as minimum, to twenty (20) years of reclusion temporal maximum, as maximum, and to pay to the heirs of the victim, Rodolfo Antonio Gadia, the amounts of P5,300.00 as actual damages, P7,000.00 as attorney's fees, and P50,000.00 as moral damages, in addition to the amount of P50,000.00 awarded by the trial court as indemnity for the victim's death.

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SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Gabino B. Balbin, Jr.

[2] Records, p. 1.

[3] Id., p. 49.

[4] The victim is referred to either as Rodolfo or Antonio in the transcript of stenographic notes.

[5] TSN (Roberto Gadia), pp. 3-7, April 18, 1989; TSN (Federico Gadia), pp. 4-10, Jan. 9, 1990.

[6] Id., p. 8; id., p. 10.

[7] TSN (Pfc. Alejandro Manzano), pp. 4-6, Sept. 10, 1991.

[8] Exh. F; Records, p. 4.

[9] Exh. A; id., p. 3.

[10] Id.; id., p. 3.

[11] TSN (Dr. Modesto Pacquing), pp. 2-7, Jan. 9, 1990.

[12] TSN (Florencia Gadia), pp. 4-12, April 10, 1991.

[13] Erroneously referred to as Artemio in the transcript of stenographic notes.

[14] TSN (Marlon Gadia), pp. 3-8, Dec. 3, 1991.

[15] Records, pp. 36-37.

[16] TSN, pp. 10, 13, Jan. 21, 1992.

[17] TSN, p. 6, July 21, 1992.

[18] Also spelled as Cristie in the transcript of stenographic notes.

[19] Referred to as Antonio in the transcript of stenographic notes.

[20] Referred to as Galdonez in the transcript of stenographic notes.

[21] TSN, pp. 5-10, Feb. 8, 1994.

[22] TSN, pp. 3-8, 11-12, Feb. 17, 1993.

[23] Records, p. 174.

[24] TSN, pp. 4-8, Sept. 11, 1995.

[25] Decision, p. 10; Records, p. 216.

[26] Brief for the Accused-Appellant, p. 3; Rollo, p. 64.

[27] TSN (Roberto Gadia), pp. 3-7, April 18, 1989 (emphasis added).

[28] TSN (Federico Gadia), pp. 5-9, Jan. 9, 1990.

[29] People v. Mendoza, G.R. No. 134004, Dec. 15, 2000.

[30] People v. Palec, G.R. No. 135331, Nov. 23, 2000.

[31] People v. Barro, G.R. No. 118098, Aug. 17, 2000.

[32] G.R. No. 136859, April 16, 2001.

[33] Del Rosario v. People, G.R. No. 141749, April 17, 2001.

[34] People v. Rabanal, G.R. No. 119542, Jan. 19, 2001.

[35] People v. Pantorilla, 322 SCRA 337 (2000).

[36] People v. Florague, G.R. No. 134779, July 6, 2001.

[37] People v. Francisco, 333 SCRA 725 (2000).

[38] TSN (Marlon Gadia), pp. 5-7, Dec. 3, 1991.

[39] TSN (Marlon Gadia), p. 19, Jan. 21, 1992.

[40] People v. Mier, 324 SCRA 628 (2000).

[41] People v. Rabanal, G.R. No. 119542, Jan. 19, 2001; People v. Quilang, 312 SCRA 314 (1999).

[42] People v. Natividad, G.R. No. 138017, Feb. 23, 2001.

[43] People v. Hilot, G.R. No. 129532, Oct. 5, 2000.

[44] People v. Cotas, 332 SCRA 627 (2000).

[45] See People v. Amazan, G.R. Nos. 136251 &138606-07, Jan. 16, 2001.

[46] People v. Tortosa, G.R. No. 116739, July 31, 2000.

[47] Records, p. 96.

[48] Id., p. 95-a.

[49] People v. Ramirez, G.R. No. 136094, April 20, 2001.

[50] People v. Mataro, G.R. No. 130378, March 8, 2001; People v. Verde, 302 SCRA 690 (1999).

[51] Exh. E; Records, p. 94.

[52] People v. Mira, G.R. No. 123130, Oct. 2, 2000.

[53] People v. Dela Cruz, G.R. No. 128362, Jan. 16, 2001.

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