

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO K. TEMPLO, ACCUSED-APPELLANT.*G.R. No. 133569. December 01, 2000*

Ponente: DE LEON, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133569/>**DE LEON, JR., J.:**

Before us on appeal is the Decision[1] of the Regional Trial Court of Quezon City, Metro Manila, Branch 95 in Criminal Case No. Q-96-64724 convicting herein appellant, Antonio Templo y Katigbak, of the crime of murder.

It appears that on September 11, 1988, at around 5:30 o'clock in the after noon, Alexander Reyes was shot twice in the chest with a .38 caliber gun near his residence in Lipa City, Batangas. He died as a result thereof. During the police investigation of the case, two (2) witnesses, namely, Jovita Constantino and Anicia Abogade, identified appellant Antonio K. Templo as responsible for killing the victim. In addition, the victim, Alexander Reyes, declared on two (2) separate occasions before he died that appellant Templo was his assailant.

On December 12, 1988, an Information for Murder against appellant Templo was filed with the Regional Trial Court, in Lipa City, Batangas, which also issued a warrant for his arrest. However, Templo evaded arrest and fled to the United States of America under the assumed name of Richard Barba after the shooting incident of September 11, 1988. He was deported to the Philippines on June 2, 1993 to answer the instant charge for murder after his capture outside his sister's office at Queens, New York, U.S.A. on July 8, 1992.

On June 10, 1993, an amended Information was filed against herein appellant Antonio Templo y Katigbak in Criminal Case No. Q-96-64724 which reads:

"That on or about the 11th day of September 1988, in the City of Lipa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of treachery being then armed with an unlicensed firearm (.38 caliber pistol) did then and there with intent to kill willfully, unlawfully and feloniously attack, assault and shoot with said firearm one Alexander Reyes who was armless and defenseless, by then and there suddenly firing twice his unlicensed pistol pointblank at the offended party and in an unexpected manner to insure its execution without risk to himself arising from any defense from the deceased, thereby hitting said Alexander Reyes with bullets on the chest area and inflicting the following mortal wounds, to wit:

1. `Gunshot wound No. 1, gunshot wound, sutured, with contusion collar, measuring 2 x 1 cm at the level of the 4th ICS along the mammary line, penetrating, with laceration at the lower lobe of the lung, laceration of the diaphragm, right, laceration of the liver, right, massive, with slug recovered at the psoas muscle along the right paravertebral line at the level of T12 and L1. No exit wound.

2. `Gunshot wound No. 2, gunshot wound, with contusion collar, measuring 0.8 x 0.6 cm just above the tip of the xyphoid, hitting the esophage-cardial junction, with massive hematoma on the omentum, severe laceration of the left liver, laceration of the aorta with a slug embedded at the psoas muscle embedded at level of T12 and L1. No exit wound.

Fresh blood evacuated from the abdominal cavity.

Cause of death:

Cardio-respiratory arrest secondary to severe hemorrhage, to gunshot wounds, chest.

And while the victim was still alive, by deliberately and inhumanly augmenting the suffering of the victim by outraging and scoffing at his person by chasing the mortally injured victim, preventing early medical assistance, and making the victim raise his hands in surrender in full view of witnesses, all that time with the use of the firearm, which caused the death of the said Alexander Reyes shortly thereafter.

With aggravating and qualifying circumstances of treachery, and cruelty.

Contrary to the provisions of Article 248 of the Revised Penal Code."

Upon being arraigned, the accused, assisted by his counsel, entered a plea of "not guilty".

Before trial on the merits commenced, the prosecution filed on January 24, 1995 a petition for change of venue which was initially denied by this Court on March 30, 1995. Upon filing of a motion for reconsideration, the court ordered the Regional Trial Court of Lipa City, Batangas to transfer the records of the case to the Regional Trial Court of Quezon City

The case was raffled to Branch 79 of the Regional Trial Court of Quezon City which was presided by Judge Godofredo Legaspi. Upon issuance of Administrative Order 51-95 by this Court, the case was eventually transferred to Branch 95 of the same trial court.

From the evidence adduced by the prosecution, it appears that on September 11, 1988 at around 5:30 o'clock in the afternoon, the victim, Alexander Reyes, a thirty-seven (37) year old resident of Lipa City, Batangas was seen outside his house at the corner of Solis and Katigbak Streets in Lipa City by prosecution witnesses Jovita Constantino and Anicia Abogade.

Jovita Constantino, a security guard of a glove factory owned by Alexander Reyes in Lipa City, testified that she earlier inquired from Abogade, a househelper of Reyes, if her "Kuya" Alex was at home. She had planned to meet with the victim to ask for an advance payment of her salary. On her way to the victim's residence, she stopped at the corner of Solis and Katigbak Streets because she saw Reyes, who was about eighteen (18) to twenty (20) meters away, at the opposite corner of the intersection allegedly having a jovial conversation with accused Antonio Templo who was then on board his red owner-type jeep. She also saw inside the jeep a woman seated beside Templo. The victim appeared smiling at the accused. At the same time, the victim was tapping the accused's shoulder with his right hand while his left hand was holding the handle of the left side mirror of the jeep. His left foot was resting on the running board of the jeep.[2] From her vantage point, she could see the accused who was then facing the victim.[3]

Jovita recalled that Templo was holding a gun when she heard two (2) successive shots. She saw the victim bleeding profusely on his chest as he ran towards the opposite side of the intersection where she was standing to mount a passenger jeepney. He occupied the seat beside the driver. Templo alighted from the red jeep, and poked the gun at the driver who dismounted and ran away. Reyes also alighted from the jeepney but Templo obstructed his path and pointed the gun at him, and at this instance Constantino heard Templo asked Reyes if he still wanted to fight. With his hands raised, the victim replied, "Suko na ako, pare." Then, the lady on board the red owner type jeep of Templo shouted, "Tama na, tama na!" Templo went back to his jeep, and drove toward Labac, Batangas.[4]

Anicia Abogade corroborated the eyewitness account of Jovita Constantino. Before the shooting incident, Abogade was sent by his "Kuya" Alex to get some Pop Cola bottles at the glove factory. On her way back at the

intersection of Solis and Katigbak Streets, she noticed her "Kuya" Alex from a distance of about fifteen (15) meters from her talking to Antonio Templo who was on board an owner-type jeep. Reyes, she said, appeared smiling at Templo. The victim's right hand was apparently tapping the accused's shoulder while the left hand was holding the handle of the left side of the jeep. She momentarily turned her attention away from the victim and proceeded to cross the intersection.[5]

After about two (2) seconds, she heard two (2) gunshot coming from the direction of Reyes and Templo. Reyes was bleeding on his chest as he hurriedly walked across the intersection of Solis and Katigbak Streets. He boarded a parked jeepney and sat beside the driver.[6]

Appellant Templo was holding a short firearm when he alighted from his owner-type jeep. Templo followed Reyes to the passenger jeepney whose driver ran away. Reyes also dismounted and attempted to escape but the appellant poked his gun at Reyes. The victim raised his hands in surrender and Abogade heard him pleading, "Suko na ako, pare, hindi ko na kaya." Then, the lady inside the owner-type jeep of Templo shouted, "Tama na naman, tama na!" Templo went back to his jeep and drove toward Labac, Batangas. The injured Reyes boarded a passenger jeep to go to N.L. Villa Memorial Hospital.[7]

After the incident, Abogade went back to Reyes' house. She came to know about Reyes' death from their neighbor in a telephone conversation. Thereafter, she went to the hospital.[8]

John Marfilla testified that he saw his godfather, Alexander Reyes, being brought to N.L. Villa Memorial Hospital in Lipa City, Batangas. He approached the victim and inquired who shot him. Although injured and in pain, the victim replied, "Si Tony." While Marfilla was bringing Reyes inside the hospital, the victim asked his godson if he knew "Tony Templo". John replied in the negative although he knew him by face even before the incident. Reyes instructed Marfilla to check his car because it was left unattended at that time.[9]

SPO3 Reynaldo Saludo of the Lipa City Police also testified that on September 11, 1988 at about 6:00 o'clock in the evening, he received a report from the N.L. Villa Memorial Hospital that a patient was rushed to the hospital due to gunshot wounds. Together with a certain SPO2 Rogelio Mayo, he went to the hospital to get Reyes' ante-mortem statement.[10]

At the emergency room, SPO3 Saludo asked the victim's name to which the latter responded "Alexander Reyes, po." Saludo also inquired how the victim acquired his wounds and Reyes answered that he was shot. When asked who shot him, Reyes replied "Tony Templo." SPO3 Saludo then asked Reyes if he would die of his wound. And the latter answered, "Hindi ko po alam." The series of questions and answers was reduced in writing by SPO3 Saludo. As the victim was already too weak to sign the document, Reyes placed his thumbmark at the lower portion of the document using his own blood.[11]

Dr. Elviro Africa, M.D., Assistant City Health Officer of Lipa City, Batangas, conducted a post mortem examination on the body of Alexander Reyes. The autopsy report shows the following findings:

x x x

"Gunshot wound No. 1, gunshot wound, sutured, with contusion collar, measuring 2x1 cm at the level of the 4[th] ICS along the mammary line, penetrating with laceration at the lower lobe of the lung, right laceration of the diaphragm, right, laceration of the liver, right, massive, with slug recovered at the psoas muscle along the right paravertebral line at the level of T12 and L1. No exit wound.

Gunshot wound No. 2, gunshot wound, with contusion collar, measuring 0.8 x 0.6 cm. Just below the tip of the xyphoid, hitting the esophage-cardial junction with massive hematoma of the omentum, severe laceration of the left liver, laceration of aorta with a slug embedded at the psoas muscle recovered at the level of T12 and

L1. No exit wound.

Fresh blood evacuated at the abdominal cavity.

Cause of death is cardio respiratory arrest secondary to severe hemorrhage, secondary to gunshot wounds, chest (sic)."[12]

According to Dr. Africa, Gunshot Wound No. 1 entered between the 3[rd] and 4[th] ribs, while Gunshot Wound No. 2 entered the tip of the breastbone.[13] Both gunshot wounds were fatal, specially Gunshot Wound No. 2 which hit the major vessel, the liver and the esophago-cardial junction causing massive bleeding and eventually the victim's death.[14]

National Bureau of Investigation Ballistic Expert Brandeis C. Flores testified that the two (2) bullets recovered by Dr. Africa from the body of the victim were fired from the same gun. He identified the bullets as coming from a .38 caliber gun.[15]

Romeo Reyes, the brother of the victim Alexander Reyes, testified that he personally knew Antonio Templo inasmuch as he was his childhood friend. Together with police officers, he searched for the whereabouts of Templo after the shooting incident. They searched for Templo in Bataan and Mindoro before they learned that he had fled to stay with his sister in the United States of America.[16]

On July 8, 1992, the U.S. authorities arrested Templo for being an illegal alien at his sister's office in Queens, New York, Roosevelt Avenue, U.S. Templo denied the charge, alleging that his name was Richard Barba. When Romeo Reyes called Templo by his nickname "Tony", the latter looked at him and then remembered him. Inside his prison cell at the U.S. Immigration Office, Templo approached Romeo Reyes and asked for forgiveness.[17] Templo was eventually deported to the Philippines on June 2, 1993.[18]

For his defense, Antonio Templo testified that: In the afternoon of September 11, 1988, he drove her 13 year old daughter, Maria Antoinette Templo, to the place of a certain Mr. Vega who would type her daughter's term paper. Upon reaching the corner of Solis and Katigbak Streets, his jeep was stopped by Alexander Reyes and then berated him: "Putang ina mo, bakit ganyan?" With a .38 caliber revolver, Reyes pistol whipped Templo on the left side of his nape. Reyes told him to alight from his jeep. After he alighted, Templo's first reaction was to leave his daughter. He ran to the crowd but suddenly stopped upon hearing two (2) gunshots. Reyes was not there anymore when Templo went back. He then drove the jeep to the place of Mr. Vega. He only found out from his brother-in-law, Ramon Ternate, Sr., that Alexander Reyes was shot dead.[19]

Appellant denied challenging Alexander Reyes to a fight because, according to him, it would not look good in the presence of his daughter.[20] Templo surmised that Reyes pistol-whipped him because he did not pay the five thousand (P5,000.00) peso membership fee in the gun club of the deceased. He claimed that Reyes had many enemies for the reason that he was a mischievous ("pilyo") person. For example, he killed a helper of one Rene Gloria for disclosing his illegal activities. He also had a rift with the del Rio family, two (2) of whose members were killed.[21]

Templo left the Philippines together with his family to avoid the members of the New People's Army who used to visit his farm in Batangas.[22] He denied any knowledge that a warrant of arrest was issued against him before he left the Philippines.[23] He denied having asked for forgiveness from Romeo Reyes after his arrest in New York for being an illegal alien. During the deportation proceedings, he filed an application for political asylum but it was denied.[24]

After weighing the evidence presented by the parties, the trial court rendered a decision finding the accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision states:

WHEREFORE, judgment is hereby rendered finding the accused, Antonio Templo Y Katigbak GUILTY beyond reasonable doubt of the crime of murder defined and penalized by Article 248 of the Revised Penal Code and is hereby sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Alexander Reyes, the amounts of P50,000.00, as death indemnity; P50,000.00, as moral damages; P100,000.00 as actual damages; and P6,900,000.00 as loss of earnings.

The period within which the accused was detained at the City Jail of Quezon City shall be credited to him in full as long as he agrees in writing to abide by and follow strictly the rules and regulations of the said institution.

The accused is hereby ordered to pay the costs.

IT IS SO ORDERED.[25]

In his appeal, the accused-appellant raised the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE PROSECUTION HAS FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF MURDER, ABSENT THE REQUISITE PROOF REGARDING THE MANNER OF EXECUTION OF THE CRIME CHARGED.

III

THE COURT ERRED IN NOT FINDING, EVEN ON THE PREMISE OF THE PROSECUTION'S THEORY, THAT ACCUSED-APPELLANT MAY ONLY BE CONVICTED OF HOMICIDE.

We find the testimonies of prosecution witnesses Jovita Constantino and Anicia Abogade to be credible. From their eyewitness accounts it appears that appellant Templo, while on board his vehicle, was conversing with Alexander Reyes who was standing beside him. Subsequently, appellant shot Reyes twice on the chest. The victim attempted to flee but he was prevented by appellant who aimed his gun at the former. Appellant at that time relented only after his daughter pleaded for him to desist.

Prosecution witnesses Constantino and Abogade positively identified the appellant as the perpetrator of the crime. It was only about 5:30 o'clock in the afternoon when they saw appellant shot the victim twice on the chest. Appellant followed the victim as the latter attempted to flee and, in the process, he (appellant) got close to prosecution witness Constantino who was standing at the opposite side of the intersection where the shooting incident occurred. This prosecution witness who positively identified appellant as the assailant of the victim did not waiver on cross-examination.

On the other hand, appellant's defense is a mere alibi. He claims that before the gunshots were fired, he left the crime scene, and hid behind a jeep. When he heard two (2) gunshots, he went back to look for his daughter. He denied shooting Reyes for the reason that, according to him, he was not carrying a gun. He even shifted the blame on Reyes as the one who allegedly whipped him in the nape with a .38 caliber pistol. When he returned to the place of shooting, Reyes was not there anymore so he drove his jeep to Mr. Vega's place.

Alibi is inherently weak, for it is easy to contrive and concoct. For such defense to prosper it is not enough for the accused to prove that he was somewhere else when the crime occurred. He must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[26] In the case at bar, it was established that appellant was just a few meters away from the crime scene. It was not physically impossible for him to have

committed the crime. Besides it is a well-settled rule that when there are credible witnesses, such as in the case at bench, who have positively identified the assailant, the defense of alibi is negative and self-serving and deserves no probative weight.[27]

Appellant contends that the affidavit of prosecution witness, Jovita Constantino, was taken twenty-two (22) days after the shooting incident occurred. Her account, according to appellant, was an afterthought to plug the gaps in the prosecution witness statements of John Marfilla and Anicia Abogade.

We disagree. The delay of a witness in reporting to the police authorities the crime she has witnessed, when adequately explained, does not impair the witness' credibility, neither will it render her testimony biased nor will it destroy its probative value[28]. Jovita Constantino already explained that she merely wanted to be accompanied by a relative of the deceased. Thus, she voluntarily appeared before the National Bureau of Investigation office in Batangas twenty-two (22) days after the shooting incident when she was accompanied by Romeo Reyes who is the brother of the deceased.[29]

Appellant also contends that the testimony of Jovita Constantino was laden with inconsistencies. He points out that Constantino allegedly stayed in the factory up to 8:00 o'clock in the afternoon while Abogade testified that she was with Constantino between 7:00 up to 8:00 o'clock in the evening. Appellant also points out that Constantino earlier denied knowing appellant's name at the time of the shooting incident, but later on admitted to have heard from her co-workers the appellant's name as the one responsible for the crime. These are minor inconsistencies that cannot override the prosecution witnesses' positive identification of the accused as the perpetrator of the crime. Although there may be inconsistencies on minor details in her testimony, the same do not impair Constantino's credibility as a witness. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than indicia of falsehood, and they often bolster the probative value of the testimony.[30]

Appellant further contends that Constantino and Abogade are relatives and that they share the same middle name, that is, "Amande". Being relatives, it was probable that they have compared notes. Apart from being a mere conclusion of fact on the part of appellant, relationship, assuming there is one, will not by itself undermine the credibility of the said prosecution witnesses without showing improper motive for testifying against the appellant. The absence of evidence showing any improper motive on the part of the said principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive exists, and that their testimonies are worthy of full faith and credence.[31]

In a desperate effort to discredit the credibility of the said two (2) eyewitnesses for the prosecution, appellant pointed out that neither of them helped their employer nor were they shocked when the shooting incident occurred and that they remained vivid and calculating in recounting the details of the crime. The Court has already ruled that witnesses of startling occurrences react variedly depending upon their situation and state of mind. There is no standard form of human behavior when one is confronted with a strange, startling or frightful experience.[32]

Appellant likewise tries to impeach the testimony of Anicia Abogade by comparing the affidavit she earlier executed and her testimony. While the affidavit states that she saw appellant only after the shooting incident, she testified that she saw him even before the shooting incident. This Court has ruled that discrepancies between the affidavit of a witness and his testimony in court do not necessarily discredit the witness because it is a matter of judicial experience that affidavits, being taken ex-parte, are almost always incomplete and often inaccurate. Besides, the testimonial discrepancies could have been caused by the natural fickleness of memory, which tends to strengthen, rather than weaken the credibility as they erase any suspicion of rehearsed testimony.[33]

In addition to the positive identification of the appellant by the prosecution witnesses, the dying declaration of

Alexander Reyes was taken by SPO3 Saludo. However, appellant objects to its admissibility on the ground of absence of proof of its authenticity. While the statement was thumb-marked in Reyes' own blood, appellant contends that the said thumbmark of the victim may have been affixed when Reyes was already dead and that the nurse and the doctor who attended to the victim did not sign the said statement. Lastly, between 6:30 and 7:00 o'clock in the evening, the sworn statement could not have been executed because the doctors by then were too busy attending to the dying Reyes and that the medical records do not bear any data on the alleged execution of the said statement.

The requisites for the admissibility of dying declarations have already been established in a long line of cases. In the case at bar, the victim's ante-mortem statement or dying declaration is entitled to probative weight since it has been proven that: (1) at the time the declaration was made, death was imminent and the declarant was conscious of that fact; (2) the declaration refers to the cause and surrounding circumstances of such death; (3) the declaration relates to facts which the victim was competent to testify to; (4) the declarant thereafter died; and (5) the declaration is offered in a criminal case wherein the declarant's death is the subject of the inquiry.[34]

Moreover, a dying declaration does not require the signature of witnesses for its validity. SPO3 Saludo affirmed in court that he took the dying declaration of Reyes and that it was thumbmarked before the victim died. We also agree with the Solicitor General's view that the dying declaration subject of the instant criminal case, is credible not only because the declarant was dying but also because his testimony in itself is worthy of credence.[35]

Likewise, John Marfilla testified that just a few minutes after the shooting incident and while he was escorting the victim, Alexander Reyes, to the hospital, the latter disclosed to him that it was "Tony Templo" (referring to appellant) who shot him. That disclosure by the victim which is part of *res gestae* is admissible in evidence as an exception to the hearsay rule. Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. [36] The revelation by the victim of appellant's identity as his assailant was made immediately after a startling occurrence, that is, immediately after the shooting. There was no opportunity on the part of the victim to contrive his dying declaration.

Another evidence of appellant's guilt is his flight from the scene of the crime and, subsequently, from the jurisdiction of Philippine courts. After a warrant of arrest was issued against him, appellant Templo went into hiding and became a fugitive of justice. He even left the country to reside in the United States of America under the false name "Richard Barba."

The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.[37] One type of act that can be given in evidence against him is flight. In criminal law, flight means an act of evading the course of justice by voluntarily withdrawing oneself to avoid arrest or detention or the institution or continuance of criminal proceedings. The unexplained flight of the accused person may as a general rule be taken as evidence having tendency to establish his guilt. True enough, "the wicked flee, when no man pursueth, but the innocent are bold as a lion." [38]

Appellant's self-serving explanation that he left the Philippines because of alleged threats of the NPA rebels does not convince this Court. If he actually feared for his life in Batangas, it is puzzling why he opposed the petition filed by the prosecutor for a change of venue of the instant case from Lipa City, Batangas to Quezon City.

Appellant cannot feign ignorance of the criminal complaint filed against him and the subsequent issuance of a warrant for his arrest before he left the Philippines, considering the fact that his lawyer, Attorney Franco Loyola, filed with the prosecutor's office a motion for extension of time to file a counter-affidavit just before he departed from the country.[39] He used forged papers and documents to ensure his unhampered departure. If his only

reason was the alleged threats of the NPA rebels, it was not necessary for him to use fake identity papers. His assumption of a false identity exposed his feigned innocence, inasmuch as he knew that the authorities were after him in connection with the killing of Alexander Reyes.

Appellant contends that his flight cannot be taken against him for the reason that his constitutional right to be presumed innocent before conviction will be violated. The constitutional right of the accused to be presumed innocent until proven otherwise is not conclusive. This Court, as interpreter of the Constitution, classified such presumption as a disputable one under the Rules of Court.[40] It can be overridden by certain prima facie facts that indicate circumstances having a tendency to prove his guilt, such as flight, as in the case at bench.

After having resolved the issue of appellant's culpability, we now determine whether or not the commission of the crime was attended by the qualifying circumstance of treachery. The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, without the slightest provocation on the part of the victim.[41] The elements of treachery are: (1) the means of execution employed gives the person no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted.[42]

We rule that treachery did not attend the commission of the crime in this case. The trial court appreciated treachery due to the fact that the perpetrator shot the victim allegedly in an unexpected and sudden manner. The victim was allegedly unaware as he was smiling while talking to the accused and tapping the latter's shoulder.

But that is only the other side of the coin. There appears to be no sufficient evidence on record to prove that appellant deliberately went to the corner of Katigbak and Solis streets in the late afternoon of September 11, 1988 to look for and then kill Reyes. In fact, the meeting was accidental as appellant was accompanied by his daughter at the time of the shooting incident. No witnesses were presented by the prosecution to give an account on how appellant and Reyes met. When Abogade and Constantino arrived at the intersection, appellant was already talking to Reyes. These witnesses did not hear the conversation between appellant and Reyes. On the other hand, appellant testified that the victim blocked the path of his vehicle, prompting him to stop his jeep. Appellant may have been provoked by the victim during the subsequent verbal exchanges that ensued between them. It appears, however, that appellant did not plan to kill Reyes beforehand.

It does not always follow that just because the attack is sudden and unexpected it is necessarily tainted with treachery. Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim.[43] Provocation of the accused by the victim negates the presence of treachery even if the attack may have been sudden and unexpected.[44] The suddenness of the attack does not, of itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. The qualifying circumstance of treachery may not be simply deducted from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty by the culprit.[45]

As there is reasonable doubt in the alleged attendance of treachery, the crime committed is only homicide under Article 249 of the Revised Penal Code which provides that:

Article 249. Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any other circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

With respect to appellant's civil liabilities, Eva Reyes, who is the widow of the victim, testified that she borrowed One Hundred Thousand Pesos (P100,000.00) from her sister to pay for the funeral expenses of the deceased

victim; that she suffered sleepless nights due to her husband's death and the pain of rearing their children by herself.[46] However, the trial court's award of One Hundred Thousand Pesos (P100,000.00) as actual damages is not supported by any receipt. Therefore, the Court only affirms the trial court's award of Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as civil indemnity. This Court lowers the amount of the award for loss of earning capacity of the victim to Six Million Eight Hundred Eighty Thousand Pesos and Eighty Centavos (P6,880,000.80) computed based on the American Expectancy Table of Mortality. The formula for computing the loss of earnings is:

Net earning capacity =

$$\frac{2(80 - \text{age of victim at the time of death}) \times \text{net income}}{3}$$

Net income is computed by deducting from the amount of the gross income of the victim the amount of his living expenses. As there is no proof of the living expenses of the deceased, the net income is estimated to be 50% of the gross annual income.[47] In the case at bar, the victim Alexander Reyes, was earning from his glove factory the sum of Ten Thousand Pesos (P10,000.00) per week, or Forty Thousand Pesos (P40,000.00) per month.[48] His gross annual income therefore is Four Hundred Eighty Thousand Pesos (P480,000.00), 50% of which is Two Hundred Forty Thousand Pesos (P240,000.00). Since there is no proof or showing of the living expenses of the deceased, his net income is Two Hundred Forty Thousand Pesos (P240,000.00) per year. Applying the formula, his loss of earnings amounts to Six Million Eight Hundred Eighty Thousand Pesos and Eighty Centavos (P6,880,000.80) since

$$\begin{aligned} & \frac{2}{3} \times [80 - 37] \times P240,000.00 \\ & 28.667 \times P240,000.00 = P6,880,000.80 \end{aligned}$$

WHEREFORE, the appealed decision of the regional Trial Court of Quezon City, Branch 95 is hereby MODIFIED in that accused-appellant is GUILTY only, beyond reasonable doubt, of the crime of HOMICIDE as defined in Article 249 of the Revised Penal Code; and the penalty imposed on the accused-appellant is hereby reduced to an indeterminate sentence for a period of 11 years and 1 day of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum, with accessory penalties provided by law, and to pay the heirs of the deceased victim, Alexander Reyes, the sum of P50,000.00 as civil indemnity ex delicto, P50,000.00 as moral damages, and P6,880,000.80 for the loss of earning capacity of the said deceased victim. The award of actual damages is deleted for lack of requisite proof.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Diosdado M. Peralta. Rollo, pp. 125-139.

[2] TSN, dated April 20, 1994, pp. 23-33.

[3] TSN, dated May 18, 1994, p. 5.

[4] TSN, dated April 20, 1994, pp. 34-40.

[5] TSN, dated June 15, 1994, pp. 8-14.

[6] TSN, dated June 15, 1994, pp. 15-18.

- [7] TSN, dated June 15, 1994, pp. 18-27.
- [8] TSN, dated June 15, 1994, pp. 30-32.
- [9] TSN, dated September 8, 1993, pp. 7-12.
- [10] TSN, dated September 1, 1993, pp. 5-9.
- [11] TSN, dated September 1, 1993, pp. 9-15; Exhibits "A" and "A-1".
- [12] Exhibit "D".
- [13] TSN, dated April 20, 1994, pp. 5-10.
- [14] TSN, dated April 20, 1994, pp. 10-11.
- [15] Exhibits "C", "C-1-A", "C-1-B", and "C-1-C".
- [16] TSN, dated September 7, 1994, pp. 5-15.
- [17] TSN, dated September 7, 1994, pp. 16-24.
- [18] TSN, dated September 7, 1994, pp. 25-27.
- [19] TSN, dated April 1, 1997, pp. 4-11.
- [20] TSN, dated April 22, 1997, pp. 5.
- [21] TSN, dated April 1, 1997, pp. 12-18.
- [22] TSN, dated April 1, 1997, p. 23.
- [23] TSN, dated April 1, 1997, p. 20.
- [24] TSN, dated April 22, 1997, p. 9-10.
- [25] Rollo, pp. 50-51.
- [26] *People vs. Rabang*, 315 SCRA 451,459 (1999).
- [27] *People vs. Molina*, 311 SCRA 517,527 (1999).
- [28] *People vs. Ondalok*, 272 SCRA 631,639 (1997).
- [29] TSN dated June 1, 1994, p. 9.
- [30] *People v. Molina*, 311 SCRA 517, 526 (1999).
- [31] *People v. Abdul*, 310 SCRA 246, 265 (1999).
- [32] *People v. Tahop*, 315 SCRA 465, 473 (1999).
- [33] *People v. Molina*, *supra*, at 526.
- [34] *People v. Molina*, *supra*, at 525.
- [35] Appellee's Brief, p. 24. Rollo, p. 105.
- [36] Rules of Court, Rule 130, sec. 41.
- [37] Rules of Court, Rule 130, sec. 26.

[38] United States v. Alegado, 25 Phil 510.

[39] TSN, dated April 29, 1997, p. 18.

[40] Rules of Court, Rule 131, sec. 3(a).

[41] People v. Macucha, 310 SCRA 14, 23-24 (1999).

[42] People v. Atrejenio, 310 SCRA 229, 244 (1999).

[43] People vs. Sabanal, 172 SCRA 430, 434 (1989); People v. Macaso, 64 SCRA 659 (1975); People v. Ardiza, 55 SCRA 245.

[44] People v. Sabanal, 172 SCRA 431, 434 (1989).

[45] People v. Aninon, 158 SCRA 701 (1988);

[46] TSN, dated October 7, 1996, pp. 2-11.

[47] People v. Librando, G.R. No. 132251, July 6, 2000.

[48] TSN, dated October 7, 1996, p.6.

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