

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO HUGO, LORENZO HUGO AND RUDY HUGO, APPELLANTS.

G.R. No. 134604. August 28, 2003

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

For automatic review[1] is the decision[2] of the Regional Trial Court, Urdaneta, Pangasinan, Branch 46, in Criminal Case No. U-9368, finding appellants Ernesto Hugo, Lorenzo Hugo, and Rudy Hugo guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the penalty of death and to pay the heirs of the victim Remegio Talon the sum of P23,000 as actual damages and P50,000 as damages.

After preliminary investigation, an information[3] for murder was filed on 9 October 1997. Its accusatory portion reads:

That on or about August 21, 1997, in the evening at Barangay Narra Proper, San Manuel, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos with intent to kill, [and with] evident premeditation and treachery, conspiring, together did then and there willfully, unlawfully and feloniously hack and stab Remegio "Remy" Talon inflicting upon him multiple incise[d] wounds which caused his instantaneous death, to the damage and prejudice of his heirs.

At their arraignment on 10 November 1997, Ernesto and Rudy entered a plea of not guilty. Trial on the merits ensued thereafter as to them.[4] Lorenzo, who was subsequently arrested on 27 February 1998, also entered a plea of not guilty during his arraignment on 2 March 1998.[5]

The witnesses presented by the prosecution were Joel Talon, SPO3 Dominador Urbiztondo Jr., Dr. Asuncion Tuvera, Helen Talon, and Marina de Guzman.

Joel Talon testified that at 7:00 p.m. of 21 August 1997, he fetched his cousin Remegio at the birthday party of Lolito Villamar at Barangay Narra, San Manuel, Pangasinan. They left the party at around 7:00 p.m. On their way home, they were met by Ernesto, Lorenzo, and Rudy. Ernesto was walking along the left side of the road, while Rudy and Lorenzo took the right side. Ernesto came face to face with Remegio. Suddenly, Ernesto hacked Remegio twice with a bolo, first on the forearm and then on the right shoulder, causing the latter to fall to the ground. Ernesto quickly ran away, and his bolo slipped from his hand. Remegio then told Joel to run after Ernesto. Joel promptly gave a chase. Though wounded, Remegio stood up to follow them. Lorenzo and Rudy also chased Remegio and Joel.

Since Ernesto was already some distance away, Joel decided to turn back. Standing approximately ten meters from Remegio, Joel saw Lorenzo and Rudy overtake Remegio. Thereafter, Joel witnessed Lorenzo hack Remegio with a bolo on the back of his head, causing Remegio to fall to the ground. Shocked by what he saw, Joel could not move to help Remegio. From where he stood, Joel witnessed Lorenzo deliver another blow at Remegio's neck. Afterwards, Rudy hacked Remegio at the mouth and forehead. Lorenzo and Rudy forthwith fled.[6]

When the brothers had gone, Joel approached Remegio, who lay prostrate on the ground, and then he shouted for help. Bobby Antimano, Joey Villamar, Ben Gapisan, and Eniong Marcelo arrived and helped Joel carry Remegio's lifeless body to the street pavement. Eventually, SPO3 Dominador Urbiztondo Jr. and other policemen arrived at the crime scene and conducted an investigation.[7]

On 23 August 1997, Joel executed a sworn statement[8] before SPO3 Urbiztondo. He declared that only Ernesto hacked Remegio. However, on 26 August 1997, Joel executed an addendum[9] to his 23 August 1997 sworn statement, adding that he saw Lorenzo and Rudy coming from a dimly-lit area and walking towards the scene of the crime immediately after Ernesto hacked Remegio. But, he could not tell what Lorenzo and Rudy did, as he was already in pursuit of Ernesto.

SPO3 Dominador Urbiztondo Jr., member of the Philippine National Police, San Manuel, Pangasinan, recalls that at around 7:00 p.m. of 21 August 1997, he received a report from Barangay Captain Bartolome Salcedo that a stabbing incident happened in Barangay Narra, San Manuel. He and his team immediately went to the crime scene and recovered a jungle bolo. In the course of his investigation, he came across Joel and Barangay Captain Salcedo. Joel accordingly informed him that he (Joel) and his cousin Remegio came from the birthday party of a certain Villamar and that on their way home they were met by Ernesto, who immediately hacked Remegio for no reason at all. SPO3 Urbiztondo and his team then conducted a follow-up investigation for the arrest of Ernesto. The following morning, Ernesto voluntarily surrendered to the police station.[10]

Dr. Asuncion Tuvera, Municipal Health Officer of the Rural Health Unit of San Manuel, Pangasinan, testified that she conducted an autopsy on Remegio's corpse and found[11] the victim to have suffered the following injuries:

Head-hacking wound on the forehead about 19 cm in length with fracture of the frontal bone and aviscuation of brain tissues.

-hacking wound about 24 cm in length at the fronto parietal area with fracture of the fronto-parcetal bone of the skull and aviscuation of brain tissues.

-incised wound about 23 cm in length (2) from right ear to the mouth.

Neck-incised wound about 21cm in length from the right lateral aspect of the neck to the left lateral part cutting the pharynx, larynx, esophagus and big blood vessels.

Extremities-incised wound on the right elbow about 3 inches in length, non-penetrating.

Dr. Tuvera stated that the neck injury sustained by Remegio could have caused his instantaneous death. She opined that since the head wounds were frontal, the probability was that the victim and assailant were facing each other.[12]

Helen Talon, wife of Remegio, recalls that at around 5:30 p.m. of 21 August 1997, Remegio's aunt Marina de Guzman informed her that Ernesto and his group was planning to kill Remegio. An hour later, Helen saw Ernesto, Lorenzo, and Rudy pass by their residence, armed with bolos. After about half an hour, Helen was informed by Joel that Remegio had been killed.[13] As a consequence of the untimely death of her husband, Helen spent P51,462 for burial and other incidental expenses.[14]

Marina de Guzman, resident of Sitio Cavite, Barangay Narra, San Manuel, Pangasinan, recalls that at around 5:30 p.m. of 21 August 1997, as she was standing in front of her yard, she overheard Ernesto telling a certain Danny Abad that they would kill Remegio. Ernesto and Danny were then drinking wine at the yard of her neighbor Romy Ramos. Marina immediately informed Helen of what she heard. At 7:00 p.m., she was informed that Remegio had been killed.[15]

For their defense, Ernesto, Lorenzo, and Rudy testified on their own behalf and called upon Rachel Gregorio, Lolita Ferrer, Jimmy Hugo, Myrna Hugo, Jessie Hugo, Bartolome Salcedo, and Bernardo Flores as their witnesses.

Ernesto recalls that at 5:30 p.m. of 21 August 1997, while he was on foot patrol at Barangay Narra, San Manuel, Pangasinan, a young boy approached him and told him to bring home a person who was drunk. Being a barangay tanod at the time, he acceded to the request. The drunk person was a certain Asiong Villamar. After bringing Asiong home at Brgy. Narra, San Manuel, Pangasinan, he was invited by Asiong's neighbors, namely, Joel, Remegio, and Joey Villamar, to drink with them. In the course of their drinking spree, Ernesto remarked that taking marijuana would be a "happier hobby." Ernesto noticed the angry reaction of the three; thus, he went home and took a bath. Ernesto thereafter continued on his foot patrol.[16]

While on patrol, Ernesto met Joel and Remegio. Remegio confronted him about the marijuana. Suddenly, Joel threw a punch at Ernesto, which the latter was able to avoid. Remegio then swung his bolo at Ernesto, which he was again able to avoid. The former delivered another blow. Ernesto had no more room to move lest he would fall into the canal behind him. He was thus left with no choice but to draw his bolo and defend himself. He accordingly hacked Remegio several times. When he saw Remegio fall to the ground, he fled and sought refuge in a nearby bamboo grove. The following day he went to his fellow barangay tanods and the Barangay Captain to ask assistance regarding his surrender. He then surrendered at the police station at 10:00 a.m. of the same day.[17]

For his part, Rudy testified that he was in Pasig City at the time the crime in question was committed. He left Pangasinan on 19 August 1997 for Manila to look for a job. He stayed in the boarding house of his friend in A. Pascual Street, Ugong, Pasig City. At around 4:00 p.m. of 21 August 1997, he went to the Barangay Hall with his co-applicant to submit their bio-data to a certain Kagawad Cleofe, who was the one responsible for receiving employment applications. Because it was already late, Rudy and his co-applicant were advised by Cleofe to return the next day at 8:00 a.m. Rudy thus left for his boarding house and arrived there at 7:30 p.m. The next day, 22 August 1997, Rudy returned to the Barangay Hall. Thereafter, he and his co-applicants proceeded to the factory in Valle Verde to meet their prospective employer. He returned to his boarding house at about 8:00 p.m. That night, he was informed by his brother Jimmy that his sister Lolita had called that morning to inform them that Ernesto was involved in an incident.[18]

Rudy left for Pangasinan on 29 August 1997, and stayed at their house at Sitio Cavite, Barangay Narra. He visited his brother Ernesto in jail the following day. A warrant for his arrest was issued on 10 October 1997, and he was arrested on 14 October 1997 in the house of his sister Lolita in San Manuel.[19] His testimony was corroborated by his boarding housemate Rachel Gregorio, his brother Jimmy Hugo, and Bernardo Ferrer.

Lorenzo's alibi is that on 21 August 1997, he was working at the ricefields in Barangay Moring, San Nicolas, Pangasinan, together with his brother Jerry Hugo, his son Jessie Hugo, Doming Calpotura, Doming Arquejo, and Apiong Calpotura. Their group worked the whole day at the fields and returned home at 7:00 p.m. He then took a bath, ate supper, and slept.

At about 5:30 a.m. of the following day, after eating breakfast, he went out with his son Jessie to gather grass. On their way home at 8:00 a.m., they were met by Barangay Captain Salcedo, Police Officer Boac, and Councilman Boy Isidro. When he asked them what they wanted, he was only told to change his clothes. Lorenzo was then brought to the Police Headquarters at San Manuel, Pangasinan. There, he was asked about the whereabouts of his brother Ernesto. He told the police that he had no idea where Ernesto was. A few minutes later, Ernesto, looking sad, arrived with Barangay Captain Salcedo, a certain councilman, and a barangay tanod. With Ernesto in the custody of the police, Lorenzo was allowed to leave the police headquarters.

From 22 August 1997 to 26 February 1998, he shuttled between his house and his sister Lolita's house in San Roque, San Manuel, Pangasinan, where he was doing some carpentry work. He was in his sister's house when he was arrested on 27 February 1998. His whereabouts were corroborated by the testimonies of his children Myrna and Jessie Hugo.[20]

In its decision of 16 June 1998, the trial court found Ernesto, Lorenzo, and Rudy guilty as co-conspirators of the crime of murder. In ruling that conspiracy existed, the trial court opined that from their concerted acts Ernesto, Lorenzo, and Rudy were moved by a unanimity of design to kill Remegio. Ernesto was the first to hack Remegio; thereafter, Lorenzo and Rudy pursued the already-wounded Remegio to finish up the aggression Ernesto had started.

As to the presence of treachery, the trial court held that Remegio was not given any opportunity to defend himself in that Lorenzo and Rudy hacked him immediately after Ernesto wounded him, thereby ensuring no possible retaliation from him.

Finally, considering the evident inequality of forces between the victim and his aggressors, the trial court found that the killing of Remegio was attended by the aggravating circumstance of abuse of superior strength.

This case is now before us for automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659.

In their Brief,[21] appellants Ernesto and Rudy, represented by Atty. Arturo B. Cefra, impugn their conviction on the grounds that the trial court erred in (a) giving credence to the testimony of Joel positively identifying Rudy as one of the perpetrators of the crime; (b) finding that appellants conspired in killing Remegio; and (c) finding that evident premeditation and treachery attended the killing of Remegio.

In support thereof, Ernesto and Rudy point to the three occasions that Joel declared that Ernesto solely committed the crime. The first time was a few minutes after the incident, when Barangay Chairman Bartolome Salcedo went to the crime scene in response to a report received by him. The second was when SPO3 Urbiztondo responded to the report that a crime had just been committed. The third was when Joel executed his sworn statement before the police on 23 August 1997. The trial court, thus, gravely erred in giving credit to Joel's testimony, which bore material contradictions. The omission of the names of Rudy and Lorenzo, which refers to very important details, definitely casts serious doubt upon the credibility of Joel. Hence, Ernesto and Rudy contend that they should be acquitted.

Appellant Ernesto, represented by the Public Attorney's Office, submits that the trial court erred in giving credence to the testimony of Joel positively identifying him as one of the conspirators.[22] He asserts that Joel never mentioned in his affidavit his name and that of Rudy as perpetrators of the crime; rather, he repeatedly declared that it was only Ernesto who committed the crime. This omission did not refer to minor details but to a very important detail of an incident which, ordinarily, an eyewitness would not be expected to fail to mention. Finally, he asserts that while Joel executed an addendum to his affidavit, the three-day interval from the first affidavit necessarily discredits him as an eyewitness, for if indeed he was telling the truth he could have done so in his first sworn statement.

The Office of the Solicitor General (OSG)[23] supports the trial court's finding and conclusion that appellants Ernesto, Rudy, and Lorenzo conspired to kill Remegio. The records reveal that (a) the appellants arrived at the scene of the crime together; (b) moments later, appellant Ernesto, who was then armed with a bolo, suddenly hacked Remegio; (c) after a while, appellants Rudy and Lorenzo took turns in hacking Remegio with a bolo; and (d) all together the appellants fled from the scene of the crime. The OSG asserts that the seeming discrepancy

alluded to by the appellants could not overcome Joel's positive identification pointing to them as perpetrators of the crime. That Joel omitted to mention the names of Rudy and Lorenzo in his affidavit is inconsequential, for affidavits are considered "almost always incomplete and inaccurate," as recognized by this Court in *People v. Palomar*.^[24]

As for the presence of treachery, the OSG asserts that the killing of Remegio, then unarmed, was so sudden and unexpected. The killers gave Remegio no opportunity at all to repel the attack or offer any defense. It, however, disagrees with the trial court's appreciation of the aggravating circumstance of abuse of superior strength, the said circumstance being inherent in the qualifying circumstance of treachery. Concomitant thereto, the OSG recommends that the penalty should be reduced from death to reclusion perpetua.

After a careful evaluation of the records of this case, we find that significant facts and circumstances were overlooked and disregarded by the trial court, justifying a departure from the settled rule that factual findings of the trial court bind this Court.^[25]

The records show that serious discrepancies attended Joel's sworn statements and court testimony, particularly as to the participation of Lorenzo and Rudy in the killing of Remegio.

In his sworn statement executed before the police officers two days after the incident, or on 23 August 1997, Joel mentioned only Ernesto as the one who committed the crime; thus:

Q

What prompted you to appear before the office of San Manuel Police Station?

A

To give my voluntary statement in connection with the hacking to death of my cousin Remy Talon y Ramos, wherein the suspect Ernesto Hugo y Bartolome alias Esto was to [be] held criminally responsible.

Q

Where and when did [sic] this crime committed?

A

Along the municipal road, in front of the house of Mr. Sozimo Perena [sic] of Brgy Narra, San Manuel, Pangasinan, at about 7:00 o'clock in the evening of August 21, 1997.

Q

Will you narrate brief and concise what was incident happened [sic]?

A

That on or about 7:00 o'clock in the evening of August 21, 1997, when I fetched my cousin Remy Talon, the victim at the house of Joey Villamar of same Brgy, while on our way home and upon reaching in front of the house of Mr. Sozimo Peñera. Suddenly Ernesto Hugo blocked our way and at the time holding a bolo, at this juncture without any apparent reasons attacked and hacked the victim several times.

Q

What else happened after that?

A

After hacking the said victim, the suspect immediately ran towards west direction leaving the bolo (weapon) used. Upon learning that he was unarmed, I call[ed] the attention of Lolita Villamar, Joey Villamar and Bobby Antimado for help[] for the immediate arrest of the suspect.

Likewise, in his sworn statement[26] executed during the preliminary examination conducted by Judge Hilarion A. Suller on 26 August 1997 at the 7[th] Municipal Circuit Trial Court of Asingan-San Manuel, Pangasinan, Joel imputed to Ernesto the commission of the crime. Nowhere in his affidavit was it stated that two other persons participated in the killing. Neither were the names of Rudy and Lorenzo mentioned therein.

In his addendum executed on 26 August 1997 at the police station of San Manuel, Pangasinan, Joel added that after Ernesto hacked the victim, he saw Rudy and Lorenzo coming from a dimly-lit area about ten meters from the crime scene, but he had no idea as to what Lorenzo and Rudy did, since he was chasing Ernesto. Thus:

Q

What did you see when Ernesto Hugo hacked the victim?

A

After hacking the victim several times, I saw the two (2) persons coming from the dimly [sic] areas.

Q

What was the distance of [these] two (2) persons coming near the crime scene?

A

More or less ten (10) meters sir.

Q

Did you identify these two (2) persons?

A

Yes sir, they are Rudy Hugo and Lorenzo Hugo.

Q

What did Rudy Hugo and Lorenzo Hugo do?

A

I don't know sir, because when I cheased [sic] one of the suspect[s] Ernesto Hugo, purposely for his immediate arrest [sic].[27]

However, in his court testimony, Joel had another story to tell. This time, with precision, Joel narrated the details of the participation of Lorenzo and Rudy in the killing of Remegio, and to quote:

COURT:

When you were met by the Hugos what happened?

A Ernesto Hugo immediately hacked Remegio, sir.

PROSECUTOR ESPINOZA:

When Ernesto Hugo immediately hacked Remegio Talon....

COURT:

He did not say Remegio Talon he only said "Remegio."

PROSECUTOR ESPINOZA:

When you said Remegio was hacked, who is this Remegio, Mr. Witness?

A My cousin, Remegio Talon, sir.

Q And your companion that night?

A Yes, sir.

Q How many times did Ernesto Hugo hack[] Remegio Talon?

A Two (2) times, sir.

COURT:

With what?

A Bolo, sir.

PROSECUTOR ESPINOZA:

How far were you from Remegio Talon when Ernesto Hugo immediately hacked him?

A About 1 meter only, sir.

Q In relation to Remegio Talon where were you?

A At his back, sir.

Q And where was Ernesto Hugo when he hacked Remegio?

A In front, sir.

Q How about Rudy Hugo where was he when Ernesto Hugo hacked Remegio Talon?

A Rudy was a little bit far, sir.

Q How far was he from Ernesto Hugo?

A From here to the table, sir. (From the witness stand to the table is about 7 meters as estimated by the parties)

Q And how far is Rudy Hugo to Remegio Talon?

A The same distance, sir.

Q How about Lorenzo Hugo where was he when Ernesto Hugo hacked Remegio Talon?

A About 7 meters, sir.

Q When Ernesto Hugo hacked Remegio what did Rudy and Lorenzo doing [sic] then?

A They went near us, sir.[28]

...

Q

Now you said that after Ernesto Hugo hacked Remegio Talon, Lorenzo and Rudy Hugo went near you, did they utter anything when they went near you?

A

When Lorenzo and Rudy Hugo got near us Ernesto Hugo ran away and Remegio said that I will go over [sic] Ernesto Hugo, sir.

Q You said Remegio are you referring to the victim?

A Remegio is [sic] not yet dead, sir.

Q You said that Ernesto Hugo hacked Remegio Talon with a bolo do you know what happened to that bolo?

A Yes, sir.

Q What happened to the bolo?

A On the second time that Ernesto Hugo hacked Remegio, the bolo was loosed from his hand, sir.

COURT:

You claimed that Ernesto Hugo hacked Remegio Talon twice was he hit?

A Yes, sir.

Q The first hacking blow where was he hit?

A Here sir. (Witness is pointing into the right forearm).

Q Is that all that was hit on the first blow?

A Yes, sir.

Q Only the right forearm of Remegio Talon?

A Yes, sir.

Q Was the arm severed?

A No, sir.

Q The second hacking blow where did it land?

A At the right shoulder, sir.

Q

So it is now clear that the two (2) hacking blows landed on the right forearm of Remegio Talon and right shoulder of Remegio Talon?

A Not yet, sir.

Q You claimed he loosed [sic] control of the bolo?

A Yes, sir.

Q He hacked only twice?

A Yes, sir.

Q No other additional hacking blows by Ernesto Hugo to Remegio?

A No more, sir.

Q You said that Remegio told you to go after Ernesto Hugo, did you comply with his request to go after him?

A Yes, sir.

Q You mean to say you pursued Ernesto?

A

Yes, sir.

Q So you left were Remegio Talon was?

A He followed me, sir.

Q Remegio Talon was able to stand?

A Yes, sir.

Q He stoo[d] up and followed you in pursuing Ernesto Hugo?

A Yes, sir.

Q How about Lorenzo and Rudy Hugo what were they doing that time?

A They also followed us, sir.

COURT:

Go ahead Fiscal.

PROSECUTOR ESPINOZA:

Were you able to catch up with Ernesto Hugo?

A No, sir.

Q How about Rudy and Lorenzo Hugo were they able to catch you and Remegio Talon?

A It was only Remegio Talon that Rudy and Lorenzo overtook, sir.

Q When Rudy and Lorenzo Hugo overtook Remegio Talon do you know what happened next?

A That was the time that they ended his life, sir.

COURT:

How?

A They hacked him, sir.

PROSECUTOR ESPINOZA:

Both of them Rudy and Lorenzo Hugo hacked Remegio Talon?

COURT:

You ask one by one not together Fiscal for the record and in case of appeal the Court will know, separate one from the other step by step.

PROSECUTOR ESPINOZA:

I will, your Honor.

Q How did Rudy Hugo end[] the life of Remegio Talon?

A He hacked Remegio Talon, sir.

Q How many times [did] Rudy Hugo hack[] Remegio?

A Two time [sic], sir.

Q The first blow Mr. Witness where was Remegio Talon hit?

A At the mouth, sir. (Witness pointing on both side[s] of the mouth).

...

Q How about the second blow where was Remegio Talon hit?

A On the forehead, sir.

Q How about Lorenzo Hugo what did he do when he was able to overtake Remegio?

A He also hacked him, sir.

Q How many times did he hack Remegio Talon?

A Two (2) times, sir.

Q

And in those two (2) instances Remegio Talon was hit?

A Yes, sir.

Q The first blow where was he hit?

A At the back of the head, sir.

Q How about the second blow where was Remegio Talon hit?

A At the neck front from right to left, sir.

COURT:

At the time Rudy and Lorenzo Hugo overtook Remegio Talon was Remegio still standing or lying down?

A Still standing, sir.

PROSECUTOR ESPINOZA:

Who between Rudy and Lorenzo hacked Remegio Talon first?

A Lorenzo, sir.[29]

Generally, an affidavit, being taken ex parte, is considered almost always incomplete and often inaccurate or lacking in details and is deemed inferior to the testimony given in open court.[30] Jurisprudence, however, forewarns that when serious and inexplicable discrepancies are present between a previously executed sworn statement of a witness and his testimonial declarations with respect to one's participation in a serious imputation

such as murder, there is raised a grave doubt on the veracity of the witness' account.[31]

In the case at bar, the failure of Joel to mention in his sworn statements the participation of Lorenzo and Rudy in the killing of Remegio pertains to a very important detail of the incident. Likewise, it is noteworthy that on two other occasions Joel stated that it was Ernesto who hacked the victim; he failed to mention the names of Lorenzo and Rudy as having participated in the killing. The first was when Barangay Chairman Bartolome Salcedo asked Joel a few minutes after the incident as to who killed the victim.[32] The second was when SPO3 Urbiztondo, who responded to the report that a crime had just been committed, investigated him at the crime scene right after the hacking incident.[33] Joel, who claimed to have witnessed the crime from its beginning to the end, could not have missed the participation of Lorenzo and Rudy in the killing of Remegio. The amazing lapse in memory of this eyewitness instills disbelief in his testimony. There is, therefore, reasonable doubt as to the culpability of Lorenzo and Rudy in the killing of Remegio.

The presumption of innocence enjoyed by Lorenzo and Rudy was not overcome by the prosecution, which has the burden to prove that they conspired with Ernesto in killing Remegio. Jurisprudence is replete that conspiracy must be proved as clearly as the commission of the offense itself.[34]

Based on the foregoing circumstances, we find that only Ernesto is liable for the death of Remegio. He categorically testified during his direct examination that he hacked Remegio with his bolo several times, but he claimed that such was his reaction to the latter's unlawful aggression. He is, in effect, invoking self-defense.

When an accused pleads self-defense, he thereby admits authority of the crime. Consequently, the burden of proving his guilt, which lies upon the prosecution, is shifted to him.[35] He must prove by clear and convincing evidence the elements of self-defense, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. In doing so, he must rely on the strength of his own evidence, and not on the weakness of that of the prosecution which, even if weak, could not be disbelieved on account of his own admission that he assaulted the victim.[36]

In the Brief for Accused-Appellants Ernesto and Rudy Hugo, instead of arguing that the aforementioned requisites were duly proved, they attack the credibility of prosecution witness Joel Talon by harping on the alleged contradiction and discrepancies between his affidavits and testimony in court as regards the participation of Rudy and Lorenzo in the crime. Notably, they did not question Ernesto's own participation in the killing of Remegio; rather, they merely argue that treachery and abuse of superior strength cannot be taken against Ernesto.

We cannot give credence to Ernesto's version of self-defense, which is self-serving and uncorroborated. A plea of self-defense cannot be justifiably appreciated, especially when uncorroborated by independent and competent evidence or when it is extremely doubtful.[37] The physical evidence shows that Remegio suffered two hack wounds on the head and four incised wounds on the neck, face and elbow, which contradicts Ernesto's claim of self-defense. It certainly defies reason why Ernesto had to inflict such injuries on Remegio if he were only defending himself. The nature and number of wounds are important indicia that disprove his plea of self-defense and demonstrate a criminal mind resolved to end the life of the victim.[38]

We shall now address the issue of whether the crime committed by Ernesto was murder or homicide. The information alleges the circumstances of treachery, evident premeditation, and abuse of superior strength. The trial court appreciated treachery to qualify the killing to murder.

Our review of the evidence supports the trial court's finding of treachery. For treachery to be appreciated, two elements must concur: (1) the means of execution employed gives the person attacked no opportunity to defend

himself or retaliate; and (2) the means of execution was deliberately or consciously adopted.[39]

Joel was consistent in his sworn statements and testimony in court that the assault was sudden, unexpected, and unprovoked. There was no exchange of words between the victim and Ernesto at any time before the actual attack. Upon approaching and coming near Remegio, he (Ernesto) immediately hacked the former. The several blows were delivered continuously until Remegio fell to the ground. Remegio was simply overwhelmed by the swiftness of the attack, thus ensuring the execution of the offense without risk to Ernesto. Clearly, the requisites of treachery were present.

The trial court correctly disregarded the aggravating circumstance of evident premeditation. Evident premeditation is appreciated upon proof of (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[40] While it was proved that Ernesto planned to kill Remegio an hour before the incident,[41] the prosecution failed to show manifest acts that Ernesto took thereafter to indicate that he clung to his plan to kill Remegio. Moreover, there was no sufficient time for him to meditate on the consequences of his acts.

Neither can we appreciate the aggravating circumstance of abuse of superior strength. The records are bereft of any information with respect to the physical condition of both Ernesto and Remegio. For the aggravating circumstance of abuse of superior strength to be appreciated, the age, size, and strength of the parties must be considered. There must be a notorious inequality of forces between the victim and the aggressor, giving the latter a superiority of strength which is taken advantage of by him in the commission of the crime.[42] And even assuming *arguendo* that it existed, abuse of superior strength should not be appreciated separately, for it is absorbed in treachery.[43]

The records disclose that Ernesto voluntarily surrendered to the authorities on 22 August 1997.[44] For voluntary surrender to be appreciated, three elements must concur: (1) that the offender has not yet been arrested; (2) that the offender surrendered himself to a person in authority or to the latter's agent; and; (3) that the surrender was voluntary.[45] These three requisites were present in the case at bar.

Verily, we find that Ernesto is guilty beyond reasonable doubt of the crime of murder, qualified by treachery. Under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, the penalty for murder is reclusion perpetua to death. With the appreciation of the mitigating circumstance of voluntary surrender, we impose upon Ernesto the lesser penalty of reclusion perpetua in consonance with Article 63 (3) of the Revised Penal Code.

Finally, the amount of P50,000 awarded by the trial court as "damages" should be deemed as indemnity *ex delicto*. As for the actual damages, an additional amount of P11,678 representing reasonable incidental expenses on account of the victim's death is proper, as they were duly proved by receipts.

WHEREFORE, the challenged Decision of Branch 46 of the Regional Trial Court of Urdaneta, Pangasinan, in Criminal Case No. U-9368 is MODIFIED. As modified, appellants LORENZO HUGO and RUDY HUGO are ACQUITTED on the ground of reasonable doubt; and appellant ERNESTO HUGO is found guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of reclusion perpetua with all its accessory penalties, and to pay the heirs of the victim Remegio Talon the amounts of P50,000 as indemnity *ex delicto* and P34,678 as actual damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Corona, and Carpio-Morales, JJ., on leave.

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of R.A. No. 7659, entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes," which took effect on 31 December 1993 (People v. Simon, G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[2] Per Judge Modesto C. Juanson; Original Record (OR), 295-311.

[3] OR, 2.

[4] Id., 86.

[5] Id., 186.

[6] TSN, 6 January 1998, 17-28.

[7] Id., 28-31.

[8] Exhibit "H," Exh. "2," OR, 16.

[9] Exh. "I," Exh. "3," OR, 20.

[10] TSN, 6 January 1998, 3-7, 10-14.

[11] Exh. "A," OR, 47.

[12] TSN, 3 December 1997, 10-11.

[13] TSN, 9 December 1997, 10-14.

[14] Id., 6; Exhibits "D-D24," OR, 248-270.

[15] TSN, 12 January 1998, 7-10.

[16] TSN, 14 May 1998, 2-5.

[17] TSN, 14 May 1998, 6; 18 May 1998, 10-12.

[18] TSN, 23 March 1998, 3-7.

[19] Id., 8.

[20] TSN, 13 April 1998, 3-11.

[21] Rollo, 210-224.

[22] Id., 71-83.

[23] Rollo, 111-137; 239-265.

[24] G.R. Nos. 108183-85, 21 August 1997, 278 SCRA 114.

[25] *People v. Abella*, G.R. No. 127803, 28 August 2000, 339 SCRA 129; *People v. Pacantara*, G.R. No. 140896, 7 May 2002; *People v. Rama*, G.R. No. 144386, 23 January 2002.

[26] Exh. "4"-Rudy; Exh. "1"-Lorenzo, OR, 24.

[27] OR, 16.

[28] TSN, 6 January 1998, 20-22.

[29] TSN, 6 January 1998, 23-27.

[30] *People v. Castillo*, G.R. No. 139339, 19 January 2001, 349 SCRA 732; *People v. Mationg*, G.R. No. 137989, 27 March 2001, 355 SCRA 458.

[31] *People v. Ortiz*, 334 Phil. 590 (1997); *People v. Gonzales*, G.R. No. 106873, 3 October 2000, 341 SCRA 688; *People v. Hernani*, G.R. No. 122113, 27 November 2000, 346 SCRA 73.

[32] TSN, 4 May 1998, 4.

[33] TSN, 6 January 1998, 5-6.

[34] *People v. Aquino*, G.R. No. 145371, 28 September 2001, 366 SCRA 266; *People v. Ortiz*, *supra* note 31, at 21.

[35] *People v. Arizala*, G.R. No. 130708, 22 October 1999, 317 SCRA 244.

[36] *People v. Ansoyon*, 75 Phil. 772 (1946); *People v. Gadiano*, L-31818, 30 July 1982, 115 SCRA 559.

[37] *People v. De la Cruz*, 353 Phil. 364 (1998).

[38] *People v. Bitoon*, G.R. No. 112451, 28 June 1999, 309 SCRA 209; *People v. Patalinghug*, G.R. Nos. 125814-15, 16 November 1999, 318 SCRA 116; *People v. Pacantara*, *supra* note 25.

[39] *People v. Sualog*, G.R. No. 134310, 15 November 2000, 344 SCRA 690; *People v. Quinicio*, G.R. 142430, 13 September 2001, 365 SCRA 252.

[40] *People v. Mationg*, *supra* note 30; *People v. Enriquez*, G.R. No. 138264, 20 April 2001, 357 SCRA 269.

[41] TSN, 12 January 1998, 7-9.

[42] *People v. Cabato*, No. L-37400, 15 April 1988, 160 SCRA 98; *People v. Carpio*, G.R. Nos. 82815-16, 31 October 1990, 191 SCRA 108.

[43] *People v. Landicho*, G.R. No. 116600, 3 July 1996, 258 SCRA 1; *People v. Abella*, *supra* note 25.

[44] TSN, 6 January 1998, 7; OR, 96.

[45] *People v. Quinicio*, *supra* note 39; *People v. Taraya*, G.R. No. 135551, 27 October 2000, 344 SCRA 401.

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