

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO M. GUERRERO, SR., AND ORLANDO A. GUERRERO, JR.,
ACCUSED, ORLANDO A. GUERRERO, JR., ACCUSED-APPELLANT.**

G.R. No. 134759. September 19, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of San Fernando, La Union, Branch 27, in Criminal Case No. 4402, finding appellant Orlando A. Guerrero, Jr., guilty of murder and sentencing him to suffer the penalty of reclusion perpetua, and to pay the amount of P62,000 as actual damages and P50,000 as moral damages. Co-accused Orlando M. Guerrero, Sr., was acquitted.

On April 4, 1997, Orlando Guerrero, Jr., also known as “Pablo,” together with his father Orlando Guerrero, Sr., nicknamed “Dino,” was accused of murder committed as follows:

That on or about the 7th day of January 1997, in the Municipality of San Juan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously and without justifiable cause, attack, assault, club, beheaded and cut off the penis of the victim Ernesto Ocampo, which caused his death thereafter, to the damage and prejudice of his lawful heirs.

CONTRARY TO LAW.[2]

Upon arraignment, both pleaded not guilty. Appellant interposed self-defense. His father, Dino, denied any complicity in the killing.

The prosecution presented the following witnesses:

DR. EUMELIA T. SANGLAY,[3] the municipal health officer of San Juan, La Union, testified that she performed the autopsy on the body of the victim, Ernesto Ocampo. She confirmed the Certification[4] she issued, dated January 13, 1997, with the following findings:

A. EXTERNAL

1. Decapitated about the level of 5th cervical vertebra
2. Amputated penis
3. Lacerated wound, 8.0 cm. occipito-parietal area right
4. Lacerated wound, 3.9 cm. frontal area, right
5. Incised wound, 6.0 cm. anterior aspect, proximal 1/3, arm, right

6. Incised wound, 3.4 cm. lateral, 1/3 shoulder, right
7. Incised wound, 2.3 cm. maxillary area, right
8. Incised wound, 7.0 cm. mandibular area, right
9. Linear abrasions, multiple (3) anterior chest

INTERNAL

1. Complete laceration of the trachea, esophagus thyroid gland
2. Complete laceration of the muscles of the neck; Platysma, Sternocleidomastoid, Scalene muscles, Levator scapulae, splenius capitis, Infrahyoid muscles
3. Complete laceration of the common carotid artery, external jugular vein, anterior jugular vein, interior jugular vein
4. Complete laceration of the spinal accessory nerve, inferior laryngeal nerve, vagus nerve, phrenic nerve

The cause of death is hypovolemic shock secondary to MULTIPLE HACKING WOUNDS.

Dr. Sanglay said that the victim had been beheaded, and his penis was cut off totally. Two wounds were found on his head, one on the front, and another a little bit backwards on the right side of the head. There were other wounds, she said, in different parts of Ernesto's body. But of these injuries, she added that decapitation or separation of the head from the body was the fatal one.[5] However, she could not ascertain the order in which the wounds were inflicted.[6] She could not likewise determine whether they were inflicted while the victim was standing up or lying down.[7]

SPO2 BIENVENIDO JACALNE,[8] a member of the PNP at San Juan, La Union, testified that on January 7, 1997, he responded to a report regarding an incident at Brgy. Taboc, San Juan, La Union. He rode on a minibus, accompanied by PO2 James Lewis and SPO2 Alberto Patubo, while SPO1 Emilio Taracatac proceeded to the scene on a motorcycle. They were followed by the Chief of Police Michael Nicolas and PO2 Dominador Gamal. When they arrived at the scene, they saw the victim Ernesto Ocampo lying dead, his head having been separated from the body while his penis was completely severed and placed on his abdomen. Witness Jacalne said he was informed that one Dino Guerrero was inside the house nearby. Dino Guerrero came out with his hands extended forward. SPO1 Emilio Taracatac immediately frisked and handcuffed him. Before Dino was handcuffed, according to the witness, he said that it was his son who had killed the victim. Thereafter, Dino was brought to the police station for custodial investigation.

SPO2 Jacalne prepared a sketch of the scene of the crime. He identified the things found therein including the bladed weapon, Exhibit "B," and the wooden club, Exhibit "C". Pictures were taken by photographer FLORENCIO BUCCAT,[9] who later authenticated them as Exhibit "E" to "E-3" in court. According to Jacalne, there was no sign of disorder or disarray in the place: chairs and tables were in place at the porch. After the police officers had gathered information from bystanders, they prepared a "spot report". It was then signed by the Chief of Police, Lt. Michael Nicolas, and transmitted to the police headquarters. There it was copied verbatim by SPO4 ROGELIO GARCIA,[10] who entered it in the police blotter. According to SPO2 Jacalne, no verification of the report was made because nobody wanted to give verified information.

Further, Jacalne testified that appellant Orlando Guerrero, Jr., was not at the scene of the crime during their investigation. But upon their return to the police station, appellant was already there.[11] Appellant admitted killing the victim, according to Jacalne, by clubbing the victim first with the wooden stick, and then cutting his

head and his penis with a knife.[12]

SPO1 EMILIO TARACATAC,[13] one of the officers who went to the crime scene, testified that co-accused Dino Guerrero voluntarily extended his hands to be handcuffed when the officers apprehended him. Taracatac then asked Dino what he knew of the killing of Ocampo, but Dino replied that he will just give his statement when he had a lawyer present.[14] Dino's daughter, Ana Costales, was around but did not say anything to the policeman while he was putting handcuffs on her father. Ana denied knowing anything about the incident.[15] He also noticed that when Dino came out, he was only wearing shorts, his hair appeared wet, as if he had just taken a bath or had just finished washing.[16]

NANCY C. OCAMPO,[17] widow of the victim, testified that she knew appellant Orlando "Pablo" Guerrero, Jr. and his father Orlando "Dino" Guerrero, Sr. According to Nancy, appellant's mother Rosa, together with his sisters Ana, Rina and Nora Guerrero, all worked at one time or another as household help for Nancy's parents-in-law. Sometime in October 1996, according to Nancy, she caught her husband Ernesto and Nora Guerrero embracing each other near the kitchen of their house. Nancy screamed and then slapped Nora. As a result, Nora and her family were asked to leave the employ of the Ocampos, for the purpose of putting an end to the illicit relationship between Ernesto and Nora. However, according to Nancy, she believed that her husband and Nora continued to see each other. Thus, on December 20, 1996, Nancy went to see Dino, asking him to stop his daughter Nora from seeing her husband, or send her far away to cut the relationship.[18] According to Nancy, Dino told her, "If ever I will see your husband, I will kill him." Nancy implored him not to do that and to please pity their children.[19] During the conversation, Nancy said, Pablo was on the porch of the house, a duplex with a common porch. She added that she informed Ernesto, her husband, about Dino's statement, but her husband replied that "they (Guerreros) could not do that to me because of the goodness of my mother and my father to their family." [20]

On January 6, 1997, the day before the incident, Nancy saw appellant. She said that he told her, "Ninang, if ever I will meet your husband, I will cut-off his head including his penis." [21] Nancy observed that appellant appeared to have made the statement "lightly", as the latter was "laughing." [22] She said that her husband did not believe the threat and even scolded her, saying, "Do not believe whatever you hear." [23]

MONICO GUINITARAN, a construction worker,[24] testified that he knew the victim, Ernesto Ocampo alias "George/Takel" because the father, Pedro Ocampo, was his employer. He also knew appellant and the co-accused, whom he identified when asked by the prosecution by pointing at them in open court. On January 7, 1997, as he was walking with companion Cirilo Garcia, they met appellant, who was running towards them. According to the witness he jokingly said: "Bayaw, let us have a shot." [25] On hearing this, Pablo responded, saying in Tagalog, "Itago mo kami, bayaw. Nakapatay kami." ("You hide us, brother-in-law. We have killed somebody.") Monico could not ask Pablo any question as Pablo continued running fast, away from them. Later on, Monico testified that before he could ask Pablo what he meant, or to whom Pablo referred in saying "kami," appellant again broke into a run. [26] While they were speaking, Monico noticed that appellant's hands, as well as the front of his shirt, were stained with blood.

CIRILO GARCIA, a hollow blocks factory worker also employed by the victim's father, corroborated the testimony of Monico Guinitaran that between eleven to twelve o'clock noon of January 7, 1997, they met appellant. His hands and shirt had bloodstains, according to the witness. In addition, he said that Pablo seemed afraid. According to Cirilo, appellant uttered in the Ilocano dialect, "Illemeng dak" (You help us), adding "because my father and I killed a person."

DANILO GARCIA,[27] an 18-year-old student, testified that on January 7, 1997, he and his friends were cutting

a tree near the house of Pablo Guerrero. Danilo said that earlier, Pablo had come to help their group in cutting the tree. It was sometime after Pablo had left, and while they were cutting the tree, that they heard a woman screaming, “AHHH.” Danilo stated he stopped what he was doing for about five minutes, then proceeded toward the direction where the scream came from, which turned out to be the house of appellant and co-accused. There, he saw appellant severing the head of the victim, Ernesto Ocampo, with a “rambo” knife.[28] Danilo identified the weapon in court as the same knife recovered from the crime scene.[29] Ernesto was not moving while lying down on the cement floor as appellant was slicing the victim’s neck to sever his head.[30] Danilo ran away because he was afraid of what he saw.

SATURNINO CUELLO, JR.,[31] a furniture worker, testified that while he and friends Rodel, Sekel, Nolan and Mente were cutting the tree near the house of the Guerreros, he saw Ernesto Ocampo talking with the co-accused, Orlando “Dino” Guerrero, Sr. He also noticed that appellant, whom he called “Pablo,” was holding a club. With this club (Exhibit F, Item J), appellant struck Ernesto at the right side of the back of the head causing the victim to fall down, face up. Appellant struck him again, said the witness, while his co-accused, Dino, got a bolo and hacked Ernesto in the neck below the jaw. He later cut Ernesto’s penis. Then after Dino left, added the witness, appellant severed the victim’s head from his body.[32] Witness Cuello said he also heard appellant’s sister, Ana, screaming “already dead, already dead.” He was about nine (9) meters away[33] from the scene of the killing, which was at the porch of the Guerreros’ house.

ALEXANDER ATIJERA, the Barangay Captain of Barangay Taboc, testified[34] that at past 11:00 A.M. of January 7, 1997, he met Ernesto Ocampo at the side of the house of Ana Costales, the appellant’s sister. According to Alexander, Ernesto informed him that he went to Ana’s house to ask her help to make Nora return. Ana then told Ernesto to go speak with her father Dino at the latter’s house, as Dino was waiting for Ernesto, according to Alexander. Alexander also testified that Lorena Acierto came to him later that morning, telling him, “Uncle, you come to our house because they are going to kill George Ocampo.” According to Alexander, Lorena told him that her father and brother might kill Ernesto Ocampo, also known as George. Alexander went there immediately but when he arrived, Ernesto Ocampo was already dead. He reported the incident to the police through his two-way radio.

NOLAN[35] ATIJERA, a construction worker, testified[36] that on January 7, 1997, he was among those helping Danilo Garcia cut a tree. While they were pulling the tree’s branches, they heard a woman’s voice saying, “He is dead.” Nolan’s companions immediately ran, while he waited a few minutes before proceeding to the place where the woman’s voice came from. Nolan passed between the houses of the Guerreros and the Aciertos and while doing so, he saw appellant on the Guerreros’ porch, swinging a bloodstained club in his hand. Appellant warned him, “Do not come near, I will kill you also.”[37] On re-direct examination, Nolan affirmed that he only saw appellant, alone, at the porch of the Guerreros, although he could see only the porch and not the inside of the Guerreros’ house.[38]

Further, Nolan testified that prior to the incident, appellant had come to help them in cutting the tree. Nolan corroborated appellant’s testimony that appellant got a bolo for cutting the tree but he handed the bolo to one of the tree cutters. Appellant merely helped in pulling the rope tied to the branches of the tree. According to Nolan, appellant was no longer with them when they heard the woman’s cry. But the bolo was left behind with the woodcutters.[39]

For the defense, the appellant and the co-accused, appellant’s two sisters, namely Lorenza Costales and Lorena Acierto, as well as his brother-in-law, Ireneo Costales, were presented as witnesses.

Appellant ORLANDO GUERRERO, JR., also known as “Pablo,” testified that on December 22, 1996, his mother

told him about the illicit relationship between Ernesto Ocampo and appellant's sister, Nora.[40] There and then he decided to bring Nora to Manila, because he did not want her sister to become a married man's mistress.[41] He found the situation to be very shameful.[42] Immediately the following day, appellant left with Nora and proceeded to their aunt's house in Mandaluyong. Ernesto was able to catch up with them there and told appellant that he wanted to get Nora. Appellant pleaded with him not to take his sister, and said that Nora was to be brought to Laguna to help a sister-in-law who had just given birth. Brother and sister immediately boarded a taxi and appellant succeeded in bringing Nora to the house of their brother in Laguna.[43]

On January 7, 1997, however, appellant saw Ernesto Ocampo in Taboc, San Juan, La Union. According to the appellant, in the early morning of January 7, 1997, he arrived home from his night shift duty at Bolong Farm where he worked. He immediately washed and went to sleep. At around 9:00 A.M., he woke up, had breakfast with his wife, and thereafter seated himself at their porch. It was then that he saw people cutting an "umbrella tree." He decided to help and so, he handed his bolo to the person on top of the tree cutting its branches. He also pulled the rope tied to the felled branches of the tree, in order to prevent them from damaging the roof of his uncle. A little while later, he returned to his house and since he still felt sleepy, he went back to sleep.

He was roused from his sleep by someone calling his name outside the kitchen door. He rose and proceeded to the door. Then suddenly, the door was kicked open, and there he saw his godfather, Ernesto Ocampo a.k.a. "George" and "Takel". Ernesto immediately put his left foot inside appellant's house. Ernesto wanted to know the whereabouts of appellant's sister, Nora. Appellant replied that he did not know where she was. Ernesto then warned that if ever appellant could not present Nora to him, "blood will be spilled" around their house. Ernesto suddenly rushed towards appellant and lunged at him ("dinuklos nak"), and while doing so, drew out a knife from his waist.

Appellant immediately reached for a wooden club they kept beside the door, usually used to secure the door at night, as its knob had long ago been broken. Using the club, appellant struck Ernesto on the head, which sent Ernesto reeling and caused him to step backward. Appellant struck again, this time causing Ernesto to fall down on the porch of the house. After Ernesto fell, appellant got Ernesto's knife and used it to slash his neck, to the point of completely severing the head from the body. He then proceeded to cut off Ernesto's penis. Pablo placed Ernesto's head beside his body, and then went out of the house.

Appellant proceeded westward. Along the way, he ran into his father, co-accused Dino Guerrero. Dino asked what had happened, and appellant replied, "I caused the death of Takel Ocampo." [44] Dino told him to surrender to the authorities in order to mitigate his liability. Leaving Dino, appellant continued on his way to the house of his uncle, Joe Acierto. Appellant requested his uncle to accompany him to the Police Station, where he surrendered later that same day.

Appellant vehemently denied that he met witnesses Monico Guinitaran and Cirilo Garcia on his way to his uncle's house. Thus, he also denied their claim that he admitted to them that he and his father killed someone. With regard to his conversation with the victim's wife, Nancy Ocampo, appellant testified that when they spoke to each other on January 6, 1997, the only thing he told her was for her to tell her husband not to repeat what he (Ernesto) had done to his sister. Appellant refuted her testimony that he threatened to cut off her husband's head and penis.

Co-accused ORLANDO "Dino" GUERRERO, SR., testified that from 8:30 A.M. to around noontime of January 7, 1997, he was at the seashore waiting for fish to be brought in by fishermen, from whom he would buy wholesale for her daughter to re-sell to others. There being no fish that day, however, Dino said he went back home. On the way he met his son, the appellant, who was covered with bloodstains. He asked him what had

happened and appellant replied that he had caused the death of Ernesto Ocampo.[45] Dino told appellant to surrender to the authorities so that the penalty to be imposed upon him may be mitigated. Appellant then ran from him, said Dino. He did not prevent appellant from running away because he was afraid that someone else would react and another incident would occur. Dino said he proceeded to his own house, and inside his room, he sat on the bed and thought about what his son had done.[46]

After a while, Dino testified, he heard someone outside asking for any person inside the house to come out. He opened the door and saw that it was a policeman who was calling from outside. According to Dino, he was immediately handcuffed and brought to the police station for “safekeeping and investigation.” His daughter Ana, who was then present, cried out to the policemen, telling them not to take her father as “he did not do any wrong.”[47]

With regard to the presence of his cigarettes at the scene of the crime, Dino said that he left them at one of the tables in the porch before he went to the seashore. As he was about to get them, he was immediately handcuffed by the police, and thus, the cigarettes were scattered all over the place.

Dino denied that Nancy Ocampo came to the Guerreros’ house on December 20, 1996. He also denied telling Nancy that he intended to kill Ernesto Ocampo.

LORENZA “Ana” COSTALES,[48] appellant’s sister, testified that on July 7, 1987, she was in her house. At around 11:00 A.M., she saw Ernesto Ocampo with two companions. Ernesto asked permission from her to use a small hut west of their house where Ernesto and his companions wanted to go drinking. They were carrying a case of beer and one bottle of gin. After finishing her wash, she went to the house of her sister Lorena “Rina” Acierto to roast eggplants.

According to Ana, while roasting the eggplants, she again saw Ernesto Ocampo approaching, on his way to the house of the Guerreros. Ernesto asked her where her brother Pablo was, to which she replied that appellant was inside the house, sleeping. Ana knew where her father and brother were because she had earlier asked her sister Rina. Ernesto then entered the common porch and called out “Pablo, Pablo!” She reminded Ernesto that appellant was sleeping. But Ernesto called for Pablo again, asking him to come out. As he was doing this, Ernesto kicked the door open. Ana observed that Ernesto was angry.[49] When Ernesto kicked the door open, Ana immediately called her sister Rina and told her to ask for help from the barangay captain.

Thereafter, Ana said, she proceeded to the seashore to call her father. But she couldn’t find him at the seashore so Ana went back home, in time to see in their porch her brother Pablo, herein appellant, cutting off the head of Ernesto.[50] It was then that she screamed and called out for help.

Together with her brother-in-law, Ireneo Acierto, she tried to pacify appellant by saying that it was enough, and that he should stop. But appellant only told them not to intervene and go away. Hence, Ireneo left. She then sat on the railing of the porch, and thereafter, her brother ran out. She followed him and saw appellant meeting her father and telling him that appellant had caused the death of “Takel.”[51] Dino responded, saying that Pablo should immediately surrender. Her brother Pablo continued to run. Her father, Dino, proceeded to enter their house. She herself sat down on a bench.

Soon thereafter, according to Ana, she noticed that many people were milling around their house. After that, the police came. The police called out, asking for any person inside the Guerreros’ house to come out. Her father then came out, and SPO1 Taracatac immediately pulled her father’s hands and handcuffed him. Ana objected, saying that her father should not be handcuffed as he had nothing to do with the incident. The police replied that Dino was only being taken for custodial investigation and safekeeping.

Ana further testified that Ernesto kicked the door only once.[52] She also said that at the time her brother, the appellant, was severing Ernesto's head, Ernesto was not moving. According to her, Ernesto was already dead.[53] Ana stated in her affidavit that after Ernesto had kicked the door, a heated argument then ensued between him and appellant.

LORENA "Rina" ACIERTO,[54] another sister of appellant, testified that while she was washing clothes, her sister Ana called her. When she went near Ana, she was told by Ana to fetch the barangay captain. Rina then saw Ernesto Ocampo at the porch shouting. She immediately went to the house of barangay captain Alexander Atijera for help. But Alexander refused to come with her, saying that he feared going to the place of the Guerreros. Rina decided to go to the house of the Ocampos instead. She asked Ernesto Ocampo's mother to come with her to bring home her son, Ernesto. However, Ernesto's mother only said: "Why is it that Ernesto still went there... let him die. Why is it that he still went there when he is at fault?"[55] According to Rina, she then left for home, and on her way back to her house, she met her husband, Ireneo, who informed her that Ernesto was already dead. Hearing that, Rina said she fainted.

IRENEO ACIERTO,[56] appellant's brother-in-law, testified that while he was resting in his house at past 11:30 in the morning of July 7, 1997, he heard someone screaming. When he looked out from his window, he saw that the person screaming was his sister-in-law, Ana. He went out of the house and went near the porch of the Guerreros, where he saw Ernesto Ocampo's head about to be severed by appellant. When the head was cut off, appellant placed the same on the right side of the victim's trunk. After that, appellant cut off Ernesto's penis. Ireneo noticed that while the head was being severed, the victim was lying down on the floor, but not moving. Ireneo then told appellant, "That is enough, bayaw. Stop it." According to the witness, his wife Ana was also saying, "That is enough, Manong." Appellant angrily turned to Ireneo, telling him not to interfere or else he might also be implicated. Ireneo hurriedly went away after that. Ireneo did not see his father-in-law, Dino, at the time of the incident and did not know where Dino was.

On November 14, 1997, the trial court rendered its judgment, which reads as follows:

WHEREFORE, premises considered, the Court finds the accused ORLANDO GUERRERO, JR. alias "Pablo" GUILTY of the crime of Murder for which this Court imposes the penalty of RECLUSION PERPETUA with all its accessory penalties and to indemnify the heirs of the deceased Ernesto Ocampo the sum of P50,000.00 as moral damages and the sum of 62,000.00 actual damages; ACQUITS ORLANDO GUERRERO, SR. alias Dino from the crime charged, and without any responsibility whatsoever with costs de officio.

SO ORDERED.[57]

Appellant filed seasonably his notice of appeal, anchored on the following alleged errors:

I

THE COURT A QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF THE ACCUSED-APPELLANT AND IN DISREGARDING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE;

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER PENALIZED UNDER ARTICLE 248 OF THE REVISED PENAL CODE; and

III

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF

CRUELTY AND/OR OUTRAGING AND SCOFFING THE CORPSE IN ORDER TO CLASSIFY THE KILLING AS MURDER DESPITE FAILURE OF THE PROSECUTION TO ALLEGE THE SAME IN THE INFORMATION. [58]

The following issues call for resolution: (1) Did the trial court err in ruling against appellant's claim that he acted in self-defense? (2) Did it also err in appreciating the circumstance of cruelty and scoffing at or outraging the victim's corpse? (3) Did it err further in imposing on appellant the penalty of reclusion perpetua with actual and moral damages?

Appellant claims self-defense as a justifying circumstance in the killing of Ernesto Ocampo. He contends that the act of the victim in coming over to the house of the appellant and thereafter threatening that blood would spill in their house unless appellant produced his sister, while simultaneously holding a knife, were acts tantamount to unlawful aggression. Appellant further avers that Ernesto's violent entry into the house while armed with the deadly weapon and forcing his way in, showed that Ernesto was ready and looking for trouble. This manner of entry constitutes an act of aggression which, appellant contends, he had the right to repel. The threatening attitude of an aggressor was offensive, says appellant, and a positively strong indication of the victim's wrongful intent to cause injury.[59]

For the appellee, the Office of the Solicitor General (OSG) contends that it is undisputed that Ernesto Ocampo was clearly the unlawful aggressor at the point where he barged into the Guerreros' house, advanced towards appellant, and then drew a knife from his waist. Clearly, appellant – according to the OSG – was justified in repelling that aggression, which he in fact did when he got hold of a wooden club and struck Ernesto at least twice. Ernesto then fell to the floor. The OSG points out that at this juncture, the aggression had already ceased. Further, when appellant wrenched the knife from Ernesto, whatever aggression that he had manifested initially, by this time had already completely ceased. Appellant was no longer in peril because he had already disarmed and completely neutralized the initial aggression, says the OSG. Thus, appellant's succeeding acts of decapitating and emasculating Ernesto could not be considered as acts of self-defense, but rather, of revenge.[60]

After a careful review of the records, including the testimonies of the witnesses for the prosecution and the defense, we find appellant liable for the victim's death. We are in agreement with the OSG that appellant failed in proving persuasively his claim of self-defense. The proven sequence of events militates against appellant's attempt to exculpate himself. Appellant admitted he was able to strike twice at the victim Ernesto Ocampo with the wooden club, which caused Ernesto to stagger and step back. By this time, any aggression on the victim's part had already been repelled successfully by appellant. Moreover, appellant was already able to take possession of the fatal "rambo" knife without any sign of struggle from the victim who lay prostrate on the ground. At this juncture, appellant had dramatically turned the situation in his favor. Thus, further heinous attacks upon the hapless victim's person could not, in our view, be considered as acts of self-defense.

As we have previously held in *People vs. Enfectana*: [61]

Given the fact that the relationship between the parties had been marred by ill will and animosities, and pursuant to the rule on the burden of evidence imposed by law on the party invoking self-defense, the admission of appellant [Eusebio Enfectana] that he killed [Leo Boco] made it incumbent upon appellant to convincingly prove that there was unlawful aggression on the part of the victim which necessitated the use of deadly force by appellant. Unfortunately, appellant miserably failed to prove the existence of unlawful aggression on the part of the victim.

Having established that there was no more unlawful aggression to speak of at the moment of killing, there can likewise be no self-defense, complete or incomplete, as the element of the unlawful aggression by the victim

committed against the person defending himself, is a condition sine qua non^[62] to the appreciation of this justifying circumstance in appellant's favor.

The location, number and seriousness of the wounds inflicted on the victim belie appellant's claim of self-defense.^[63] In this case, the victim Ernesto Ocampo suffered multiple mortal injuries. His head was severed, his penis cut off. But appellant suffered nary a scratch. The factual circumstances leading to the infliction of the lethal wounds on the victim's head and body show graphically that appellant had ample opportunity to take a more prudent course of action. But he gave vent to his anger, a deep-seated thirst for revenge, and a brutal lust for blood. Even if the killing was precipitated by a sense of outrage, of family honor lost or of ritual kinship betrayed, criminal responsibility for the victim's death could not be washed clean except by clear and convincing proof of the alleged justifying circumstance. Failing in that, the defense theory has no leg to stand on. We are thus constrained to rule against appellant for no error was committed by the trial court in disbelieving appellant's claim of self-defense.

But, as set forth by the second issue, did the court err in holding that appellant is guilty of murder, instead of only homicide?

The information alleges the qualifying circumstances of (1) treachery and (2) evident premeditation. It also states that there was cruelty in the perpetration of the crime, where there was deliberate and inhuman suffering of the victim and the offender had scoffed at the victim's corpse.

Article 248 of the Revised Penal Code, as amended by R.A. 7659 provides:

Art. 249. Murder - Any person who, in falling within the provisions of Art. 246 shall kill another shall be guilty of Murder and shall be punished by Reclusion Perpetua to death, if committed with any of the following circumstances:

1. With treachery, x x x
2. x x x
3. x x x
4. x x x
5. With evident premeditation
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim or outraging or scoffing at his person or corpse.

On treachery and evident premeditation, the trial court found that the evidence adduced by the prosecution fell short of the requirements of the law.^[64] On this finding, we are in agreement.

There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof, which tend directly and especially to insure its execution without risk to himself arising from the defense which the offended party might make.^[65]

On the allegation of treachery, the trial court observed that:

...The evidence is clear that the attack against the victim Ernesto Ocampo was frontal and preceded by altercation between Pablo or Orlando Guerrero, Jr. and the deceased Ernesto Ocampo. "No alevosia or treachery where the attack is frontal." (P.P. vs. Matbagon, 60 Phil. 837; P.P. vs. Luna, 76 Phil. 101) And more so, when the attack was preceded by a heated discussion between Orlando Guerrero, Jr. alias Pablo and Ernesto Ocampo. From the evidence, therefore, there was no means, method or form directly and especially utilized by Pablo Guerrero or Orlando Guerrero, in giving the clubbing blow on the head of Ernesto Ocampo (P.P. vs.

Gonzales, 76 Phil. 473)

In this case, it was the victim, Ernesto Ocampo, who barged into the family house of appellant. As a witness for appellant said, the victim indeed was looking for trouble. That appellant successfully caused Ernesto's fall appears unintended. It was part of appellant's action to repel Ernesto's attack. The vulnerable position of the victim was not deliberately sought nor contrived by appellant to facilitate the hacking of the victim. The vulnerable position of the victim was a result of a series of acts, spontaneous on appellant's part, without manifest calculation. Where the decision to kill was sudden, there is no treachery, even if the position of the victim was vulnerable, because it was not deliberately sought by the accused, but was purely accidental.[66]

As to evident premeditation, in order that it may be appreciated, the prosecution must prove: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.

In this case, while the victim's widow, Nancy Ocampo, testified that a day prior to the killing, appellant had lightly told her he would kill Ernesto by cutting off his head and penis, she said appellant's statement was not taken seriously by her and the victim.

According to the trial court, it found the alleged utterances of appellant and co-accused with regard to their intent to kill Ernesto insufficient to prove that, at the time the utterances were allegedly made, there was indeed a determination to kill and that appellant had indeed clung to that determination, planning and meditating on how to go about carrying on their threat. Hence, it ruled out evident premeditation.

Indeed, assuming *arguendo* that appellant did utter those words to his Ninang Nancy, other antecedent facts do not show that the crime was a product of serious and determined reflection. Prior to the incident, appellant had not expected Ernesto to visit the Guerreros' house that day. Earlier that morning, appellant had carried on in his usual fashion, helping his neighbors cut a tree, even leaving his bolo for them to use. If he had planned on carrying out any threat to kill the victim, securing a weapon and keeping it in his possession would have been his first concern.

A threat to kill, unsupported by other evidence which would disclose the true criminal state of mind of the accused, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation.[67] While the appellant might have nursed a grudge or resentment against the victim, that circumstance is not a conclusive proof of evident premeditation.[68]

Moreover, it was the victim himself who sought out appellant by going into the latter's house and forcing his way in. As witnesses had testified, the victim and appellant had a heated argument before the killing occurred. As previously held, there is no evident premeditation when the fracas was the result, not of a deliberate plan but of rising tempers,[69] or when the attack was made in the heat of anger.[70]

Instructive is the case of *People vs. Sarmiento*,[71] where we said:

We disagree with the appellate court that evident premeditation was present in the case at bar. Note that although threatening remarks were made by appellant on deceased, the same were made on different occasions. There was no showing that in between, appellant made plans or sought the deceased to accomplish the killing. In fact, the killing of the deceased happened when appellant was plowing the field disputed by the deceased and appellant, and the deceased unexpectedly appeared thereat. In the circumstances, it seems clear that appellant's act of shooting the deceased was not premeditated.

Thus, we hold that in the present case, the trial court did not err when it found neither treachery nor evident premeditation. However, the trial court found there was cruelty as well as outraging or scoffing at the corpse, thus, qualifying the crime to murder.

As established by the testimony of witnesses, appellant first severed the victim's head before his penis was cut-off. This being the sequence of events, cruelty has to be ruled out for it connotes an act of deliberately and sadistically augmenting the wrong by causing another wrong not necessary for its commission, or inhumanely increasing the victim's suffering.[72] As testified to by Dr. Sanglay, and reflected in her medical certificate, Ernesto in fact died as a result of his head being severed. No cruelty is to be appreciated where the act constituting the alleged cruelty in the killing was perpetrated when the victim was already dead.

What now remains to be considered is whether the act of cutting-off the victim's penis constitutes the qualifying circumstance of outraging or scoffing at the corpse of the victim.

Appellant strongly takes exception to this finding. He states that this circumstance was not properly alleged with specificity in the information, thereby violating the right of the accused to be informed. Appellant contends that "beheading and/or cutting-off the penis" were merely mentioned in the information as the cause of death but not as a qualifying circumstance.[73]

For the appellee, the OSG avers that the allegations in the complaint, that the accused "beheaded and cut off the penis of the victim" serves the function of stating specifically the act which constitutes outraging or scoffing at the victim's corpse.

On this point, we agree with the OSG's assertion and interpretation. While the information did not allege this qualifying circumstance in the exact words of the law, outraging the dead and scoffing at the victim's corpse are nevertheless deducible from the recital in the information.[74] The sequence of events as "attack, assault, club, beheaded and cut the penis of the victim, Ernesto Ocampo" alleged in the information points to the outrage committed on the dead.

To conclude, appellant's conviction for the crime of murder has been proved beyond reasonable doubt. The sentence of reclusion perpetua imposed on him is appropriate. However, a modification of the damages awarded by the trial court is in order. Actual damages should be pegged only at P39,105, the amount properly evidenced by receipts. But the award of civil indemnity in the sum of P50,000 is in accordance with prevailing jurisprudence, and the award of P50,000 as moral damages is substantiated by the testimony of the victim's widow. Hence, both awards are sustained.

WHEREFORE, the decision of the Regional Trial Court of San Fernando, La Union, Branch 27, finding appellant ORLANDO "Pablo" GUERRERO, JR., GUILTY of MURDER and sentencing him to reclusion perpetua, is AFFIRMED with the MODIFICATION that he should pay the heirs of the victim, Ernesto Ocampo: actual damages in the amount of P39,105.00; civil indemnity in the amount of P50,000.00; and moral damages in the amount of P50,000.00, together with the costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 32-63.

[2] Id. at 11.

[3] TSN, September 3, 1997, pp. 1-27.

[4] Records, p. 7.

[5] TSN, September 3, 1997, pp. 20-21.

- [6] Id. at 22.
- [7] Id. at 25.
- [8] TSN, September 3, 1997, pp. 38-81; TSN, October 14, 1997, pp. 3-30.
- [9] TSN, September 3, 1997, pp. 27-38.
- [10] TSN, October 13, 1997, pp. 6-7.
- [11] TSN, September 3, 1997, p. 54.
- [12] Id. at 54-55.
- [13] TSN, October 15, 1997, pp. 30-51.
- [14] Id. at 32-33.
- [15] Id. at 33-34.
- [16] Id. at 32.
- [17] TSN, September 4, 1997, pp. 13-31; TSN, September 5, 1997, pp. 1-39.
- [18] TSN, September 4, 1997, p. 20.
- [19] Id. at 20-21.
- [20] Id. at 23.
- [21] Id. at 22-23. Ninang means “godmother”.
- [22] TSN, September 5, 1997, pp. 27-28.
- [23] Id. at 29.
- [24] Id. at 40-61.
- [25] An invitation “to have a drink.” Bayaw means brother-in-law.
- [26] TSN, September 10, 1997, p. 6.
- [27] TSN, September 11, 1997, pp. 1-28.
- [28] Id. at 17-18.
- [29] Id. at 24-26.
- [30] Id. at 18.
- [31] TSN, September 12, 1997, pp. 1-33.
- [32] Id. at 10-11. No other witness corroborated Dino’s participation.
- [33] The trial court ignored Dino’s role in the commission of the crime.
- [34] TSN, September 29, 1997, pp. 1-21.
- [35] Noland in some parts of the records.
- [36] TSN, September 10, 1997, pp. 28-48.

- [37] Id. at 32-33.
- [38] Id. at 38-39.
- [39] Id. at 43-44.
- [40] TSN, October 8, 1997, p. 19.
- [41] Id. at 17.
- [42] Id. at 28.
- [43] Id. at 14-15; 20-21.
- [44] Id. at 9.
- [45] TSN, October 7, 1997, pp. 2-3.
- [46] Id. at 3-4.
- [47] Id. at 4-5.
- [48] TSN, October 1, 1997, pp. 2-54.
- [49] Id. at 6-8.
- [50] Id. at 10.
- [51] Id. at 11-12.
- [52] Id. at 25.
- [53] Id. at 24.
- [54] Id. at 55-68.
- [55] Id. at 56-58.
- [56] TSN, October 2, 1997, pp. 2-34.
- [57] Rollo, p. 63. Emphasis in the original.
- [58] Id. at 85-86.
- [59] Id. at 96.
- [60] Id. at 149-150.
- [61] G.R. No. 132028. April 19, 2002, p. 11
- [62] Id. at 10-11.
- [63] See *People vs. Domingo*, G.R. No. 131817, August 8, 2001, p. 4.
- [64] Rollo, pp.116-117.
- [65] *People vs. Villarmosa, et al.*, G.R. No. 131841, October 23, 2001, p. 7.
- [66] See *People vs. Cadag*, 2 SCRA 388, 393-394 (1961).
- [67] *People vs. Fuentesuela*, 73 Phil. 553, 554 (1942).

[68] See *People vs. Lacao*, 60 SCRA 89, 95 (1974).

[69] See *People vs. Padrones*, 189 SCRA 496, 511 (1990).

[70] See *People vs. Anin*, 64 SCRA 729, 734 (1975).

[71] 8 SCRA 263, 267 (1963); *People vs. Bautista*, 79 Phil. 652, 657 (1947).

[72] *People vs. Lopez*, 342 SCRA 431, 439 (2000).

[73] *Rollo*, p.99.

[74] See *People vs. Carmina*, 193 SCRA 429, 435 (1991).

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