

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. HEVER PAULINO Y BIYAYA, APPELLANT.

G.R. No. 148810. November 18, 2003

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-148810/>

YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Dumaguete City, Branch 34, in Criminal Case No. 12720 finding appellant Hever Paulino y Biyaya guilty beyond reasonable doubt of the crime of Murder, sentencing him to suffer the penalty of reclusion perpetua and ordering him to indemnify the heirs of the victim the sum of P50,000.00.

For the death of the Leonarda Paulino, appellant was charged with murder in an Information that reads:

That on 18 August 1996 at about 5:00 o'clock in the afternoon in Sitio Tubod, Tamao, Tayasan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill and with treachery and evident premeditation and without regard of the respect due to the offended party on account of her sex did then and there willfully, feloniously and unlawfully attack, assault and stone one Leonarda Paulino with a large rock thereby inflicting upon the latter fatal injury at her head which caused her death soon thereafter.

CONTRARY TO ART. 248 of the Revised Penal Code.[2]

When arraigned, appellant pleaded not guilty. Thereafter trial on the merits ensued.

The facts of the case are as follows:

On August 18, 1996, at about 5:00 p.m., the victim and her daughters, Joy and Mylene, were at their house when appellant passed by and asked for water to drink. Since he was the nephew of the victim, appellant was welcomed into the house and was given a glass of water by Mylene. He stayed at their porch while Mylene left for the house of her grandmother, Vivenciana Cantero, approximately 40 meters away. Moments later, the victim advised appellant to go home as his father might be looking for him. Appellant left the house angry at the victim for telling him to leave. Then, as the victim and Joy walked towards the house of Vivenciana Cantero to fetch Mylene, Joy saw appellant, who was only about 2 meters behind them, throw a rock at them hitting the head of the victim. The victim slumped to the ground with her face down while appellant ran away. Vivenciana heard the cries of Joy for help, and rushed to the scene. Her husband, Timoteo Cantero and Leonila Onayan, Joy's aunt, helped Vivenciana bring the victim to Bindoy District Hospital where she was treated. She was then transferred to the Negros Oriental Provincial Hospital later that night. The victim died the following day.[3]

Dr. Fe Herrera, a resident physician of Bindoy District Hospital, testified that the victim was unconscious when she was brought by the relatives to the hospital. The victim sustained two lacerated wounds, one on the left temporal region, about three centimeters long and the other one on the right parietal region, about six centimeters long. She referred the victim to the Negros Oriental Provincial Hospital for further treatment.[4]

Dr. Virgilio de Guzman, the government physician at the Negros Oriental Provincial Hospital who attended to the victim, testified that the injuries sustained by the victim were fatal and no amount of surgical intervention could have saved her. The victim died on August 19, 1996 at 8:30 a.m. due to cardio-pulmonary arrest secondary to uncal herniation secondary to severe traumatic injury.[5]

For his part, appellant admits that he threw a stone at the victim but claims that he did so in self-defense. According to him, in the afternoon of August 18, 1996, he passed by the house of the victim and asked for water to drink. After Mylene Paulino gave him a glass of water, he asked her if she already had a boyfriend. Mylene did not reply but kicked him instead. She then went into the kitchen. Suddenly, the victim came out of the kitchen holding a scythe in her hand and shouted at him, "I will kill you! I will chop you finely with the use of this scythe!" Appellant ran away and the victim chased him. When the victim was about 3 meters away from him, he picked a stone and threw it at her to defend himself. After that, he ran towards their house. He did not see whether the victim was hit or not. That same night, he told his father what happened. The following morning, he went to the house of policeman Remegio Torres to surrender. He was accompanied to the police station of Tayasan, Negros Oriental, where he was investigated and detained.[6]

After trial, the court a quo rendered a decision, the dispositive portion of which reads:

WHEREFORE, accused HEVER PAULINO is hereby found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, and the Court hereby imposes upon him the penalty of RECLUSION PERPETUA .

Accused is likewise directed to indemnify the heirs of victim Leonarda Paulino the amount of FIFTY THOUSAND PESOS (P50,000.00).

In line with Section 5, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, accused Hever Paulino is hereby ordered to be immediately detained at the New Bilibid Prison in Muntinlupa City, Metro Manila. The accused is, however, hereby given full credit for the entire period of his preventive detention, provided that he has submitted himself to and observed the rules and regulations imposed by the detention center.

No pronouncement as to costs.

SO ORDERED. [7]

Hence, this appeal, based on the following assignment of errors:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II.

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

III.

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS LIABLE FOR THE ACTS COMPLAINED OF, THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF TREACHERY.[8]

Appellant's claim of self-defense is unavailing.

Settled is the rule in criminal cases that the prosecution has the onus probandi in establishing the guilt of the accused.[9] However, where the accused admits commission of the crime but invokes self-defense, the basic rule

that the burden of proving the guilt of the accused lies on the prosecution is reversed, and the burden of proof is shifted to the accused to prove the elements of his defense.[10] It then becomes incumbent upon him to rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution, for even if the latter were weak, it could not be disbelieved after he had admitted the killing.[11] Hence, if the accused fails to discharge the burden of proof, his conviction must ensue as a matter of consequence.[12]

By invoking self-defense, appellant must prove: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel or prevent it; and (c) lack of sufficient provocation on the part of the person defending himself.[13] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete. In other words in self-defense, unlawful aggression is a primordial element.[14]

The question whether appellant acted in self-defense is essentially a question of fact.[15] In convicting appellant, the trial court succinctly held that:

In the case at bar, the court is not persuaded to believe the assertion of accused Hever Paulino that he acted in self-defense when he threw a big stone at the head of victim Leonarda Paulino, which led to her death. As admitted by the accused on the witness stand, he had no previous quarrel or misunderstanding with victim Leonarda Paulino, nor with eyewitness Joy Paulino, or with any members of their family. There is no reason, therefore, why Leonarda would chase him with a scythe. There is also no reason at all why Joy Paulino would impute to the accused the heinous crime of Murder, if he did not commit the crime as charged. This is especially so, taking into account the fact that the accused, the victim and the eyewitness are relatives. Leonarda is the wife of the uncle of the accused, while Joy is the first cousin of the accused. Well-settled is the rule that where there is no showing that the principal witnesses for the prosecution were actuated by any improper motive, the presumption is that they are not so actuated and their testimonies are entitled to full faith and credit. Mere relationship of a witness to the victim does not impair her credibility as to render her testimony unworthy of credence where no improper motive can be ascribed to her for so testifying. The assertion of the accused that the victim chased him with a scythe is unworthy of belief as it is unnatural, coupled by the fact that it runs counter to the credible and straightforward testimony of eyewitness Joy Paulino...

x x x x x x x x

The fact that victim Leonarda Paulino advised the accused, who is the nephew of her husband, to go home because he has his own house and his father might be looking for him, does not constitute an unlawful aggression in contemplation of law. The victim simply showed concern for the accused and his father.[16] (Citations omitted)

We have consistently held that findings of facts and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. The trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[17] No such fact or circumstance obtains in the case at bar.

Appellant failed to prove with satisfactory and convincing evidence that the victim was guilty of unlawful aggression. Self-defense cannot be justifiably entertained where it is not only uncorroborated by competent evidence but is seriously doubtful. Like alibi, self-defense is inherently a weak defense, which is so easy to concoct but very difficult to verify.[18] Appellant's invocation of self- defense therefore deserves scant consideration.

Appellant next argues that if he were to be held criminally liable, it should only be for homicide. According to him, treachery was not alleged in the Information with specificity as to qualify the killing to murder. He cites as bases for his argument the cases of *People v. Alba*[19] and *People v. Manlansing*,[20] wherein the Court disregarded the qualifying circumstance of treachery for the reason that it failed to specify treachery as a circumstance qualifying the killing to murder. In said cases, treachery was considered only a generic aggravating circumstance; thus, the crime committed was only homicide and not murder.

We do not agree.

In the subsequent case of *People v. Aquino*,[21] the Court clarified its ruling in the cases of *Alba* and *Manlansing* by holding that:

[T]he Court has repeatedly held, even after the recent amendments to the Rules of Criminal Procedure, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense.

x x x x x x x x

Section 9, Rule 110 of the Revised Rules of Criminal Procedure states that the-

"x x x qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know x x x (the) qualifying and aggravating circumstances x x x."

Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.

The rules require the qualifying circumstances to be specifically alleged in the Information in order to comply with the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to prepare fully for his defense to prevent surprises during the trial.

x x x x x x x x

Section 8 of Rule 110 requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances." (Emphasis supplied). Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words "qualifying" or "qualified by" to refer to the circumstances which raise the category of an offense. It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category.

x x x x x x x x

We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial.

When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

In the case at bar, the Information clearly passes the test as it specified treachery as an attending circumstance in the commission of the crime. The allegation, although not preceded by the words "aggravating/qualifying," "qualifying," or "qualified by," is sufficient to apprise appellant of the charge against him as to enable him to prepare fully his defense.

The trial court correctly found the presence of the qualifying circumstance of treachery in the instant case. 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 specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part.[22]

In the case at bar, it was established that the victim had no reason to expect that she will be assaulted by appellant. She and her daughter Joy were just walking towards the house of Vivenciana to fetch her other daughter Mylene. The unexpected and sudden attack on Leonarda constitutes treachery because said assault rendered her unable and unprepared to defend herself. Appellant's act of throwing a stone at the victim from behind shows that he deliberately adopted a mode of attack that would deprive the victim of an opportunity to defend herself.

As to the mitigating circumstance of voluntary surrender, we agree with appellant that the same should be considered in his favor. The evidence shows that appellant surrendered to a person in authority a day after the incident. This fact was not contested by the prosecution. Notwithstanding this, the presence of voluntary surrender as a mitigating circumstance will not affect the penalty to be imposed upon appellant. Under Article 248 of the Revised Penal Code, as amended, the penalty for murder is reclusion perpetua to death. Article 63 of the same code states that when the law prescribes a penalty consisting of two indivisible penalties and the crime is attended by a mitigating circumstance and no aggravating circumstance, the lesser penalty shall be imposed.[23] Consequently, the penalty of reclusion perpetua was correctly imposed by the trial court.

Finally, the trial court correctly awarded civil indemnity in the amount of P50,000.00 to the heirs of the victim. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[24] Likewise, the trial court was correct in not awarding actual, moral and exemplary damages because the prosecution failed to present competent evidence to prove the same. To justify an award of actual damages, there must be competent proof of the actual amount of loss.[25] Further, in murder cases, moral damages cannot be granted in the absence of proof therefor[26] and exemplary damages without any aggravating circumstance.[27]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Dumaguete City, Branch 34, in Criminal Case No. 12720 finding appellant Hever Paulino y Biyaya guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the heirs of the victim the sum of P50,000.00 as civil indemnity is AFFIRMED in toto.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio and Azcuna, JJ., concur,

- [1] Penned by Judge Rosendo B. Bandal, Jr.
- [2] Rollo, p. 7.
- [3] TSN, June 11, 1997, pp. 3-14.
- [4] TSN, July 4, 1997, pp. 3-6.
- [5] TSN, September 8, 1998, pp. 9-11; Folder of Exhibits, Exhibit D (Death Certificate).
- [6] TSN, February 2, 2000, pp. 3-9.
- [7] Rollo, pp. 31-32.
- [8] Rollo, p. 61.
- [9] *People v. Quijano, Sr.*, G.R. Nos. 144523-26, 10 June 2003.
- [10] *People v. Annibong*, G.R. No. 139879, 8 May 2003.
- [11] *People v. Cueto*, G.R. No. 147764, 16 January 2003.
- [12] *People v. Gallego*, G.R. No. 127489, 11 July 2003.
- [13] *People v. Castellano*, G.R. No. 139412, 2 April 2003.
- [14] *People v. Rabanal*, G.R. No. 146687, 22 August 2002.
- [15] *People v. Suyum*, G.R. No. 137518, 6 March 2002.
- [16] Rollo, Decision, p. 83.
- [17] *People v. Federico*, G.R. No. 146956, 25 July 2003.
- [18] *People v. Ansus*, G.R. No. 149784, 14 July 2003.
- [19] G.R. No. 130523, 29 January 2002, 375 SCRA 70, 78-79.
- [20] G.R. Nos. 131736-37, 11 March 2002.
- [21] G.R. Nos. 144340-42, 6 August 2002.
- [22] *People v. Aguilos*, G.R. No. 121828, 27 June 2003.
- [23] *People v. Delada*, G.R. No. 137406, 26 March 2003.
- [24] *People v. Roxas*, G.R. No. 140762, 10 September 2003.
- [25] *People v. Olermo*, G.R. No. 127848, 17 July 2003.
- [26] *People v. Escarlos*, G.R. No. 148912, 10 September 2003.
- [27] Art. 2230, New Civil Code.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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