

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HONORATO C. BELTRAN, JR., ACCUSED-APPELLANT.

G.R. NO. 168051. September 27, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Murder is one of the instances when man descends to a level lower than that of the beast, for it is non-instinctive killing, a deliberate destruction of a member of the same species for reasons other than survival.[1]

This is an appeal from the Decision of the Court of Appeals in CA-G.R. CR No. 00755, dated 31 March 2005,[2] affirming with modifications the Decision of the Regional Trial Court (RTC) of Pallocan, Batangas City, Branch 4, in Criminal Case No. 10525, dated 9 October 2001,[3] convicting the accused-appellant Honorato C. Beltran, Jr., alias Jun-Jun and Junior, of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of deceased Norman H. Concepcion, the amount of P75,000.00 as moral damages, P50,000.00 as civil indemnity, and P18,252.00 as actual damages.

On 3 November 1999, appellant was indicted in an Information[4] for Murder allegedly committed as follows:

That on or about October 25, 1999 at around 10:00 o'clock in the evening at Velasquez Road, Brgy. Sta. Rita, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bolo, a deadly weapon, with intent to kill and with the qualifying circumstance of treachery, did then and there, willfully, unlawfully and feloniously attack, assault and hack with the said bolo, suddenly and without warning one Norman Concepcion y Habla while the latter was unarmed and completely defenseless, thereby hitting him on the different parts of his body, which directly caused the victim's death.

When arraigned on 9 November 1999, appellant pleaded "Not Guilty" to the charge therein.[5] Thereafter, trial on the merits ensued.

The prosecution established its case through the testimonies of its witnesses, namely: Ever D. Sales, Rolando G. Dalisay, Dr. Dinah R. Lucero, SPO1 Julian M. de Castro and Normita H. Concepcion. Their testimonies are summarized as follows:

Ever D. Sales (Ever) was a resident of Velasquez Subdivision, Barangay Sta. Rita, Batangas City. He worked as a gasoline boy in Caltex Gasoline Station at San Pascual, Batangas City.

Ever testified that on 25 October 1999, at about 10:00 in the evening, he left his workplace and proceeded home using his bicycle. While traversing the Velasquez Road, he saw appellant holding a bolo and standing in front of his house situated at the side of Velasquez Road. On the opposite side of the same road, he saw Norman H. Concepcion (Norman) standing in front of an automobile repair shop. Exhausted by the travel, Ever decided to stop by and rest momentarily at a nipa hut near the same road. Minutes later, he saw appellant, from a distance of six meters, stalking Norman who was then walking near the automobile shop. Appellant approached Norman, and, without a warning, hacked him with a bolo. Norman tried to avoid the blow by moving backwards and

shielding his face with his left arm. However, Norman's left hand was hit and wounded by the bolo. When Norman turned around and ran, appellant hacked him at the back causing him to fall down on a grassy area. Appellant repeatedly hacked Norman with a bolo.

Fearing for his own safety, Ever immediately left the nipa hut and sought help in a nearby sari-sari store. Later, he went to the crime scene and found no trace of appellant. He also discovered the bloodied and lifeless body of Norman sprawled on the ground. Afterwards, he proceeded home and narrated to a relative named Renato Sales (Renato) what he just witnessed. Later, Renato informed a certain Carmina Baliwag of the incident, who in turn, relayed the same to Normita Concepcion (Normita), the sister of Norman. Ever also declared that he did not know of any reason why appellant hacked Norman to death.[6]

Rolando G. Dalisay (Rolando) is a resident of Velasquez Subdivision, Barangay Sta. Rita, Batangas City, where he is engaged in a carpentry business.

Rolando supported the testimony of Ever by stating that on 25 October 1999, at around 10:00 in the evening, he was walking along Velasquez Road to buy some medicines when, at a distance of about 15 meters, he saw appellant hacking Norman with a bolo. He noticed that when Norman fell on the ground, appellant continued his onslaught by relentlessly hacking the former. Afraid that he might be seen by the appellant, he immediately went home and informed his wife about the incident. When the barangay tanod and policemen arrived at the crime scene, he proceeded thereto and told them what he had witnessed. Further, he stated that he personally knows appellant as the latter was a former employee in his carpentry business. He also personally knew Norman since the latter was a relative of his wife. Lastly, he testified that appellant and Norman had a previous quarrel which, however, was subsequently settled in their barangay office.[7]

SP01 Julian D. Mendoza was the investigating officer of the instant case. On 26 October 1999, at about 12:00 midnight, his station received an information regarding the hacking incident. He and a certain SPO3 Mario Panaligan rushed to the crime scene. Upon arriving thereat, he inquired from the people present the identity of the dead person and of the killer. Rolando approached him and narrated that the dead person was Norman and the killer was appellant. Normita also arrived at the crime scene and told him relevant information. With this lead, they proceeded to appellant's house but the latter was not there.

On 27 October 1999, a certain Tomas Dimacuha surrendered the appellant. Later, the brother of appellant, Sherman Beltran, brought before him the bolo, about three palms in length, used by appellant in hacking Norman to death.[8]

Dr. Dinah R. Lucero, Medical Officer IV of the Batangas City Health Office, testified that she conducted the post mortem examination on the cadaver of Norman on 26 October 1999 at the Eternal Memorial Chapel. She declared that, aside from the fact that Norman's body was almost decapitated, the latter suffered seven stab wounds and his cause of death was "massive blood loss secondary to multiple hacking wound." [9] The death certificate issued by Lucero shows that Norman was twenty-two (22) years of age at the time of his demise.[10]

Lastly, Normita, sister of Norman, testified that on the evening of 25 October 1999, Carmina Baliwag called her on the telephone and instructed her to proceed to Velasquez Road. Upon arriving thereat, she was shocked to discover the dead body of Norman lying on the ground. She claimed that appellant had a motive to kill Norman since an altercation occurred between the two on 22 October 1999, which, however, was settled later on 25 October 1999. In establishing her claim for damages, she stated that she spent an amount of P61,000.00 in connection with Norman's death, and that the latter worked as an assistant to the electrician at First Gas Company with a monthly income of P6,000.00. She also claimed that she was "shocked" at the sudden and gruesome death of Norman, and that she felt "pity" for him.[11]

On the other hand, the defense argued its case by presenting the testimony of the appellant himself and a certain Dr. Luisito Briones.

Appellant admitted that he hacked Norman with a bolo but insisted that he did the same in self-defense. He narrated that on 25 October 1999, at about 10:00 in the evening, he and his mother were resting inside their house when suddenly, he heard Norman shouting and insulting him outside their house and challenging him to a fight. When he came out of the house, he noticed that Norman was accompanied by several unidentified persons. Thereafter, he tried to pacify Norman but the latter slapped the back of his head and pulled out an ice pick from his pocket. He retreated and looked for something to defend himself. He found a bolo near a tamarind tree in front of their house and took the same. When Norman was about to enter appellant's house, the latter hacked him with the bolo. Norman tried to avoid the blow but the same hit his left arm. Appellant lost grip of the bolo and the same fell on the ground. While appellant was reaching for the bolo, Norman grabbed his head and tried to stab him with the ice-pick. Appellant, however, eluded the counter-attack but he sustained a minor wound on the forehead. Upon gaining control of the scuffle, appellant took the bolo and hacked Norman four consecutive times, most of them landed on the head. When appellant noticed that Norman was no longer moving, he fled therein and went to his brother, Sherman Beltran, in Bauan, Batangas, where he stayed that same night and hid therein the bolo. The next day, he went to his sister's house in Lipa City. Later that day, he went to the Granja Hospital, also in Lipa City, for treatment of his wound on the forehead.

Appellant also claimed that on 22 October 1999, he was mauled by Norman near a sari-sari store; that Norman is taller than him since he is only 5'4 in height; that he was forced to kill Norman because the latter insulted him and his mother; and that he was on his way to Bauan City to surrender to police when he was apprehended by the barangay officers in Lipa City.[12] Appellant was twenty-nine years (29) of age at the time of his arrest.[13]

Dr. Luisito D. Briones testified that he treated appellant on the morning of 26 October 1999 at Granja Hospital in Lipa City for a lacerated wound on the forehead. He also claimed that the wound was possibly caused by a knife and that it was already on the healing stage. He also issued a medical certificate attesting to the same.[14]

On 9 October 2001, the RTC rendered its Decision[15] finding appellant guilty beyond reasonable doubt of the crime of murder. It reasoned that appellant's claim of self-defense cannot be sustained in view of the positive and credible testimonies of the prosecution witnesses. In closing, the trial court ruled:

In the light of all the foregoing consideration and upon the evidence, accused Honorato Beltran, Jr. y Casia alias "Jun-Jun" is hereby found GUILTY beyond reasonable doubt of the crime of Murder charged in the information. Consequently, the accused is hereby sentenced to Reclusion perpetua together with all the accessory penalties inherent therewith and to pay the costs. He is further directed to indemnify the heirs of Norman Concepcion in the sum of P61,000.00 as actual damages and the sum of P75,000.00 as moral damages.[16]

Aggrieved, appellant filed a notice of appeal therein on 22 October 2001.[17] Subsequently, on 3 January 2003, appellant filed his Appellant's Brief with this Court assailing the Decision of the RTC dated 9 October 2001.[18] Pursuant to our ruling in the case of *People v. Mateo*,[19] we issued a Resolution dated 8 November 2004, transferring the instant case to the Court of Appeals for disposition.[20] On 31 March 2005, the Court of Appeals promulgated its Decision affirming with modifications the assailed RTC Decision. Aside from reducing the amount of actual damages awarded by the RTC, it also ordered appellant to pay the heirs of Norman an amount of P50,000.00 as civil indemnity. The dispositive portion thereof reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Aside from moral damages in the amount of P75,000.00, appellant is ordered to pay the heirs of the deceased, Norman Concepcion, the following amounts: (a) Fifty Thousand (P50,000.00) as civil indemnity; and (b) Eighteen Thousand Five

Hundred Twenty-Five (P18,525.00) as actual damages.[21]

Dismayed, appellant appealed the afore-quoted Decision before this Court by adopting and invoking the same arguments stated in his Appellant's Brief dated 3 January 2003, to wit:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF EVER SALES DESPITE OF ITS BEING UNBELIEVABLE AND BIASED, INSTEAD OF THE SELF-DEFENSE INTERPOSED BY THE APPELLANT.

II.

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE SAME BEYOND REASONABLE DOUBT.

III.

ASSUMING THAT ACCUSED-APPELLANT IS NOT ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, THE TRIAL COURT ERRED IN NOT CONSIDERING IN HIS FAVOR THE MITIGATING CIRCUMSTANCES OF SUFFICIENT PROVOCATION ON THE PART OF THE OFFENDED PARTY WHICH IMMEDIATELY PRECEDED THE ACT AND VOLUNTARY SURRENDER.

IV.

THE TRIAL COURT GRAVELY ERRED IN AWARDING EXCESSIVE ACTUAL DAMAGES.[22]

Anent the first issue, appellant argued that the testimony of prosecution witness, Ever, is biased, unbelievable and confusing; that the trial court should not have considered them; that his acquittal is proper on the ground of self-defense; and that the elements of self-defense are present in the instant case.

The contention is without merit.

Prosecution eyewitness, Ever, testified that on 25 October 1999, at about 10:00 in the evening, he left his workplace and proceeded home using his bicycle. While traversing Velasquez Road, he saw appellant holding a bolo and standing in front of his house situated at the side of Velasquez Road. On the opposite side of the same road, he saw Norman standing in front of an automobile repair shop. Exhausted by the travel, he decided to stop by and rest momentarily at a nipa hut near the same road. Minutes later, he saw appellant, from a distance of six meters, stalking Norman who was walking then near the automobile repair shop. Appellant approached Norman, and without a warning, repeatedly hacked him with a bolo. Although it occurred late in the evening, the light coming from the moon and the electric post therein provided him with good visibility to identify appellant and Norman, and to witness how the heinous act was executed.[23] This testimony was corroborated by another prosecution eyewitness, Rolando. Thus, the positive identification and categorical declarations of Ever on the witness stand under solemn oath deserves full faith and credence.

Appellant, however, posited that there were inconsistencies between the testimony of Ever in open court and his sworn statements before the investigators. According to appellant, Ever testified during his direct examination that he was at a distance of about six meters, more or less, from appellant and Norman when the hacking occurred; that the place where the killing occurred was "lighted" by the moon; and that during his cross-examination, he stated that there was no other person within the area when he witnessed the hacking. On the other hand, appellant claimed that Ever declared in his sworn statements before the investigators that he was more or less 20 meters

from the place where the hacking took place; that there was light coming from the electric post and the moon; and that during his cross-examination, he also stated that the mother of appellant was outside the house when the hacking took place.[24]

This Court had consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify a reversal of judgment of conviction. Such discrepancies do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete. It bears emphasis that a sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken ex-parte are generally considered to be inferior to the testimony given in open court.[25]

Moreover, as aptly stated by the Office of the Solicitor General (OSG), when Ever testified in court that "there was light coming from the moon, sir" he was not denying what he stated in his sworn statement that "there was a light from the lamp (electric) post and the moon." [26] The appellant also testified that the place where the hacking incident occurred was lighted by an electric post. As the foregoing circumstances clearly established that the place where the hacking occurred was lighted by the moon and an electric post, the testimony of Ever as to the identity of the killer and the victim, and how the killing was executed, must stand.

Further, the alleged inconsistencies with respect to the presence of appellant's mother in the place where the hacking took place, and the distance between the nipa hut where Ever rested and the area where the hacking took place, are minor inconsistencies and trivial matters that serve to strengthen rather than weaken the credibility of Ever for they erase the suspicion of rehearsed testimony. Also, they are not material in the instant case since none of them is an essential element of murder.[27]

More importantly, the RTC had observed that Ever was candid, straightforward and credible in giving his testimony on the witness stand. It found Ever to be unbiased since he was neither a friend nor an enemy of appellant and Norman but just a mere neighbor. It also found that there was no ulterior motive for him to testify against appellant.[28]

It is a well-settled doctrine in our jurisprudence that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect.[29] This is because the trial court has the unique opportunity to observe the demeanor of a witness and is in the best position to discern whether they are telling the truth.[30] It is worth stressing at this point that the Court of Appeals affirmed such findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[31] We find no compelling reason to deviate from such findings of the RTC and the Court of Appeals.

On another point, appellant contended that he merely acted in self-defense when he hacked Norman to death.

We disagree.

Article 11, paragraph (1), of the Revised Penal Code provides for the elements and/or requisites in order that a plea of self-defense may be validly considered in absolving a person from criminal liability, viz:

ART. 11. Justifying circumstances. - The following do not incur any criminal liability:

Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril.[32] It is an act positively strong showing the intent of the aggressor and not merely a threatening or intimidating attitude.[33] It is also described as a sudden and unprovoked attack of immediate and imminent kind to the life, safety or rights of the person attacked.[34]

There is an unlawful aggression on the part of the victim when he puts in actual or imminent peril the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of weapon.[35] In order to constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary.[36]

In the instant case, there was no unlawful aggression on the part of Norman that justified the act of appellant in hacking him to death. There was no actual or imminent danger on the life of appellant when he came face to face with Norman. As narrated by Ever, Norman was just walking on the road and was not provoking appellant into a fight. It was the appellant who approached and suddenly hacked Norman repeatedly even when the latter was already fallen on the ground. In short, appellant was the unlawful aggressor.

Even if this Court were to adopt the version of facts of appellant, the result or conclusion would be the same.

Appellant alleged that he was resting inside his house when he heard Norman shouting invectives against him and challenging him to a fight. When he went outside the house to pacify Norman, the latter slapped the back of his head and brought out an ice-pick. Appellant retreated and when Norman tried to follow him inside the house, he took a bolo and repeatedly hacked Norman. The foregoing circumstances does not justify the act of appellant in hacking Norman. Obviously, mere shouting of invectives and challenging one to a fight does not put one's life in actual or imminent danger. In the same vein, mere slapping of one's head does not place a person's life in serious danger such that it compels him to use a bolo and hack the offender.

As regards the brandishing of an ice-pick, appellant had several less harmful means of avoiding the same as he was not cornered or trapped. He could have run inside his house and locked the door, or, called the neighbors or authorities for help. Unfortunately, appellant did not avail himself of any of those options and instead chose to hack Norman. Quite conspicuously, no convincing evidence was presented to show that Norman was, indeed, armed with an ice-pick at the time of the incident. In fact, no ice-pick was found in the crime scene nor in the body of Norman. There was also no proof adduced showing that Norman attempted to stab appellant or tried to barge into the latter's house.[37]

The fact that appellant sustained an injury on his head, allegedly caused by Norman's ice-pick, does not signify that he was a victim of unlawful aggression or that he acted in self-defense.[38] The physician who treated appellant testified that the latter was diagnosed on 26 October 1999, the day after the hacking incident; that appellant was discharged on the same day he was treated in the hospital since he was only an out-patient; and that at the time he examined the head injury of appellant, it was already on its healing stage.[39] It is clear from the foregoing that appellant's head injury was not serious or severe. The cause of the same is likewise doubtful. Thus, the superficiality of the injury sustained by appellant is no indication that his life and limb were in actual peril.[40]

In stark contrast, Norman was almost decapitated and sustained fatal injuries on the head and neck. All in all, Norman sustained seven fatal wounds, most of them located at the head and neck. Based on the foregoing, it is difficult to believe that Norman was the unlawful aggressor. The gravity, location, and number of wounds

sustained by Norman are eloquent physical evidence showing a determined effort on the part of appellant to kill Norman, and not just to defend himself.[41]

Time and again, we held that unlawful aggression is a sine qua non for upholding the justifying circumstance of self-defense.[42] It is an essential and indispensable requisite, for without unlawful aggression on the part of the victim, there can be, in a jural sense, no complete or incomplete self-defense.[43] Without unlawful aggression, self-defense will not have a leg to stand on and this justifying circumstance cannot and will not be appreciated even if the other elements are present.[44] To our mind, unlawful aggression is clearly absent in the case at bar.

The second element of self-defense requires that the means employed by the person defending himself must be reasonably necessary to prevent or repel the unlawful aggression of the victim. The reasonableness of the means employed may take into account the weapons, the physical condition of the parties and other circumstances showing that there is a rational equivalence between the means of attack and the defense.[45]

The act of appellant in repeatedly hacking Norman on his head and neck was not a reasonable and necessary means of repelling the aggression allegedly initiated by the latter. As stated earlier, no convincing evidence was presented to show that Norman was armed with an ice-pick at the time of the incident. In fact, no ice-pick was found in the crime scene or in the body of the victim. There was also no proof showing that Norman attempted to stab appellant or tried to barge into the latter's house. Granting *arguendo* that Norman was armed with an ice-pick, the repeated hackings were not necessary since he can overpower or disable Norman by a single blow on non-vital portion/s of his body.

Again, as correctly observed by the OSG, had the appellant merely wanted to protect himself from what he perceived as an unlawful aggression of Norman, he could have just disabled Norman.[46] When Norman fell on the ground, appellant should have ceased hacking the former since the alleged aggression or danger no longer exists. By appellant's own testimony, however, he hacked Norman with his bolo even when the latter was already lying on the ground. It appears, therefore, that the means used by appellant, which were simultaneous and repeated hackings, were adopted by him not only to repel the aggression of Norman but to ensure the latter's death. In sum, such act failed to pass the test of reasonableness of the means employed in preventing or repelling an unlawful aggression.

Like an alibi, self-defense is inherently weak for it is easy to fabricate.[47] Thus, this Court had consistently ruled that where an accused admits killing the victim but invokes self-defense, it is incumbent upon the accused to prove by clear and convincing evidence that he acted in self-defense.[48] As the burden of evidence is shifted on the accused to prove all the elements of self-defense, he must rely on the strength of his own evidence and not on the weakness of the prosecution.[49] In the instant case, appellant failed to discharge such burden with clear and convincing evidence. Therefore, his plea of lawful self-defense must fall.

With regard to the second issue, appellant contended that there was no treachery that qualified his act to murder in the absence of direct evidence showing that his attack on Norman was sudden; that Norman was not deprived of an opportunity to defend himself; and that appellant did not employ treachery to insure the execution of the crime.

Appellant's contention is bereft of merit.

Treachery is a sudden and unexpected attack under circumstances that render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[50] It is as an aggravating circumstance that qualifies the killing of a person to murder. Article 14, paragraph (16) of the Revised Penal Code states the concept and essential elements of treachery as an aggravating circumstance, thus:

ART. 14. Aggravating circumstances. - The following are aggravating circumstances:

x x x x

16. That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person 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.

As can be gleaned from the foregoing, two essential elements/conditions are required in order that treachery may be appreciated: (1) The employment of means, methods or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus no opportunity for self-defense or retaliation; and (2) deliberate or conscious choice of such means, methods or manner of execution. Further, it must always be alleged in the information and proved in trial in order that it may be validly considered.[51]

In the case at bar, treachery was alleged in the Information against appellant. Moreover, all the essential elements/conditions of treachery were established and proven during the trial.

Appellant, while holding a bolo, had waited for the dark to set in before making his move so that nobody, especially Norman, would notice his impending attack. When he saw Norman, alone and unarmed, casually walking near an auto repair shop, he followed him surreptitiously. Later, appellant came out and approached the unsuspecting Norman, who, in turn, faced the former. Appellant took advantage of the stunned and hapless Norman by swiftly hacking him with a bolo. As the assault was sudden and unexpected, Norman was forced to move backwards and raise his left arm to shield his face but it was too late. Norman's left arm was immediately hit by the bolo. When Norman turned his back on appellant and tried desperately to run, appellant hacked him again at the back causing him to fall on the ground. As the bloodied and moaning Norman was lying on the ground, appellant unleashed his full wrath by repeatedly hacking him on the neck and head. Upon noticing that Norman was no longer moving and was, in fact, almost decapitated, he stopped the hacking and fled the scene.

As viewed from the foregoing, the suddenness and unexpectedness of the appellant's attack rendered Norman defenseless, vulnerable and without means of escape. Appellant's use of nighttime and a deadly bolo, as well as the sudden attack and repeated hackings on the vital portions of Norman's body, were especially adopted by him to immediately cripple Norman and prevent him from retaliating or escaping. Appellant deliberately adopted them in order to overpower the much younger, taller, and larger Norman. Considering that Norman was alone and unarmed, there was absolutely no way for him to defend himself or escape. Further, the fact that Norman sustained several fatal wounds while appellant allegedly sustained a single superficial wound on his forehead shows that Norman was not able to retaliate or defend himself. Given the foregoing, there is no doubt in our minds that appellant intended and was determined to kill Norman.

Appellant, however, asseverated that there was no treachery since the attack was frontal or face to face, such that Norman had been forewarned of the attack and, thus, placed him in a position where he can defend himself. Appellant also claimed that there was a quarrel between him and Norman prior to the hacking incident which, in effect, negate treachery since it disproved the fact that the attack was sudden and unexpected. We are not persuaded.

There is no dispute that Norman was facing appellant at the time of the first blow. Subsequently, however, Norman turned his back and tried to run but he was hacked at the back, and when he fell on the ground, he was hacked again repeatedly. It is settled that treachery is to be appreciated when the victim was initially attacked frontally, but was attacked again after being rendered helpless and had no means to defend himself or to retaliate.[52] As long as the attack was sudden and unexpected, and the unarmed victim was not in a position to repel the attack, there is treachery.[53]

The quarrel between Norman and appellant prior to the hacking incident does not negate treachery. It is true that there is no treachery if the killing was preceded by an altercation or dispute. The same, however, does not apply in the instant case. The misunderstanding between the two occurred on 22 October 1999. This was settled before their barangay officials on the morning of 25 October 1999. Cooler heads then had already set in. In fact, the two shook hands before the same barangay officials. Thus, there was no reason for Norman to suspect that appellant still held a grudge against him and to prepare or anticipate appellant's retaliation. It must also be noted that no conversation or struggle occurred between them shortly before the hacking incident.

Appellant argued that if his plea of self-defense cannot be considered, he is still entitled to the mitigating circumstances of sufficient provocation on the part of the offended party and voluntary surrender under Article 13 paragraphs (4) and (7) of the Revised Penal Code, respectively.

We reject these contentions.

Article 13 paragraph (4) of the Revised Penal Code provides that a person's criminal liability may be mitigated if there was a sufficient provocation or threat on the part of the offended party which immediately preceded the crime. Before the same can be appreciated, the following elements must concur: (1) That the provocation or threat must be sufficient or proportionate to the crime committed and adequate to arouse one to its commission; (2) That the provocation or threat must originate from the offended party; and (3) That the provocation must be immediate to the commission of the crime by the person provoked.

Norman did not in any way provoke appellant into a fight on that fateful night. There was no argument or physical struggle that ensued between them shortly before appellant hacked Norman with a bolo. Norman was innocently walking along the road when, all of a sudden, appellant surfaced and hacked him in rapid succession. The alleged altercation between the two occurred much earlier (22 October 1999) as to reasonably and sufficiently incite the appellant to act the way he did. In the absence of sufficient provocation on the part of the offended party, appellant's assertion of mitigating circumstance cannot be sustained. Moreover, and more importantly, this ordinary mitigating circumstance cannot offset the qualifying aggravating circumstance of treachery which is present in the instant case.

Likewise, appellant is not entitled to the mitigating circumstance of voluntary surrender. Article 13, paragraph (7) of the Revised Penal Code states that the offender's criminal liability may be mitigated if he voluntarily surrendered to a person in authority or his agents. Accordingly, the essential elements of voluntary surrender are: (1) that the offender had not been actually arrested or apprehended; (2) that the surrender was voluntary and spontaneous; and (3) that the offender surrendered himself to a person in authority or his agent.

Appellant was already apprehended for the hacking incident by the barangay officials of Lipa City just before he was turned over to the police by a certain Tomas Dimacuha.[54] Assuming that appellant had indeed surrendered to the authorities, the same was not made spontaneously.[55] Immediately after the hacking incident, appellant, instead of proceeding to the barangay or police, went to his brother, Sherman Beltran, in Bauan, Batangas, and the next day, to his sister in Lipa City. It took him three long days to surrender to the police authorities.[56] Moreover, the flight of appellant and his act of hiding until he was apprehended by the barangay officials are circumstances highly inconsistent with the spontaneity that characterizes the mitigating circumstance of voluntary surrender.[57]

As to the last issue, appellant insisted that the trial court has awarded excessive damages in favor of Norman's heirs. He argued that there was no proof or justification for the same.

When death occurs due to a crime, the following damages may be awarded: (1) a civil indemnity *ex delicto* for the

death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[58] Thus, we agree with the Court of Appeals that the award of P50,000.00 for civil indemnity ex delicto to Norman's heirs is proper without need of proof other than appellant's commission of murder that resulted in Norman's death.[59] Likewise, we agree with the Court of Appeals that moral damages should be awarded since Normita testified during the trial that she suffered moral shock and wounded feelings because of the brutal and sudden death of Norman. However, we deem it necessary to reduce the amount of the same from P75,000.00 to P50,000.00.

Normita claimed that she spent a total amount of P61,080 for the burial and funeral expenses of Norman. However, the receipts on record shows that only an amount of P18,420.82 was spent therein.[60] Normita's claim of expenses for the food, drinks, flowers, chairs and tables during the funeral and burial of Norman, as well as the traditional 40 days prayer thereafter, were not supported by any receipts. These expenses are merely written, listed, and signed by Normita in one sheet of yellow paper, and submitted as evidence in the trial court. Thus, as general rule, Normita is entitled only to an amount of P18,420.82 since actual damages may be awarded only if there are receipts to support the same. However, in the case of *People v. Dela Cruz*,[61] this Court declared that when actual damages proven by receipts during the trial amount to less than P25,000.00, such as in the present case, the award of temperate damages for P25,000.00, is justified in lieu of actual damages for a lesser amount. This Court ratiocinated therein that it was anomalous and unfair that the heirs of the victim who tried but succeeded in proving actual damages to less P25,000.00 only would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages. Thus, instead of P18,420.82, an amount of P25,000.00 as temperate damages should be awarded to the heirs of Norman. Actual damages for loss of earning capacity cannot be awarded in this case since there was no documentary evidence to substantiate the same.[62] Although there are exceptions to this rule, none is availing in the present case.[63]

Moreover, exemplary damages in the amount of P25,000.00 should be awarded in this case since the qualifying circumstance of treachery was firmly established.[64]

WHEREFORE, the Decision of the Court of Appeals dated 31 March 2005 is hereby **AFFIRMED** with **MODIFICATIONS**: We award Norman's heirs civil indemnity of P50,000.00 for Norman's death; moral damages, in the amount of P50,000.00; temperate damages, in lieu of actual damages, in the amount of P25,000.00; and lastly, exemplary damages in the amount of P25,000.00.

SO ORDERED.

Panganiban, C. J. (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] *People v. Tuson*, G.R. Nos. 106345-46, 16 September 1996, 261 SCRA 711, 713.

[2] Rollo, pp. 3-15; penned by Associate Justice Magdangal M. de Leon with Associate Justices Salvador J. Valdez, Jr., and Mariano C. Del Castillo, concurring.

[3] CA rollo, pp. 16-22.

[4] Records, pp. 1-2.

[5] Id. at 14.

[6] Id. at 7-8.

[7] Id. at 4-5.

- [8] Id. at 6.
- [9] Id. at 86-88.
- [10] Id.
- [11] Id. at 3.
- [12] TSN, 1 December 2000.
- [13] Records, p. 10.
- [14] TSN, 6 June 2001.
- [15] CA rollo, pp. 16-22.
- [16] Id. at 22.
- [17] Records, p. 149.
- [18] CA rollo, pp. 59-75.
- [19] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [20] Id. at 158.
- [21] Rollo, p. 14.
- [22] Rollo, pp. 7-8.
- [23] Records, pp. 7-8.
- [24] CA rollo, pp. 59-75.
- [25] *People v. Lazaro*, 319 Phil. 352, 361 (1995); *People v. Layno*, 332 Phil. 612, 625 (1996); *People v. Foncardas*, G.R. No. 144598, 6 February 2004, 422 SCRA 356, 370.
- [26] CA rollo, p. 130.
- [27] *People v. Monieva*, 388 Phil. 915, 924 (2000).
- [28] Records, p. 10.
- [29] *People v. Abolidor*, G.R. No. 147231, 18 February 2004, 423 SCRA 260, 265.
- [30] *People v. Matito*, G.R. No. 144405, 24 February 2004, 423 SCRA 617, 625.
- [31] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.
- [32] *People v. Alconga and Bracamonte*, 78 Phil. 366, 374 (1947).
- [33] *People v. Arizala*, 375 Phil. 666, 674 (1999).
- [34] *People v. Bausing*, G.R. No. 64965, 18 July 1991, 199 SCRA 355, 361.
- [35] *People v. Crisostomo*, 195 Phil. 162, 172 (1981).
- [36] *Senoja v. People*, G.R. No. 160341, 19 October 2004, 440 SCRA 695, 704.
- [37] CA rollo, p. 21.

- [38] Roca v. Court of Appeals, G.R No. 114917, 29 January 2001, 350 SCRA 414, 423.
- [39] Records, p. 132.
- [40] Senoja v. People, supra note 36.
- [41] People v. Delmindo, G.R No. 146810, 27 May 2004, 429 SCRA 546, 557.
- [42] People v. Cario, 351 Phil. 644, 659 (1998).
- [43] People v. Gallego, 453 Phil. 825, 839 (2003).
- [44] People v. Caratao, 451 Phil. 588, 602 (2003).
- [45] People v. Encomienda, 150-B Phil. 419, 433 (1972).
- [46] CA rollo, p. 124.
- [47] People v. Carujao, G.R. No. 122767, 20 January 2004, 420 SCRA 207, 213.
- [48] Rendon v. People, G.R. No. 127089, 19 November 2004, 443 SCRA 142, 146.
- [49] People v. Castellano, Sr., 448 Phil. 482, 499 (2003).
- [50] People v. Santos, G.R. No. 127492, 16 January 2004, 420 SCRA 37, 49.
- [51] Rule 110, Sections 8 and 9, of the Revised Rules on Criminal Procedure.
- [52] People v. Riglos, 394 Phil. 54, 72 (2000).
- [53] People v. Agsalog, G.R. No. 141087, 31 March 2004, 426 SCRA 624, 639.
- [54] CA rollo, pp. 19-21.
- [55] People v. Mallari, 452 Phil. 210, 223 (2003).
- [56] Id.
- [57] People v. Fallorina, G.R. No. 137347, 4 March 2004, 424 SCRA 655, 675.
- [58] Nueva España v. People, G.R. No. 163351, 21 June 2005, 460 SCRA 547, 555.
- [59] Id.
- [60] Records, pp. 90-97.
- [61] 459 Phil. 130, 138-139 (2003).
- [62] Id.
- [63] Id.
- [64] People v. Manambay, G.R. No. 130684, 5 February 2004, 422 SCRA 73, 90.

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