

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO TABARNERO AND GARY TABARNERO, ACCUSED-APPELLANTS.

G.R. No. 168169. February 24, 2010

Ponente: LEONARDO-DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168169/>

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00027 dated April 29, 2005. In said Decision, the Court of Appeals affirmed with modification the August 29, 2002 Decision[2] of the Regional Trial Court (RTC), Branch 78 of Malolos, Bulacan, in Crim. Case No. 888-M-2000, convicting herein appellants Alberto Tabarnero (Alberto) and Gary Tabarnero (Gary) of the crime of Murder.

The factual and procedural antecedents of the case are as follows:

Late at night on October 23, 1999, Gary went to the house of the deceased Ernesto Canatoy (Ernesto), where the former used to reside as the live-in partner of Mary Jane Acibar (Mary Jane), Ernesto's stepdaughter. Gary and Ernesto had a confrontation during which the latter was stabbed nine times, causing his death. The versions of the prosecution and the defense would later diverge as regards the presence of other persons at the scene and other circumstances concerning Ernesto's death.

On March 3, 2000, Gary and his father, Alberto, were charged with the crime of Murder in an Information which read:

That on or about the 23[rd] day of October, 1999, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with bladed instrument and with intent to kill one Ernesto Canatoy, did then and there willfully, unlawfully, and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and stab with the said bladed instrument the said Ernesto Canatoy, hitting the latter on the different parts of his body, thereby causing him serious physical injuries which directly caused his death.[3]

On 27 March 2000, warrants for the arrest of Gary and Alberto were issued by the RTC of Malolos, Bulacan.[4]

On April 22, 2001, Gary surrendered to Barangay Tanod Edilberto Alarma.[5] When he was arraigned on April 30, 2001, Gary pleaded NOT GUILTY to the crime charged. [6] During this time, Alberto remained at large.

On May 21, 2001, a pre-trial conference was conducted. Therein, Gary admitted having killed Ernesto, but claimed that it was an act of self-defense. Thus, pursuant to Section 11(e), Rule 119 of the Rules of Court, a reverse trial ensued.

Gary, a 22-year-old construction worker at the time of his testimony in June 2001, testified that he stayed in Ernesto's house from 1997 to 1999, as he and Mary Jane were living together. Mary Jane is the daughter of Teresita Acibar, the wife[7] of Ernesto. However, Gary left the house shortly before the October 23, 1999 incident because of a misunderstanding with Ernesto when the latter allegedly stopped the planned marriage of Gary and

Mary Jane, who was pregnant at that time.

On October 23, 1999, Gary was allegedly in his house in Longos, Malolos, Bulacan at around 11:40 p.m. with his friend, Richard Ulilian; his father, co-appellant Alberto; his mother, Elvira; and his brother, Jeffrey. Overcome with emotion over being separated from Mary Jane, Gary then went to Ernesto's house, but was not able to enter as no one went out of the house to let him in. He instead shouted his pleas from the outside, asking Ernesto what he had done wrong that caused Ernesto to break him and Mary Jane up, and voicing out several times that he loved Mary Jane and was ready to marry her. When Gary was about to leave, the gate opened and Ernesto purportedly struck him with a lead pipe. Ernesto was aiming at Gary's head, but the latter blocked the blow with his hands, causing his left index finger to be broken. Gary embraced Ernesto, but the latter strangled him. At that point, Gary felt that there was a bladed weapon tucked at Ernesto's back. Losing control of himself, Gary took the bladed weapon and stabbed Ernesto, although he cannot recall how many times he did so.[8]

According to Gary, Ernesto fell to the ground, and pleaded, "saklolo, tulungan niyo po ako" three times. Gary was stunned, and did not notice his father, co-appellant Alberto, coming. Alberto asked Gary, "anak, ano ang nangyari?" To which Gary responded "nasaksak ko po yata si Ka Erning," referring to Ernesto. Gary and Alberto fled, allegedly out of fear.[9]

Gary denied that he and Alberto conspired to kill Ernesto. Gary claims that it was he and Ernesto who had a fight, and that he had no choice but to stab Ernesto, who was going to kill him.[10]

Gary's sister, Gemarie Tabarnero, testified that she was a childhood friend of Mary Jane. Gemarie attested that Mary Jane was Gary's girlfriend from 1995 to 1999. Sometime in 1999, however, Gary and Mary Jane were prevented from talking to each other. During that time, Gary was always sad and appeared catatonic, sometimes mentioning Mary Jane's name and crying.[11]

On the night of the incident on October 23, 1999, Gemarie observed that Gary was crying and seemed perplexed. Gary told Gemarie that he was going to Ernesto's house to talk to Ernesto about Mary Jane. Gary allegedly did not bring anything with him when he went to Ernesto's house.[12]

In the meantime, on August 5, 2001, Alberto was apprehended.[13] On August 20, 2001, he pleaded NOT GUILTY to the charge.[14] However, while Alberto's defense is denial and not self-defense like Gary's, the court decided to proceed with the reverse trial, as it had already started that way.[15]

Next on the witness stand was Edilberto Alarma (Alarma), who was a barangay tanod of Longos, Malolos, Bulacan since February 2000. Alarma testified that while he was in a meeting at around 4:00 p.m. on April 22, 2001, Gary arrived and told him of his intention to surrender to him. Gary told him that he was responsible for the "incident [that] happened at Daang Riles." Together with his fellow barangay tanod Zaldy Garcia, Alarma brought Gary to the Malolos Police Station, where the surrender was entered in the blotter report.[16]

Appellant Alberto, a construction worker employed as leadman/foreman of Alicia Builders, was 45 years old at the time of his testimony in September 2001. He testified that at the time of the incident, he was living in Norzagaray, Bulacan. On October 23, 1999, however, he went to visit his children, Gary and Gemarie, in Barangay Longos, Malolos, Bulacan. Before going to sleep at 11:00 p.m., he realized that Gary was not in the place where he would usually sleep. He went downstairs, thinking that Gary was just urinating. He waited for five minutes; when Gary did not show up, he proceeded to Daang Bakal, where Gary had many friends. He walked for about 10 minutes. About 400 meters from the site of the incident, he saw Gary and asked him what happened and why he was in a hurry, to which Gary replied: "Wag na kayong magtanong, umalis na tayo, napatay ko po yata si Kuya Erning." Alberto and Gary ran in different directions. Alberto passed through the railways and exited in

front of the capitol compound to wait for a jeepney going to Sta. Maria, his route toward his home in Norzagaray.[17]

Alberto claims that he had no knowledge of the accusation that he conspired with Gary in killing Ernesto. It was three months after the incident that he came to know that he was being charged for a crime. At this time, he was already residing in Hensonville Plaza, Angeles City, Pampanga, where he was assigned when his engineer, Efren Cruz, secured a project in said place.[18]

During cross-examination, Alberto repeated that he did not return to Gary's house after the incident. He said that it did not occur to him to inform the authorities about the killing of Ernesto. Later, Alberto learned from his sibling, whom he talked to by phone, that Gary had already surrendered. He did not consider surrendering because, although he wanted to clear his name, nobody would work to support his family. He said that he had no previous misunderstanding with Ernesto.[19]

Answering questions from the court, Alberto stated that he immediately went home to Norzagaray because he was afraid to be implicated in the stabbing of Ernesto. It did not occur to him to stay and help Gary because he did not know where Gary proceeded after they ran away. The next time he saw Gary was three months after the incident, when Gary went to Norzagaray.[20]

The first to testify for the prosecution was its eyewitness, Emerito Acibar (Emerito). Emerito, the brother of Mary Jane,[21] was inside their house in Daang Bakal, Longos, Malolos, Bulacan with his brother and his stepfather, Ernesto, at around eleven o'clock on the night of the incident on October 23, 1999. He heard somebody calling for Ernesto, but ignored it. He then heard a "kalabog," followed by Ernesto's plea for help. Emerito was about to go outside, but, while he was already at the door of their one-room[22] house, he saw Ernesto being held by a certain Toning "Kulit" and another person, while Gary and Alberto were stabbing Ernesto with fan knives. Emerito lost count of the number of thrusts made by Gary and Alberto, but each inflicted more than one, and the last stab was made by Alberto. Emerito shouted for help. The four assailants left when somebody arrived, allowing Emerito to approach Ernesto and bring him to the Bulacan Provincial Hospital.[23]

On cross-examination, Emerito confirmed that Gary and Mary Jane used to reside in Ernesto's house. On the date of the incident, however, Gary had already left the house, while Mary Jane had moved to Abra with Teresita (the mother of Emerito and Mary Jane). According to Emerito, his family did not know that Mary Jane and Gary had a relationship because they treated Gary like a member of the family. Ernesto got mad when his wife, Teresita, found out about Gary and Mary Jane's relationship. On the night of the incident, at past 11:00 p.m., Emerito was fixing his things inside their house, when he heard someone calling from outside, but was not sure if it was Gary. Emerito neither saw Ernesto leaving the room, nor the fight between Ernesto and Gary. All he saw was the stabbing, which happened seven to eight meters away from the doorway where he was standing. He was sure that there were four assailants, two of whom went to a bridge 8 to 10 meters from the incident, where they boarded a yellow XLT-type car.[24]

Senior Police Officer 2 (SPO2) Ronnie Morales of the Malolos Philippine National Police testified that he was on duty at the police station on the night of October 23, 1999. During that night, Emerito reported at the police station that Ernesto had been stabbed. SPO2 Morales and Emerito proceeded to the Bulacan Provincial Hospital, where SPO2 Morales saw Ernesto in the operating room, very weak due to multiple injuries. While in the presence of two doctors on duty, SPO2 Morales asked Ernesto who stabbed him. Ernesto answered that the assailants were the father and son, Gary and Alberto Tabarnero from Longos, Bulacan.[25]

Cross-examined, SPO2 Morales clarified that it was already 1:00 a.m. of the following day when he and Emerito proceeded to the hospital. As they went to the hospital, Emerito did not inform SPO2 Morales that he witnessed

the incident. SPO2 Morales did not find it odd that Emerito did not tell him who the suspects were when Emerito reported the incident, because they immediately proceeded to the hospital, considering that the victim, Ernesto, was still alive. Ernesto was not able to affix his signature on the Sinumpaang Salaysay[26] because he could no longer talk after the fourth question. Answering questions from the court, SPO2 Morales further stated that he could not remember talking to Emerito on their way to the hospital, since they were in a hurry.[27]

The government physician at the Bulacan Provincial Hospital who prepared Ernesto's death certificate, Dr. Apollo Trinidad, clarified that Ernesto died on October 25, 1999. However, considering the admission by the defense of the fact of death, the cause thereof, and the execution of the death certificate, the prosecution no longer questioned Dr. Trinidad on these matters.[28]

Teresita's testimony was likewise dispensed with, in light of the admission by the defense that she was the common-law wife of Ernesto, and that she incurred P55,600.00 in expenses in relation to Ernesto's death.[29]

On August 29, 2002, the RTC rendered its Decision convicting Gary and Alberto of the crime of murder. The decretal portion of the Decision reads:

WHEREFORE, the foregoing considered, this Court hereby finds accused Alberto Tabarnero and Gary Tabarnero GUILTY beyond reasonable doubt of the Crime of Murder defined and penalized under Art. 248 of the Revised Penal Code, as amended, and sentences them to suffer the penalty of Reclusion Perpetua and to pay private complainant Teresita Acibar the amount of P55,600.000 (sic) as actual damages[,] P50,000.00 as indemnity for the death of Ernesto Canatoy[,] P50,000.00 as moral damages, and the costs of suit.[30]

Gary and Alberto appealed to this Court. After the parties had filed their respective briefs, this Court, in *People v. Mateo*,[31] modified the Rules of Court in so far as it provides for direct appeals from the RTC to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment. Pursuant thereto, this Court referred[32] the case to the Court of Appeals, where it was docketed as CA-G.R. CR.-H.C. No. 00027.

On April 29, 2005, the Court of Appeals affirmed the conviction with modification as regards exemplary damages, disposing of the case in the following manner:

WHEREFORE, the decision of the Regional Trial Court of Malolos, Bulacan, Branch 78 dated 29 August 2002 is hereby AFFIRMED with the modification that exemplary damages in the amount of P25,000.00 is awarded because of the presence of treachery.[33]

From the Court of Appeals, the case was elevated to this Court anew when Gary and Alberto filed a Notice of Appeal on May 13, 2005.[34] In its Resolution on August 1, 2005, this Court required both parties to submit their respective supplemental briefs, if they so desire. Both parties manifested that they were adopting the briefs they had earlier filed with this Court.

Gary and Alberto, in their brief filed in this Court before the referral of the case to the Court of Appeals, assigned the following errors to the RTC:

I.

THE COURT A QUO GRAVELY ERRED IN NOT CONSIDERING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE AND THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER INTERPOSED BY ACCUSED-APPELLANT GARY TABARNERO

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY IN THE CASE AT BAR

III.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANTS ARE CULPABLE, THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY[35]

The justifying circumstance of self-defense on the part of Gary cannot be considered

The requisites for self-defense are: 1) unlawful aggression on the part of the victim; 2) lack of sufficient provocation on the part of the accused; and 3) employment of reasonable means to prevent and repel aggression.[36]

The defense invokes the said justifying circumstance, claiming that all of the above three elements are present in the case at bar. There was allegedly unlawful aggression on the part of Ernesto when the latter delivered the first blow with the lead pipe. According to the defense, the means Gary used to defend himself was reasonable, and the shouted professions of his feelings for Mary Jane could not be considered provocation sufficient for Ernesto to make the unlawful aggression.

The Court of Appeals noted that the only evidence presented by the defense to prove the alleged unlawful aggression was Gary's own testimony. Citing *Casitas v. People*,[37] the Court of Appeals held that the nine stab wounds inflicted upon Ernesto indicate Gary's intent to kill, and not merely an intent to defend himself. The number of wounds also negates the claim that the means used by Gary to defend himself was reasonable.

We agree with the Court of Appeals. Unlawful aggression is an indispensable requirement of self-defense.[38] As ruled by the Court of Appeals, the evidence presented by Gary to prove the alleged unlawful aggression, namely, his own testimony, is insufficient and self-serving. The alleged sudden appearance of Ernesto and his first attack with the lead pipe the very moment Gary decided to leave seems to this Court to be all too convenient, considering that there was no one around to witness the start of the fight.

The RTC, which had the opportunity to observe the demeanor of the witnesses, found Gary's account concerning the alleged unlawful aggression on the part of Ernesto to be unconvincing. Factual findings of the trial court, especially when affirmed by the Court of Appeals, as in this case, are binding on this Court and are entitled to great respect.[39] It also bears to emphasize that by invoking self-defense, Gary, in effect, admitted killing Ernesto, thus, shifting upon him the burden of evidence to prove the elements of the said justifying circumstance.[40] A plea of self-defense cannot be justifiably appreciated where it is not only uncorroborated by independent and competent evidence, but also extremely doubtful in itself.[41]

The defense further argues that assuming that Gary is not qualified to avail of the justifying circumstance of self-defense, he would nevertheless be entitled to the mitigating circumstance of incomplete self-defense under Article 13(1) of the Revised Penal Code, which provides:

Art. 13. Mitigating circumstances. -- The following are mitigating circumstances:

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

We disagree. Unlawful aggression is a condition sine qua non, without which there can be no self-defense, whether complete or incomplete.[42] There is incomplete self-defense when the element of unlawful aggression by the victim is present, and any of the other two essential requisites for self-defense.[43] Having failed to prove the indispensable element of unlawful aggression, Gary is not entitled to the mitigating circumstance, even assuming the presence of the other two elements of self-defense.

Gary is not entitled to the mitigating circumstance of voluntary surrender

The first assignment of error presents another issue for the consideration of this Court. The defense argues that Gary's yielding to Alarma should be credited as a mitigating circumstance of voluntary surrender. The Solicitor General agreed with the defense on this point. The Court of Appeals, however, disagreed, and held that the delay of six months^[44] before surrendering negates spontaneity,^[45] a requisite for voluntary surrender to be considered mitigating.

We agree with the Court of Appeals.

In order that the mitigating circumstance of voluntary surrender may be credited to the accused, the following requisites should be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary, must be spontaneous, i.e., there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him.^[46]

In *People v. Barcimo, Jr.*,^[47] the pending warrant for the arrest of the accused and the latter's surrender more than one year after the incident were considered by the Court as damaging to the plea that voluntary surrender be considered a mitigating circumstance. Thus:

The trial court did not err in disregarding the mitigating circumstance of voluntary surrender. To benefit an accused, the following requisites must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary. A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. Voluntary surrender presupposes repentance. In *People v. Viernes* [G.R. No. 136733-35, 13 December 2010], we held that going to the police station to clear one's name does not show any intent to surrender unconditionally to the authorities.

In the case at bar, appellant surrendered to the authorities after more than one year had lapsed since the incident and in order to disclaim responsibility for the killing of the victim. This neither shows repentance or acknowledgment of the crime nor intention to save the government the trouble and expense necessarily incurred in his search and capture. Besides, at the time of his surrender, there was a pending warrant of arrest against him. Hence, he should not be credited with the mitigating circumstance of voluntary surrender.

The records show that Gary surrendered on April 22, 2001.^[48] The commitment order commanding that he be detained was issued on April 24, 2001.^[49] The surrender was made almost one year and six months from the October 23, 1999 incident, and almost one year and one month from the issuance of the warrant of arrest against him on March 27, 2000.^[50] We, therefore, rule that the mitigating circumstance of voluntary surrender cannot be credited to Gary.

Alberto is a principal by direct participation in the killing of Ernesto

In insisting upon Alberto's innocence, the defense claims that there was no conspiracy between him and his son, Gary. The defense asserts that Alberto just happened to be near the scene of the crime as he was looking for his son, whom he saw only after the altercation.

The basis of Alberto's conviction, however, is not solely conspiracy. A review of the proven facts shows that conspiracy need not even be proven by the prosecution in this case, since Alberto was categorically pointed by the eyewitness, Emerito, as one of the assailants who actively and directly participated in the killing of Ernesto:

Q

Those 2 persons whom you saw and who stabbed your stepfather in the evening of October 23, 1999, if they are now in court, will you be able to identify them?

A

Yes, sir.

Q

Would you please point to those 2 persons?

A

(Witness pointing to the persons who, when asked answered to the name of Alberto Tabarnero and Gary Tabarnero)

Q

What was the position of Alberto Tabarnero in that stabbing incident?

A

He was the one whom I saw stabbed last my stepfather.

x x x x

COURT (TO THE WITNESS):

Q

How many times did you see Gary stabbed your father?

A

I cannot count how many stabs Gary made.

PROS. SANTIAGO:

Q

Was it many times or just once?

A

I cannot count but more than 1.

Q

How about Alberto Tabarnero, how many times did you see him stabbing your stepfather?

A

I cannot count also but he was the last one who stabbed my stepfather.[51]

Having actually participated in the stabbing of Ernesto, it was adequately proven that Alberto is a principal by direct participation.

Even more persuasive is the statement of the victim himself, Ernesto, as testified to by SPO2 Morales, that it was "the father and son, Gary and Alberto Tabarnero from Longos, Bulacan" who stabbed him.[52] While Ernesto was

not able to testify in court, his statement is considered admissible under Section 37, Rule 130 of the Rules of Court, which provides:

Sec. 37. Dying declaration. -- The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

In applying this exception to the hearsay rule, we held as follows:

"It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence -- not so much the rapid eventuation of death -- is at hand. This may be proven by the statement of the deceased himself or it may be inferred from the nature and extent of the decedent's wounds, or other relevant circumstances." [53]

In the case at bar, Ernesto had nine stab wounds which caused his death within the next 48 hours. At the time he uttered his statement accusing Gary and Alberto of stabbing him, his body was already very rapidly deteriorating, as shown by his inability to speak and write towards the end of the questioning.

We have considered that a dying declaration is entitled to the highest credence, for no person who knows of his impending death would make a careless or false accusation. When a person is at the point of death, every motive of falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. [54] It is hard to fathom that Ernesto, very weak as he was and with his body already manifesting an impending demise, would summon every remaining strength he had just to lie about his true assailants, whom he obviously would want to bring to justice.

The killing of Ernesto is qualified by treachery

Emerito had testified that he saw Ernesto being held by two persons, while Gary and Alberto were stabbing him with fan knives:

Q

When you said "lalabas po sana," what do you mean by that?

A

I am at the door and saw what happened.

Q

What did you see?

A

I saw my stepfather being held by two persons and being stabbed.

Q

Will you describe the appearance of your stepfather and the 2 persons whom according to you were stabbing your stepfather at that time?

A

My stepfather is "lupaypay" and he was being stabbed.

Q

When you said "lupaypay," will you describe to this Honorable Court his position and appearance?

A

When I saw my stepfather he was about to fall on the ground.

Q

Could you describe their appearance?

A

They were helping each other in stabbing my grandfather. (sic)

Q

Those two persons whom you saw and who stabbed your stepfather in the evening of October 23, 1999 if they are now in Court, will you be able to identify them?

A

Yes, sir.

Q

Could you please point to those 2 persons?

A

(Witness pointing to the persons who, when asked answered to the name of Alberto Tabarnero and Gary Tabarnero)

Q

What was the position of Alberto Tabarnero in that stabbing incident?

A

He was the one whom I saw stabbed last my stepfather.

Q

What about Gary, what is his position?

A

He was helping in the stabbing.

x x x x

Q

What kind of weapon or instrument were used by Gary and Alberto?

A

Fan knife, sir.

Q

Both of them were armed by a knife?

A

Yes, sir.[55]

From said testimony, it seems uncertain whether Emerito saw the very first stabbing being thrust. Thus, the defense asseverates that since Emerito failed to see how the attack commenced, the qualifying circumstance of treachery cannot be considered, citing *People v. Amamangpang*,[56] *People v. Icalla*,[57] and *People v. Sambulan*. [58] In said three cases, this Court held that treachery cannot be appreciated as the lone eyewitness did not see the commencement of the assault.

Treachery is defined under Article 14(16) of the Revised Penal Code, which provides:

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.

The Solicitor General argues that treachery was amply demonstrated by the restraint upon Ernesto, which effectively rendered him defenseless and unable to effectively repel, much less evade, the assault.[59]

We agree with the Solicitor General.

In the cases cited by the appellants, the eyewitnesses were not able to observe any means, method or form in the execution of the killing which rendered the victim defenseless. In *Amamangpang*, the first thing the witness saw was the victim already prostrate on the bamboo floor, blood oozing from his neck and about to be struck by the accused. In *Icalla*, the witnesses merely saw the accused fleeing from the scene of the crime with a knife in his hand. In *Sambulan*, the witness saw the two accused hacking the victim with a bolo. Since, in these cases, there was no restraint upon the victims or any other circumstance which would have rendered them defenseless, the Court ruled that it should look into the commencement of the attack in order to determine whether the same was done swiftly and unexpectedly. However, the swiftness and unexpectedness of an attack are not the only means by which the defenselessness of the victim can be ensured.

In *People v. Montejo*,[60] the prosecution witnesses testified that after challenging the victim to a fight, the accused stabbed the victim in the chest while he was held in the arms by the accused and a companion. Not requiring a swift and unexpected commencement to the attack, the Court held:

Thus, there is treachery where the victim was stabbed in a defenseless situation, as when he was being held by the others while he was being stabbed, as the accomplishment of the accused's purpose was ensured without risk to him from any defense the victim may offer [*People v. Condemena*, G.R. No. L-22426, May 29, 1968, 23 SCRA 910; *People v. Lunar*, G.R. No. L-15579, May 29, 1972, 45 SCRA 119.] In the instant case, it has been established that the accused-appellant stabbed the victim on the chest while his companions held both of the victim's arms.

In *People v. Alvarado*,[61] the accused and his companions shouted to the victim: "Lumabas ka kalbo, kung matapang ka." When the victim went out of the house, the accused's companions held the victim's hands while the accused stabbed him. Despite the yelling which should have warned the victim of a possible attack, the mere fact that the accused's companions held the hands of the victim while the accused stabbed him was considered by this Court to constitute *alevosia*.

We, therefore, rule that the killing of Ernesto was attended by treachery. However, even assuming for the sake of argument that treachery should not be appreciated, the qualifying circumstance of abuse of superior strength would nevertheless qualify the killing to murder. Despite being alleged in the Information, this circumstance was not considered in the trial court as the same is already absorbed in treachery. The act of the accused in stabbing

Ernesto while two persons were holding him clearly shows the deliberate use of excessive force out of proportion to the defense available to the person attacked. In *People v. Gemoya*,^[62] we held:

Abuse of superior strength is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of in the commission of the crime (*People vs. Bongadillo*, 234 SCRA 233 [1994]). When four armed assailants, two of whom are accused-appellants in this case, gang up on one unarmed victim, it can only be said that excessive force was purposely sought and employed. (Emphasis ours.)

In all, there is no doubt that the offense committed by the accused is murder.

The award of damages should be modified to include civil indemnity *ex delicto*

In the Decision of the RTC convicting Gary and Alberto, it awarded the amount of P55,600.00 as actual damages, P50,000.00 as indemnity for the death of Ernesto, P50,000.00 as moral damages and an unidentified amount as costs of suit.^[63] The Court of Appeals modified the RTC Decision by awarding an additional amount of P25,000.00 as exemplary damages on account of the presence of treachery.^[64]

The Solicitor General claims that the award of P55,600.00 in actual damages is not proper, considering the lack of receipts supporting the same. However, we held in *People v. Torio*^[65] that:

Ordinarily, receipts should support claims of actual damages, but where the defense does not contest the claim, it should be granted. Accordingly, there being no objection raised by the defense on Alma Paulo's lack of receipts to support her other claims, all the amounts testified to are accepted. (Emphasis supplied.)

In the case at bar, Teresita Acibar's testimony was dispensed with on account of the admission by the defense that she incurred P55,600.00 in relation to the death of Ernesto.^[66] This admission by the defense is even more binding to it than a failure on its part to object to the testimony. We therefore sustain the award of actual damages by the RTC, as affirmed by the Court of Appeals.

The Solicitor General likewise alleges that a civil indemnity *ex delicto* in the amount of P50,000.00 should be awarded. Article 2206^[67] of the Civil Code authorizes the award of civil indemnity for death caused by a crime. The award of said civil indemnity is mandatory, and is granted to the heirs of the victim without need of proof other than the commission of the crime.^[68] However, current jurisprudence have already increased the award of civil indemnity *ex delicto* to P75,000.00.^[69] We, therefore, award this amount to the heirs of Ernesto.

Finally, the Court of Appeals was correct in awarding exemplary damages in the amount of P25,000.00. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230^[70] of the Civil Code.^[71]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00027 dated April 29, 2005 is hereby AFFIRMED, with the MODIFICATION that appellants Alberto and Gary Tabarnero are further ordered to pay the heirs of Ernesto Canatoy the amount of P75,000.00 as civil indemnity.

SO ORDERED.

Puno, C.J., Chairperson, Carpio Morales, Brion,^[*] and Villarama, Jr., JJ., concur.

[*] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Lucas P. Bersamin per Raffle dated 18 January 2010.

[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Lucas P. Bersamin (now a member

of this Court) and Celia C. Librea-Leagogo, concurring; rollo, pp. 3-27.

[2] Records, pp. 139-150.

[3] Id. at 2.

[4] Id. at 8-9.

[5] TSN, Aug. 20, 2001, p. 5.

[6] Records, pp. 18-19.

[7] Gary testified that Ernesto was Teresita's husband (TSN, June 4, 2001, p. 4), but Teresita's testimony for the prosecution would later be dispensed with on the admission by the defense that Teresita is Ernesto's common-law wife.

[8] TSN, June 4, 2001, pp. 2-9.

[9] Id. at 9.

[10] Id. at 9-10.

[11] TSN, July 23, 2001, pp. 4-5.

[12] Id. at 5-6.

[13] TSN, August 20, 2001, p. 2; TSN, September 3, 2001, p. 5.

[14] TSN, August 20, 2001, p. 2.

[15] Id. at 3-4.

[16] Id. at 5-11.

[17] TSN, September 3, 2001, pp. 2-4.

[18] Id. at 4-6.

[19] Id. at 7-10.

[20] Id. at 10-11.

[21] TSN, November 5, 2001, p. 2.

[22] Id. at 2.

[23] TSN, October 8, 2001, pp. 2-7.

[24] TSN, November 5, 2001, pp. 2-9.

[25] TSN, December 3, 2001, pp. 2-6.

[26] Exhibit C; records, p. 125.

[27] Id. at 7-13.

[28] TSN, January 7, 2002, pp. 1-4.

[29] Records, p. 145.

- [30] Id. at 150.
- [31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [32] Rollo, p. 2.
- [33] Id. at 27.
- [34] CA rollo, p. 153.
- [35] Id. at 51-52.
- [36] Baxinela v. People, G.R. No. 149652, March 24, 2006, 485 SCRA 331, 342.
- [37] 466 Phil. 861, 870 (2004).
- [38] Baxinela v. People, supra note 36.
- [39] Garcia v. Court of Appeals, 441 Phil. 323, 332 (2002).
- [40] Baxinela v. People, supra note 36.
- [41] People v. De la Cruz, 353 Phil. 363, 381 (1998).
- [42] Baxinela v. People, supra note 36.
- [43] Senoja v. People, 483 Phil. 716, 724 (2004).
- [44] The Court of Appeals and the Solicitor General miscomputed the length of time before Gary surrendered himself.
- [45] CA rollo, p. 129.
- [46] People v. Saul, 423 Phil. 924, 936 (2001).
- [47] 467 Phil. 709, 720-721 (2004).
- [48] TSN, Aug. 20, 2001, p. 5.
- [49] Records, p. 13.
- [50] Id. at 11.
- [51] TSN, October 8, 2001, pp. 4-6.
- [52] TSN, December 3, 2001, p. 5.
- [53] People v. Santos, 337 Phil. 334, 349 (1997).
- [54] People v. Lamasan, 451 Phil. 308, 321 (2003).
- [55] TSN, October 8, 2001, pp. 4-6.
- [56] 353 Phil. 815, 832 (1998).
- [57] 406 Phil. 380, 394 (2001).
- [58] 352 Phil. 336, 350 (1998).
- [59] Rollo, p. 103.

[60] G.R. No. L-68857, November 21, 1988, 167 SCRA 506, 515.

[61] 341 Phil. 725, 737 (1997).

[62] 396 Phil. 213, 221-222 (2000).

[63] Records, p. 150.

[64] CA rollo, p. 147.

[65] 452 Phil. 777, 800 (2003).

[66] Records, p. 145.

[67] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[68] People v. Honor, G.R. No. 175945, April 7, 2009, 584 SCRA 546, 560.

[69] People v. Amodia, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 545; People v. De Guzman, G.R. No. 173477, February 4, 2009, 578 SCRA 54.

[70] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[71] People v. Catubig, 416 Phil. 102, 120 (2001); see People v. Beltran, Jr., G.R. No. 168051, 27 September 2006, 503 SCRA 715, 741.

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.