

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDUARDO TAAN @
“BEBOT” AND DANNY DOE, APPELLANTS,**

G.R. NO. 169432 (FORMERLY G.R. NO. 145508). October 30, 2006

Ponente: TINGA, J.

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TINGA, J.:

Accused-appellant Eduardo Taan @ Bebot was found guilty of murder aggravated by the use of an unlicensed firearm and sentenced to death in Criminal Case No. U-10383 in the Decision[1] dated 19 July 2000 rendered by the Regional Trial Court of Urdaneta City, Branch 46. The dispositive portion of the decision reads:

WHEREFORE, JUDGMENT is hereby rendered, CONVICTING EDUARDO TAAN OF the crime of Murder aggravated with the use of unlicensed firearm and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; Taan is likewise ordered to indemnify the heirs of the victim the sum of P75,000.00 as moral damages and another sum of P50,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the mitimus and to transmit the whole records of the case to the Honorable Supreme Court of the Philippines for automatic review.

The Jail Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living body of Eduardo Taan alias "BEBOT" [sic] to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this Decision.

SO ORDERED.[2]

The relevant antecedents are as follows:

The Information[3] in Criminal Case No. U-10383 for murder alleged:

That sometime in July, 1999, at Barangay Canarvacanan, Binalonan, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused EDUARDO TAAN, alias "BEBOT", in conspiracy with DANNY DOE, whose true name has not yet been fully established, armed with a big stone and an unlicensed short firearm, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully unlawfully, and feloniously [sic] attack, assault, hold, hit, strike, tie and shoot Ricardo Ladaga, inflicting upon him the following injuries:

-Depressed Fracture; 3 cm. x 4 cm.; oblong in shape; mid-temporo-parietal area; Right.

-Fracture, 1 cm. in diameter, circular in shape, mid-posterior aspect of the hard palate, most probably of a gunshot wound entrance.

-Skull Fracture, 1.3 cm. in diameter, circular in shape, upper third of the occipital area, most probably of a gunshot wound exit, Right.

-Avulsion, teeth, Left and Right Lower Central Incisors. [sic]

v-Avulsion, tooth, Left Lateral Lower Incisor [sic].

which caused the instantaneous death of said Ricardo Ladaga, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code, as amended by Republic Act Nos. 7659 and 8294.[4]

During his arraignment, Taan, assisted by counsel, pleaded not guilty to the charge. Thereafter, trial ensued.[5]

The prosecution's evidence consist of the testimonies of (1) Juanito Ochinang, a relative of the victim, Ricardo Ladaga (Ladaga), and an eyewitness to the shooting incident;[6] (2) Dr. Danilo Rebugio, Municipal Health Officer of Laoac, Pangasinan, who conducted the autopsy on the body of Ladaga;[7] (3) Cipriano Culiao, Jr., member of the Philippine National Police (PNP) of Binalonan, Pangasinan, who entered into the police blotter the report that Ladaga was missing since 18 July 1999;[8] (4) SPO2 Wilfredo Tagala, member of the PNP Records Section of the Firearms and Explosives Division, who identified in court the certification that Taan is not a licensed firearm holder;[9] (5) Dave Fronda, PNP-CIDG, who took down the statement of Ochinang and found Ladaga's body on 15 September 1999 buried at the nearby irrigation canal at Barangay Canarvacanan, Binalonan, Pangasinan;[10] (6) Silvino Ladaga who testified that the white t-shirt and slippers he last saw his brother, Ladaga, wearing were found ten (10) meters away from Taan's house after the fateful incident;[11] and documents consisting of (1) the Autopsy Report dated 17 September 1999 on Ladaga;[12] (2) the Sworn Statement dated 14 September 1999 of Ochinang;[13] (3) the Certification dated 25 April 2000 of the Firearms and Explosives Division of the PNP, showing that Taan does not possess any authority or license from the government to possess the subject firearm;[14] (4) the Police Blotter with the entry regarding the disappearance of Ladaga;[15] (5) the Radio Message for Transmission accomplished by the Police Superintendent in September 1999, reporting that Ladaga was last seen by witnesses accosted by Taan, Ochinang, and a certain Danny, and that Ochinang has vowed to pinpoint the location where Ladaga was shot four (4) times in the head and buried by Taan;[16] and (6) the Memorandum prepared by the Team which investigated the incident reporting that Taan poked a revolver inside Ladaga's mouth and simultaneously a gunshot rang four (4) times.[17]

The prosecution sought to prove that on 18 July 1999, the witness Ochinang, a Barangay Kagawad and relative of the deceased, was at Mariano Domaoal's (Mariano) house in Sitio Obbog, San Maria, Binalonan, Pangasinan having a "drinking spree" with Mariano, Romeo Domaoal, Mario Rivera, Eduardo Taan, Danilo Marquez, Marlon Ruar and Romeo Tacadena.[18] At around 4:30 p.m., Taan invited the group to continue their drinking session at his house in Sitio Obbog, Barangay Dumayat of the same town.[19] Ochinang, Marquez, Tacadena and Ruar accepted the invitation and on their way to Taan's house, they met Ladaga. Surprised, Taan told his godfather, Tacadena, "this is the one we are looking for, he was the one who robbed the school." Taan continued to say, "Take him, Ninong, Danny because I have been looking for that guy." [20] Tacadena and Marquez took hold of Ladaga and carried him towards a mango tree. To force Ladaga to confess to the crime of stealing, which he later did,

Marquez tied Ladaga's hands with a palm leaf while Taan held the latter's legs.[21] Marquez then struck Ladaga's forehead with a big stone.[22] Taan removed Ladaga's shirt to wipe the blood off the latter's face.[23] At around 8:00 p.m., Ladaga was brought inside Taan's house.[24] Afterwards, Taan asked Tacadena and Ruar to go home.[25] Between midnight to 1:00 a.m., Marquez, who had with him a shovel, and Taan, armed with a gun, brought Ladaga to a two (2) foot-deep irrigation canal at Barangay Canarvacanan. Thereat, Ladaga was made to lie down and Taan poked a gun in his mouth and fired it four (4) times. Ochinang, then at the dike of the irrigation canal, about a meter away from the scene, witnessed the incident and how Taan buried Ladaga in the irrigation canal.[26]

Two days later, Taan summoned Ochinang to dig a deeper burial site for Ladaga because of the foul odor coming from the original gravesite. Nonetheless, it was Taan who dug a deeper site which was more or less six (6) meters

from the original site. Taan removed Ladaga's body from the original gravesite and transferred it to the new excavation.[27]

On 14 September 1999, Ochinang reported the matter to the Central Intelligence Division Group (CIDG), Dagupan City. Thereat, he executed a sworn statement[28] asserting Taan's authorship of the crime and indicating the place where Ladaga had been buried. Subsequently, Ladaga's body was recovered from the place pointed to by Ochinang.[29]

Dr. Danilo Rebugio, Municipal Health Officer of Laoac, Pangasinan, conducted an autopsy of the victim and made the following post-mortem findings, viz.:

SIGNIFICANT EXTERNAL FINDINGS:

-An [almost] decomposed body of a male cadaver.

SIGNIFICANT INTERNAL FINDINGS:

-Depressed Fracture; 3 cm. x 4 cm.; oblong in shape; mid-temporo-parietal area; Right.

-Fracture, 1 cm. in diameter, circular in shape, mid-posterior aspect of the hard palate, most probably of a gunshot wound entrance.

-Skull Fracture, 1.3 cm. in diameter, circular in shape, upper third of the occipital area, most probably of a gunshot wound exit, Right.

-Avulsion, teeth, Left and Right Lower Central Incisors [sic].

-Avulsion, tooth, Left Lateral Lower Incisor [sic].

CAUSE OF DEATH: MASSIVE

INTRA-CRANIAL INJURIES MOST

PROBABLY SECONDARY TO GUNSHOT

WOUND.[30]

The prosecution likewise presented a certification dated 25 April 2000 from the Firearms and Explosives Division of the PNP stating that Taan is "not a licensed/registered firearm holder of any kind and caliber per verification from available records with this office as of this date." [31]

Taan, as sole witness for the defense, interposed the defense of denial. He alleged that Ochinang falsely accused him of the crime because he had previously imputed against the latter the stealing of three (3) of his uncle's goats and he had refused to help Ochinang in his bid for the position of barangay kagawad.[32]

Taan testified that on 18 July 1999, after attending a wedding celebration, he and Marlon Ruar went to Mariano's house and had a drinking session with Mariano, Rogelio Dumali, Romeo Pulido, Luding and Romeo Domaol. While thereat, Taan saw Ochinang pulling a person whose identity Taan did not know and whose hands were tied with "buri." Taan and the rest of the group were shocked to see the person with a blackeye. Afterwards, Taan left for home with Marlon Ruar, Rogelio Dumali, Romeo Tacadena and Danny Marquez.[33]

At his house, Taan again saw Ochinang with the person who had a blackeye and whose hands were tied with "buri." Taan asked who the person was. Ochinang replied that he is "[m]y nephew who is a theft [sic] whom I cannot control." Taan then ordered Ochinang and the man to leave to avoid involvement in the situation.[34]

Several days after, Ochinang dropped by Taan's house while the latter was having a drink with Romeo Tacadena

and Danny Marquez. Taan invited Ochinang to join them. Ochinang acceded. During their conversation, Taan asked Ochinang whether he had heard about the disappearance of the man he had previously been with. Ochinang, in response, told them not to talk anymore and to just keep silent. Taan and the group proceeded to tell Ochinang, "You again killed a person." Ochinang replied, "Just keep your cool and shut up your mouth." [35] Taan was found guilty as charged and the judgment of conviction was elevated to the Court for automatic review. In a Resolution [36] dated 14 September 2004 of the Court in G.R. No. 145508, [37] the case was transferred to the Court of Appeals pursuant to the Court's ruling in *People v. Efren Mateo*. [38]

Before the Court of Appeals, Taan argued that the trial court erred in: (1) convicting him of the crime of murder despite the failure of the prosecution to prove his guilt beyond reasonable doubt; (2) giving full faith and credence to the testimonies of the prosecution witnesses while completely ignoring the defense's evidence; (3) appreciating the aggravating circumstance of treachery where none existed; (4) sentencing him to suffer the penalty of death and to indemnify the heirs of Ladaga the sum of P75,000.00 as moral damages and another sum of P50,000.00 as exemplary damages. [39]

The Court of Appeals in a Decision [40] dated 30 March 2005, in CA-G.R. CR-H.C. No. 00257, affirmed with modifications the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, The 19 July 2000 Decision of Branch 46, Regional Trial Court of Urdaneta City in Criminal Case No. U-10383, finding appellant Eduardo Taan guilty beyond reasonable doubt of Murder and imposing upon him the penalty of death, is AFFIRMED with the MODIFICATION that appellant is ORDERED to pay the heirs of the victim, Ricardo Ladaga, the amount of P50,000.00 as civil indemnity; P75,000.00 as moral damages; P25,000.00 as exemplary damages; and P25,000.00 as temperate damages. Costs de oficio.

SO ORDERED. [41]

The Court of Appeals found no compelling reason to deviate from the trial court's observation that Ochinang was clear and categorical in identifying Taan as the assailant and that his testimony is sufficient to support a conviction.

Taan is now before the Court submitting for resolution the same matters argued before the Court of Appeals. Through his Manifestation and Motion dated 9 January 2006, Taan stated that there is no more necessity to file a supplemental brief and prayed that the case be resolved on the basis of the records and the brief earlier filed. [42] Earlier, the Office of the Solicitor General manifested that it was no longer filing a supplemental brief. [43]

The Court finds no reason to depart from the findings of the trial court and the Court of Appeals. The Court affirms the judgment of conviction but reduces the sentence of death to reclusion perpetua.

Settled is the rule that the findings of facts of the trial court, its calibration of the testimonial evidence of the parties, its assessment of the probative weight thereof and its conclusions anchored on said findings are accorded great respect, if not conclusive effect, because of the unique advantage of the trial court in observing and monitoring at close range the conduct, demeanor and deportment of the witnesses as they gave their testimonies before the trial court. [44] Unless it is shown that the trial court overlooked, misunderstood or misappreciated certain facts and circumstances which if considered would have altered the outcome of the case, appellate courts are bound by the findings of facts of the trial court. [45]

The trial court gave credence and full probative value to the testimony of Ochinang. The trial court characterized Ochinang's testimony as "positive, categorical and straightforward." [46] The trial court also found Ochinang's testimony to be adequately supported by documentary evidence. Ochinang's testimony that Marquez struck Ladaga's face with a stone was confirmed by the Autopsy Report, to wit:

SIGNIFICANT INTERNAL FINDINGS:

-Depressed Fracture; 3 cm. x 4 cm.; oblong in shape; mid-temporo- parietal area; Right.

Ochinang's allegation that Taan put the barrel of the gun inside Ladaga's mouth and fired it, causing the latter's death, was likewise established by the Autopsy Report, viz:

SIGNIFICANT INTERNAL FINDINGS:

x x x x

-Skull Fracture, 1.3 cm. in diameter, circular in shape, upper third of the occipital area, most probably of a gunshot wound exit Right.

Thus, leading the trial court to declare that:

Between the positive, clear, unequivocal and specific declarations of Ochinang, who was in the company of the accused Taan and Marquez on July 18, 1999, and defense' contention that it could have been that the person who could have killed Ricardo Ladaga was Juanito Ochinang because of his reputation. The declaration of Ochinang prevails over the denial of Taan. The Court is convinced beyond reasonable doubt that it was Taan, with the assistance of Marquez, who inflicted injuries to the face of the victim. Likewise, Taan was the one who shot the victim by putting the barrel of his gun to the mouth of Ladaga.[47]

Evidently, Ochinang testified in a clear and convincing manner leaving no room for doubt that indeed it was Taan who killed Ladaga.

That Ochinang's testimony is at variance with his Sworn Statement[48] does not persuade us to rule that Ochinang should be discredited as a witness. Taan points out that on the witness stand, Ochinang testified that after the drinking spree, he was with the rest of the group when they met Ladaga; while in his Sworn Statement, Ochinang stated that after parting ways with his drinking mates, he was about to cross a river by means of a foot bridge when he saw Taan and Marquez holding Ladaga.[49] We believe, however, that the alleged inconsistencies are trivial and insignificant and refer only to minor details and as such, do not impugn Ochinang's credibility. Discrepancies and/or inconsistencies between a witness's affidavit and testimony do not necessarily impair his credibility as affidavits are taken ex parte and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[50] Between the ex-parte affidavit and the testimony of a witness in court, the latter commands greater weight particularly when the defense had the full opportunity to cross-examine the witness.[51]

Next, Taan contends that Ochinang's failure to protect his relative, Ladaga, from harm and to immediately report the matter to Ladaga's family erode Ochinang's credibility.[52]

We are not persuaded. Ochinang testified that he had tried to stop Taan and Marquez from tying Ladaga's hands,[53] but could not because Taan was holding a gun and he had taken shabu.[54] Ochinang also implored Taan and Marquez four (4) times not to kill Ladaga to no avail.[55] The reason Ochinang failed to immediately report the incident to the authorities was his fear of Taan, who had warned him not to disclose the incident, and his several bodyguards.[56] Pertinently, we have ruled in *People v. Hernandez*,[57] that:

Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting the crime to the authorities. Such failure in making a prompt report to the proper authorities does not destroy the truth per se of the complaint. Likewise, the natural hesitance of the witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved or dragged into a criminal investigation is common, and has been judicially declared not to affect their credibility.[58]

The supposed grudge Ochinang had against Taan which provoked the filing of the criminal case is flimsy to be believed. Even assuming that the allegation were true, the existence of a grudge does not automatically render Ochinang's testimony bereft of credibility.[59]

All told, pitted against the categorical and positive testimony of Ochinang, Taan's defense of denial miserably fails. Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies.[60] Remarkably, Taan did not any present corroborating witness, i.e. his drinking buddies, to strengthen his testimony that Ladaga, the previously unidentified individual who had a blackeye and whose hands were tied, was last seen with Ochinang.

With respect to the non-presentation of the subject firearm, such is not fatal to the prosecution of an illegal possession case as long as the existence thereof can be established by testimony.[61] In this case, Ochinang testified that he saw Taan in possession of a ".38 caliber revolver"[62] which the latter used to shoot Ladaga.[63] Significantly, this was corroborated by the testimony of Dr. Rebugio, who conducted the post-mortem examination on Ladaga. He reported that Ladaga sustained a gunshot wound the entry of which is a hole 1.3 cm. in diameter located in the mid-posterior aspect of the hard palate while the exit thereof is another hole 1.3 cm in diameter in the upper third of the occipital area.[64]

In qualifying the crime to murder, the trial court correctly appreciated the circumstance of treachery. For treachery to be considered, two (2) elements must concur: (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and (b) the means of execution were deliberately or consciously adopted.[65] Treachery clearly attended the killing as Ladaga, pinned down by Taan, was tipsy when he was killed, and thus was enfeebled and did not have full control of his senses.[66] Previously, Ladaga's hands had been tied and his forehead had been struck with a stone.[67] With Marquez carrying a shovel and Taan armed with a gun, the unarmed, weakened Ladaga was clearly defenseless. The essence of treachery is that the attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[68]

Article 248[69] of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659,[70] prescribes the penalty of reclusion perpetua to death for the crime of murder. Considering the qualifying circumstance of treachery and the aggravating circumstance of the use of an unlicensed firearm,[71] which was proven through Ochinang's testimony and the Certification that Taan is not a licensed holder of a firearm, the proper imposable penalty would have been death. However, in view of the enactment of R.A. No. 9346 or the Act Prohibiting the Imposition of the Death Penalty, the penalty that should be imposed is reclusion perpetua.[72]

Regarding damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[73]

We affirm the monetary awards granted by the Court of Appeals but modify the awards of civil indemnity ex delicto to P75,000.00 and moral damages to P50,000.00 for the heirs of Ladaga, based on recent jurisprudence.[74]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00257 is AFFIRMED with MODIFICATION. Eduardo Taan @ "Bebot" is found GUILTY beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, aggravated with the use of an unlicensed firearm. The proper imposable penalty is death. However, pursuant to Republic Act No. 9346, appellant is sentenced to suffer the penalty of reclusion perpetua without possibility of parole. The appellant is ORDERED to pay the heirs of the victim, Ricardo Ladaga, the amounts of P75,000.00 as civil indemnity;

P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P25,000.00 as temperate damages; all with interest at the legal rate of six percent (6%) per annum from this date until fully paid. Costs de oficio.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] CA rollo, pp. 28-40; Penned by Hon. Modesto C. Juanson.

[2] Id. at 40

[3] Records, pp. 1-2; Dated 19 October 1999

[4] Id. at 1.

[5] CA rollo, p. 29

[6] Id. at 30.

[7] Id. at 31.

[8] Id. at 32.

[9] Id. at 33.

[10] Id.

[11] Id.

[12] Exhibit "A"; Records, p. 11.

[13] Exhibit "B"; Id. at 45.

[14] Exhibit "C"; Id. at 104.

[15] Exhibit "D"; Id. at 102-103.

[16] Exhibit "H"; Id. at 89.

[17] Exhibit "I"; Id. at 90-92.

[18] TSN, 11 April 2000, pp. 2- 3; TSN, 9 May 2000, pp. 2-3.

[19] TSN, 12 April 2000, p. 3; TSN, 10 May 2000, p. 2.

[20] TSN, 12 April 2000, p. 3.

[21] TSN, 15 May 2000, p. 5-6; TSN, 17 April 2000, pp. 2-3; TSN, 15 May 2000, p. 7

[22] TSN, 10 May 2000, pp. 9-10.

[23] TSN, 17 April 2000, pp. 2-3.

[24] TSN, 15 May 2000, p. 10.

[25] Id. at 14-15.

- [26] TSN, 10 May 2000, p. 11; TSN, 15 May 2000, p. 12, 14; TSN, 17 April 2000, pp. 3, 4, 5, 6.
- [27] TSN, 17 April 2000, p. 5.
- [28] Supra note 13.
- [29] Records, p. 126.
- [30] Supra note 12.
- [31] Supra note 14.
- [32] TSN, 13 June 2000, pp. 19-20.
- [33] TSN, 13 June 2000, pp. 4-9.
- [34] Id. at 7-9.
- [35] Id. at 15-17.
- [36] CA rollo, p. 142.
- [37] The docket number of the instant case when first elevated to the Court.
- [38] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [39] CA rollo, pp. 109-110.
- [40] Id. at 144-164; Penned by Associate Justice Perlita J. Tria Tirona with the concurrence of Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr.
- [41] Id. at 163-164.
- [42] Rollo, p. 32.
- [43] In its Manifestation dated 5 December 2005, id. at 24-26.
- [44] People v. De la Cruz, G.R. No. 131035, 28 February 2003, 398 SCRA 415, 422.
- [45] People of the Philippines v. Fabian Sades y Rodel, G.R. No. 171087, 12 July 2006.
- [46] CA rollo, p. 35.
- [47] Id. at 38.
- [48] Supra note 13.
- [49] CA rollo, p. 68.
- [50] People v. Santiago, G.R. Nos. 137542-43, 20 January 2004, 420 SCRA 255-256.
- [51] People v. Ibañez, G.R. No. 148627, 28 April 2004, 428 SCRA 146, 159; People v. de la Cruz, G.R. No. 131035, 28 February 2003, 398 SCRA 431 citing People v. Estorco, 331 SCRA 38 (2000).
- [52] CA rollo, p. 69.
- [53] TSN, 10 May 2000, pp. 9-10.
- [54] TSN, 15 May 2000, p. 7.

[55] Id. at 8.

[56] Id. at 21.

[57] G.R. No. 139697, 15 June 2004, 432 SCRA 104.

[58] G.R. No. 139697, 15 June 2004, 432 SCRA 104, 112-113,

[59] *People v. Medina*, G.R. No. 155256, 30 July 2004, 435 SCRA 610, 620.

[60] *People v. Hernandez*, *supra* note 57 at 118.

[61] *People v. Taguba*, 396 Phil. 366, 380 (2000).

[62] TSN, 10 May 2000, p. 11.

[63] TSN, 17 April 2000, pp. 3-4.

[64] Records, p. 11; TSN, 10 April 2000, pp. 3, 5.

[65] *People v. Hammer*, 442 Phil. 394, 402 (2002).

[66] TSN, 10 May 2000, p. 9.

[67] Id. at 9-10.

[68] *People v. Baltazar*, G.R. No. 129933, 26 February 2001, 352 SCRA 678, 688.

[69] Art. 248. Murder.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
- In consideration of a price, reward or promise;
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin;
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity;
- With evident premeditation;
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[70] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws, and for other Purposes; effective 31 December 1993.

[71] Section 1, paragraph 3 of R.A. No. 8294 specifically states that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered an aggravating circumstance.

[72] *People of the Philippines v. Elberto Tubongbanua y Pahilanga*, G.R. No. 171271, 31 August 2006.

[73] Id.

[74] Id.

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