

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO BUBAN ALIAS “ESCO,” APPELLANT.

G.R. NO. 170471 (Formerly G.R. No. 155294). May 11, 2007

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170471/>

QUISUMBING, J.:

Before this Court for automatic review is the Decision[1] of the Court of Appeals in C.A. G.R. CR. H.C. No. 00339 promulgated on September 29, 2005, affirming the Decision[2] dated September 9, 2002 of the Regional Trial Court (RTC) of Baler, Aurora, Branch 66 in Criminal Case No. 2052, finding appellant Francisco Buban guilty beyond reasonable doubt of the crime of murder qualified by treachery, with the aggravating circumstances of evident premeditation and dwelling, without any mitigating circumstance, and sentencing him to suffer the supreme penalty of death.

Buban was charged in an information dated October 17, 1995, as follows:

That on the 13[th] day of August, 1995 at around 10:00 o'clock in the evening, purposely sought to better accomplish his criminal design, at Barangay Paleg, Municipality of Dinalungan, Province of Aurora, Philippines and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and by means of treachery and evident premeditation, attack, assault and use personal violence upon the person of one Arsenio V. Imperial by then and there shooting him inside the latter's house with an unlicensed carbine rifle hitting him on the posterior hairline area or nape and the slug exited through his left cheek which caused his instantaneous death immediately thereafter.

CONTRARY TO LAW.[3]

A Warrant of Arrest[4] was issued on October 30, 1995 for Buban's arrest. However, he remained at large. An Alias Warrant of Arrest[5] was issued on December 10, 1997. He was arrested on October 29, 2001[6] and then confined at the Provincial Jail in Baler, Aurora on October 30, 2001.[7]

During arraignment on December 20, 2001, Buban pleaded not guilty.[8] Thereafter, trial ensued.

The prosecution presented three witnesses: SPO1 Alberto Curitana, and Ruel Imperial and Perla Imperial, respectively the son and the wife of the victim.

SPO1 Alberto Curitana testified that on August 13, 1995, while he was on duty at the Dinalungan Police Station at about 11:00 p.m., a certain Bombi Torres went to his office and reported that Arsenio Imperial was shot in the latter's hut at Sitio Balenti, Paleg, Dinalungan, Aurora. He said that upon orders of his superior, Police Officers Marcelino Galamgam, Rey Castillo, he, and others he could not remember, proceeded to Arsenio's place in a Hi-Lux pick-up driven by Manuel Torres. They reached the place at about 11:20 to 11:30 p.m.[9] and found the victim's body lying on the ground. He noticed that Arsenio sustained a bullet wound on his nape that passed through his left cheek. When he asked the victim's wife, Perla, who was pale with fear, if she saw who shot Arsenio, she said she knew nothing, as she cried and trembled.[10] According to Curitana, they brought the body

of Arsenio to the barangay hall. The victim's family went with them since they also feared for their lives.[11]

Curitana further narrated that the next day, he continued his investigation of the crime scene and found an empty case of carbine shells outside the house and a slug near the doorjamb. Accompanied by Ruel, the victim's son, SPO4 Galamgam and he took pictures.[12] They asked Ruel if he knew who shot his father and were told he did not.[13]

Curitana also testified that a month after, Perla and Ruel went to their station to report that they witnessed the accused Buban shoot Arsenio. Curitana said he prepared the sworn statements of Perla and Ruel[14] and executed a sworn statement attesting to the aforementioned incidents.[15]

Ruel G. Imperial, son of the victim, testified that on August 13, 1995, at around 10:00 p.m., while he was about to sleep in their hut, he noticed that the clothes hanging on the wall move, and he saw Buban, Rey Castillo and Bombi Torres with a rifle inserted through a torn portion atop their bamboo wall. The trio had been milling around their house in a pick-up.[16] When Ruel was about to go down the hut, he saw the gun fire and his father fall.[17] Thereafter, he saw the three men run towards the back of the hut. He saw the pick-up leave, only to return later with Romy Usman, Bombi Torres, a certain Egay, SPO1 Alberto Curitana and Tameng Torres. They carried his father inside the vehicle to the barangay hall.[18] After the incident, he and his family no longer returned home.[19] Ruel explained he came out to testify only after more than a month out of fear of the police and persons involved in the killing.[20]

Perla, wife of the deceased, basically corroborated the testimony of Ruel. She added she was beside her husband when he was shot and clearly saw Buban's face, and Bombi Torres and Rey Castillo. Buban's face was illuminated by two kerosene lamps, parallel to each other about 1 ½ feet away from the top of the bamboo where the muzzle of the gun was. After her husband was shot, she heard a moving vehicle, so she stood up and saw the white pick-up that had frequented their place before the incident. Inside the vehicle, more or less 15 meters away from her, she recognized Bombi Torres, Egay Torres, Sabino Calulcan, Rogel Morales and Adan Galamgam. The back of the vehicle was open and there was light inside. The vehicle left and returned later with Usman, Curitana, Bombi Torres, Egay Torres and another whom she failed to recognize. Her husband's body was taken to the barangay hall, where it was examined the following morning by Municipal Health Officer Araceli Bayubay who issued the death certificate. She said her family took shelter at the barangay hall during the nine-day novena prayers and later they moved to a vacant house in front of the barangay hall for a month, before transferring to Barangay Calabuanan where they continued to reside.[21]

During cross-examination, when asked why her husband was shot, Perla replied that her husband told her that while he was fishing on August 11, 1995, he witnessed the accused with several policemen slaughtering cattle by the river, an illegal activity.[22]

The defense presented only one witness, the accused himself.

Buban testified that on the night of August 13, 1995, he was in the house of their neighbor, Zenaida Sumawang, at Barangay Zone II in Dinalungan. The house was only 15 meters from his and about one kilometer from Barangay Paleg. He went there at around 5:00 p.m., got drunk, and decided to stay up to almost early in the morning. The following morning, he went to look for citrus gatherers so he could transport citrus to Baler. With ten helpers, he harvested citrus, loaded these on a motorboat to Baler on August 14, 1995 at 10:00 p.m. While on board, he met Arsenio's brother-in-law who told him he was bound for Calabuanan, Baler to inform his relatives of Arsenio's death. He said he reached Baler at around 4:00 a.m. on August 15, 1995; and as soon as he returned to Dinalungan, he passed by the barangay hall where the body of the victim, who was his friend, was lying in state.

Buban denied having anything to do with the victim's death nor that Arsenio saw him and some others butchering a cow, although he admitted that at that time cattle rustling was rampant in their place. He also claimed he had no quarrel nor reason to kill the victim. He admitted knowing Castillo, Torres and Usman, husband of then Mayor Elena C. Usman. He also knew policeman Curitana who investigated the case. According to Buban, he often talked to them whenever they passed his place. Buban informed the court that Arsenio's house was in Sitio Balenti, more or less 300 meters from his. He added that nobody ever asked him about Arsenio's killing until September 4, 1995, when policeman Pilongo invited him for questioning. He was given a copy of the resolution dated October 17, 1995 of the Office of the Provincial Prosecutor, charging him with murder. He said he never left his residence at Dinalungan since then nor was he ever arrested for the murder. He alleged he was arrested only on October 29, 2001, and he was arrested because of a boxing incident with his son who ran away and reported the matter to the police.[23]

On September 9, 2002, the RTC rendered a decision finding the accused guilty of murder qualified by treachery, with the aggravating circumstances of evident premeditation and dwelling, without any mitigating circumstance, and sentenced him to death. The RTC ruled:

From the foregoing, the crime committed by the accused being murder, qualified by treachery, and attended by the generic aggravating circumstances of evident premeditation and that the offense was committed in the dwelling of the offended party, the court has no alternative under the law but to impose upon him the capital penalty.

WHEREFORE, premises considered, the court finds accused Francisco Buban alias "Esco" guilty beyond reasonable doubt of the crime of Murder qualified with treachery and considering the two aggravating circumstances of evident premeditation and dwelling without any mitigating circumstance to offset the same, hereby sentences him to suffer the supreme penalty of death by lethal injection; to pay the heirs of victim Arsenio Imperial the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages; and to pay the costs.

SO ORDERED.[24]

Following *People v. Mateo*, [25] the case was transferred from this Court to the Court of Appeals.

In a decision dated September 29, 2005, the Court of Appeals affirmed the RTC's ruling with modification. It discounted the aggravating circumstance of evident premeditation but still imposed the penalty of death because of the presence of the qualifying circumstance of treachery and aggravating circumstance of dwelling. The dispositive portion of the decision states:

WHEREFORE, the decision dated September 9, 2002 of the Regional Trial Court of Baler, Aurora, Branch 66 finding accused-appellant FRANCISCO BUBAN alias "ESCO" guilty beyond reasonable doubt for the crime of MURDER and sentencing him to suffer the supreme penalty of death and ordering him to pay the heirs of ARSENIO IMPERIAL the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages is hereby AFFIRMED.

SO ORDERED.[26]

The issues raised by the appellant before this Court are the following:

I.

WHETHER OR NOT THE COURT A QUO ERRED [IN] FINDING THAT THE GUILT OF THE ACCUSED HAD BEEN PROVEN BEYOND REASONABLE DOUBT.

II.

W[H]ETHER OR NOT THE COURT A QUO ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION IN INCREASING THE PENALTY IMPOSED UPON THE ACCUSED-APPELLANT.[27]

Appellant Buban contends that his guilt had not been proven beyond reasonable doubt. He avers that the testimonies of Perla and Ruel are incredible and contrary to human experience. He adds that it is unbelievable for Ruel, a young barrio lad, to have the courage to peep outside upon seeing the muzzle of a rifle aimed at his family. Appellant posits that one's natural reaction would be to sound the alarm and inform his companions about the gun.[28] He further argues that it is unbelievable that Ruel had seen him during that time because the place was lighted by only two kerosene lamps;[29] and Perla could not have recognized the persons inside the vehicle 15 meters away from her with little lighting.[30] Further, appellant avers that Ruel's testimony is impaired by his relationship with the victim,[31] and that the sworn statements, executed by Ruel and Perla more than a month after the incident, were doubtful.[32] Additionally, appellant avers that there was no evident premeditation shown because there has been no direct evidence of the planning and preparation to kill the victim, and the execution of the criminal act was not preceded by cool thought and reflection before the alleged criminal act.[33] Lastly, he argues that even if it was true that the deceased had seen him and a companion on August 11, 1995 butchering a cow two days before the killing incident, this did not mean that he planned nor executed the killing of Arsenio. Hence, appellant insists, there was no evident premeditation proved in the commission of the crime.[34]

The Office of the Solicitor General (OSG), representing the State, contends that Buban's testimony is devoid of merit. The OSG insists that the testimonies of Ruel and Perla were straightforward, guileless and credible.[35] The OSG adds there was nothing incredible nor unnatural in Ruel's behavior nor Perla's running outside the house to see who the assailants were.

However, the OSG agrees with the contention of the appellant that evident premeditation was not present in the commission of the offense charged. According to the OSG, the roaming of the pick-up around the vicinity of the incident is not conclusive as to intent or plan to kill the victim. They were after all policemen on patrol.[36]

On the matter of the credibility of Ruel and Perla, contrary to what Buban wants this Court to believe, we find the testimonies of Ruel and Perla straightforward, clear and consistent.

Ruel clearly testified, to wit:

Q: When he was shot, where were you?

A: In our house.

Q: How was he shot and who shot him if you know?

A: As I said, I saw the clothes which were hanged were moved and the tip of the bamboo was broken to which a tip of a rifle was inserted; when I was about to go down, I saw that the gun was fired and my father fell down.

Q: Who placed the rifle?

A: s I said Francisco Buban.

Q: Was he alone?

A: He was with two other companions, Rey Castillo and Bombi Torres.

Q: What were they doing if you know [at] that time?

A: They were standing beside Francisco Buban, sir.

Q: What happened after that?

A: They left running and proceeded to the direction of the back of the house, sir.[37]

Perla corroborated Ruel's testimony, as follows:

Q: You said that there was a gun shot do you know where it came from?

A: Yes, sir.

Q: Can you please tell us where it came from?

A: At the time when my son was lying down on my breast, a light and a gunshot was [heard] in front of us, sir.

Q: Why do you say that a gun shot [came] from that direction?

A: I clearly saw the edge of the gun that was placed on the tip of the bamboo, sir.

Q: And what else did you see aside from light of the gunshot?

A: There was a person, sir.

Q: Do you know who are these persons?

A: Yes, sir.

Q: Who are these persons?

A: Francisco Buban, sir.

Q: Aside from Francisco Buban?

A: Bombi Torres and Rey Castillo, sir.

x x x x

Q: You mentioned the name Ruel Imperial do you know where was he when your husband was shot?

A: He was lying on top of [the] double deck near the higher lamp, sir.

Q: Which was higher, the one [where] he [was] lying or the tip of the bamboo that was broken?

A: The place [where] he was lying, sir.

Q: How many feet or meter was [the] distance between the place he was laying or sleeping [and] that broken bamboo?

A: More or less three (3) meters, sir.

Q: You said that your husband was shot coming from the nozzle of a [rifle], what portion of [his] body was hit?

A: On his neck and passed through to his cheek.

Q: According to you [when] he was hit, how many gunshot have you [heard]?

A: Only one, sir.

Q: You said that he was sitting beside you, what happened to him?

A: He stumbled down, sir.[38]

As often stressed by this Court, the issue of credibility of witnesses is a function properly lodged with the trial court, whose findings are entitled to great weight and accorded the highest respect by the reviewing courts.[39] We shall accord the trial court's findings, when affirmed by the appellate court, the greatest respect and uphold its evaluation of the credibility and weight of the testimony of the witnesses, Ruel and Perla.

As to the lack of credibility of Ruel peeping out to see who the assailants were and of Perla's trying to see for herself what had happened, this Court has repeatedly held that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange, startling, or frightful experience.[40]

As to Buban's contention that Ruel could not have seen the shooters because of poor lighting, we have previously

held that illumination coming from a "gasera" is sufficient for purposes of identification of an assailant.[41] Likewise, even the split-second illumination by a flash of lightning could suffice to confirm the identification of the appellant.[42]

Neither does delay of the witnesses' coming out to reveal the identity of the killers impair their credibility. Perla's fear for her and her children's lives, considering that the perpetrators were members either of the police force or the CAGU and that their residence was in an isolated area, we hold that the delay and reluctance to come out was understandable.[43]

Their relationship to the victim does not ipso facto render Ruel and Perla biased in their testimonies. Family relationship does not by itself render an eyewitness's testimony inadmissible or less credible or devoid of probative value. On the contrary, Perla and Ruel, being blood relatives of the deceased, would not just indiscriminately impute the crime to anybody but would necessarily identify the malefactor properly in order to secure the conviction of the real culprit and obtain justice.[44]

As for Buban's alibi, alibi is the weakest of all defenses. It is easy to concoct, although difficult to disprove. For alibi to prosper, proof that the defendant was somewhere else when the crime was committed is insufficient. He must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time. In this case, appellant himself testified that he was at the very same area where the house of the victim was located. He never testified that it was physically impossible for him to be at the scene of the crime on the date and at the time it happened. The trial court found that he was within the vicinity of the locus criminis.[45] We are not persuaded to discard this factual finding without the appellant's ironclad proof of his alibi.

An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.[46] So, while we agree that there is no evident premeditation present, we cannot agree that the offense was not qualified by treachery. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[47] At the time he was killed, Arsenio was in his home, unarmed, with his family, while preparing to sleep. There was no way he could have been aware of the nefarious acts much less resist the attack by Buban who surreptitiously inserted a deadly rifle through a hole in his wall.

Article 248 of the Revised Penal Code provides:

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. (As amended by R.A. 7659) (Emphasis supplied.)

The qualifying circumstance of treachery being present, the crime committed by the appellant is murder in accordance with Article 248. With the aggravating circumstance of dwelling and no mitigating circumstance, the penalty imposed should be in its maximum, which is death.

However, in view of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," signed into law on June 24, 2006, the penalty imposed must be reduced from death to reclusion perpetua without eligibility for parole.[48]

As to 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.[49]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Based on current jurisprudence, the award of civil indemnity ex delicto of P75,000 in favor of the heirs of Arsenio Imperial is in order.[50]

The RTC also correctly awarded moral damages in the amount of P50,000 in view of the violent death of the victim and the resultant grief to his family.[51] Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in this case. To deter future similar transgressions, the Court finds that an award of P25,000 for exemplary damages is proper.[52]

WHEREFORE, the Decision of the Court of Appeals in C.A. G.R. CR. H.C. No. 00339 promulgated on September 29, 2005, affirming the Decision dated September 9, 2002 of the Regional Trial Court of Baler, Aurora, Branch 66 in Criminal Case No. 2052 is **AFFIRMED** with **MODIFICATION**. Appellant Francisco Buban is found **GUILTY** beyond reasonable doubt of **MURDER** as defined in Article 248 of the Revised Penal Code, qualified by treachery and with the attendant aggravating circumstance of dwelling, with no mitigating circumstance. Pursuant to Rep. Act No. 9346, banning the imposition of the death penalty, he is sentenced to suffer the penalty of Reclusion Perpetua without possibility of parole. The appellant is further **ORDERED** to pay the heirs of Arsenio Imperial the amounts of P75,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages, all with interest at the legal rate of 6% per annum from this date until fully paid.

Costs against appellant.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.
Austria-Martinez, and Corona, JJ., on leave.

[1]Rollo, pp. 3-11. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle concurring.

[2] CA rollo, pp. 62-70. Penned by Judge Armando A. Yanga.

[3] Records, p. 1.

[4] Id. at 7.

- [5] Id. at 20.
- [6] Id. at 91.
- [7] Id. at 23.
- [8] Id. at 28.
- [9] TSN, April 15, 2002, p. 3.
- [10] Id. at 4-5.
- [11] Id. at 6.
- [12] Id.
- [13] Id. at 9.
- [14] Id. at 10.
- [15] Id. at 12.
- [16] TSN, April 16, 2002, pp. 1-2.
- [17] Id. at 2.
- [18] Id.
- [19] Id. at 3.
- [20] Id.
- [21] CA rollo, pp. 64-65.
- [22] TSN, April 18, 2002, p. 3.
- [23] CA rollo, pp. 66-67.
- [24] Id. at 70.
- [25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [26] Rollo, p. 10.
- [27] CA rollo, p. 52.
- [28] Id. at 53.
- [29] Id. at 54.
- [30] Id. at 55.
- [31] Id. at 102.
- [32] Id. at 56.
- [33] Id. at 58.
- [34] Id. at 59.
- [35] Id. at 83.

[36] Id. at 92-93.

[37] TSN, April 16, 2002, p. 2.

[38] TSN, April 17, 2002, pp. 3-6.

[39] *People v. Flores*, G.R. No. 137497, February 5, 2004, 422 SCRA 91, 96.

[40] *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 516; *People v. Muyco*, G.R. No. 132252, April 27, 2000, 331 SCRA 192, 197; *People v. Talaboc*, G.R. No. 103290, April 23, 1996, 256 SCRA 441, 453; See also *People v. Alagon*, G.R. Nos. 126536-37, February 10, 2000, 325 SCRA 297, 310.

[41] *People v. Alagon*, id. at 309.

[42] *People v. Intong*, G.R. Nos. 145034-35, February 5, 2004, 422 SCRA 134, 140.

[43] See *People v. Tulop*, G.R. No. 124829, April 21, 1998, 289 SCRA 316, 331.

[44] Id.

[45] *People v. Andales*, G.R. Nos. 152624-25, February 5, 2004, 422 SCRA 253, 269.

[46] *People v. Lab-eo*, G.R. No. 133438, January 16, 2002, 373 SCRA 461, 480.

[47] *People v. Duban*, G.R. No. 141217, September 26, 2003, 412 SCRA 131, 138.

[48] *People v. Rodrigo*, G.R. No. 173022 (Formerly G.R. No. 144588), January 23, 2007, p. 24.

[49] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[50] Id. at 743.

[51] Id.

[52] Id.

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.