

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO BRACIA, ACCUSED-APPELLANT.

G.R. No. 174477. October 02, 2009

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the May 30, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00906. The CA affirmed the May 8, 1997 Decision[2] of the Regional Trial Court (RTC), Branch 18, Albay, finding appellant Renato Bracia (appellant) guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

ANTECEDENT FACTS

The prosecution charged the appellant and Jessie Boy Bercasio (Bercasio) before the RTC with the crime of murder under an Information that states:

That on or about the 30[th] day of October 1994 at more or less 4 o'clock in the early morning, at Barangay Cabasan, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with bolos, with intent to kill, conspiring, confederating and helping one another, motivated with hate and ill-feeling, with evident premeditation, treachery, abuse of superior strength and nocturnity, did then and there willfully, unlawfully and feloniously assault, attack, hack and stab RESTITUTO BARCEBAL, JR. who was on his way home, thereby inflicting several mortal hack and stab wounds: stab wound, 8.5 x 4.5 cm. penetrating, back, (R) - 8.5 cm. from superior iliac crest; stab wound, 4.5 cm. x 2 cm., umbilical area, penetrating, 5 cm. above the umbilicus; hacked wound, 11 cm. long cutting the pinna of right ear, from the area of external auditory canal, extending to the face, with fracture of zygomatic bone, right; and eighteen (18) other hacked, incised and stab wounds at the back and front side of the body of the latter, which caused his death, to the damage and prejudice of his heirs.

ACTS CONTRARY TO LAW.[3]

The appellant and Bercasio pleaded not guilty to the charge upon arraignment.[4] The prosecution presented the following witnesses in the trial on the merits that followed: Edgar Constantino (Edgar); Dr. Merlie Gomez Beltran (Dr. Beltran); Fr. Rally Gonzales (Fr. Gonzales); Salvacion Burce vda. De Barcebal (Salvacion); SPO4 Antonio Bermundo (SPO4 Bermundo); SPO4 Marciano Berdin (SPO4 Berdin); and Eddie Belen (Eddie). The appellant, Hipolito Panong (Hipolito), Maura Bracia (Maura), and Erwin Besmonte (Erwin) took the witness stand for the defense.

Edgar testified that in the early morning of October 30, 1994, Fr. Gonzales asked him and Restituto Barcebal, Jr. (Restituto) to accompany him (Fr. Gonzales) to the convent in Cabasan.[5] This convent was an annex of the Cabasan Church.[6] At that time, the three (3) of them were in the house of Restituto located in Calambog, Cabasan, Bacacay, Albay.[7] They left Restituto's house at around 3:00 a.m.[8] While they were walking towards the convent, Fr. Gonzales asked Restituto the name of the person behind them. Restituto answered that it was

"Renato."[9]

They arrived at the convent at around 4:00 a.m.[10] Not long after Edgar and Fr. Gonzales entered the convent,[11] Edgar heard Restituto shouting, "Please help me." [12] Edgar went out and saw the appellant and Bercasio hacking Restituto with bolos. Edgar was more or less 10 meters from them. He maintained that he recognized the appellant and Bercasio because the moon was bright.[13] Edgar then hid behind the altar.[14] He saw Restituto run towards the other side of the road[15] - about 20 meters from the site of the first hacking incident,[16] but the appellant and Bercasio went after him; they continued hacking Restituto when they caught up with him.[17] When Restituto fell down, the appellant uttered, "Restituto Barcebal, rimati ka na, gadan ka na" (Restituto Barcebal, you're finished, you're dead). Thereafter, the appellant and Bercasio ran to different directions. Edgar immediately went inside Fr. Gonzales' room because he was afraid.[18]

On cross examination, Edgar testified that Restituto was a resident of Barangay Calambog; and that the appellant's house was located beside a road leading to Restituto's house.[19] He explained that he entered the convent two minutes after he arrived, and then went inside Fr. Gonzales' room to sleep.[20] He was unable to sleep and heard Fr. Gonzales snoring after 30 minutes.[21] After a while, he heard Restituto shout for help.[22]

Dr. Beltran, the Rural Health Physician of Bacacay, Albay, declared on the witness stand that she conducted an autopsy on the remains of the victim on October 31, 1994, and made the following findings:

FINDINGS:

- General Survey: The whole body is in curved position with flexion of both upper and lower extremities.
- Hacked wound, 11 cm. long, cutting the pinna of right ear, from the area of external auditory canal, extending to the face, with fracture of zygomatic bone, right.
- Stab wound, 3 cm. long, superficial, from eyebrow to superior orbital area, left.
- Stab wound, 8.5 x 4.5 cm. penetrating, back (R) - 8.5 cm from superior iliac crest.
- Hacked wound with incomplete avulsion of skin, 13 cm. long x 7 cm proximal third, arm, left, posterior area.
- Hacked wound, 6.5 cm x 5 cm. proximal third, antero-lateral area, arm, left.
- Hacked wound, 13 cm long, proximal third, posterior area, arm, left
- Stab wound, 3.5 cm x 2 cm, 1.2 cm in depth, posterior axillary line, (4.5 cm below the axilla, left)
- Hacked wound with fracture of metacarpal bone, hypothenar area, hand, right
- Hacked wound, 6cm x 2 cm, lateral area, distal third, forearm, left
- Amputation, middle third, third digit, right hand.
- Incomplete amputation, second digit, right hand.
- Hacked wound, with fracture of wristbone, left hand.
- Incised wound, 6 cm., palm, left
- Incised wound, 2 cm. superficial, dorsal area, wrist left.
- Hacked wound, 8 cm x 2.5 cm. antero lateral area, 11 cm above the knee, left thigh.
- Hacked wound, 7 cm. x 2.5 cm., antero-lateral area, 8 cm above the knee left thigh.

- Incised wound, base of thumb, left.
- Incised wound, 2 cm x 0.5 cm. lateral area, middle third, forearm right.
- Stab wound, 4.5 cm. x 2 cm. umbilical area, penetrating 5 cm above the umbilicus.
- Stab wound, 2 cm x 1 cm, superficial, epigastrium, left.
- Incised wound, 4 cm superficial, middle third, thigh, left.

INTERNAL FINDINGS:

- Stab wound, 4.5 cm. large intestines with involvement of the mesentery and mesenteric vessels.
- Stab wound, 4.5 cm. head of pancreas.
- Stab wound, vena cava.
- Hemoperitoneum - more than 1 liter
- Presence of fecal material outside of the intestines

FINAL DIAGNOSIS:

Hypovolemia

Stab wound, abdomen

Multiple Hacked wound.[23]

According to Dr. Beltran, the victim suffered 21 external injuries and 5 internal injuries.[24] She opined that due to the number of injuries, the wounds could have been inflicted by more than one (1) person.[25]

Fr. Gonzales narrated that he said mass in San Pablo, Albay at 3:00 p.m. on October 29, 1994. He proceeded to Sitio Calambog at around 10:00 p.m., and slept at the house of Restituto.[26] At around 3:00 a.m. of October 30, 1994, he asked Restituto and Edgar to accompany him to the convent in Cabasan, Bacacay. Upon reaching the convent, Restituto asked that he be allowed to go home because he would take his family to the "poblacion" to celebrate his father's death anniversary.[27]

At around 6:00 a.m. of the next day, Fr. Gonzales' brother woke him up and told him that Restituto had been killed. He saw Restituto's body and observed that it was covered with blood and bore a lot of stab wounds. He took pictures of the body and reported the incident to the police. He later gave these pictures to the Chief of Police of Bacacay.[28]

Fr. Gonzales recalled that while he, Restituto, and Edgar were walking towards the convent in Calambog, he saw two people following them. When he asked Restituto who these people were, Restituto answered, "Renato Bracia." [29]

Fr. Gonzales also narrated that on October 19, 1994, while he, his brothers and sisters, and Restituto were walking in Cabasan, the appellant suddenly shouted at them, "Maski sampolong Granada an ipasabog sakuya dai aco natatatkot" (Even if ten grenades are thrown at me, I'm not afraid). The appellant further uttered, "Jun, kaya kong inumon an dugo mo." Fr. Gonzales advised Restituto to ignore the appellant.[30]

On cross examination, Fr. Gonzales stated that he reported the killing to the police on October 30, 1994; thereafter, he was investigated by the police.[31] He recalled that soon after arriving at the convent, Restituto asked for permission to go home. He entered his room at the convent at about 3:20 a.m. and soon fell asleep.

Edgar was also in his room at that time. He was informed that Restituto had been killed when he woke up at 6:00 a.m.[32]

Salvacion, the widow of Restituto, narrated that on October 30, 1994, Edgar informed her that her husband had been killed; she immediately went to Cabasan and saw her husband's lifeless body covered with blood.[33] She confirmed that Restituto's brothers and sister shouldered the funeral expenses which amounted to P28,000.00.[34] She admitted not knowing how much was spent for the wake because somebody took care of it. She added that she spent P200.00 for every mass during the wake; P6,000.00 for the cemetery lot and tomb; P2,000.00 for transportation during the funeral procession; and P5,000.00 for the last prayer or "katapusan."[35] Salvacion further testified that her husband was 29 years old when he died; and that he worked as a farmer and earned P5,000.00 a month as administrator of his parents' land.[36]

On cross examination, Salvacion recalled that Fr. Gonzales and Restituto arrived at her house at around 7:30 p.m. on October 29, 1994. They came from San Pablo where Fr. Gonzales celebrated mass; Restituto acted as acolyte. Fr. Gonzales and Restituto left at 3:00 a.m. of October 30, 1994 to go to the church in Cabasan.[37]

SPO4 Bermundo testified that at around 8:00 a.m. of October 30, 1994, he and SPO2 Jaime Barcebal (SPO2 Barcebal) were instructed by the chief of police to investigate a hacking incident in Cabasan. They immediately conducted an investigation when they arrived at the Cabasan Parish Church at 10:00 a.m. They interviewed Fr. Gonzales and then conducted an ocular inspection of the crime scene.[38] They noticed that there were blood stains on the bamboo fence near the appellant's house, as well as footprints and blood stains on the road leading to his house. They proceeded to the Cagraray Emergency Hospital where they saw the victim's body.[39]

Thereafter, they went to the appellant's house and asked for his whereabouts from his grandmother. The latter told them that the appellant was out gathering firewood. They were skeptical because it was not customary to gather firewood on Sundays, and thus waited for the appellant's arrival. They finally saw the appellant at around 1:00 p.m. and invited him to the Bacacay Police Station.[40] They added that on October 31, 1994, Edgar went to the police station and identified the appellant.[41]

On cross examination, SPO4 Bermundo stated that they talked to Fr. Gonzales and to other people at the convent when he and SPO2 Barcebal arrived there. They toured the vicinity, and then returned to the convent at around 11:00 a.m.[42] He maintained that he investigated Edgar at the police station on October 31, 1994.[43] He explained that the scene of the hacking was 30 meters from the house of the appellant, and that the blood stains began on the road leading towards the appellant's house.[44]

SPO4 Berdin, the Property Evidence Custodian and Chief Administrative Officer of the Bacacay Police Station, identified the bolo ("guinunting") and knife presented in court as the same bolo and knife given to him by SPO4 Alfredo Base.[45]

Hipolito, a barangay tanod of Cabasan, declared on the witness stand that the appellant went to his hut at around 7:00 a.m. of October 30, 1994, and told him that he (appellant) had killed somebody. Hipolito advised the appellant to wait for the arrival of the police authorities. Meanwhile, the appellant requested permission to gather firewood for his grandmother. Hipolito agreed because he knew the appellant would not flee.[46]

On cross examination, Hipolito maintained that the appellant was alone when he went to his hut. He admitted knowing Bercasio but did not see him with the appellant on October 30, 1994. The appellant proceeded to the "centro of Cabasan" when the police did not arrive.[47]

Maura, the appellant's grandmother, testified that the appellant slept in her house in Cabasan, Bacacay, Albay on October 30, 1994. At around 3:00 a.m. on October 30, 1994, she woke the appellant after two (2) stones were

thrown at her house. The appellant stood up and got a bolo; she ordered the appellant not to go out because it was still dark. The appellant replied that he would just see who was throwing stones at the house. The appellant went out and returned in the morning.[48] On his return, the appellant did not relate any unusual incident and instead told her that he would gather firewood. He returned at 11:00 a.m. The police came afterwards.[49]

On cross examination, Maura confirmed that she suffered from flu on October 29, 1994.[50] She went to sleep at around 10:00 p.m. of October 29, 1994 in a room adjacent to the appellant's room. According to her, she slept "very lightly" and would have noticed if the appellant went out of his room. At around 3:00 a.m. of October 30, 1994, she was awakened when stones were thrown at her house.[51] The appellant went out and returned at 6:00 a.m.; the appellant then told her that he came from Visita, a sitio in Cabasan. The appellant told her that he would gather firewood.[52] According to Maura, she knew that the appellant was involved in the killing of Restituto because he was arrested by the police.[53]

The appellant testified that he did not intend to kill his victim.[54] He narrated that in the early morning of October 30, 1994, he was sleeping in his grandmother's house when his grandmother woke him up and asked him to verify the identity of the person throwing stones at the house. He stood up, got a "guinunting," and went out to frighten the person throwing stones.[55] Outside, he saw Restituto standing on their yard. Restituto struck him with a wooden pole, but he parried the blow. Restituto struck him again and this time hit him. The appellant fled, but Restituto chased him. When the appellant felt that Restituto was at the point of catching up with him, he faced him; they were then approaching the appellant's house.[56] Restituto swung the wooden pole at him; the appellant countered by swinging his bolo. The appellant hit Restituto who fell to the ground, but he did not know which part of Restituto's body he hit. At this point, the appellant left for home and was not sure whether Restituto was still alive. From his house, he proceeded to the house of the barangay captain to surrender.[57] However, he returned home when the barangay captain did not open his door. When daylight came, he went again to the barangay captain's house, but did not proceed anymore because many people were around, including Restituto's brother. The appellant returned to his grandmother's house and told her that he would gather firewood. He also told his grandmother of his intention to surrender to barangay tanod Polito Panong (barangay tanod Panong).[58]

The appellant proceeded to the house of barangay tanod Panong and saw him about to bathe. He told barangay tanod Panong of his intention to surrender and was advised that it would be better to surrender to the police. The appellant requested permission from barangay tanod Panong to gather firewood for his grandmother before surrendering to the police. He returned to his grandmother's house after gathering firewood and saw three policemen - SPO4 Bermundo, Jimmy Barcelona and Polito Barcoma - there. These policemen handcuffed him and brought him to kagawad Belen.[59]

The appellant further stated that the bolo he used in gathering firewood was different from the one that he used in fighting Restituto. The police brought the bolo he used in cutting firewood to the police headquarters; he surrendered the bolo he used in fighting Restituto to the chief of police the day after his detention. He added that the knife recovered by the police was owned by Restituto; he grabbed it from him during their fight.[60]

According to the appellant, he fell down during the fight and it was at this point that Restituto tried to stab him. He hit back causing Restituto to lose his grip on his knife. He reiterated that he had no intention of killing Restituto during the fight.[61] He also denied that he followed Restituto, Edgar and Fr. Gonzales on their way to the convent in the early morning of October 30, 1994, and claimed that he was sleeping in his house at that time.[62] The appellant also stated that Fr. Gonzales suspected him of stealing his chicken.[63] He denied that he and Bercasio hacked Restituto to death.[64]

On cross examination, the appellant maintained that he slept at around 8:00 p.m. on October 29, 1994,[65] and he

did not go to the dance held that night.[66] He confirmed that his grandmother woke him up at 2:00 a.m. of October 30, 1994.[67] According to him, he threw the bolo he used in killing Restituto in a grassy place near a banana trunk because he was confused and frightened.[68] He wanted to surrender to barangay tanod Panong as he did not want to go near the centro because many people were there.[69]

He recalled that when his grandmother woke him up to check on the identity of the person throwing stones, he went outside and saw Restituto standing on the yard and holding a wooden pole;[70] he was not then within Restituto's striking stance. Restituto went near him and struck him. He raised his right arm holding a guinunting to parry the blow; Restituto's pole hit the edge of the roof and thus he was not hit. Restituto struck him again and hit him in the chest as he was moving backwards. Immediately after, he ran away.[71]

Eddie, testifying as a rebuttal witness for the prosecution, narrated that at around 9:00 p.m. of October 29, 1994, he, together with the appellant, Erwin, Jerry Batalla, Andy Panong and Sandy Belen went to a dance at Bonga, Bacacay. Eddie saw Bercasio there at 10:00 p.m. They went home at around 1:00 a.m. on October 30, 1994 when it began to rain, and arrived in Cabasan at 2:00 a.m.[72]

On cross examination, Eddie explained that he and his companions met at a bridge near the house of barangay tanod Panong and then proceeded to Bonga to attend a barangay-sponsored dance.[73] They went home as the rain became heavy at around 1:00 a.m.[74] He admitted that he is engaged to the sister of Fr. Gonzales.[75]

Erwin, on sur-rebuttal, testified that indeed, he, Jerry Batalla, Sandy Belen and Eddie Boy Belen went to a dance at Barrio Bonga, Cabasan. The appellant was not with them.[76] On the prosecution's further questioning, he declared that he believed that the appellant killed Restituto.[77]

The RTC convicted the appellant of the crime of murder in its decision of May 8, 1997 as follows:

WHEREFORE, from the totality of the evidence presented before us, the Court finds accused, Renato Bracia, guilty beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the heirs of Restituto Barcebal, Jr. the amount of P50,000.00 for his death; to pay the heirs of the deceased the amount of P42,300.00 in actual damages; P100,000.00 for the unearned income of the deceased; and, to pay the costs.

With respect to accused, Eddie Boy Bercasio, who died after his escape from his detention at the Albay Provincial Jail, the case against him is hereby DISMISSED.

SO ORDERED.[78]

The appellant directly appealed his conviction to this Court in view of the penalty of reclusion perpetua that the RTC imposed. We referred the case to the CA for intermediate review pursuant to our ruling in *People v. Mateo*. [79]

The CA, in its May 30, 2006 decision,[80] affirmed the RTC decision with the modification that the award for loss of earning capacity be increased from P100,000.00 to P1,020,000.00.

In his brief,[81] the appellant argues that the RTC erred -

1. in convicting him of the crime of murder;
2. in giving credence to the incredible and inconsistent testimony of Edgar;
3. in not considering the justifying circumstance of self-defense; and
4. in ruling that conspiracy, evident premeditation and treachery attended the killing of Restituto.

THE COURT'S RULING

We deny the appeal, but modify the awarded indemnities.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the RTC and the CA's unanimity on the findings of fact, we nevertheless carefully scrutinized the records of this case, as the penalty of reclusion perpetua demands no less than this kind of scrutiny.[82]

A distinguishing feature of the present case is the presence of an eyewitness - Edgar - who provided positive identification of the appellant in his December 8, 1995 testimony. To directly quote from the records:

x x x

Q:

All right, while you were talking with Father Gonzales in the early morning at 4 o'clock of October 30, 1994, will you tell us whether there was an unusual incident that happened, if any?

A:

Yes, sir.

Q:

Will you tell this court what was that unusual incident?

A:

When I heard Restituto Barcebal shout, "Please help me."

Q:

Where did you hear that voice of Restituto Barcebal shouting asking for help?

A:

Inside the convent.

x x x

Q:

So what did you do after you heard that shout of Restituto Barcebal?

A:

I went outside of the convent.

Q:

Then what happened next?

A:

When I went outside the convent, that was the time I saw Renato Bracia and Jessie Boy Bercasio hacking.

Q:

Who was being hacked by these two (2) accused, Renato Bracia and Jessie Boy Bercasio?

A:

Restituto Barcebal.

Q:

How far were you from this hacking incident?

A:

More or less ten (10) meters.

x x x

Q:

Now, look around inside this courtroom if any of these two (2), Renato Bracia and Jessie Boy Bercasio are present inside this courtroom?

A:

There is one here.

Q:

Who is present inside this courtroom today?

A:

Renato Bracia.

Q:

Will you kindly stand and point to him where is this Renato Bracia?

(Witness is pointing to the man in a dark green t-shirt answering to the name of Renato Bracia.)

x x x

Q:

What happened to Restituto Barcebal on that occasion of the hacking incident?

A:

Restituto Barcebal ran away.

Q:

Where did Restituto Barcebal go when he ran away?

A:

To the other side of the road.

Q:

How about you? What did you do?

A:

I hid behind the altar.

Q:

What else did you do?

A:

I again saw Restituto Barcebal being hacked by Jessie Boy Bercasio and Renato Bracia.

x x x

Q:

How were you able to see the second hacking incident when you said you were already hiding behind the altar?

A:

The church had no walls.

Q:

Then what happened after the second hacking incident?

A:

Restituto Barcebal, Jr. fell down.

x x x[83] [Emphasis ours]

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court which observed the witnesses firsthand and which noted their demeanor, conduct, and attitude. The trial court's assessment of the credibility of witnesses is binding upon this Court, except when the lower court overlooked facts and circumstances of weight and influence that can alter the result.[84]

We carefully scrutinized the records of this case, and found no reason to disbelieve Edgar's straightforward narration of the events surrounding Restituto's death. Nor did we see anything on record indicating any improper motive that would lead Edgar to testify as he did. In fact, in his testimony of December 8, 1995, he categorically stated that he knew the appellant prior to the hacking incident, as they were both residents of Barangay Cabasan. He also testified that that he was just 10 meters from the place where Restituto was first hacked; and that the moon was bright during the incident. Under these circumstances, we have no doubt regarding his positive identification of the appellant as the assailant.

The Appellant's Plea of Self-Defense

The appellant sought to exculpate himself by claiming that the hacking was an act of self-defense. He maintained that he did not intend to kill Restituto, and that he merely defended himself when the victim struck him with a wooden pole.

The appellant's arguments fail to convince us.

As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt.

However, when the accused admits the killing and by way of justification pleads self-defense, the burden of evidence shifts; the accused must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[85]

Article 11(1) of the Revised Penal Code spells out the elements that the accused must establish by clear and convincing evidence to successfully plead self-defense. The Article provides:

Art. 11. Justifying Circumstances. - The following do not incur any criminal liability:

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

First. Unlawful aggression;

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

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

x x x x

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon. It is a statutory and doctrinal requirement that, for the justifying circumstance of self-defense, unlawful aggression as a condition sine qua non must be present. There can be no self-defense, complete or incomplete, unless the victim commits an unlawful aggression against the person defending himself.[86]

In the present case, we find that the appellant failed to prove that he had to defend himself against an unlawful aggression. Aside from his own claim (which we find under the circumstances to be unreliable and self-serving), the appellant did not present any other evidence to corroborate his claim that there was an actual or imminent peril to his life or limb, i.e., that Restituto struck him with a wooden pole when he (appellant) went outside his grandmother's house to check on the identity of the person throwing stones at their house. The appellant also failed to present any evidence to show that the victim hit him on the chest. On the other hand, the number of wounds the victim suffered, 26 in all (a number of which were located in vital parts of the body), belies the appellant's claim that he acted in self-defense. The location and severity of these wounds also negate the claim of self-defense; these circumstances point to a determined effort to kill, and not simply to defend.

Even if we assume that the victim was indeed the unlawful aggressor, the appellant's plea of self-defense would still fail for lack of rational equivalence between the means of attack and the means of defense that would characterize the defense as reasonable. The fact that Restituto suffered 21 external wounds and 5 internal wounds on various parts of his body belies the appellant's claim that he was simply warding off the victim's attack by a wooden pole and used his "guinunting" as a means commensurate to the thrusts he avoided. We stress that among the injuries the victim suffered were: a stab wound, 8.5 x 4.5 cm., penetrating the back; amputation, middle third, third digit, right hand; stab wound, 4.5 cm. x 2 cm., umbilical area, penetrating, 5 cm. above the umbilicus; stab wound, 4.5 cm. large intestine with involvement of the mesentery and mesenteric levels; and stab wound, 4.5 cm. head of pancreas. The depth of these wounds shows the force the appellant exerted, while the locations indicate that the thrusts were all meant to kill, not merely to disable the victim.

In addition, the presence of these multiple stab and hack wounds shows that two weapons were used in assaulting the victim, belying another claim the appellant made - that he was alone (wielding only a guinunting) when he fought Restituto. The number and severity of these wounds in fact confirm Edgar's testimony that two persons - the appellant and Bercasio - attacked and assaulted Restituto, and likewise validate Dr. Beltran's statement that

more than one person could have inflicted the wounds. In *People v. Carriaga*,^[87] we held that self-defense is negated where the nature of the victim's injuries undeniably shows that he was attacked by several assailants armed with weapons of various kinds that were not wielded by the accused alone.

Self-defense, like alibi, is an inherently weak defense for it is easy to fabricate. Self-defense must be proven by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. This type and nature of evidence simply do not obtain in this particular case.^[88] Therefore, the appellant's plea of self-defense must fail.

The Crime Committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

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:

1. With treachery, taking advantage of superior strength x x x

x x x x

5. With evident premeditation; x x x

In convicting the appellant of murder, the courts a quo appreciated treachery. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution.^[89] The essence of this qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack would take place, thus depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.^[90]

The evidence in this case shows that the appellant and another person (later identified as Bercasio) followed Restituto, Edgar, and Fr. Gonzales as they were walking towards the convent situated in Cabasan. The victim himself in fact recognized the appellant, as the former uttered "Renato Bracia" when asked by Fr. Gonzales if he recognized the person following them. When they arrived at the convent, Edgar went inside the convent, while Restituto asked for permission to return home. While the unsuspecting Restituto was on his way home, the appellant and Bercasio attacked and assaulted him with a bolo and knife, respectively. Restituto initially succeeded in running away, but the appellant and Bercasio caught up with him and continued to hack him until he fell down and died. The manner and mode of attack by the appellant and Bercasio, to our mind, bespeak of treachery; they deprived the victim of any real chance to defend himself, thereby ensuring the commission of the crime without risk to themselves.

In *People v. Vallespin*,^[91] we explained:

The essence of treachery is the sudden and unexpected attack by the aggressor on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. It can exist even if the attack is frontal, if it is sudden and unexpected, giving the victim no opportunity to defend himself against such attack. In essence, it means that the offended party was not given an opportunity to make a defense.

Abuse of Superior Strength and Evident Premeditation

The Information alleges that the crime was attended by abuse of superior strength.

We agree.

Abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor and selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to use purposely excessive force that is out of proportion to the means of defense available to the person attacked.[92]

In the present case, the evidence shows that Restituto was unarmed when he was attacked by the appellant and Bercasio who were both armed with deadly weapons. The appellant and Bercasio took turns in hacking the victim; the victim was able to momentarily free himself from the assault and run, but his assailants eventually caught up with him. The appellant and Bercasio continued hacking him until he fell down and died. Clearly, Restituto was overwhelmed by the combined efforts of his two (2) assailants who did not only enjoy superiority in number, but also of weapons. Under these circumstances, we have no doubt that there was gross inequality of forces between the victim and his two assailants and that the victim was overwhelmed by forces he could not match.

While evident premeditation was also alleged in the Information, the courts a quo were correct in not appreciating this circumstance. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. Significantly, the prosecution did not even attempt to prove the presence of these elements.

The Proper Penalty

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with reclusion perpetua to death. The other qualifying circumstance of abuse of superior strength is deemed absorbed in treachery.

While evident premeditation and nocturnity were alleged in the Information, these circumstances were not adequately proven. Hence, in the absence of mitigating and aggravating circumstances in the commission of the felony, the court a quo correctly sentenced the appellant to reclusion perpetua, conformably with Article 63(2) of the Revised Penal Code.

Civil Liability

The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the appellant's responsibility therefor. While the RTC and the CA commonly awarded P50,000.00 as death indemnity to the murder victim's heirs, prevailing jurisprudence dictates an award of P75,000.00.[93] Hence, we modify the award of civil indemnity to this extent to be paid by the appellant to the victim's heirs.

The RTC awarded the amount of P42,300.00 to the victim's heirs as actual damages. It appears that out of the said amount, only P29,320.00 were duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[94]

The heirs of the victim are likewise entitled to exemplary damages, since the qualifying circumstances of treachery and abuse of superior strength were firmly established. When a crime is committed with an aggravating

circumstance, either qualifying or generic, an award of P25,000.00 as exemplary damages is justified.[95]

We affirm the award of P1,020,000.00 as indemnity for loss of earning capacity to the victim's heirs. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[96] Given Salvacion's testimony that her husband was a farmer who earns P5,000.00 monthly for administering his parents' land,[97] we hold that his heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula:

Net Earning Capacity = $\frac{2}{3} \times (80 \text{ less the age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})$

The records show that the victim's annual gross income was P60,000.00 per annum computed from his monthly rate of P5,000.00. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of P30,000.00. His life expectancy, on the other hand, is assumed to be $\frac{2}{3}$ of the age 80 less 29, his age at the time of death. Applying the formula yields the net earning capacity of P1,020,000.00.

We likewise affirm the award of P50,000.00 as moral damages pursuant to current jurisprudence.[98]

WHEREFORE, in light of all the foregoing, we hereby AFFIRM the May 30, 2006 Decision of the CA in CA-G.R. CR-HC No. 00906 with the following MODIFICATIONS:

- (1) civil indemnity is INCREASED to P75,000.00;
- (2) actual damages is REDUCED to P29,320.00; and
- (3) the appellant is ORDERED to pay the heirs of the victim P25,000.00 as exemplary damages.

Costs against appellant Renato Bracia.

SO ORDERED.

Carpio Morales, (Acting Chairperson), Ynares-Santiago, Del Castillo, and Abad, JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

[1] Penned by Associate Justice Elvi John S. Asuncion (separated from the service), and concurred in by Associate Justice Noel G. Tijam and Associate Justice Mariflor P. Punzalan-Castillo; rollo, pp. 3-10.

[2] Penned by Judge Mamerto M. Buban, Jr.

[3] CA rollo, p. 6.

[4] Records, p. 64.

[5] TSN, December 8, 1995, p. 5.

[6] Id., p. 4.

- [7] Id., p. 6.
- [8] Id., p. 8.
- [9] Id., p. 9.
- [10] Id., p. 7.
- [11] Id., pp. 34 and 36.
- [12] Id., p. 13.
- [13] Id., pp. 14-15.
- [14] Id., p. 18.
- [15] Id., p. 20.
- [16] Id., p. 21.
- [17] Id., pp. 19-20.
- [18] Id., pp. 21-23.
- [19] Id., p. 25.
- [20] Id., pp. 36-37.
- [21] Id., p. 38.
- [22] Id., pp. 39-40.
- [23] Records, pp. 4-5.
- [24] TSN, January 19, 1996, pp. 5-6.
- [25] Id., p. 21.
- [26] TSN, January 26, 1996, pp. 5-7.
- [27] Id., pp. 8-9.
- [28] Id., p. 9.
- [29] Id., pp. 10-11.
- [30] Id., pp. 12-14.
- [31] Id., pp. 15-16.
- [32] Id., p. 26.
- [33] TSN, February 9, 1996, pp. 11-12.
- [34] Id., p. 13.
- [35] Id., pp. 18-23.
- [36] Id., p. 23.
- [37] Id., pp. 27-30.

[38] TSN, February 22, 1996, pp. 4-6.

[39] Id., pp. 7-8.

[40] Id., pp. 10-12.

[41] Id., p. 13.

[42] Id., pp. 24-25.

[43] Id., pp. 27-28.

[44] Id., pp. 36-38.

[45] TSN, March 1, 1996, pp. 8-10.

[46] TSN, March 15, 1996, pp. 11-14.

[47] Id., pp. 15-17.

[48] TSN, April 19, 1996, p. 4.

[49] Id., p. 5.

[50] Id., p. 8.

[51] Id., pp. 10-12.

[52] Id., pp. 13-14.

[53] Id., pp. 14-15.

[54] TSN, May 10, 1996, p. 4.

[55] Id., pp. 4-6.

[56] Id., pp. 6-7.

[57] Id., pp. 7-9.

[58] Id., pp. 10-11.

[59] Id., pp. 11-14.

[60] Id., pp. 15-16.

[61] Id., p. 17.

[62] Id., pp. 17-18.

[63] Id., p. 19.

[64] Id., pp. 20-21.

[65] Id., p. 22.

[66] Id., p. 23.

[67] Id., p. 22.

[68] Id., pp. 30-31.

- [69] Id., pp. 31-32.
- [70] Id., p. 33.
- [71] Id., pp. 35-36.
- [72] TSN, May 31, 1996, pp. 4-6.
- [73] Id., pp. 7-8.
- [74] Id., p. 10.
- [75] Id., p. 12.
- [76] TSN, June 14, 1996, pp. 3-4.
- [77] Id., p. 5.
- [78] CA rollo, pp. 32-33.
- [79] Per our Resolution dated September 6, 2004, rollo, p. 2.
- [80] Id., pp. 3-10.
- [81] CA rollo, pp. 83-98.
- [82] See *People v. Ballesteros*, G.R. No. 172696, August 11, 2008, citing *People v. Garalde*, 521 SCRA 327, 340 (2007).
- [83] TSN, December 8, 1999, pp. 4-21.
- [84] See *People v. Nueva*, G.R. No. 173248, November 3, 2008.
- [85] See *People v. Santillana*, G.R. No. 127815, June 9, 1999, 308 SCRA 104.
- [86] See *People v. Ansawas*, G.R. No. 140647, December 18, 2002, 394 SCRA 227.
- [87] G.R. No. 135029, September 12, 2003, 411 SCRA 40.
- [88] See *People v. Asuela*, G.R. Nos. 140393-94, February 4, 2002, 376 SCRA 51.
- [89] See *People v. Garcia*, G.R. No. 174479, June 17, 2008, 554 SCRA 616.
- [90] See *People v. Felipe*, G.R. No. 142205, December 11, 2003, 418 SCRA 146.
- [91] G.R. No. 132030, October 18, 2002, 391 SCRA 213.
- [92] See *People v. Barcelon, Jr.*, G.R. No. 144308, September 24, 2002, 389 SCRA 556.
- [93] *People v. De Guzman*, G.R. No. 173477, February 4, 2009.
- [94] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003, 403 SCRA 153.
- [95] See *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671.
- [96] See *People v. Algarme*, G.R. No. 175978, February 12, 2009; *Licyayo v. People*, G.R. No. 169425, March 4, 2008, 547 SCRA 598.
- [97] These statements remain unchallenged and uncontroverted by the defense.

[98] See *People v. Cawaling*, G.R. No. 157147, April 17, 2009.

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