

PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS. ZALDY GARCIA Y ANCHETA, ACCUSED-APPELLANT.

G.R. No. 174479. June 17, 2008

Ponente: BRION, J.

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BRION, J.:

We review in this appeal the May 31, 2006 decision[1] of the Court of Appeals ("CA") in CA-G.R. CR-H.C. No. 02075 affirming with modification the decision[2] of the Regional Trial Court ("RTC"), Branch 67, Bauang, La Union. This RTC decision found the accused-appellant Zaldy Garcia y Ancheta ("appellant") guilty of the crime of murder qualified by treachery, attended by the special aggravating circumstance of use of an unlicensed firearm. The RTC imposed the death penalty on the appellant.

Background Facts

The prosecution charged the appellant before the RTC with the crimes of murder and violation of Republic Act (R.A.) No. 6425, as amended,[3] under two separate informations. The information for murder reads:

Criminal Case No. 2300-Bg

That on or about the 8[th] day of September 1999, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and in a treacherous manner, did then and there, willfully, unlawfully and feloniously shoot Police Chief Inspector Tito Ines Opina with an unlicensed firearm inflicting upon the latter a fatal gunshot wound which directly caused his death, all to the damage and prejudice of the heirs of Tito Ines Opina and other consequential damages.

CONTRARY TO LAW.[4]

The charge for violating R.A. 6425 is no longer under review after the RTC acquitted the appellant on ground of reasonable doubt.

On arraignment, the appellant pleaded not guilty to the charges laid. The prosecution presented the following witnesses in the trial on the merits that ensued: Special Police Officer (SPO) 4 Paterno B. Oriña; Julita Ines Opina; Police Chief Inspector Benjamin Lusad; Dr. Bernardo Parado; Tito Opina, Sr.; SPO3 Edwin B. Benavidez; SPO2 Benjamin Soriano; and SPO1 Rolando Valdez Pascua. The appellant and his wife, Evangeline Garcia, took the witness stand for the defense.

The material points in the testimony of SPO4 Paterno B. Oriña ("SPO4 Oriña") are summarized by the trial court as follows:

"Sometime on September 8, 1999 at around 8:00 o'clock in the morning, x x x he told his companions that he knew the whereabouts of Zaldy Garcia. So in the presence of the other officers, Major Opina told him that they will go and locate the whereabouts of Zaldy Garcia; x x x[5]

Thereafter, he and Major Opina proceeded to Barangay Pugo, Bauang, La Union to serve the Warrant of Arrest against Zaldy Garcia issued by Judge Adolfo Alagar. x x x Upon reaching Pugo, Bauang, La Union, they asked someone near the place who pointed to them the house being rented by Zaldy Garcia. They went nearer the compound and saw a little boy about four (4) to five (5) years old to whom they asked again the house of Zaldy Garcia and the boy pointed a (sic) house inside the compound surrounded by a fence.[6]

Inside the compound are two (2) houses. One is a big house, bungalow type while the other which was rented by Zaldy Garcia is small, bungalow type made of concrete hollow blocks. There is a perimeter fence, about seven (7) to eight (8) feet high with two (2) steel gates. Vehicles can pass through the wider gate while the other, only persons can pass through it. The wider gate is about six (6) to seven (7) feet wide and the other is about five (5) feet wide. Both gates were locked at that time.[7]

They stood in front of the gate that was closed, then a woman approached them at a distance of more or less three (3) meters away. The woman talked to Major Opina who introduced himself and his companion as policemen and she was told that a Warrant of Arrest was issued for the arrest of her husband. While Major Opina and the accused' (sic) wife were talking, Zaldy Garcia came out from their house half naked. The wife's reaction was then normal and she told Major Opina that they just (sic) stay outside for she will get the key from the caretaker and open the gate.[8]

When Major Opina saw Zaldy Garcia, he pointed his finger to Zaldy and said, "Zaldy, agsurender kan, adda warrant of arrest mo." (Zaldy you better surrender, you have a warrant of arrest.) Zaldy just waived his hands indicating as if he refuses, who was then more or less twenty (20) meters from the gate. After waiving his hands, he went inside the house. From the gate to the house, there were no obstruction and the ground was clear. [9]

At that instance, he told his superior Major Opina that they call for a back up from the Police Station of Bauang. Major Opina then ordered him to call. He sent a young man about 16 years old from the vicinity to go to the Police Station to ask a back up for them. As they were waiting for the back-up, they discussed the strategy they would employ in order to arrest Zaldy Garcia. After fifteen (15) to twenty (20) minutes, three (3) policemen arrived and they were SPO3 Edwin Benavidez, PO1 Casem, and the third one, whose name he did not know.[10]

Upon the arrival of the three policemen, witness and Major Opina scaled the fence near the smaller gate and the three policemen positioned themselves outside the compound. SPO3 Benavidez stayed near the big gate outside the compound and the other two were at the back of the western and southern side of the compound.[11] He told SPO3 Benavidez to go with them as back up because he had a long firearm but Benavidez preferred to stay where he was positioned at the big gate. Both the big and small gates were closed. But even if someone is outside the gate, the whole of the house rented by Zaldy Garcia could still be seen.[12]

He and Major Opina were able to enter the compound by scaling the fence.[13] They proceeded to the house of the accused. The pathway leading to the house is plain planted with Bermuda grass and is open. Aside from the main door of the house, there is a screen, it's a double opening door. If somebody is outside about one meter from the door, persons inside the house could be seen. The door was open but the screen made of chicken wire was closed.[14]

While he was walking side by side with Major Opina approaching the door, Major Opina was on his left side, and was ahead of him. Suddenly, they were shot at. He was not hit but Major Opina who was about one meter from the door was hit on the abdomen. After the shot was fired, he dived and positioned himself in a safety (sic) place. Major Opina fell down and he heard the sound of "ehhh" from him.[15]

After he was able to position himself in a safer place, he traded shots with the accused. He did not see the accused when the first shot was fired, but as they traded shots, he saw the accused inside the house near the window beside the door at the eastern portion of the house. The open window at the eastern side of the house is

a steel window with glass. At this point, witness was made to draw a sketch of the compound showing the two houses which are very near each other about one and a half (1 ½) meters away.[16]

When Major Opina fell to the ground, he tried to retrieve him but the accused traded shots with him. He called for the back-up policemen to get inside the compound telling them that Major Opina was shot, he heard somebody from the outside shouting, "You better cover yourself, Sarge." As no one came in from the back up and because he had no extra ammunitions, he covered himself, withdrew at the back of the house, scaled the fence and then went to the main gate. At that juncture, Major Lusad arrived. He traded approximately nine (9) shots with the accused, who had also fired more or less eight (8) to nine (9) shots. However, the accused did not run out of ammo., as they discovered when he surrendered that he has lot of ammunitions and extra magazine.[17]

Upon the arrival of Major Lusad, he ordered them not to shoot and he negotiated with Zaldy Garcia to surrender.[18] During the negotiation, he was outside the gate, but he was aware of what was happening. He heard the demand of the accused before surrendering, that part of the policemen from San Fernando will leave the premises before he (Zaldy) will surrender. x x x[19]

After the negotiation, he saw Zaldy Garcia went outside the house alone, handed his firearm and surrendered to Major Lusad. That was only the time the body of Police Chief Inspector Opina was retrieved by Dr. Parado and brought him to the ambulance.[20] x x x

Witness further testified that he was the one holding the Warrant of Arrest.[21] x x x They have also made precautions in Serving the Warrant of Arrest, but they were immediately shot at when they were approaching the door, as it is an open ground and there was no way for them to take cover if they will be fired upon. So, when a shot rang out and Major Opina was hit, he fell on the side near the door at a distance of more or less one meter.[22] Major Opina was then a little bit ahead of him and nearer to the door.

At the outburst of the first shot, he dived to the ground between the two houses and traded shots with the accused. The shots of the accused were coming from inside the house through the window at the eastern side and from the window of the kitchen. But the first shot was through the door because that was the place where Major Opina was standing while he was at his side."[23] (Italics and footnotes referring to the pertinent parts of the records supplied).

Julita Ines Opina, the mother of the victim, testified that her son was the Chief Intelligence Officer at the San Fernando City Police Station holding the rank of police major.[24] He received a monthly pay of Twenty Thousand Pesos (P20,000.00), more or less, at the time of his death.[25] She affirmed that their family incurred expenses during her son's wake and burial, and in attending the hearings of the case. They spent Twenty Thousand Pesos (P20,000.00), more or less, for the wake. These expenses were not receipted. They also spent Fifty-eight Thousand Pesos (P58,000.00) for the funeral expenses covered by an official receipt issued by the Jones Funeral Homes, and an additional Six Thousand Pesos (P6,000.00) issued by the Glamor Studio. On top of all these, their non-receipted miscellaneous expenses amounted to Sixty-four Thousand Pesos (P64,000.00). After the funeral, they spent around Three Thousand Pesos (P3,000.00) every time they went to court for the hearings; up to July 12, 2000, they had spent Thirty-three Thousand Pesos (P33,000.00). She suffered mental anguish that could not be paid for in money terms, which led to the enlargement of her heart and hypertension.[26]

The testimony of Police Chief Inspector Benjamin Lusad ("Chief Inspector Lusad"), who acted as the senior police officer at the scene immediately after the shooting, was summarized as well by the RTC as follows:

"Upon receiving a report that an incident transpired at Barangay Pugo, Bauang, La Union, he immediately proceeded to the scene and was informed by his men that Police Chief Inspector Tito Opina had been shot. The first thing he did was to clear the scene. When he saw that there were two houses within the compound, he had to clear the first house in order for him to reach the second house which the suspect was believed to be in. He

and his men approached the gate which was apparently padlocked. He peeped in and saw three (3) children who were at the balcony outside the door of the bigger bungalow so that what he did was to evacuate them. They were able to enter the compound as it was the timely arrival of the owner of the house by the name of Norman Lopez.[27]

Upon entering the compound, he searched the house, but he could not see the inside of the house where the suspect was presumed to be hiding because of the locked windows. In going to the second door of the first house, there was an alley where Police Chief Inspector Opina was lying. After clearing the first house, the next thing he did as commander in that kind of situation was to neutralize the suspect by negotiating for his surrender. He was asking the wife to leave but she would not leave and was holding on to him. Their conversation with the accused went on as the wife was the one speaking to the husband while he was the one telling the wife what to tell her husband. x x x However, he could not see the accused as they were separated by walls, but he was at a hearing distance.[28]

He could not exactly remember how long did it take him to negotiate as he did not want the negotiation to go further. He had to think fast and told the accused to come out and if he wants to surrender, he can surrender. He requested him to surrender and when he opened the door of the bigger bungalow, he immediately saw the suspect inside the smaller bungalow and upon seeing him, he stood up, raised both his hands and put down his gun at the wall of the window, then gave his firearm to him while witness was at the alley. When the accused raised his hands and handed him the firearm, he took hold of it and took the magazine and ordered the accused to get out from the house. Witness was made to identify a firearm made in Hungary with SN B60071 including magazines and he said that was the firearm surrendered to him because he was the one whom the suspect had surrendered. He personally took the firearm from the suspect and brought the suspect to the mobile car. The gun was loaded at that time which will be enough to fire at least ten (10) more rounds. The bullets are not just ordinary but special kind that has the tendency to rupture upon impact. x x x Aside from the firearm and extra magazines, the magazines were loaded with ammunitions. x x x[29]

x x x

He was able to talk to the accused at the Police Station. Upon initial inquiry on the matter, he immediately asked the suspect why he was able to do that and the accused said that he shot the late Tito Opina because he believed that he was at a disadvantage. He knew that they are (were) policemen, so he fired first before the policemen could arrest him for certain offense.[30] (Italics and footnotes referring to pertinent parts of the records supplied)

x x x

Dr. Bernardo Parado, a Municipal Health Officer of Bauang, La Union, declared on the witness stand that on September 8, 1999, he conducted an autopsy of Major Opina's body upon the request of Chief Inspector Lusad.[31] According to him, Major Opina's cause of death was cardiopulmonary arrest secondary to hypovolemic shock, irreversible, secondary to massive hemothorax secondary to ruptured pulmonary artery left secondary to gunshot wound 3[rd] to 4[th] rib; left parasternal line, left anterior chest wall.[32]

Tito Opina, Sr. testified that the loss of his son greatly affected his family physically, mentally and financially.[33] He added that his son was a recipient of many awards, including being named the Most Outstanding Chief of Police of La Union.[34]

SPO3 Edwin B. Benavidez testified that in the morning of September 8, 1999, he, together with Police Officer (PO) 3 Juan D. Casem, Jr. ("PO3 Casem") and PO2 Amelito Sapitula ("PO2 Sapitula") were assigned by Chief Inspector Lusad to assist Major Opina and SPO4 Oriña at Pugo, Bauang La Union. Upon reaching the place, they were informed that Major Opina and SPO4 Oriña would effect the arrest of appellant. Afterwards, Major Opina - who had no gun with him - borrowed the unloaded gun of PO3 Casem.[35]

Thereafter, SPO3 Benavidez saw Major Opina and SPO4 Oriña scale the fence to enter the compound. He instructed PO3 Casem and PO2 Sapitula to position themselves at the back of the house to prevent the appellant's escape from that end, while he positioned himself in front of the main gate. As Major Opina, with SPO4 Oriña at his back, approached the appellant's house, he heard a shot and saw Major Opina fall. He intended to but did not shoot at the house because the appellant's wife told him there were children inside. He then called for reinforcement through his radio.[36] While waiting, gunshots were exchanged between SPO3 Oriña and the appellant. After Chief Inspector Lusad's arrival, he instructed the people at the first house to leave for a safer place. He followed Chief Inspector Lusad to the first house from where the latter asked for the appellant's surrender. The negotiation took some time, with the accused surrendering only at approximately 2 p.m. Upon surrender, the appellant handed a 9mm. pistol with magazines and ammunitions to Chief Inspector Lusad who brought these to the police station. These were later on handed over to him for marking as evidence and submission to the representative of the PNP Crime Laboratory.

SPO2 Benjamin Soriano, Chief of the Investigation Division of Bauang Police Station, testified that he conducted an investigation of the incident. He saw the lifeless body of Major Opina when he arrived at the scene. It was lying near the doorstep of the second house. He took pictures of the crime scene and investigated the witnesses. When he entered appellant's house with the deputy chief of police, they saw several empty bullet shells in the living room and kitchen.[37]

SPO1 Rolando Valdez Pascua, a police officer assigned at the Firearms and Explosives Division at Camp Crame as custodian officer, confirmed that appellant was not a registered firearm holder.[38]

The appellant gave a different version of the events, summarized in the RTC decision as follows:

"On September 8, 1999 in the morning, he was inside their rented house with his wife at Pugo, Bauang, La Union. He began renting that house owned by a certain Bobot for two (2) months prior to the date of the incident.[39]

He was about to take a bath when there were two (2) persons knocking at the main gate of the compound about ten (10) meters away from their apartment. The compound is fenced. He went out when he heard these two persons calling "Apo" and told them to come back when the owner of the house arrives. As he was about to take a bath, he told his wife to ask the two persons their purpose and that was the time the wife saw an armalite partly hidden beside the gate.[40]

The main gate of the fence that enclosed the apartment is concrete made of iron. From the place where he was, he cannot see if there was anybody outside the fence, he can only see, if he goes outside the house (sic). His wife coming (sic) back from the gate informed him that the persons calling has an armalite. And while these two (2) persons are climbing the fence, he heard one of them uttering that they will kill him, although he did not know who between the two persons uttered those words as he was already inside the house because he was afraid.[41]

He does not know these persons as they were not in uniforms nor did they inform him that they are Police Officers. After hearing those utterances that they will kill him, he just stayed inside the house. The door of their apartment covered with screen was closed at that time.[42]

He did not see who between the two persons told him the word, "I will kill you, Zaldy," because his view was blocked by a plastic curtain, but at that time he went out, he saw them but they were not familiar to him as that was the first time he saw them. Upon hearing those words, "I will kill you, Zaldy," he got nervous wondering what wrong had he committed.[43]

When he heard them coming nearer to their house, he began to clean the gun kept inside their cabinet. Because he feared for his life, he accidentally pulled the trigger of the gun once towards the direction of the door. The

screen covering the main door was hit by the bullet.[44]

The gun is licensed according to the accused, owned by a certain Romy, a CIA from the Visayas and the Manager of Mama's Bar. He was asked to sell the gun. The documents needed for the sale were given to him but were taken back by the owner a day prior to the incident; while the gun remained in his possession, although he is not a licensed gun dealer.[45]

He did not know if there was any person hit when he accidentally pulled the trigger of the gun. He only learned from Major Benjamin Lusad that he hit Major Opina when the former came to the scene of the incident.[46]

After the firing of the gun, he hid himself at the kitchen for two to three hours. Thereafter, major Lusad arrived, talked to him and he surrendered. He told Major Lusad that he does not know those persons.[47]

He testified further that he was not a former soldier nor had any training in the military so as to know how to operate a gun as he is only a high school graduate. When in fact (sic), he was not familiar with the mechanism of the gun, but the owner taught him how to untuck and tucked (sic) the gun, to open the gun, so that he can accidentally fire that gun without untucking it. Because of fear of his life, he has to arm himself to defend his life. However, he insisted having accidentally pulled the trigger of the gun as he did not notice that the persons were already outside the door, where one of them was Major Opina who was accidentally hit.[48]

x x x

Again, he said, he accidentally fired the gun inside the house because of his nervousness, but, he did not intentionally killed (sic) the victim. At that time. He thought of committing suicide to finish his life as he had hurt feelings upon hearing that they will kill him. He said, he even fired the gun four (4) times at the flooring of the house.[49]

He came to see the body of Major Opina who was about two to three meters away from the door of the house when he surrendered.[50] At first, he was then afraid to surrender, but Major Lusad was able to convince him."[51] (Footnoting ours)

Evangeline Garcia, the appellant's wife, corroborated the appellant's testimony. She narrated that on the morning of September 8, 1999, two (2) men in civilian clothes arrived at the gate of the compound of the house they were renting. Upon her husband's instruction, she went out and asked these persons who they were looking for. She noticed that one of them had a long firearm. The men introduced themselves as the compadre of her husband. She then told them to wait for the owner of the house, as the gate was padlocked. As she was returning to the house, she saw the men scaling the fence. She immediately went inside the house, got her children, and proceeded to their room. She heard gunshots afterwards.[52]

The RTC's decision of August 26, 2003 convicting the accused of the crime of murder provides:

WHEREFORE, judgment is rendered in Criminal Case No. 2300, finding the accused Zaldy Garcia GUILTY beyond reasonable doubt of the crime of MURDER qualified by treachery and with the attendant of a special aggravating circumstance of "the use of unlicensed firearm" and is hereby sentenced to suffer the supreme Penalty of Death, and to pay the heirs of the late Chief Inspector Tito Opina, Jr., the following:

- a) P50, 000.00 for death indemnity;
- b) P126, 000.00 as expenses for the wake, burial and funeral of the victim;
- c) P1,000,000.00 for loss of earning capacity;
- d) P50, 000.00 for moral damages;
- e) P50, 000.00 for exemplary damages plus the costs of the suit.

In Criminal Case No. 2301, the accused is hereby acquitted on reasonable doubt.

SO ORDERED.[53]

The case was elevated to this Court on automatic appeal but was remanded to the Court of Appeals (CA) in accordance with *People v. Mateo*.^[54]

The CA decision of May 31, 2006^[55] affirmed with modification the RTC decision, reducing the award of actual damages and exemplary damages to P64,075.00 and P25,000.00, respectively, and increasing the indemnity for loss of earning capacity to P2,563,516.70. The CA likewise elevated the case to the Supreme Court for automatic review pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rule of Criminal Procedure to Govern Death Penalty Cases).

In his brief,^[56] the appellant argues that the RTC erred -

- in convicting him after the prosecution failed to prove his guilt beyond reasonable doubt;
- in appreciating the qualifying circumstance of treachery;
- in failing to recognize the mitigating circumstance of voluntary surrender in imposing the penalty; and
- in awarding P1,000,000.00 as indemnity for loss of earning capacity.

The Court's Ruling

After due consideration, we deny the appeal but modify the penalty imposed and the awarded indemnities.

Sufficiency of Prosecution Evidence

The established rule in factual reviews before us is that the findings and conclusions of the trial court - including its assessment of the credibility of the witnesses and the probative weight of their testimonies - are accorded high respect, if not conclusive effect, especially if affirmed by the CA.^[57] We nevertheless fully scrutinized the records under review since the review of this case is pursuant to a constitutional command, dictated no less by the highest stake - the life of the accused.^[58]

The appellant contends, as his first point, that his guilt has not been proven beyond reasonable doubt; no one really testified that it was he who shot Major Opina.

We clarify at the outset that proof beyond reasonable doubt is not solely established by direct evidence. In the absence of direct evidence, the prosecution may present circumstantial evidence that, under given conditions, may meet the evidentiary standard of "proof beyond reasonable doubt" in criminal cases. Circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.^[59] The conclusions that can be drawn from the chain of proven circumstances rather than their number are material to prove the guilt of the accused. What is paramount is that facts be proven from which inferences may be drawn - with all the circumstances being consistent with one other - that the accused is guilty and this inference is consistent with no other conclusion except that of guilt.^[60]

The records of this case show that evidence of who actually shot Major Opina is not lacking. In fact, the evidence is the strongest there is, as the appellant himself admitted in open court that he was the one who wielded the gun and pulled the trigger. In his July 17, 2002 testimony, he narrated:

ATTY. GOMEZ:

Q:

Now, you said that you were afraid and you stayed inside your house, after you heard those utterances what happened next after that?

ZALDY GARCIA:

A:

When I heard them coming nearer to my house, that was the time that I was cleaning the gun they were asking me to sell, I accidentally pulled the trigger of the gun, sir.[61] (Emphasis ours)

Likewise, during the continuation of the hearing on July 18, 2002, the appellant testified thus:

ATTY. GOMEZ:

Q:

Now you said that upon hearing those statements from the person outside your house what did you do next mr. witness?

ZALDY GARCIA:

A:

I waited when my wife informed me that they climbed the fence and that was the time that I got nervous.

Q:

And what did you do mr. witness or after feeling nervous?

A:

Accidentally pulled the trigger of the gun sir.

Q:

When in point in time did you take the gun from the place where it is hidden you have earlier stated?

A:

When they were already inside the compound sir.

Q:

And after getting the gun, what did you do mr. witness with that gun?

A:

I was holding it and accidentally pulled the trigger of the gun sir.[62] (Emphasis supplied)

This same gun, by the admission of the appellant's lawyer at the hearing, was confiscated from the appellant and was the same gun that fired the bullet extracted from the body of Major Opina.[63] This same gun (cal. 9mm Parrabellum with serial number B60071), was found by the PNP Regional Crime Laboratory Office 1 to be positive of gunpowder nitrates,[64] indicating that it had recently been fired.

From the various testimonies, we note that no other person, except for the appellant's wife and some children were in the compound at the time of the incident. The compound, surrounded by a fence, had practically been cordoned

off by the time reinforcement came; thus, no other person could go in and out therefrom. Moreover, testimonies also confirm that the appellant was alone in the house during his surrender.[65] Evidence shows too that the fatal shot came from within the house, specifically from behind the screen door.[66] All these, taken collectively and even without the appellant's admission, lead to no other conclusion than that appellant was the only person who could have fired the gun that killed Major Opina. They constitute too an unbroken chain leading to the conclusion that appellant was responsible for Major Opina's death.

The appellant's contention that he accidentally pulled the trigger of the gun out of nervousness deserves scant consideration. His conduct after shooting Opina belies this claim. First, appellant traded shots with SPO4 Oriña immediately after Major Opina was hit. The testimonies of SPO4 Oriña himself and the other police witnesses, supported by physical evidence of the empty 9mm bullet shells recovered from the appellant's house, attest to the exchange of gunfire. A man who shoots another by accident would have been concerned with the consequences of the accident and does not immediately trade shots with the shooting victim's companion. Second, the appellant was fully and adequately armed to do battle, as shown by the gun magazines and ammunition he subsequently surrendered. It is hard to picture a man so armed and who had traded shots with the police to be one who would accidentally shoot another. Finally, a man who accidentally shoots another does not resist and fail to surrender for an extended time. The prolonged negotiations alone showed lack of concern and repentance - traits and reactions inconsistent with the claimed accidental shooting. Thus, based on conclusions from the established facts, we rule out the validity of the appellant's claim of accidental shooting.

The Presence of 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.[67]

To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution.

The appellant seeks to negate these elements of treachery by claiming to have acted out of fear and nervousness; he was allegedly under these stresses because persons who were armed, dressed in civilian clothes and who did not identify themselves as members of the police, scaled his fence. He simply reacted to the intrusion and had no plan to shoot one of those who so approached his house. Hence, he concludes that there was no treachery and the killing could not have been attended by this qualifying circumstance. He posits that the court a quo should have recognized all these.

What are the undisputed facts?

First, it is not disputed that the appellant went out of his house to see for himself the two men who came. Second, by his own testimony, he returned to his house to get his gun. Third, no immediate shooting took place. The two policemen still called for backup assistance, waited and conferred on what to do, and only after the backup came did they scale the fence. Twenty minutes must have elapsed from the time the appellant went inside the house up to the time of the actual shooting. Fourth, Major Opina was almost at the door of the appellant's house when the shot that killed him rang out. Fifth, the shot came from inside the house through a closed chicken wire screen door that effectively hid a man from inside the house from someone from the outside. Sixth, the first and fatal shot was sudden, immediately hitting Major Opina.

We conclude from all these established facts that indeed treachery had attended the killing of Major Opina. While

the original initiative originated from the police who sought to arrest the appellant, the latter's response was an attack which showed, by its method and manner, that it did not come at the spur of the moment. The appellant was duly forewarned about the identities of Major Opina and SPO4 Oriña. Not only was he forewarned, he had ample time to reflect on what to do. His immediate response was to arm himself and to lie in wait - in ambush, literally - and to fire from a position of concealment and relative safety at the two policemen who were fully exposed and in the open at the time. The shooting distance of a little more than a meter effectively gave Major Opina no chance. This, in our view, is a classic example of treachery under the definition of the Revised Penal Code of the term.[68]

Voluntary Surrender

Nor can we accede to the appellant's claim that he should get the mitigating benefit of voluntary surrender in the imposition of his penalty.

The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[69] Without these reasons and where the clear reasons for the supposed surrender is the inevitability of arrest and the need to ensure his safety, the surrender cannot be spontaneous and cannot be the "voluntary surrender" that serves as a mitigating circumstance.[70]

Again, to hark back to the undisputed facts, no surrender immediately took place after the shooting of Major Opina; what followed was an exchange of shots between the appellant and SPO4 Oriña, after which the appellant holed out in his kitchen for some two to three hours. It was only after negotiations with Chief Inspector Lusad that he gave himself up. Thus, SPO3 Benavidez testified that the negotiation was "quite long." [71] SPO4 Oriña, on the other hand, testified that the appellant even made demands before he surrendered.[72] When he did surrender, the police had been in place for some time, fully surrounding his house so that he could not have escaped without a major and direct confrontation with them. Then, too, he did not acknowledge liability for the killing of Major Opina even after his surrender to Chief Inspector Lusad. Under these circumstances, none of the attendant elements that would make the surrender a mitigating circumstance was present. The appellant surrendered simply because there was no other way out without risking his own life and limb in a battle with the police.

The Proper Penalty

The crime committed by the appellant is murder qualified by treachery penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659)[73] with reclusion perpetua to death.[74] The proven use of an unlicensed firearm adds an aggravating circumstance to the crime pursuant to Republic Act No. 8294[75] and its established jurisprudence.[76] Consequently, the CA did not err when it upheld the trial court's imposition of the death penalty under Article 63(1) of the Revised Penal Code.[77]

Despite this confirmation, however, we cannot impose the death penalty in light of Republic Act No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" signed into law on June 24, 2006. Section 2 of this law mandates that in lieu of the death penalty, reclusion perpetua must be imposed with no eligibility for parole under the Indeterminate Sentence Law.[78]

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.[79] While the trial court 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.[80] Hence, we modify the civil indemnity award to this extent to be paid by the appellant to the heirs of Major Opina.

Indemnity for loss of earning capacity is determinable under established jurisprudence based on the net earning capacity of the murder victim computed under the formula:

Net Earning Capacity = $2/3 \times (80 \text{ less the age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})$ [81]

The records show that Major Opina's annual gross income was P154,800.00 per annum computed from his monthly rate of P12,900.00 a month. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of P77,400.00. His life expectancy, on the other hand, is assumed to be $2/3$ of age 80 less 31, his age at the time he died. Applied to the above formula, these data yield the net earning capacity loss to be indemnified at P2,554,200.00. The CA award must thus be reduced to this amount.

With respect to actual damages, established jurisprudence allows only expenses duly supported by receipts.[82] It appears that out of the P126,000.00 awarded by the trial court, only P64,075.00 was actually supported by the required receipts.[83] The difference represents the amounts based solely on the unreceipted submissions by Major Opina's mother. Thus, we affirm the indemnity for actual damages of P64,075.00 that the CA awarded.

We likewise affirm, pursuant to Articles 2216, 2217 and 2219 of the Civil Code, the CA's award of moral damages in light of the mental anguish that the parents of Major Opina suffered. Lastly, we similarly affirm the award of exemplary damages[84] under Article 2230 of the Civil Code given the presence of the aggravating circumstance of use of an unlicensed firearm.

WHEREFORE, in light of all the foregoing, we hereby AFFIRM the May 31, 2006 decision of the CA in CA-G.R. CR-H.C. No. 02075 with the following MODIFICATIONS:

- (1) the penalty of death imposed on accused-appellant is REDUCED to reclusion perpetua without eligibility for parole;
- (2) the death indemnity is INCREASED to P75, 000.00; and
- (3) the indemnity for loss of earning capacity is REDUCED to P2,554,200.00.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, and Leonardo-De Castro, JJ., concur.

Carpio Morales, Velasco, Jr., and Nachura, JJ., on official leave.

[1] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Japar B. Dimaampao and Associate Justice Arturo G. Tayag; rollo, at pp. 3-25.

[2] Penned by Judge Rose Mary Molina-Alim; CA rollo, at pp. 111-153.

[3] The Dangerous Drugs Act of 1972, as amended.

[4] CA rollo, at p. 10.

[5] TSN, July 11, 2000 at pp. 6-7.

- [6] Id., at pp. 8-10.
- [7] Id., at p. 12.
- [8] Id., at pp. 10-11.
- [9] Id., at p. 13.
- [10] Id., at p. 14.
- [11] Id., at p. 15.
- [12] Id., at p. 16.
- [13] Id., at p. 17.
- [14] Id., at pp. 18-19.
- [15] Id., at pp. 19-20.
- [16] Id., at pp. 20-21.
- [17] Id., at pp. 22-23.
- [18] Id., at p. 23.
- [19] Id., at pp. 29-30.
- [20] Id., at p. 26.
- [21] Id., at p. 37.
- [22] Id., at p. 39.
- [23] Id., at pp. 39-40.
- [24] TSN, July 12, 2000 at p. 4.
- [25] Id., at p. 7.
- [26] Id. at pp. 9-12.
- [27] TSN, July 25, 2000 at pp. 5-6.
- [28] Id., at pp. 6-8.
- [29] Id., at pp. 9-12.
- [30] Id. at p. 16.
- [31] TSN, July 26, 2000 at p. 4.
- [32] Id., at p. 10.
- [33] TSN, August 1, 2000 at p. 4.
- [34] Id., at p. 7.
- [35] TSN, September 13, 2000 at pp. 4-6.
- [36] Id., at pp. 7-8.

- [37] TSN, September 18, 2001 at pp. 4-5.
- [38] TSN, October 30, 2001 at pp. 5-6.
- [39] TSN, July 17, 2002 at p. 4.
- [40] Id., at pp. 4-6.
- [41] Id., at p. 7.
- [42] Id., at pp. 8-9.
- [43] TSN, July 18, 2002 at pp. 5-6.
- [44] Id., at p. 7.
- [45] TSN, July 17, 2002 at pp. 10-11.
- [46] TSN, July 18, 2002, at p. 8.
- [47] Id., at pp.10-11.
- [48] Id., at pp. 16-17.
- [49] TSN, July 18, 2002, at p. 18.
- [50] Id., at p. 25.
- [51] Id., at pp. 27-28.
- [52] TSN, October 2, 2002 at pp. 5-7.
- [53] CA rollo, at pp. 152-153.
- [54] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [55] Rollo, at pp. 3-25.
- [56] CA rollo, at pp. 92-109.
- [57] *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.
- [58] Article VIII, Section 5(2)(d), Philippine Constitution.
- [59] *People v. Estillore*, G.R. No. 140348, July 18, 2003, 406 SCRA 605, 615.
- [60] *People v. Loreto*, G.R. No. 137411-13, February 28, 2003, 398 SCRA 448, 459.
- [61] TSN, July 17, 2002 at p. 9.
- [62] TSN, July 18, 2002 at p. 7.
- [63] TSN, September 13, 2000 at p. 15.
- [64] Records, at p. 5.
- [65] TSN, July 11, 2000 at p. 24; TSN, July 25, 2000 at p. 13.
- [66] Id., at pp. 18-19.
- [67] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288.

[68] Article 14, paragraph 16 of the Revised Penal Code provides: There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[69] *People v. Acuram*, G.R. No. 117954, April 27, 2000, 331 SCRA 129, 137.

[70] *People v. Deopante*, G.R. No. 102772, October 30, 1996, 263 SCRA 691, 702.

[71] TSN, September 13, 2000 at p. 10.

[72] TSN, July 11, 2000 at p. 30.

[73] *The Heinous Crime Law*

[74] 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 x x x

[75] Section 1, paragraph 3 of this Act (which took effect on July 6, 1997) provides that "if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance".

[76] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 688; *People v. Palaganas*, G.R. No. 165483, September 12, 2006, 501 SCRA 533; *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 51; *People v. Castillo*, G.R. Nos. 131592-93, February 15, 2000, 325 SCRA 613, 619.

[77] ART. 63. Rules for the application of indivisible penalties.

x x x

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x

[78] SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SECTION 3. Persons convicted of offenses punishable with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[79] *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34.

[80] *People v. Brodett*, G.R. No. 170136, January 18, 2008, 542 SCRA 88.

[81] *People v. Batin*, *supra*, note 66 at p. 294.

[82] *Pleyto v. Lomboy*, G.R. No. 148737, June 16, 2004, 432 SCRA 329; *People v. Buenavidez*, G.R. No.

141120, September 17, 2003, 411 SCRA 202.

[83] See Exh. "F-F3," Records at pp. 64-65.

[84] People v. Villa, Jr., G.R. No. 179278, March 28, 2008.

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